

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

In the Matter of

DON S. JACKSON and  
JENKENS & GILCHRIST, a  
Professional Corporation,

Former Outside Counsel  
of Peoples Heritage Federal  
Savings and Loan Association,  
Salina, Kansas,

Respondents.

Re: Resolution No.  
DAL 91-47

OTS Order No. AP 95-14  
Dated: March 10, 1995

OPINION AND ORDER ACCEPTING OFFER OF SETTLEMENT  
BY JENKENS & GILCHRIST

WHEREAS, the Office of Thrift Supervision ("OTS") has issued a Notice of Charges ("Notice") against Respondents Don S. Jackson ("Jackson") and Jenkens & Gilchrist, a Professional Corporation ("Jenkens & Gilchrist"), asserting certain enforcement claims arising out of Jackson's and Jenkens & Gilchrist's representation of Peoples Heritage Federal Savings and Loan Association, Salina, Kansas, now in receivership ("Peoples Heritage"), and seeking an order directing restitution and other affirmative relief, pursuant to 12 U.S.C. § 1818(b)(1) and (6); and

WHEREAS, Respondent Jenkens & Gilchrist has submitted an Offer of Settlement ("Offer") in the above-captioned proceeding. Upon

consideration, the OTS has determined to accept the Offer.<sup>1</sup> Solely on the basis of the consent evidenced by the Offer and without any adjudication in the merits, **THE OTS HEREBY ORDERS THAT:**<sup>2</sup>

#### DEFINITIONS

1. For the purposes of this Opinion and Order Accepting Offer of Settlement by Jenkins & Gilchrist (the "Order"), the following definitions shall apply:

2. The phrase the "Firm" or "Jenkins & Gilchrist" shall mean Jenkins & Gilchrist, a Professional Corporation, headquartered in Dallas, Texas;

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1. In the Offer, solely for the purposes of this proceeding and without admitting or denying the allegations of the Notice and without any adjudication of the facts or law, Jenkins & Gilchrist, as defined herein, acknowledges service of the Notice; admits the jurisdiction of the OTS with respect to the matters set forth in the Notice; waives a hearing with respect to the matters set forth in the Notice, all post-hearing procedures with respect to the matters set forth in the Notice, judicial review of the Order by any court as provided by 12 U.S.C. §1818(h), challenge to the validity of the Order, any objection to the staff's participation in the OTS's consideration of the Offer, and any and all claims for the award of fees, costs or expenses arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and stipulates that the record basis for this proceeding consists of the Notice and the Offer.

2. Solely by virtue of the Offer and not by an adjudication on the merits, this Order, as defined herein, may be used in any proceeding brought by the OTS to enforce this Order. The Notice, the Offer, and this Order, or the relief consented to by virtue of the Offer, shall not be used by OTS for any other purpose. The payment of the amounts set forth in paragraphs 18 through 23 of this Order do not constitute and shall not be deemed by the OTS to constitute evidence of or an admission by Jenkins & Gilchrist, as defined herein, as to any liability, fault, or wrongdoing. Negotiation of the terms of this Order, including conduct and statements made in connection therewith, shall not be admissible in accordance with Rule 408 of the Federal Rules of Evidence.

3. The phrase "insured depository institution" shall mean any savings and loan association, savings bank, commercial bank, credit union or any other depository institution that holds federally insured deposits, any non-diversified holding company of such institution, and a diversified holding company of such institution to the extent that the services provided directly relate to a subsidiary federally insured depository institution;

4. The phrase "regulatory responsibility" shall mean the representation of an insured depository institution in connection with an application, examination or proceeding before a federal bank regulatory agency, advising an insured depository institution concerning its compliance with federal banking laws and regulations or designation as general counsel of an insured depository institution;

5. "Knowledge" in any context as to a Firm attorney shall mean the actual knowledge of such attorney or reckless disregard by such attorney of the facts;

6. "Knowledge" in any context as to the Firm shall mean (a) the knowledge of the Firm attorney in charge on the matter, or (b) the knowledge of another Firm attorney working on the matter where such knowledge should have been, but was not, requested by the Firm attorney in charge on the matter in the reasonable exercise of his or her supervisory responsibility, or (c) knowledge of another Firm attorney not working on the matter, when to the knowledge of the Firm attorney in charge, such other Firm attorney has knowledge material to the Firm attorney in charge's responsibility; and

7. "Knowingly" shall mean that the Firm attorney has acted voluntarily and intentionally and not because of inadvertence, ignorance, mistake, or accident.

#### FIRM POLICIES AND PROCEDURES

8. All allegations in the Notice relate solely to the Firm's prior representation of one savings and loan association with respect to real estate lending activities that occurred between 1984 and 1989. None of the allegations in the Notice prompting this Order relate to the Firm's representation of commercial banking institutions, bank holding companies or merger and acquisition activities. Nevertheless, the Firm and OTS agree that it is appropriate for the Firm to maintain uniform operating policies and procedures for supervising the conduct of its financial institutions practice relating to insured depository institution clients, which it has furnished to the OTS. The obligations set forth in this Order are generally consistent with and supplemental to the Firm's existing operating policies and procedures, and refer to the following terms which are derived, in part, from those policies and procedures.

#### REPRESENTATION OF INSURED DEPOSITORY INSTITUTION CLIENTS

9. When the Firm (i) acts as general counsel to an insured depository institution, or (ii) undertakes regulatory responsibility for a new or existing insured depository institution for which the Firm anticipates performing or performs legal services, excluding collection and foreclosure work, having a value

of \$250,000 or more at the Firm's regular billing rates during any one calendar year, the Firm shall:

a. with respect to each new insured depository institution client, the Firm shall in writing confirm, or obtain confirmation of, the nature of the representation at or about the time the Firm is retained by such client and, for each significant new matter opened by the Firm, record the nature of such matter in accordance with the Firm's normal policy; and

b. assign an attorney who is qualified to supervise matters entailing regulatory responsibility relevant to the representation and who has had at least five (5) years experience in advising (i) insured depository institutions, or (ii) other clients as to insured depository institution-related matters ("attorney in charge"). The attorney in charge shall, with respect to any financial institution regulatory issues involved in the engagement: (i) assign as necessary other attorneys qualified to work on the matters undertaken, (ii) supervise the work of the attorneys assigned to such matters, and (iii) monitor the quality of such attorneys' work.

10. When acting as counsel for an insured depository institution in connection with:

a. any matter in which the Firm undertakes regulatory responsibility, neither the Firm nor any Firm attorney shall knowingly or recklessly violate, or knowingly or recklessly cause, bring about, participate in, counsel, or aid and abet in the violation of any applicable federal banking statutes or regulations;

b. the documenting or closing of any transaction, neither the Firm nor any Firm attorney shall cause, counsel, or aid and abet the commission of any act that, to the knowledge of the Firm or the Firm attorney, as applicable, constitutes a violation of applicable federal banking statutes or regulations. Provided, however, nothing contained herein shall prevent the Firm from assisting a client in seeking a waiver, modification or other relief from applicable federal banking statutes or regulations.

11. The Firm shall require each attorney at or prior to the time that he or she is initially assigned to perform legal services covered by the terms of this Order to read a copy of this Order and acknowledge in writing that he or she has done so. Upon receipt of such acknowledgment, the Firm shall have complied with its obligation set forth in this paragraph.

DOCUMENTATION PREPARED BY THE FIRM ON BEHALF OF INSURED DEPOSITORY  
INSTITUTION CLIENTS

12. In the course of representing an insured depository institution in any matter:

a. neither the Firm nor any Firm attorney shall prepare or assist in the preparation of any documentation that will to the knowledge of the Firm or the Firm attorney, as applicable, have the effect of providing a materially inaccurate or misleading record of the business of such insured depository institution;

b. no attorney of the Firm shall prepare, deliver or make, or assist in the preparation, delivery or making of, any document that such attorney knows will be relied upon by, or

submitted to, a federal bank regulatory agency and which, to the Firm's knowledge, includes any untrue or misleading statement of a material fact or omits to state a material fact necessary to make the statements made in the document, in light of the circumstances under which they were made, not misleading; and

c. the Firm shall correct any document which it has prepared that the Firm knows will be relied upon by, or submitted to, a federal bank regulatory agency if to the Firm's subsequent knowledge such document contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made in the document, in light of the circumstances under which they were made, not misleading. Such correction shall be promptly submitted to the insured depository institution and; if the uncorrected document has been submitted to, or relied upon by, a federal bank regulatory agency, the Firm shall advise the insured depository institution to promptly submit the corrected document to such federal bank regulatory agency.

13. The Firm shall retain substantive documentation prepared during, and all files pertaining to, its representation of an insured depository institution that will provide an accurate and complete record of the transaction or the matter undertaken. This retention shall continue in accordance with the Firm's record retention policy; and said policy as it relates to files with respect to insured depository institutions shall not be materially altered, amended or modified without the prior review and approval of the OTS.

#### CONFLICTS OF INTEREST

14. The Firm shall not, with knowledge, represent in the same transaction both (a) an insured depository institution and, (b) any other person or entity, including another insured depository institution, with respect to a matter in which the interests of the insured depository institution and the other person or entity are adverse unless: (i) each such client (if a corporate entity by an appropriate officer who has no conflicting duty to the other party) consents to such representation in such matter after full disclosure concerning the nature of any such conflict in that matter, which disclosure and consent shall be appropriately documented by the Firm; and (ii) such representation is permitted by applicable standards of professional conduct. The representation of a syndicate and the syndicate manager in the ordinary course of a syndicated financial transaction, or a lead lending institution and loan participants in the ordinary course of a loan transaction, shall not be deemed "adverse" for the purpose of this paragraph.

15. During the course of the Firm's representation of an insured depository institution, the Firm shall retain all documentation and files concerning all conflicts checks procedures pertaining to new or proposed matters to be performed by the Firm consistent with the Firm's record retention policy.

#### DISCLOSURE TO INSURED DEPOSITORY INSTITUTION CLIENTS

16. When, to the knowledge of a Firm attorney, an employee, officer or director of an insured depository institution client regulated by the OTS has acted or is threatening to act in

violation of such person's fiduciary duties, the Firm attorney shall inform the attorney in charge, who, if he or she concurs, shall advise such employee, officer or director (a) concerning such person's fiduciary duties to the institution's shareholders and creditors, which includes the insurance fund, and (b) that the fiduciary duties of such person include the responsibility for the safety and soundness of the insured depository institution as set forth in paragraph 17 below. Should such employee, officer or director, to the Firm's knowledge, fail to adhere to the attorney in charge's advice concerning fiduciary duties, the Firm shall cause the attorney in charge to inform a responsible executive officer of the insured depository institution of the facts and circumstances surrounding the actions or intended actions of such employee, officer or director and of the advice provided to such employee, officer or director. The Firm shall further cause the attorney in charge to advise the responsible executive officer that pursuant to his or her own fiduciary duties he or she must (a) ascertain whether a breach of fiduciary duty is threatened or has occurred, and (b) in the event that a breach of fiduciary duty is threatened or has occurred, take action to correct or nullify the actions constituting the threatened or actual breach of fiduciary duty and remedy any harm to the insured depository institution caused by those actions. If the responsible executive officer, to the Firm's knowledge, fails to act pursuant to the attorney in charge's advice, if warranted by the seriousness of the matter, the Firm shall cause the attorney in charge to take the same steps with respect to such insured depository institution's

Board of Directors as it was required to take with respect to such responsible executive officer. If the Board of Directors, to the Firm's knowledge, fails to act pursuant to the attorney in charge's advice, the Firm shall consider whether the applicable ethical rules require the Firm's resignation from the engagement or some other action and shall act in accordance with such ethical rules and shall document its decision. Provided, however, that if, during the course of satisfying its obligations under this paragraph, the Firm is terminated by the client or if the Firm resigns, consistent with applicable ethical rules, the firm has no further obligations under this paragraph with respect to such client.

17. When advising any person concerning his or her responsibility for the safety and soundness of an insured depository institution, the Firm shall advise that person that the OTS has determined that an unsafe or unsound practice embraces, among other things, any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be unacceptable risk of loss or damage to an institution, its shareholders, or its creditors (which in the view of the OTS includes the insurance fund). The foregoing shall not preclude the Firm from supplementing such advice in any manner consistent with applicable law and regulations.

### RESTITUTION

18. The Firm shall pay restitution to or for the benefit of the Resolution Trust Corporation ("RTC"), as receiver for Peoples Heritage, the amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00), payable pursuant to the terms set forth below.

19. The Firm shall pay to the RTC, as receiver for Peoples Heritage, the sum of One Hundred Fifty Thousand and No/100 dollars (\$150,000) in cash on or before March 10, 1995;

20. The Firm shall pay to the OTS the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) in cash on or before March 10, 1995, representing the first installment of affirmative relief, in the form of restitution and reimbursement, concerning expenses incurred by the OTS in conducting investigative and enforcement activities relating thereto;

21. The Firm shall pay to the RTC, as receiver for Peoples Heritage, the sum of One Hundred Fifty Thousand and No/100 dollars (\$150,000) in cash on or before March 21, 1995;

22. The Firm shall pay to the OTS the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) in cash on or before March 21, 1995, representing the final installment of affirmative relief, in the form of restitution and reimbursement, concerning expenses incurred by the OTS in conducting investigative and enforcement activities relating thereto;

23. On or before March 10, 1995, the Firm shall execute and deliver a promissory note payable to the RTC, as receiver for Peoples Heritage, (the "RTC Note") in the total amount of Seven

Hundred Fifty Thousand and No/100 Dollars (\$750,000), said sum to include the payment set forth in paragraph 21 above, payable in the installments of principal and accrued interest set forth therein, and on the other terms and conditions set forth in the RTC Note attached as Exhibit A. Such RTC Note, as fully executed and delivered, is and shall be incorporated herein by reference and, in addition to the remedies set forth in the RTC Note, shall be enforceable by the OTS as a term of this Order as though fully set forth in this Order; and

24. Notice of payments to the RTC should be made by telecopy and express courier to: Brian C. McCormally, Senior Deputy Chief Counsel, Midwest Enforcement/Litigation, Office of Thrift Supervision, 8500 W. 110th St., Suite 400, Overland Park, KS 66214, telecopy number (913) 338-3014.

#### MISCELLANEOUS

25. The Firm shall retain all records or files required to be created or maintained pursuant to this Order while the Order is in effect or for three years after the record or file was created, whichever period is longer.

26. Subject to the limitations set forth in paragraph 27 below, the Firm shall promptly respond to any request from the OTS for the Firm's documents that OTS reasonably requires to determine compliance with this Order.

27. Nothing contained herein shall require the Firm to provide to the OTS information protected by an attorney-client or work product privilege unless waived by the holder of the privilege. In

the event that the Firm seeks to withhold documents from the OTS under a claim of privilege, the Firm shall provide the OTS with a privilege log containing a description of each document withheld and listing the document's date, its author, the names and positions of persons to whom the document was or has been provided, the applicable privilege asserted, and such other non-privileged information as may reasonably be requested by OTS for the purpose of determining the validity of the claim of privilege. In the event the OTS determines such information does not establish the validity of the Firm's claim of privilege, the Firm shall not be obligated to provide such documents except pursuant to a subpoena, the validity of which the Firm or any other interested party may challenge, to the extent permitted by law or regulation.

28. This Order and the Offer may be used in any proceeding brought by the OTS to enforce this Order.

29. This Order constitutes the final disposition of all penalties, monetary and non-monetary administrative relief that could have been brought by the OTS against Jenkins & Gilchrist, or any of its present or former partners, shareholders, associate attorneys or employees, in connection with any aspect of its representation of Peoples Heritage; Mississippi Savings Bank, Batesville, Mississippi, now in receivership ("Mississippi Savings Bank"); and First American Federal Savings Bank, Santa Fe, New Mexico, now in receivership ("First American"). All OTS proceedings against the Firm related to the Notice are hereby terminated and no future proceedings shall be commenced against the Firm or any present or former partner, shareholder, associate

attorney or employee of the Firm, relating to the Firm's representation of Peoples Heritage; Mississippi Savings Bank; and First American.

30. The OTS has also reviewed the Firm's representation of Murray Federal Savings and Loan Association, Dallas, Texas, now in receivership ("Murray Federal"), and First Garland Federal Savings, Garland, Texas, now in receivership ("First Garland"), and has determined that any regulatory concerns the OTS may have as to the Firm regarding any matters arising out of the Firm's representation of these insured depository institutions are addressed by this Order. Therefore, this Order constitutes the final disposition of all allegations for penalties, monetary and non-monetary administrative relief that could have been brought by the OTS against the Firm in connection with its representation of Murray Federal and First Garland. The OTS, however, expressly reserves the right to seek any and all non-monetary administrative relief as to present or former partners, shareholders, associate attorneys or employees of the Firm individually in connection with any aspect of such persons' participation in the Firm's representation of Murray Federal and First Garland.

31. The Firm shall for a period of three years from the effective date of this Order comply with the policies and procedures set forth above and shall not amend, modify, revise or alter in any way the policies and procedures without the prior written approval of the OTS. At the conclusion of a three-year period commencing on the effective date of this Order, the Firm shall submit written certification to the OTS that the Firm

complied with the terms and conditions of the Order as set forth herein. Upon its receipt of the certification, paragraphs 1 through 17 and 25 through 32 of this Order shall be terminated and the OTS shall forward written notification of this fact to the Firm. Paragraphs 18 through 24 of this Order shall remain in effect until the RTC Note is paid in full in accordance with its terms. Upon full and complete satisfaction of the terms of the RTC Note, paragraphs 18 through 24 of this Order shall terminate.

32. This Order shall become effective on the date of execution by the Acting Director, OTS, and a copy of this Order shall be served upon the Firm at the address set forth in the Notice.

Dated: March 10, 1995

Jonathan L. Flechter  
Jonathan L. Flechter  
Acting Director  
Office of Thrift Supervision

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

In the Matter of )

DON S. JACKSON and )  
JENKENS & GILCHRIST, a )  
Professional Corporation )

Former Outside Counsel )  
of Peoples Heritage Federal )  
Savings and Loan Association, )  
Salina, Kansas, )

Respondents. )

Resolution No. 91-47

OFFER OF SETTLEMENT BY  
JENKENS & GILCHRIST

I.

Respondent Jenkens & Gilchrist, a Professional Corporation ("Jenkins & Gilchrist" or "the Firm"), hereby submits this Offer of Settlement ("Offer") to the Office of Thrift Supervision (the "OTS"). This Offer is submitted for the sole purpose of disposing of the allegations and issues raised in the Notice of Charges ("Notice") issued by the OTS in this matter.

II.

This Offer is submitted solely for the purpose of terminating this proceeding and shall be null and void and shall not be used in any manner in any proceeding if it is not accepted by the OTS as hereinafter set forth.

### III.

Solely for the purposes of this proceeding, without admitting or denying the allegations of the Notice in this proceeding and without adjudication of any issue of fact or law, Jenkens & Gilchrist:

1. Admits the jurisdiction of the OTS with respect to the matters set forth in the Notice;
2. Stipulates that the record basis for this proceeding consists of the Notice and this Offer;
3. Acknowledges service of the Notice; and
4. Waives:
  - a. a hearing;
  - b. all post-hearing procedures;
  - c. entry of findings of fact and conclusions of law;
  - d. judicial review of the OTS's order by any court as provided by 12 U.S.C. §1818(h), or otherwise challenge the validity of the Order;
  - e. any objection of the staff's participation in OTS's consideration of this Offer; and
  - f. any and all claims for the award of fees, costs or expenses arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

#### IV.

Jenkins & Gilchrist consents, solely by virtue of this Offer and not any adjudication on the merits, to the entry of an order by the OTS that contains the following terms:<sup>1</sup>

#### DEFINITIONS

1. For the purposes of this Opinion and Order Accepting Offer of Settlement by Jenkins & Gilchrist (the "Order"), the following definitions shall apply:

2. The phrase the "Firm" or "Jenkins & Gilchrist" shall mean Jenkins & Gilchrist, a Professional Corporation, headquartered in Dallas, Texas;

3. The phrase "insured depository institution" shall mean any savings and loan association, savings bank, commercial bank, credit union or any other depository institution that holds federally insured deposits, any non-diversified holding company of such institution, and a diversified holding company of such institution to the extent that the services provided directly relate to a subsidiary federally insured depository institution;

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1. Solely by virtue of the Offer and not by an adjudication on the merits, this Order, as defined herein, may be used in any proceeding brought by the OTS to enforce this Order; provided, however, that there shall be no use of the Notice in such a proceeding except in connection with a proceeding to enforce this Order. The Notice, the Offer, and this Order, or the relief consented to by virtue of the Offer, shall not be used by OTS for any other purpose. The payment of the amounts set forth in paragraphs 18 through 23 of the Order do not constitute and shall not be deemed by the OTS to constitute evidence of or an admission by Jenkins & Gilchrist, as defined herein, as to any liability, fault, or wrongdoing. Negotiation of the terms of this Order, including conduct and statements made in connection therewith, shall not be admissible in accordance with Rule 408 of the Federal Rules of Evidence.

4. The phrase "regulatory responsibility" shall mean the representation of an insured depository institution in connection with an application, examination or proceeding before a federal bank regulatory agency, advising an insured depository institution concerning its compliance with federal banking laws and regulations or designation as general counsel of an insured depository institution;

5. "Knowledge" in any context as to a Firm attorney shall mean the actual knowledge of such attorney or reckless disregard by such attorney of the facts;

6. "Knowledge" in any context as to the Firm shall mean (a) the knowledge of the Firm attorney in charge on the matter, or (b) the knowledge of another Firm attorney working on the matter where such knowledge should have been, but was not, requested by the Firm attorney in charge on the matter in the reasonable exercise of his or her supervisory responsibility, or (c) knowledge of another Firm attorney not working on the matter, when to the knowledge of the Firm attorney in charge, such other Firm attorney has knowledge material to the Firm attorney in charge's responsibility; and

7. "Knowingly" shall mean that the Firm attorney has acted voluntarily and intentionally and not because of inadvertence, ignorance, mistake, or accident.

#### FIRM POLICIES AND PROCEDURES

8. All allegations in the Notice relate solely to the Firm's prior representation of one savings and loan association with respect to real estate lending activities that occurred between

1984 and 1989. None of the allegations in the Notice prompting this Order relate to the Firm's representation of commercial banking institutions, bank holding companies or merger and acquisition activities. Nevertheless, the Firm and OTS agree that it is appropriate for the Firm to maintain uniform operating policies and procedures for supervising the conduct of its financial institutions practice relating to insured depository institution clients, which it has furnished to the OTS. The obligations set forth in this Order are generally consistent with and supplemental to the Firm's existing operating policies and procedures, and refer to the following terms which are derived, in part, from those policies and procedures.

REPRESENTATION OF INSURED DEPOSITORY INSTITUTION CLIENTS

9. When the Firm (i) acts as general counsel to an insured depository institution, or (ii) undertakes regulatory responsibility for a new or existing insured depository institution for which the Firm anticipates performing or performs legal services, excluding collection and foreclosure work, having a value of \$250,000 or more at the Firm's regular billing rates during any one calendar year, the Firm shall:

a. with respect to each new insured depository institution client, the Firm shall in writing confirm, or obtain confirmation of, the nature of the representation at or about the time the Firm is retained by such client and, for each significant new matter opened by the Firm, record the nature of such matter in accordance with the Firm's normal policy; and

b. assign an attorney who is qualified to supervise matters entailing regulatory responsibility relevant to the representation and who has had at least five (5) years experience in advising (i) insured depository institutions, or (ii) other clients as to insured depository institution-related matters ("attorney in charge"). The attorney in charge shall, with respect to any financial institution regulatory issues involved in the engagement: (i) assign as necessary other attorneys qualified to work on the matters undertaken, (ii) supervise the work of the attorneys assigned to such matters, and (iii) monitor the quality of such attorneys' work.

10. When acting as counsel for an insured depository institution in connection with:

a. any matter in which the Firm undertakes regulatory responsibility, neither the Firm nor any Firm attorney shall knowingly or recklessly violate, or knowingly or recklessly cause, bring about, participate in, counsel, or aid and abet in the violation of any applicable federal banking statutes or regulations;

b. the documenting or closing of any transaction, neither the Firm nor any Firm attorney shall cause, counsel, or aid and abet the commission of any act that, to the knowledge of the Firm or the Firm attorney, as applicable, constitutes a violation of applicable federal banking statutes or regulations. Provided, however, nothing contained herein shall prevent the Firm from assisting a client in seeking a waiver, modification or other relief from applicable federal banking statutes or regulations.

11. The Firm shall require each attorney at or prior to the time that he or she is initially assigned to perform legal services covered by the terms of this Order to read a copy of this Order and acknowledge in writing that he or she has done so. Upon receipt of such acknowledgment, the Firm shall have complied with its obligation set forth in this paragraph.

DOCUMENTATION PREPARED BY THE FIRM ON BEHALF OF INSURED DEPOSITORY  
INSTITUTION CLIENTS

12. In the course of representing an insured depository institution in any matter:

a. neither the Firm nor any Firm attorney shall prepare or assist in the preparation of any documentation that will to the knowledge of the Firm or the Firm attorney, as applicable, have the effect of providing a materially inaccurate or misleading record of the business of such insured depository institution;

b. no attorney of the Firm shall prepare, deliver or make, or assist in the preparation, delivery or making of, any document that such attorney knows will be relied upon by, or submitted to, a federal bank regulatory agency and which, to the Firm's knowledge, includes any untrue or misleading statement of a material fact or omits to state a material fact necessary to make the statements made in the document, in light of the circumstances under which they were made, not misleading; and

c. the Firm shall correct any document which it has prepared that the Firm knows will be relied upon by, or submitted to, a federal bank regulatory agency if to the Firm's subsequent

knowledge such document contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made in the document, in light of the circumstances under which they were made, not misleading. Such correction shall be promptly submitted to the insured depository institution and; if the uncorrected document has been submitted to, or relied upon by, a federal bank regulatory agency, the Firm shall advise the insured depository institution to promptly submit the corrected document to such federal bank regulatory agency.

13. The Firm shall retain substantive documentation prepared during, and all files pertaining to, its representation of an insured depository institution that will provide an accurate and complete record of the transaction or the matter undertaken. This retention shall continue in accordance with the Firm's record retention policy; and said policy as it relates to files with respect to insured depository institutions shall not be materially altered, amended or modified without the prior review and approval of the OTS.

#### CONFLICTS OF INTEREST

14. The Firm shall not, with knowledge, represent in the same transaction both (a) an insured depository institution and, (b) any other person or entity, including another insured depository institution, with respect to a matter in which the interests of the insured depository institution and the other person or entity are adverse unless: (i) each such client (if a corporate entity by an appropriate officer who has no conflicting duty to the other party)

consents to such representation in such matter after full disclosure concerning the nature of any such conflict in that matter, which disclosure and consent shall be appropriately documented by the Firm; and (ii) such representation is permitted by applicable standards of professional conduct. The representation of a syndicate and the syndicate manager in the ordinary course of a syndicated financial transaction, or a lead lending institution and loan participants in the ordinary course of a loan transaction, shall not be deemed "adverse" for the purpose of this paragraph.

15. During the course of the Firm's representation of an insured depository institution, the Firm shall retain all documentation and files concerning all conflicts checks procedures pertaining to new or proposed matters to be performed by the Firm consistent with the Firm's record retention policy.

DISCLOSURE TO INSURED DEPOSITORY INSTITUTION CLIENTS

16. When, to the knowledge of a Firm attorney, an employee, officer or director of an insured depository institution client regulated by the OTS has acted or is threatening to act in violation of such person's fiduciary duties, the Firm attorney shall inform the attorney in charge, who, if he or she concurs, shall advise such employee, officer or director (a) concerning such person's fiduciary duties to the institution's shareholders and creditors, which includes the insurance fund, and (b) that the fiduciary duties of such person include the responsibility for the safety and soundness of the insured depository institution as set

forth in paragraph 17 below. Should such employee, officer or director, to the Firm's knowledge, fail to adhere to the attorney in charge's advice concerning fiduciary duties, the Firm shall cause the attorney in charge to inform a responsible executive officer of the insured depository institution of the facts and circumstances surrounding the actions or intended actions of such employee, officer or director and of the advice provided to such employee, officer or director. The Firm shall further cause the attorney in charge to advise the responsible executive officer that pursuant to his or her own fiduciary duties he or she must (a) ascertain whether a breach of fiduciary duty is threatened or has occurred, and (b) in the event that a breach of fiduciary duty is threatened or has occurred, take action to correct or nullify the actions constituting the threatened or actual breach of fiduciary duty and remedy any harm to the insured depository institution caused by those actions. If the responsible executive officer, to the Firm's knowledge, fails to act pursuant to the attorney in charge's advice, if warranted by the seriousness of the matter, the Firm shall cause the attorney in charge to take the same steps with respect to such insured depository institution's Board of Directors as it was required to take with respect to such responsible executive officer. If the Board of Directors, to the Firm's knowledge, fails to act pursuant to the attorney in charge's advice, the Firm shall consider whether the applicable ethical rules require the Firm's resignation from the engagement or some other action and shall act in accordance with such ethical rules and shall document its decision. Provided, however, that if,

during the course of satisfying its obligations under this paragraph, the Firm is terminated by the client or if the Firm resigns, consistent with applicable ethical rules, the firm has no further obligations under this paragraph with respect to such client.

17. When advising any person concerning his or her responsibility for the safety and soundness of an insured depository institution, the Firm shall advise that person that the OTS has determined that an unsafe or unsound practice embraces, among other things, any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be unacceptable risk of loss or damage to an institution, its shareholders, or its creditors (which in the view of the OTS includes the insurance fund). The foregoing shall not preclude the Firm from supplementing such advice in any manner consistent with applicable law and regulations.

#### RESTITUTION

18. The Firm shall pay restitution to or for the benefit of the Resolution Trust Corporation ("RTC"), as receiver for Peoples Heritage, the amount of One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00), payable pursuant to the terms set forth below.

19. The Firm shall pay to the RTC, as receiver for Peoples Heritage, the sum of One Hundred Fifty Thousand and No/100 dollars (\$150,000) in cash on or before March 10, 1995;

20. The Firm shall pay to the OTS the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) in cash on or before March 10, 1995, representing the first installment of affirmative relief, in the form of restitution and reimbursement, concerning expenses incurred by the OTS in conducting investigative and enforcement activities relating thereto;

21. The Firm shall pay to the RTC, as receiver for Peoples Heritage, the sum of One Hundred Fifty Thousand and No/100 dollars (\$150,000) in cash on or before March 21, 1995;

22. The Firm shall pay to the OTS the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000) in cash on or before March 21, 1995, representing the final installment of affirmative relief, in the form of restitution and reimbursement, concerning expenses incurred by the OTS in conducting investigative and enforcement activities relating thereto;

23. On or before March 10, 1995, the Firm shall execute and deliver a promissory note payable to the RTC, as receiver for Peoples Heritage, (the "RTC Note") in the total amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000), said sum to include the payment set forth in paragraph 21 above, payable in the installments of principal and accrued interest set forth therein, and on the other terms and conditions set forth in the RTC Note attached as Exhibit A. Such RTC Note, as fully executed and delivered, is and shall be incorporated herein by reference and, in addition to the remedies set forth in the RTC Note, shall be enforceable by the OTS as a term of this Order as though fully set forth in this Order; and

24. Notice of payments to the RTC should be made by telecopy and express courier to: Brian C. McCormally, Senior Deputy Chief Counsel, Midwest Enforcement/Litigation, Office of Thrift Supervision, 8500 W. 110th St., Suite 400, Overland Park, KS 66214, telecopy number (913) 338-3014.

MISCELLANEOUS

25. The Firm shall retain all records or files required to be created or maintained pursuant to this Order while the Order is in effect or for three years after the record or file was created, whichever period is longer.

26. Subject to the limitations set forth in paragraph 27 below, the Firm shall promptly respond to any request from the OTS for the Firm's documents that OTS reasonably requires to determine compliance with this Order.

27. Nothing contained herein shall require the Firm to provide to the OTS information protected by an attorney-client or work product privilege unless waived by the holder of the privilege. In the event that the Firm seeks to withhold documents from the OTS under a claim of privilege, the Firm shall provide the OTS with a privilege log containing a description of each document withheld and listing the document's date, its author, the names and positions of persons to whom the document was or has been provided, the applicable privilege asserted, and such other non-privileged information as may reasonably be requested by OTS for the purpose of determining the validity of the claim of privilege. In the event the OTS determines such information does not establish the

validity of the Firm's claim of privilege, the Firm shall not be obligated to provide such documents except pursuant to a subpoena, the validity of which the Firm or any other interested party may challenge, to the extent permitted by law or regulation.

28. This Order and the Offer may be used in any proceeding brought by the OTS to enforce this Order.

29. This Order constitutes the final disposition of all penalties, monetary and non-monetary administrative relief that could have been brought by the OTS against Jenkins & Gilchrist, or any of its present or former partners, shareholders, associate attorneys or employees, in connection with any aspect of its representation of Peoples Heritage; Mississippi Savings Bank, Batesville, Mississippi, now in receivership ("Mississippi Savings Bank"); and First American Federal Savings Bank, Santa Fe, New Mexico, now in receivership ("First American"). All OTS proceedings against the Firm related to the Notice are hereby terminated and no future proceedings shall be commenced against the Firm or any present or former partner, shareholder, associate attorney or employee of the Firm, relating to the Firm's representation of Peoples Heritage; Mississippi Savings Bank; and First American.

30. The OTS has also reviewed the Firm's representation of Murray Federal Savings and Loan Association, Dallas, Texas, now in receivership ("Murray Federal"), and First Garland Federal Savings, Garland, Texas, now in receivership ("First Garland"), and has determined that any regulatory concerns the OTS may have as to the Firm regarding any matters arising out of the Firm's representation

of these insured depository institutions are addressed by this Order. Therefore, this Order constitutes the final disposition of all allegations for penalties, monetary and non-monetary administrative relief that could have been brought by the OTS against the Firm in connection with its representation of Murray Federal and First Garland. The OTS, however, expressly reserves the right to seek any and all non-monetary administrative relief as to present or former partners, shareholders, associate attorneys or employees of the Firm individually in connection with any aspect of such persons' participation in the Firm's representation of Murray Federal and First Garland.

31. The Firm shall for a period of three years from the effective date of this Order comply with the policies and procedures set forth above and shall not amend, modify, revise or alter in any way the policies and procedures without the prior written approval of the OTS. At the conclusion of a three-year period commencing on the effective date of this Order, the Firm shall submit written certification to the OTS that the Firm complied with the terms and conditions of the Order as set forth herein. Upon its receipt of the certification, paragraphs 1 through 17 and 25 through 32 of this Order shall be terminated and the OTS shall forward written notification of this fact to the Firm. Paragraphs 18 through 24 of this Order shall remain in effect until the RTC Note is paid in full in accordance with its terms. Upon full and complete satisfaction of the terms of the RTC Note, paragraphs 18 through 24 of this Order shall terminate.

32. This Order shall become effective on the date of execution by the Acting Director, OTS, and a copy of this Order shall be served upon the Firm at the address set forth in the Notice.

V.

Jenkins & Gilchrist hereby represents, warrants and states that this Offer is signed and submitted on its behalf by a duly authorized agent or representative.

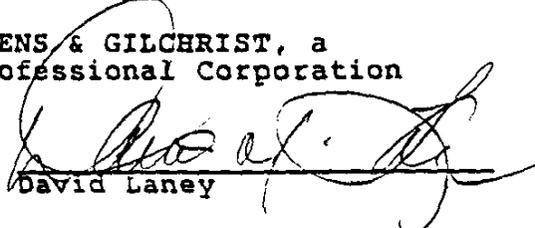
VI.

The undersigned states that he has read the foregoing Offer and declares that no promise or inducement of any kind has been made by OTS or its staff to induce the undersigned to tender this Offer, and that the submission of this Offer is a free and voluntary act on his part.

Respectfully submitted,

JENKENS & GILCHRIST, a  
Professional Corporation

By:

  
David Laney

Dated:

3-2-95

Exhibit A

**PROMISSORY NOTE**

\$750,000

Date: \_\_\_\_\_, 1995

FOR VALUE RECEIVED, Jenkins & Gilchrist, P.C. (herein called "Maker") promises to pay to the order of the Resolution Trust Corporation as Receiver for Peoples Heritage Federal Savings and Loan Association, Salina, Kansas (herein called "Payee"), the principal sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00), together with interest on the unpaid principal balance of this Note from time to time outstanding at the Treasury Bill Rate (as hereinafter defined). Maker shall make five (5) annual installments of principal of One Hundred Fifty Thousand Dollars (\$150,000.00), plus accrued interest, beginning on March 21, 1995 and thereafter on March 21, 1996, March 21, 1997, March 21, 1998 and March 21, 1999 ("Installment Payment Date(s)"). Payment shall be made by (i) wire transfer of immediately available funds to:

Federal Home Loan Bank of Chicago  
ABA# 071004501  
For credit to RTC National  
Receiver Acct. 9703-0  
Ref: FIN6946

for credit to Resolution Trust Corporation as Receiver for Peoples Heritage Federal Savings and Loan Association, Salina, Kansas (with the notice of each such wire transfer to be made by telecopy and express courier to Therese D. Pritchard, Assistant General Counsel, Resolution Trust Corporation, 1717 H Street, N.W., 10th Floor, Washington, D.C. 20006,

telecopy number (202) 736-0415 and to Brian C. McCormally, Senior Deputy Chief Counsel, Midwest Enforcement/Litigation, Office of Thrift Supervision, 8500 W. 110th St., Suite 400, Overland Park, KS 66214, telecopy number (913) 338-3014), or (ii) such other method or at such other place as may hereafter be specified by Payee by written notice to Maker, in lawful money of the United States of America.

All computations of interest shall be made on the basis of a year of 365 days and the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. From the date hereof through March 21, 1995, interest shall accrue at a rate equal to 5.06% per annum. Beginning on March 21, 1995 and for each one year period thereafter (such period beginning on the Installment Payment Date) interest will accrue at the Treasury Bill Rate. "Treasury Bill Rate" shall mean, the rate of interest which is the coupon equivalent yield on United States Treasury bills (i) most recently issued prior to such Installment Payment Date and (ii) having a maturity of 52 weeks after the date of such issuance, such coupon equivalent yield to be determined (i) by reference to the "Credit Markets" section of the Wall Street Journal published on the business day immediately following the auction of such Treasury bills, or (ii) if the coupon equivalent yield cannot be determined as set forth in clause (i) above, by such other method as may be reasonably selected by Payee and notified by Payee to Maker in writing at least two (2) business days prior to the date on which any such interest payment is due. The Treasury Bill Rate shall be recalculated and shall change on each Installment Payment Date.

All payments made by Maker pursuant to paragraphs 18 and 23 of the Order (as hereinafter defined) shall reduce the unpaid principal balance of this Note, provided, however, that such payments shall be applied (i) first to reduce the amount of such principal due and payable hereunder on March 21, 1999, (ii) then to reduce the amount of such principal due and payable hereunder on March 21, 1998, (iii) then to reduce the amount of such principal due and payable hereunder on March 21, 1997, (iv) then to reduce the amount of such principal due and payable hereunder on March 21, 1996 and (v) finally to reduce the amount of such principal due and payable hereunder on March 21, 1995. "Order" shall mean that certain Opinion and Order Accepting Offer of Settlement of Jenkins & Gilchrist, P.C., OTS AP No. , effective on \_\_\_\_\_, 1995.

If Maker shall fail to make any payment of interest when due and payable hereunder, the amount of such unpaid interest shall (i) be added to the unpaid principal balance of this Note and (ii) accrue interest in accordance with the terms and provisions of this Note.

Maker shall be in default hereunder upon any of the following (each an "Event of Default"):

- (a) The Maker shall have failed to pay any principal of or interest on this Note within ten (10) days of when otherwise due pursuant to the terms of this Note;
- (b) The Maker shall have dissolved without immediate reconstitution and no

successor partnership shall have acquired substantially all of the assets and assumed substantially all of the liabilities of the Maker, including, without limitation, the obligations of the Maker under this Note; and

(c) The Maker shall commence a voluntary case concerning itself under the United States Bankruptcy Code (Title 11) as now or hereafter in effect (or any successor thereto); or the Maker shall commence any other judicial proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to the Maker or there is commenced against the Maker any involuntary proceeding of the character described in this subsection (c) which remains undismissed for a period of 60 days; or the Maker is adjudicated insolvent or bankrupt; or any order for relief or other order approving any such case or proceedings is entered; or the Maker suffers the appointment of any custodian or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or the Maker makes a general assignment for the benefit of creditors; or the Maker shall admit in writing that it is unable to pay its debts generally as they become due; or the Maker shall call a meeting of its creditors with a view to arranging a composition or adjustment of its debts; or the Maker shall by any act or failure to act indicate its consent to, approval of or acquiescence in any of the foregoing; or any partnership action is taken by the Maker for the purpose of effecting any of the foregoing.

If any Event of Default shall then be continuing, the Payee may, declare the entire

principal of and any accrued interest on this Note, and all other obligations owing hereunder, to be, whereupon the same shall become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Maker; provided, that, any Event of Default specified in subsection (c) shall occur without the giving of any such notice.

The Maker may prepay the balance due on this Note or any portion at any time, without cost or penalty.

Maker does not agree to intend to pay, and Payee does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as "charge or collect"), any amount in the nature of interest or in the nature of a fee, which would in any way or event (including demand, prepayment, or acceleration) cause Payee to charge or collect more than the maximum Payee would be permitted to charge or collect by federal law. Any such excess interest or unauthorized fee shall, instead of anything stated to the contrary, be applied first to reduce the principal balance, and when the principal has been paid in full, be refunded to Maker. The right to accelerate maturity of sums due under this Note does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Payee does not intend to charge or collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Payee for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Note until

payment in full so that the rate or amount of interest evidenced hereby does not exceed the applicable usury ceiling.

The Maker hereby waives diligence, presentment, notice of intention to acceleration, notice of acceleration, demand, protest and notice of any kind whatsoever. The nonexercise by the Payee of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any particular instance.

This Note may be assigned or transferred at any time by Payee without the consent of the Maker, except the Payee shall give the Maker fifteen (15) days notice prior to any transfer or assignment.

This Note is an obligation owed to the United States of America made in compliance with and by reason of the Order and shall be construed in accordance with the laws of the United States of America and may be enforced by any and all remedies available for the enforcement of such obligations, including without limitation, those provided in 12 U.S.C. § 1818. To the extent there is no applicable federal law with respect to a particular issue or

question arising under this Note, the law of the State of Kansas, excluding its choice of law rules, shall be applied.

JENKENS & GILCHRIST, P.C.

By: \_\_\_\_\_

Its: \_\_\_\_\_

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

In the Matter of

DON S. JACKSON AND  
JENKENS & GILCHRIST, a  
Professional Corporation

Former Outside Counsel of  
Peoples Heritage Federal  
Savings and Loan Association  
Salina, Kansas

Respondents

Re: Resolution No.  
DAL 91-47

OTS Order No. AP 95-13  
Dated: March 10, 1995

NOTICE OF CHARGES AND OF HEARING FOR A CEASE AND DESIST ORDER TO  
DIRECT RESTITUTION AND OTHER AFFIRMATIVE RELIEF AND NOTICE OF  
INTENTION TO PROHIBIT FROM PARTICIPATION IN THE CONDUCT OF THE  
AFFAIRS OF INSURED DEPOSITORY INSTITUTIONS

I. NOTICE

1. The Office of Thrift Supervision ("OTS"), a bureau within the United States Department of the Treasury, issues this Notice of Charges and Notice of Intention to Prohibit pursuant to the authority of Section 5(d)(1)(A) of the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. § 1464(d)(1)(A)<sup>1</sup>, and Sections 8(b) and 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b) and (e). By issuing this Notice of Charges and Notice of Intention to Prohibit the OTS is, inter alia, commencing administrative adjudicatory proceedings against the Respondents, Don S. Jackson ("JACKSON"), and Jenkens & Gilchrist, a Professional

1. All references to the U.S.C. in this Notice of Charges are as amended.

Corporation, Dallas, Texas ("JENKENS & GILCHRIST" or "the FIRM"). The OTS is the appropriate Federal banking agency to maintain administrative adjudicatory proceedings against institution-affiliated parties and persons participating in the conduct of the affairs of an insured savings institution. For purposes of this proceeding, the OTS is the successor in interest to, and is exercising the rights of, the Federal Home Loan Bank Board ("FHLBB") and the Federal Savings and Loan Insurance Corporation ("FSLIC"), pursuant to Section 401 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1813(q).

2. The OTS charges below that, inter alia, the grounds exist to prohibit JACKSON from participating in the conduct of the affairs of any federally-insured financial institution.

3. The OTS further charges below that, inter alia, the grounds exist, by virtue of the actions of its former partner JACKSON and others set forth herein, to issue a cease and desist order against JENKENS & GILCHRIST and to require JENKENS & GILCHRIST to make restitution, reimbursement, indemnification, guarantee against loss or other appropriate relief to correct or remedy conditions resulting from the violations, practices, and breaches described in this Notice of Charges.

## II. JURISDICTION

4. At all times relevant hereto, Peoples Heritage Federal Savings and Loan Association, Salina, Kansas (the "Institution" or "Peoples Heritage"), was a federally-chartered stock savings association with its principal place of business in Salina, Kansas.

5. Peoples Heritage was a "savings association" as that term is defined by Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the HOLA, 12 U.S.C. § 1462(4). Accordingly, it was an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

6. Until August 9, 1989, the accounts of Peoples Heritage were insured by the FSLIC, pursuant to Section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. § 1726(b), by reason of which it was an "insured institution" as that term was defined by the NHA.

7. As of August 9, 1989, pursuant to the provisions of FIRREA, the insurance of the accounts of Peoples Heritage were transferred to the Federal Deposit Insurance Corporation ("FDIC").

8. Until August 9, 1989, the FHLBB was the regulatory agency with jurisdiction over Peoples Heritage and persons participating in the conduct of its affairs pursuant to Section 5 of HOLA, 12 U.S.C. § 1464.

9. As of August 9, 1989, pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS succeeded to the interests of the FHLBB with respect to the supervision and regulation of all savings associations, and thus became the "appropriate Federal banking agency" with jurisdiction over persons participating in the conduct of the affairs of Peoples Heritage and its institution-affiliated parties.

10. The OTS, as successor to the FHLBB, is the appropriate federal banking agency to initiate a proceeding to determine whether a cease and desist order to make restitution should issue against persons participating in the conduct of the affairs of an insured savings institution and its institution-affiliated parties, and whether persons should be prohibited from further participation in the affairs of any insured depository institution. 12 U.S.C. § 1818.

11. On October 10, 1989, pursuant to 12 U.S.C. § 1464(d)(2)(E), the Director of OTS appointed the Resolution Trust Corporation ("RTC") as Receiver for Peoples Heritage for the purposes of liquidation. On January 11, 1990, Peoples Heritage was placed into a liquidating receivership.

### III. RESPONDENTS

12. Respondent JENKENS & GILCHRIST is a Dallas, Texas, based law firm operating as a professional corporation with its principal office at 1445 Ross Avenue, Suite 3200, Dallas, Texas 75202. JENKENS & GILCHRIST was retained by Peoples Heritage beginning in 1983 to provide a variety of legal services to Peoples Heritage. These services included, but were not limited to, the preparation of commercial real estate loan closing documentation necessary to record and safeguard the assets of Peoples Heritage; examination of real property title documentation; preparation of written legal opinions addressing loans-to-one-borrower and other regulatory lending issues; periodic research, review and interpretation of

regulatory and statutory matters; legal research concerning a subordinated debenture and other legal services as requested by Peoples Heritage.

13. Respondent JACKSON was the JENKENS & GILCHRIST partner in charge of the Peoples Heritage account. JACKSON worked at JENKENS & GILCHRIST from 1975 until 1992. He became a partner during 1979 and became a shareholder at the time the firm converted to a professional corporation. JACKSON was at all times relevant hereto assigned to the real estate practice section within JENKENS & GILCHRIST. He was responsible for a "work group" principally comprised of from one to four associate attorneys who reported directly to him (collectively referred to herein as the "PEOPLES WORK GROUP"). From late 1983 through 1986, the PEOPLES WORK GROUP expended a substantial amount of its billable time on Peoples Heritage matters.

14. JENKENS & GILCHRIST was responsible for the overall supervision of the activities of JACKSON and the PEOPLES WORK GROUP. As a result of the FIRM's failure to properly supervise the activities of JACKSON and the PEOPLES WORK GROUP and, independently, since the actions and omissions of JACKSON and the PEOPLES WORK GROUP were, as a matter of law, those of the entity, JENKENS & GILCHRIST is liable for the actions and omissions of JACKSON and the PEOPLES WORK GROUP cited in this Notice.

15. As more fully described below, by and through the actions and omissions of JACKSON and the PEOPLES WORK GROUP in defining, advising, structuring and otherwise influencing the course of conduct by Peoples Heritage, JACKSON and the FIRM participated in the conduct of the affairs of Peoples Heritage and were institution-affiliated parties of the Institution.

16. JACKSON and other attorneys in the PEOPLES WORK GROUP defined, advised, structured and otherwise influenced the course of conduct of Peoples Heritage by: (a) engaging in a practice of creating false and misleading loan documents that made the existence of certain loan guaranty agreements, as well as the identity of certain undisclosed guarantors, undetectable; (b) participating in the concealment of certain guaranty agreements from review by Federal examiners; (c) failing to advise the Board of Directors of Peoples Heritage of management's practice of omitting certain loan guaranty agreements from the loan files; (d) failing to advise management officials of Peoples Heritage to make available for review by Federal examiners the loan guaranty agreements that were omitted from the standard loan closing binders and kept separate from the rest of the loan file; and (e) failing to advise the Board of loan transactions that violated the Institution's loans-to-one-borrower ("LTOB") limitations.

#### IV. STATEMENT OF FACTS

##### A. BACKGROUND

17. JENKENS & GILCHRIST, through JACKSON, was introduced in March 1983 to Peoples Heritage by Gerry N. Olson of Westlake Property Company ("Olson"). Westlake Property Company was owned by James Savage ("Savage"), R.J. Fellows ("Fellows") and Olson.

18. At the outset of JENKENS & GILCHRIST's representation of Peoples Heritage in 1983, JACKSON provided the Institution, and the PEOPLES WORK GROUP, an exemplary set of "form" loan documents to be utilized concerning all Texas real estate loan transactions.

19. At all times relevant hereto, JENKENS & GILCHRIST had an active real estate section within the firm comprised of 25 to 50 attorneys. From 1983 to 1989, JENKENS & GILCHRIST served as Peoples Heritage's primary outside legal counsel and during this time period received gross fees in the amount of \$3,353,302. During its representation, approximately 60 JENKENS & GILCHRIST attorneys billed time to Peoples Heritage.

20. During April 1983, Peoples Heritage established Peoples Financial Mortgage Corporation, a wholly-owned Texas service corporation, to originate loans in Texas.

21. During May 1983, the PEOPLES WORK GROUP, at JACKSON's direction, began preparing loan documentation and facilitating loan closings for Peoples Heritage. The standard loan documentation prepared with the objective of documenting and safeguarding the assets of Peoples Heritage included, but was not limited to, the promissory note, deed of trust, loan agreement, guaranty agreements, financing statements, Uniform Commercial Code filings, assignment of net profits, assignment of rents and leases and loans-to-one-borrower compliance certificates. The loan closings were not held at Peoples Heritage's Kansas offices, but instead, were held at the offices of either JENKENS & GILCHRIST, borrower's counsel or the title company.

22. Following each loan closing, JENKENS & GILCHRIST, acting as counsel to Peoples Heritage, would compile the loan documents into a "loan closing binder." The purpose of each loan closing binder was to provide a complete and accurate record of the loan transaction. Attorneys within the PEOPLES WORK GROUP retained a copy of the loan closing binder and transmitted at least one copy to Peoples Heritage.

23. At all times relevant hereto, JACKSON either personally, or through direction given to other attorneys in the PEOPLES WORK GROUP, participated in the preparation of Peoples Heritage loan documentation and the loan closing binders. JACKSON was also the "billing attorney" for the Peoples Heritage account. As such, he was responsible for reviewing all billing statements regarding services performed by JENKENS & GILCHRIST for Peoples Heritage.

B. UNDISCLOSED LOAN GUARANTY AGREEMENTS

1. Overview

24. From July 1983, through December 1985, Peoples Heritage originated nineteen separate loans totaling approximately \$112 million to entities in which Fellows had in excess of a ten percent ownership interest ("Fellows' entity(ies)"). In each instance, the PEOPLES WORK GROUP, at JACKSON's direction, prepared the loan documentation, conducted the "closing" of the loans on behalf of Peoples Heritage, and compiled and forwarded the loan documentation and loan closing binders to Peoples Heritage.

25. By no later than October 1983, JACKSON knew or should have known, by his receipt of a copy of a September 29, 1983 letter from Olson to James R. Cruce, former chairman of the board of Peoples

Heritage ("Cruce"), that Peoples Heritage was experiencing LTOB limitation with loans involving Fellows.

26. By May 1984, Peoples Heritage had disbursed approximately \$25 million in loan proceeds to Fellows' entities. FHLBB regulations imposed limitations on the amount of credit that savings associations, including Peoples Heritage, may have outstanding to "one borrower." See 12 C.F.R. § 563.9-3 (1984). At this same time, Peoples Heritage's LTOB limitation on loans to any one borrower was approximately \$18 million. Accordingly, the aggregate balance of all loan proceeds disbursed to Fellows exceeded Peoples Heritage's LTOB limitation by at least \$7 million.

27. Beginning in May, 1984, the PEOPLES WORK GROUP, at JACKSON's direction, began a practice of concealing the identity of certain obligors (including but not limited to Fellows) of Peoples Heritage loans. This practice was accomplished, in part, by preparing a separate guaranty for the obligor, withholding the obligor's guaranty agreement from the loan records and loan closing binders, and further, by not delivering the original loan guaranty agreement executed by the obligor to Peoples Heritage in the same manner as the other original loan documents. At the same time, other loan documents were amended so that they did not reveal the obligor's identity as a guarantor. As a result of this practice, the identity of certain loan obligors, and the existence of the obligor's guaranty of the loan, was undetectable to Federal examiners.

28. The PEOPLES WORK GROUP, at JACKSON's direction, was responsible for preparing the separate guaranty agreements; the

amendment of certain other loan documents so as to not refer to or reflect the existence of the separate guaranty agreements; the omission of copies from the loan records and loan closing binders; and the separate delivery of the guaranty agreements to Peoples Heritage. Also, certain of these loan documents did not reflect the obligors' then existing or anticipated ownership interest in the borrowing entity. In each of the seven loan transactions set forth in this Notice, six of which involve Fellows, the PEOPLES WORK GROUP failed to retain executed copies of the undisclosed obligors' guaranty agreements in the FIRM's files and in five of the seven instances, failed to retain any unsigned copies or drafts in the FIRM's files.

## 2. Lowe Tract Loan

29. On May 21, 1984, JACKSON, another attorney in the PEOPLES WORK GROUP and Thomas Burger, former senior executive vice president of Peoples Heritage ("Burger"), conferred to discuss a proposed loan to be made by Peoples Heritage. During the course of this meeting, JACKSON became aware that Fellows and other borrowers would participate as obligors and guarantors in this loan transaction.

30. An attorney in the PEOPLES WORK GROUP, at JACKSON's direction, prepared the documentation for this proposed \$6.9 million loan listing only Henry Tucker ("Tucker") and B.R. Willeford ("Willeford"), individually, as the borrowers. On May 22, 1984, this attorney prepared a separate guaranty agreement for Fellows wherein he guaranteed all debts, obligations and

liabilities of Tucker and Willeford concerning the \$6.9 million loan from Peoples Heritage.

31. This same attorney, at JACKSON's direction, also prepared a loan agreement that falsely defined "guarantor" as "none" and a deed of trust that falsely defined the "guarantor" as "none." These loan documents were prepared in this false, inaccurate and misleading manner notwithstanding the fact that JACKSON and other attorneys in the PEOPLES WORK GROUP had actual knowledge that Fellows was a guarantor on this loan.

32. On or before May 24, 1984, an entity in which Fellows had a 33% ownership interest, contracted to purchase the "Lowe Tract" real property. On May 24, 1984, Peoples Heritage made the \$6.9 million loan to Willeford and Tucker secured by the "Lowe Tract" real property ("Lowe Tract Loan"). Attorneys in the PEOPLES WORK GROUP caused the executed loan documents, including the loan agreement and deed of trust containing the false statement, but excluding Fellows' guaranty agreement, to be sent to Peoples Heritage; and further, prepared a loan closing binder which omitted Fellows' guaranty agreement. The loan closing binder did not contain any loan document that referenced the existence of Fellows' guaranty agreement. Further, attorneys in the PEOPLES WORK GROUP caused Fellows' guaranty agreement to be kept separate from the other original loan documents and to be separately delivered to Peoples Heritage. While an executed copy of virtually every document on this loan was retained, no executed copy of Fellows' \$6.9 million guaranty agreement was retained for the FIRM's files.

33. JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that at the time of the loan closing Fellows had an ownership interest in the Lowe Tract property.

34. If aggregated with Fellows' other borrowings from Peoples Heritage, the full amount of the Lowe Tract Loan exceeded the Institution's LTOB limitation and increased Fellows' aggregate LTOB violation to approximately \$10 million. This LTOB violation was not detectable by Federal examiners due to Fellows' undisclosed ownership interest in the loan transaction and his concealed guaranty agreement.

35. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised management officials of Peoples Heritage to make available for review by Federal examiners the guaranty agreement that was omitted from the standard loan closing binder and which was kept separate from the rest of the loan file.

36. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised the Board of Directors of Peoples Heritage of the above-described practices that included the preparation of false, inaccurate and misleading loan documentation and the omission of Fellows' guaranty agreement from the loan records of Peoples Heritage and the loan closing binder. Further, JACKSON did not advise the Board of Directors of Peoples Heritage that Fellows' guaranty agreement would be kept separate from the rest of the loan file at Peoples Heritage.

37. Peoples Heritage incurred substantial loss on the Lowe Tract Loan.

3. Westlake Loans to Fellows, Savage and Gressett

a. Background

38. From July 1983 through May 1984, Peoples Heritage made loans totaling approximately \$26.3 million to five "Westlake" entities. Concurrent with each of these loan transactions, Fellows and Savage, together with other individuals, executed guaranty agreements. In each instance, Fellows and Savage's guaranty agreements and their respective ownership interests in the borrowing entities were fully disclosed in the applicable loan documents and copies of the same were placed in the loan closing binders. In each instance, JACKSON drafted, or supervised the drafting of, the loan documentation.

39. As described more fully below, from and after June 1984, Peoples Heritage made four additional loans totaling approximately \$22.1 million for the benefit of joint ventures comprised of Fellows (25%), Savage (25%) and Raymond A. Gressett (50%) (hereinafter referred to as the "Westlake Loans") in violation of LTOB limitations. In each instance, an entity named Westlake Dallas Partners (comprised of Gressett, Savage and Fellows) contracted to purchase certain unimproved real estate located in or near Dallas, Texas. Westlake Dallas Partners then transferred its rights to acquire the property to a separate newly-formed joint venture ("Westlake Joint Venture(s)").

40. The Westlake Joint Venture agreements would initially reflect that the ownership was comprised of Gressett (50%) and Savage (50%). However, with respect to each of the four Westlake Loans, an amended joint venture agreement prepared by another firm

was executed either shortly before, or on the day of, the loan closing. Each of these amended joint venture agreements documented the inclusion of Fellows as a co-venturer (Savage transferred a 25% interest to Fellows). In each instance, Gressett was designated the "managing venturer," authorizing him to assume day-to-day control of the joint ventures.

**b. Westlake-Buckner 36 Loan**

41. On May 31, 1984, Gressett and Savage created the Westlake-Buckner 36 Joint Venture ("Westlake-Buckner 36 JV"). JACKSON, acting as counsel for Peoples Heritage, prepared the loan documents for a proposed \$7.8 million loan to Westlake-Buckner 36 JV, including two guaranty agreements, one to be executed by Gressett and Savage and a separate guaranty agreement to be executed by Fellows.

42. The deed of trust, promissory note and letter loan agreement, each prepared by JACKSON, failed to reference Fellows as a guarantor. This was a deviation from the prior practice of specifically referencing all of Peoples Heritage's guarantors by name in the deed of trust, promissory note and loan agreement.

43. The deed of trust contained a provision that provided for Peoples Heritage's preapproved consent to the transfer or assignment of twenty-five percent (25%) or less interest in the borrowing entity. This provision was a deviation from the prior practice of preparing a provision that restricted any assignment or transfer of an interest in the borrowing entity without prior written approval from Peoples Heritage.

44. Prior to loan closing, JACKSON received a draft of the borrowers' counsel legal opinion for review. JACKSON made hand-written suggested changes to the draft reflecting that Gressett and Savage were the only individuals guaranteeing the proposed loan to Westlake-Buckner 36 JV. JACKSON made this revision notwithstanding the fact that he had personally prepared a guaranty agreement for Fellows and knew that Fellows would be guaranteeing this loan. JACKSON then forwarded his revisions to borrowers' counsel.

45. On or before June 6, 1984, Savage transferred a 25% interest in the Westlake-Buckner 36 JV to Fellows. On June 6, 1984, Peoples Heritage made the \$7.8 million loan to Westlake-Buckner 36 JV secured by real property located in Dallas County, Texas ("Westlake-Buckner 36 Loan"). Fellows executed a separate guaranty agreement also dated June 6, 1984. JACKSON attended and participated in the loan closing.

46. A paralegal within the PEOPLES WORK GROUP, at JACKSON's direction, prepared a loan closing binder that included Gressett and Savage's guaranty agreement. Despite having possession and/or control over Fellows' original executed guaranty agreement, Fellows' guaranty agreement was omitted from the closing binder. The loan closing binder did not contain any loan document that referenced the existence of Fellows' guaranty agreement or his ownership interest in Westlake-Buckner 36 JV. Further, the Fellows' guaranty agreement was kept separate from the other original loan documents and was separately delivered to Peoples

Heritage. While an executed copy of virtually every document on this loan was retained, no executed copy of Fellows' \$7.8 million guaranty agreement was retained for the FIRM's files.

47. JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that Fellows had an ownership interest in Westlake-Buckner 36 JV at the time of loan closing.

48. If Fellows' prior undisclosed ownership interests (i.e., Lowe Tract Loan) were aggregated with his other outstanding borrowings at Peoples Heritage, the full amount of the Westlake-Buckner 36 Loan. exceeded Peoples Heritage's LTOB limitation to Fellows and increased Fellows' aggregate LTOB violation to approximately \$17.5 million. This LTOB violation was not detectable by Federal examiners due to the nondisclosure of Fellows' ownership interest in the borrowing entity and his concealed guaranty agreement.

49. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised management officials of Peoples Heritage to make available for review by Federal examiners the guaranty agreement that was omitted from the standard loan closing binder and which was kept separate from the rest of the loan file.

50. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised the Board of Directors of Peoples Heritage of the above-described practices that included the preparation of false, inaccurate and misleading loan documentation, the omission of Fellows' guaranty agreement from the loan closing binder and the separate delivery of Fellows' guaranty agreement to Peoples

Heritage. Further, JACKSON did not advise the Board of Directors of Peoples Heritage that Fellows' guaranty agreement would be kept separate from the rest of the loan file at Peoples Heritage.

51. This loan was subsequently modified on four separate occasions. An attorney in the PEOPLES WORK GROUP prepared the loan modification documentation for each modification. In each instance, this attorney failed to disclose in any of the loan documentation Fellows' joint venture interest as well as his continued guaranty of the loan.

52. Peoples Heritage incurred a substantial loss on the Westlake-Buckner 36 Loan.

**c. Westlake-McKinney 198 Loan**

53. Beginning on or about October 13, 1984, JACKSON and another attorney in the PEOPLES WORK GROUP began preparation of the loan documentation for a proposed \$5.4 million loan to Westlake-McKinney 198 Joint Venture ("Westlake-McKinney 198 JV"). The attorney's handwritten notes taken during the course of a meeting with JACKSON to discuss the proposed transaction reference that the obligors/guarantors on the loan are "Gressett, Savage and non-designated venturer" (emphasis added).

54. JACKSON and the above-referenced attorney prepared two guaranty agreements, one to be executed by Gressett and Savage and a separate guaranty agreement to be executed by Fellows. The deed of trust, promissory note and letter loan agreement, prepared by the PEOPLES WORK GROUP, again failed to reference Fellows as either an obligor or a guarantor.

55. The deed of trust contained a provision that provided for Peoples Heritage's preapproved consent to the transfer and assignment of up to 100% joint venture ownership interests in Westlake-McKinney 198 JV.

56. On October 15, 1984, Gressett and Savage created Westlake-McKinney 198 JV. On this same day, Savage conveyed a 25% interest in the joint venture to Fellows. Four days later, on October 19, 1984, Peoples Heritage made a \$5.4 million loan to Westlake-McKinney 198 JV ("Westlake-McKinney 198 Loan"). Fellows executed a guaranty agreement dated October 19, 1984. JACKSON and another attorney in the PEOPLES WORK GROUP attended and participated in the loan closing.

57. Attorneys in the PEOPLES WORK GROUP prepared a loan closing binder that included Gressett and Savage's guaranty agreement. Despite having possession and/or control over Fellows' original executed guaranty agreement, the guaranty agreement was omitted from the closing binder. The loan closing binder also did not contain any document that referenced the existence of Fellows' guaranty agreement or his ownership interest in Westlake-McKinney 198 JV. Further, the PEOPLES WORK GROUP caused Fellows' guaranty agreement to be kept separate from the other original loan documents and to be separately delivered to Peoples Heritage. While an executed copy of virtually every document on this loan was retained, no executed copy of Fellows' \$5.4 million guaranty agreement was retained for the FIRM's files.

58. JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that Fellows had an ownership interest in Westlake-McKinney 198 JV.

59. If Fellows' prior undisclosed ownership interests (i.e., Lowe Tract Loan and Westlake-Buckner 36 Loan) were aggregated with his other outstanding borrowings at Peoples Heritage, the full amount of the Westlake-McKinney 198 Loan exceeded Peoples Heritage's LTOB limitation to Fellows and increased Fellows' aggregate LTOB violation to approximately \$35.4 million. This LTOB violation was not detectable by Federal examiners due to the nondisclosure of Fellows' ownership interest in the borrowing entity and his concealed guaranty agreement.

60. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised management officials of Peoples Heritage to make available for review by Federal examiners the guaranty agreement that was omitted from the loan closing binder and which was kept separate from the rest of the loan file.

61. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised the Board of Directors of Peoples Heritage of the above-described practices that included the preparation of false, inaccurate and misleading loan documentation, the omission of Fellows' guaranty agreement from the loan closing binder and the separate delivery of Fellows' guaranty agreement to Peoples Heritage. Further, JACKSON did not advise the Board of Directors of Peoples Heritage that Fellows' guaranty agreement would be kept separate from the rest of the loan file at Peoples Heritage.

62. Peoples Heritage incurred a substantial loss on the Westlake-McKinney 198 Loan.

d. Westlake-DeSoto 156 Loan

63. Beginning on or about January 3, 1985, JACKSON and another attorney in the PEOPLES WORK GROUP began the preparation of loan documentation for a proposed \$8.1 million loan to Westlake-DeSoto 156 Joint Venture ("Westlake-DeSoto 156 JV").

64. This attorney, at JACKSON's direction, prepared two guaranty agreements, one to be executed by Gressett and Savage and a separate guaranty agreement to be executed by Fellows.

65. The deed of trust, promissory note and letter loan agreement, prepared by the PEOPLES WORK GROUP, again failed to reference Fellows as either an obligor or a guarantor. The deed of trust again contained a provision that provided for Peoples Heritage's preapproved consent to the transfer and assignment of up to 100% joint venture ownership interests in Westlake-DeSoto 156 JV.

66. On January 5, 1985, Gressett and Savage created the Westlake-DeSoto 156 JV. On January 7, 1985, Savage conveyed a 25% interest in the joint venture to Fellows. On this same day, Peoples Heritage made an \$8.1 million loan to Westlake-DeSoto 156 JV ("Westlake-DeSoto 156 JV Loan"). Fellows executed a guaranty agreement dated January 7, 1985. An attorney in the PEOPLES WORK GROUP attended and participated in the loan closing.

67. An attorney and a paralegal assigned to the PEOPLES WORK GROUP prepared a loan closing binder that included Gressett and Savage's guaranty agreement. Despite having possession and/or

control over Fellows' original executed guaranty agreement, the guaranty agreement was omitted from the closing binder. The loan closing binder did not contain any loan document that referenced the existence of Fellows' guaranty agreement or his ownership interest in Westlake-DeSoto 156 JV. Further, the PEOPLES WORK GROUP caused Fellows' guaranty agreement to be kept separate from the other original loan documents and to be separately delivered to Peoples Heritage. While an executed copy of virtually every document on this loan was retained, no executed copy of Fellows' \$8.1 million guaranty agreement was retained for the FIRM's files.

68. JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that Fellows had an ownership interest in Westlake-DeSoto 156 JV.

69. If Fellows' prior undisclosed ownership interests (i.e., Lowe Tract Loan, Westlake-Buckner 36 Loan and Westlake-McKinney 198 Loan) were aggregated with his other outstanding borrowings at Peoples Heritage, the full amount of the Westlake-DeSoto Loan exceeded Peoples Heritage's LTOB limitation to Fellows and increased Fellows' aggregate LTOB violation to approximately \$22.8 million. This LTOB violation was not detectable by Federal examiners due to the nondisclosure of Fellows' ownership interest in the borrower and his concealed guaranty agreement.

70. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised management officials of Peoples Heritage to make available for review by Federal examiners the guaranty agreement that was omitted from the loan closing binder and which was kept separate from the rest of the loan file.

71. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised the Board of Directors of Peoples Heritage of the above-described practices that included the preparation of false, inaccurate and misleading loan documentation, the omission of Fellows' guaranty agreement from the loan closing binder and the separate delivery of Fellows' guaranty agreement to Peoples Heritage. Further, JACKSON did not advise the Board of Directors of Peoples Heritage that Fellows' guaranty agreement would be kept separate from the rest of the loan file at Peoples Heritage.

72. During 1986 and 1987, attorneys in the PEOPLES WORK GROUP prepared loan modification documentation that, among other things, increased the outstanding principal balance of the Westlake-DeSoto 156 Loan from \$8.1 to \$9.2 million. In each instance, the attorney assigned from the PEOPLES WORK GROUP failed to disclose in any of the loan documentation Fellows' ownership interest in Westlake-DeSoto 156 JV as well as his continued guaranty of the loan.

73. Peoples Heritage incurred a substantial loss on the Westlake-DeSoto 156 Loan.

**e. Westlake-Flower Mound Loan**

74. On December 21, 1984, Gressett and Savage created the Westlake-Flower Mound 23 Joint Venture ("Westlake-Flower Mound JV"). On December 24, 1984, Savage transferred a 25% interest in the Westlake-Flower Mound JV to Fellows.

75. An attorney in the PEOPLES WORK GROUP, at JACKSON's direction, prepared the loan documentation for a proposed \$820,000 loan to Westlake-Flower Mound JV including two separate guaranty

agreements, one to be executed by Gressett and Savage and another to be executed by Fellows. While JENKENS & GILCHRIST retained copies or drafts of virtually every loan document on this loan, the firm did not retain any copies or drafts of Fellows' guaranty agreement.

76. The deed of trust, promissory note and letter loan agreement, prepared by the attorney referenced above, again failed to reference Fellows as a guarantor of the loan and failed to disclose Fellows' ownership interest in the joint venture. The deed of trust again contained a provision that provided for Peoples Heritage's preapproved consent to the transfer and assignment of up to 100% joint venture ownership interests in Westlake-Flower Mound JV.

77. On January 18, 1985, Peoples Heritage made the \$820,000 loan to Westlake-Flower Mound JV ("Westlake-Flower Mound Loan"). The attorney referenced above attended and participated in the loan closing.

78. A paralegal assigned to the PEOPLES WORK GROUP, at JACKSON's direction, prepared a loan closing binder that included Gressett and Savage's guaranty agreement. Despite having possession and/or control over Fellows' original executed guaranty agreement, the guaranty agreement was omitted from the closing binder. The loan closing binder also did not contain any loan document that referenced the existence of Fellows' guaranty agreement or his ownership interest in Westlake-Flower Mound JV. Further, the PEOPLES WORK GROUP caused Fellows' guaranty agreement to be kept separate from the other original loan documents and to

be separately delivered to Peoples Heritage. While an executed copy of virtually every document on this loan was retained, no executed copy of Fellows' \$820,000 guaranty agreement was retained for the FIRM's files.

79. JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that Fellows had an ownership interest in Westlake-Flower Mound JV.

80. If Fellows' prior undisclosed ownership interests (i.e., Lowe Tract Loan, Westlake-Buckner 36 Loan, Westlake-McKinney 198 Loan and Westlake-DeSoto 156 Loan) were aggregated with his other outstanding borrowings at People Heritage, the full amount of the Westlake-Flower Mound Loan exceeded Peoples Heritage's LTOB limitation to Fellows and increased Fellows' aggregate LTOB violation to approximately \$23.4 million. This LTOB violation was not detectable by Federal examiners due to the nondisclosure of Fellows' ownership interest in the borrower and his concealed guaranty agreement.

81. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised management officials of Peoples Heritage to make available for review by Federal examiners the guaranty agreement that was omitted from the loan closing binder and kept separate from the rest of the loan file.

82. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised the Board of Directors of Peoples Heritage of the above-described practices that included the preparation of false, inaccurate and misleading loan documentation, the omission of Fellows' guaranty agreement from the loan closing binder and the

separate delivery of Fellows' guaranty agreement to Peoples Heritage. Further, JACKSON did not advise the Board of Directors of Peoples Heritage that Fellows' guaranty agreement would be kept separate from the rest of the loan file at Peoples Heritage.

83. On or before February 26, 1985, the PEOPLES WORK GROUP received a copy of an Assumed Name Certificate that clearly and unequivocally referenced Fellows as an "owner" of an interest in Westlake-Flower Mound JV.

84. This loan was subsequently modified during 1987 and 1988. Attorneys in the PEOPLES WORK GROUP were responsible for preparing the loan modification documentation on both occasions. In both instances, no disclosure was made of Fellows' joint venture interest as well as his continued guaranty of the loan despite the fact that attorneys in the PEOPLES WORK GROUP clearly had information in the firm's files disclosing Fellows' ownership in the Westlake-Flower Mound JV.

85. Peoples Heritage incurred a substantial loss on the Westlake-Flower Mound Loan.

#### 4. McDermott Drive Joint Venture

86. From November 1983, to September 1984, Peoples Heritage made nine loans totaling approximately \$42 million to entities in which Kim Wise ("Wise") and Ronald Evans ("Evans") each had in excess of a ten percent (10%) ownership interest. In each instance, attorneys in the PEOPLES WORK GROUP, at JACKSON's direction, prepared the loan documentation and closed the loan on behalf of Peoples Heritage.

87. On or before September 5, 1984, Wise and Evans obtained a 50% interest in McDermott Drive Joint Venture ("McDermott Drive JV"). The other joint venturers included, but were not limited to, Sherwood Blount ("Blount").

88. JACKSON and another attorney in the PEOPLES WORK GROUP prepared the loan documentation for a proposed \$14.9 million loan to McDermott Drive JV ("McDermott Drive Loan") including two guaranty agreements, one to be executed by Blount and a separate guaranty agreement to be executed by Wise and Evans.

89. The deed of trust, promissory note and letter loan agreement, prepared by the attorney noted above, failed to reference Wise and Evans as guarantors, and further failed to disclose Wise and Evans' ownership interests in McDermott Drive JV.

90. The deed of trust contained a provision that provided for Peoples Heritage's preapproved consent to the transfer of certain ownership interests in McDermott Drive JV.

91. On September 14, 1984, Peoples Heritage made the \$14.9 million commercial real estate loan to McDermott Drive JV ("McDermott Drive JV Loan"). JACKSON attended and participated in the loan closing.

92. An attorney in the PEOPLES WORK GROUP prepared a loan closing binder that included only Blount's guaranty agreement. The loan closing binder did not contain any loan document that referenced the existence of Wise and Evans' guaranty agreement or their ownership interest in McDermott Drive JV.

93. On October 31, 1984, Wise's counsel forwarded an executed copy of Wise and Evans' guaranty agreement to the same attorney in the PEOPLES WORK GROUP. The PEOPLES WORK GROUP caused Wise and Evans' guaranty agreement to be kept separate from the other original loan documents and to be separately delivered to Peoples Heritage. While an executed copy of every loan document on this loan was retained, no executed copy of Wise and Evans' \$14.9 million guaranty agreement was retained for the FIRM's files.

94. JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that Wise and Evans had an ownership interest in McDermott Drive JV.

95. If aggregated with Wise's then existing outstanding borrowings from Peoples Heritage, the McDermott Drive JV Loan exceeded Peoples Heritage's LTOB limitation to Wise by approximately \$13.7 million. This LTOB violation was not detectable by Federal examiners due to the nondisclosure of Wise's ownership interest in the borrowing entity and his concealed guaranty agreement.

96. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised management officials of Peoples Heritage to make available for review by Federal examiners the guaranty agreement that was omitted from the standard loan closing binder and which was kept separate from the rest of the loan file.

97. Neither JACKSON nor any other attorney in the PEOPLES WORK GROUP advised the Board of Directors of Peoples Heritage of the above-described practices that included the preparation of false, inaccurate and misleading loan documentation and the omission of

Wise and Evans' guaranty agreement from the loan records of Peoples Heritage and the loan closing binder. Further, JACKSON did not advise the Board of Directors of Peoples Heritage that Wise and Evans' guaranty agreement would be kept separate from the rest of the loan file at Peoples Heritage.

98. During December 1986, Wise and Evans sold their interests in McDermott Drive JV to the remaining venturers. During this same month, attorneys in the PEOPLES WORK GROUP prepared documentation to release Wise and Evans from their guaranty of the McDermott Drive JV Loan in return for their execution of individual promissory notes payable to Peoples Heritage in the amount of \$250,000 each.

99. The above-described practices in preparing the loan documentation for, and facilitating the loan closing of, the McDermott Drive JV Loan were undertaken and accomplished with a disregard for the safety and soundness of, and constituted a risk of loss to, Peoples Heritage.

#### V. CLAIMS FOR RELIEF

##### FIRST CLAIM

##### **FAILURE TO FULFILL FIDUCIARY DUTIES TO PEOPLES HERITAGE DURING THE COURSE OF PREPARING LOAN DOCUMENTATION AND CLOSING CERTAIN COMMERCIAL REAL ESTATE LOAN TRANSACTIONS**

100. The actions and omissions, as described above, in preparing documentation for and closing certain loan transactions on behalf of Peoples Heritage constituted knowing or reckless breaches of fiduciary duties to the Institution, including the

duties of care, candor and loyalty, and demonstrated a reckless disregard for the safety and soundness of Peoples Heritage in that, in summary:

101. JACKSON and other attorneys in the PEOPLES WORK GROUP prepared false, inaccurate and misleading loan documentation that: (a) concealed the identity of three guarantors; (b) failed to disclose the guarantors' ownership interest in the borrowing entity; and (c) failed to disclose the true facts and nature of the loan transaction;

102. JACKSON and other attorneys in the PEOPLES WORK GROUP omitted loan guaranty agreements, executed by Fellows, Wise and Evans, whose aggregate borrowings exceeded Peoples Heritage's LTOB limitations, from standard loan closing binders prepared on behalf of Peoples Heritage and failed to deliver the original loan guaranty agreements in the same manner as the other original loan documents.

103. JACKSON and other attorneys in the PEOPLES WORK GROUP did not retain certain loan documents, including copies or drafts of the omitted guaranty agreements prepared on behalf of Peoples Heritage in the FIRM's files.

104. The FIRM owed a duty of care to the Institution to properly supervise the activities of JACKSON and the PEOPLES WORK GROUP. JACKSON and the other attorneys in the PEOPLES WORK GROUP owed duties of diligence, competence, independence and absolute fidelity to the interests of Peoples Heritage. In addition, they were fiduciaries and occupied positions of trust and confidence

with respect to Peoples Heritage. Further, they had a duty to protect the interests of Peoples Heritage at all times. JACKSON and the FIRM recklessly breached the foregoing duties which proximately caused Peoples Heritage to incur substantial loss.

#### SECOND CLAIM

#### PREPARATION OF FALSE, INACCURATE AND MISLEADING LOAN DOCUMENTATION RESULTED IN VIOLATIONS OF FHLBB REGULATIONS CONCERNING LOAN DOCUMENTATION REQUIREMENTS AND CONSTITUTED FAILURE TO FULFILL FIDUCIARY DUTIES TO PEOPLES HERITAGE

105. Peoples Heritage, pursuant to 12 C.F.R. § 563.17-1(c) (1984), was obligated to "establish and maintain such accounting and other records as will provide an accurate and complete record of all business transacted by it . . ."

106. Peoples Heritage, effective January 2, 1986, pursuant to 12 C.F.R. § 563.18 (1986), was prohibited from making any statement to the FHLBB that was false or misleading with respect to any material fact or omitting to state any material fact concerning any matter within the jurisdiction of the FHLBB.

107. Beginning in May 1984, as described above, JACKSON and other attorneys in the PEOPLES WORK GROUP, through their actions or omissions made, among other things, the identity of certain Peoples Heritage loan obligors and guarantors undetectable to Federal examiners.

108. Although JACKSON and the other attorneys in the PEOPLES WORK GROUP knew or should have known that certain guarantors also had obtained ownership interests in the borrowing entities, they

failed to disclose these interests in the loan documentation prepared on behalf of Peoples Heritage.

109. JACKSON and the other attorneys in the PEOPLES WORK GROUP knew or should have known that the loan documentation prepared on behalf of Peoples Heritage would be relied upon by Federal examiners as an accurate and complete record of business transacted by Peoples Heritage.

110. JACKSON and the PEOPLES WORK GROUP's conduct in knowingly and/or recklessly preparing false, inaccurate and misleading loan documentation on behalf of Peoples Heritage caused the institution to repeatedly violate 12 C.F.R. § 563.17-1(c).

111. JACKSON and the PEOPLES WORK GROUP's conduct in knowingly and/or recklessly preparing false, inaccurate and misleading loan modification documentation on behalf of Peoples Heritage after January 2, 1986, caused the institution to repeatedly violate 12 C.F.R § 563.18.

112. JACKSON and the PEOPLES WORK GROUP's conduct in knowingly and/or recklessly preparing false, inaccurate and misleading loan documentation on behalf of Peoples Heritage resulted in the Institution maintaining documentation that became part of the books and records of a federally-insured financial institution and was relied upon by Federal examiners, but which did not provide an accurate and complete record of business transacted by Peoples Heritage.

113. The FIRM's failure to properly supervise the activities of JACKSON and the other attorneys comprising the PEOPLES WORK GROUP constituted, among other things, a breach of the FIRM's fiduciary

duty of care to the Institution. JACKSON's conduct in knowingly and/or recklessly preparing false, inaccurate and misleading loan documentation on behalf of Peoples Heritage constituted, among other things, breaches of his fiduciary duties to the Institution, including the duties of care, candor and loyalty and demonstrated a willful disregard for the safety and soundness of Peoples Heritage. JACKSON and the FIRM recklessly breached the foregoing duties which proximately caused Peoples Heritage to incur substantial loss.

#### THIRD CLAIM

#### PREPARATION OF FALSE, INACCURATE AND MISLEADING LOAN DOCUMENTATION RESULTED IN VIOLATIONS OF FHLBB LOANS TO ONE BORROWER REGULATIONS AND CONSTITUTED A FAILURE TO FULFILL FIDUCIARY DUTIES TO PEOPLES HERITAGE

114. As discussed more fully above, JACKSON and other attorneys in the PEOPLES WORK GROUP repeatedly closed commercial real estate loans on behalf of Peoples Heritage that exceeded the Institution's LTOB limitations. In each of the transactions, JACKSON and other attorneys in the PEOPLES WORK GROUP concealed the existence of loan guarantors by failing to reference the existence of loan guarantors and loan guaranty agreements in any of the loan documentation prepared on behalf of Peoples Heritage; kept the guaranty agreements separate from other original loan documents; caused the undisclosed guaranty agreements to be delivered separately; and omitted the loan guaranty agreements from the standard loan closing binders prepared on behalf of Peoples Heritage. Reference to these

guarantors, or inclusion of the guaranty agreements, would have identified the borrower whose aggregate borrowings resulted in the LTOB violations.

115. JACKSON and the PEOPLES WORK GROUP's actions and omissions constitute affirmative actions which caused or brought about violations of Peoples Heritage's LTOB limitations.

116. The FIRM's failure to properly supervise the activities of JACKSON and the other attorneys comprising the PEOPLES WORK GROUP constituted, among other things, a breach of the FIRM's fiduciary duty of care to the Institution. JACKSON's actions and omissions constituted, among other things, breaches of his fiduciary duties to the Institution, including the duties of care, candor and loyalty and demonstrated a willful disregard for the safety and soundness of Peoples Heritage. JACKSON and the FIRM recklessly breached the foregoing duties which proximately caused Peoples Heritage to incur substantial loss.

#### FOURTH CLAIM

**FAILURE TO PROVIDE REQUIRED ADVICE TO MANAGEMENT OFFICIALS, FAILURE TO INVESTIGATE THE FACTS AND NATURE OF CERTAIN LOAN TRANSACTIONS, AND FAILURE TO ADVISE THE BOARD OF DIRECTORS OF CERTAIN PRACTICES AND OF APPROPRIATE STEPS TO PREVENT SUCH PRACTICES FROM CONTINUING CONSTITUTED A FAILURE TO FULFILL FIDUCIARY DUTIES TO PEOPLES HERITAGE**

117. Beginning no later than September of 1983, JACKSON and the PEOPLES WORK GROUP knew or should have known that any additional loans to Fellows or his affiliates by Peoples Heritage could result in LTOB violations.

118. Beginning in May 1984, JACKSON and other attorneys in the PEOPLES WORK GROUP began a practice in which certain loan guaranty agreements were withheld from the standard loan closing binders and other loan documents were amended to conceal the existence of certain guaranty agreement(s) and the undisclosed guarantor's identity. The amended loan documents made the existence of the guaranty agreement, as well as the identity of the undisclosed guarantor, undetectable. The PEOPLES WORK GROUP caused the omitted loan guaranty agreements to be kept separate from the other original loan documents and to be separately delivered to Peoples Heritage. On at least six separate occasions, the PEOPLES WORK GROUP omitted guaranty agreements prepared for Fellows, amended other loan documents to conceal Fellows' guaranty agreement and caused Fellows' guaranty agreements to be kept separate from the other original loan documents and to be separately delivered to Peoples Heritage.

119. Although JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that certain Peoples Heritage management officials participated in these practices, they failed to advise such persons that the management officials owed fiduciary duties to Peoples Heritage's depositors and the deposit insurance fund, and that those duties included the obligation to operate Peoples Heritage in a safe and sound manner and to avoid conduct that threatened undue risk of loss to the depositors and the insurance fund.

120. Although JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that certain Peoples Heritage

management officials were pursuing unsafe and unsound practices and were acting in violation of federal regulations, they failed to advise those management officials of their statutory and fiduciary responsibilities to the Institution.

121. Although JACKSON and other attorneys in the PEOPLES WORK GROUP knew or should have known that certain Peoples Heritage management officials were pursuing unsafe and unsound practices and were acting in violation of federal regulations, they failed to notify the Board of Directors of Peoples Heritage of the management officials' unlawful and unsafe or unsound conduct.

122. The FIRM's failure to properly supervise the activities of JACKSON and the other attorneys comprising the PEOPLES WORK GROUP constituted, among other things, a breach of the FIRM's fiduciary duty of care to the Institution. JACKSON's conduct in failing to advise certain management officials and the Board of Directors of Peoples Heritage of the duties, violations and unsafe and unsound practices described above, constituted reckless breaches of his duty of loyalty and duty to provide competent advice with due care. JACKSON and the FIRM recklessly breached the foregoing duties which proximately caused Peoples Heritage to incur substantial loss.

## VI. INJURY

123. As a consequence of the foregoing breaches of fiduciary duty, Peoples Heritage continued to operate in an unsafe and unsound condition and continued to fund unlawful loans that exceed the Institution's LTOB limitations, all of which resulted in

substantial financial loss to Peoples Heritage and posed an undue risk of loss to the insurance fund.

124. As a consequence of the foregoing actions and omissions, Federal examiners were unable to ascertain the true nature of certain Peoples Heritage loan transactions and were impeded from imposing timely and appropriate corrective action against certain management officials and against the Institution.

125. As a consequence of the foregoing regulatory violations and unsafe or unsound practices, the Board of Directors of Peoples Heritage approved and ratified loans described in this Notice that exceeded the Institution's LTOB limitation and failed to take appropriate actions to correct the violations.

126. As a consequence of the foregoing acts and omissions, and in light of the material facts of which they were or should have been aware, the Board of Directors of Peoples Heritage was deprived of the opportunity to take appropriate action with full knowledge and disclosure concerning the loans and transactions described in this Notice.

127. As a consequence of the violations, unsafe or unsound practices and breaches described in this Notice, Peoples Heritage and the insurance fund have suffered substantial loss.

#### VII. PRAYER FOR RELIEF

128. In light of the facts and claims set forth in the foregoing Notice of Charges, the OTS seeks the following remedies:

129. With respect to JENKENS & GILCHRIST, the issuance of a final cease-and-desist order pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b) requiring JENKENS & GILCHRIST to: (a) refrain from the participation in the violations described in this Notice of Charges and any other affirmative and corrective action deemed necessary and appropriate by the OTS; (b) make restitution and reimbursement for losses to Peoples Heritage caused by JACKSON and other attorneys comprising the PEOPLES WORK GROUP with respect to all expenses and other losses or damage paid or incurred in connection with the activities described above; and (c) make reimbursement to the OTS for expenses incurred by the OTS in the investigation and litigation of the matters alleged in this Notice of Charges.

130. With respect to JACKSON, the issuance of a final order of prohibition which would provide that JACKSON shall not: (a) participate in any manner in the conduct of the affairs of any institution or agency specified in Section 8(e)(7)(A) of the FDIA; (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent or authorization with respect to any voting rights in any Paragraph 7(A) institution; or (c) vote for a director or act as an institution-affiliated party.

#### VIII. NOTICE OF HEARING

131. Notice. Notice is hereby given that, pursuant to Sections 8(b) and 8(e) of the FDIA, 12 U.S.C. § 1818(b) and (e), and Sections 407(e) and (g) of the NHA, 12 U.S.C. § 1730(e) and (g)

and in accordance with the Rules of Practice and Procedure in Adjudicatory Proceedings ("OTS's Adjudication Rules"), 12 C.F.R. Part 509 (1994), an administrative hearing will be held to determine whether final orders should be issued by the OTS:

a. Ordering JENKENS & GILCHRIST to (i) cease and desist from the violations described in this Notice; (ii) undertake affirmative and corrective actions deemed necessary and appropriate by the OTS; (iii) make restitution and reimburse the federal insurance fund for losses incurred by Peoples Heritage as a result of violations of statutory, regulatory and fiduciary duties by JACKSON and the PEOPLES WORK GROUP, and the FIRM's failure to supervise as set forth herein; and (iv) make reimbursement to the OTS for expenses incurred by the OTS in the investigation and litigation of the matters alleged in this Notice of Charges; and

b. Ordering JACKSON to be prohibited from participating in the conduct of the affairs of any federally-insured depository institution.

132. Location and Date. The hearing will be held in the Federal judicial district for Kansas, in or near Kansas City, Kansas, except as may otherwise be provided by Section 8(h) of the FDIA. The hearing will be held before an Administrative Law Judge ("ALJ") under the direction of the Office of Financial Institution Adjudication, who shall be appointed to preside over said hearing. Unless otherwise set by the ALJ or by agreement of the parties, the hearing will commence on or about the sixtieth day following service of this Notice. The exact time of day and location will be announced at a later time by the ALJ. The hearing will be

conducted before the ALJ in accordance with the adjudicatory provisions of the Administrative Procedures Act, 5 U.S.C. §§ 554-557, as made applicable by Section 8(h) of the FDIA, and the OTS's Adjudication Rules, 12 C.F.R. Part 509 (1994).

133. Answer Required. The Respondents are hereby directed to file an Answer in response to the charges set forth in the preceding Notice within twenty (20) days after receiving service thereof. The requirements of the Answer and the consequences of failure to file an Answer are set forth at Section 509.19 of the OTS's Adjudication Rules. As provided by Section 509.19(c)(1) of the OTS's Adjudication Rules, the failure of a Respondent to file an answer as required by this Notice within the time provided herein shall constitute a waiver of the Respondent's right to appear and contest the allegations of the foregoing Notice.

134. Filing of Papers. Filing of papers is governed by Section 509.10 of the OTS's Adjudication Rules, and except as otherwise provided by the rule, any papers required to be filed shall be filed with the Office of Financial Institution Adjudication, 1700 G Street, N.W., Washington, D.C. 20552.

135. Public or Private Hearing. The Respondents may, within 20 days after receiving service of this Notice, file a written request for a private hearing, as provided by Section 509.33(a) of the OTS's Adjudication Rules. Such request and any replies thereto are governed by Section 509.33 of the Adjudication Rules. The hearing shall be open to the public, unless the OTS, in its discretion, determines that an open hearing would be contrary to the public interest. See, 12 U.S.C. § 1818(u)(2). The Respondents are hereby

advised about the OTS's policy regarding public and private hearings, which was adopted by OTS Res. No. 90-1347 and is set forth at OTS Regulatory Bulletin RB 18-5 (reprinted at Supervisory Service Paragraph 27,060). The Director will rule on any papers filed under Section 509.33(a), and accordingly, copies of any such papers must also be sent to the Director of OTS at 1700 G Street, N.W., Washington, D.C. 20552.

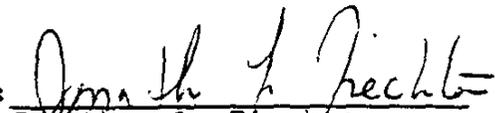
136. Service on Enforcement. Until an OTS attorney files a notice of appearance in this proceeding, the Respondents shall serve a copy of each and every of his filings on the below-named Senior Deputy Chief Counsel, as counsel of record for the OTS, as follows:

Brian C. McCormally, Esq.  
Senior Deputy Chief Counsel  
Office of Thrift Supervision  
8500 West 110th Street  
Suite 400  
Overland Park, Kansas 66214

Issued by the Office of Thrift Supervision on this 10<sup>th</sup> day of March, 1995.

OFFICE OF THRIFT SUPERVISION

By:

  
Jonathan L. Fiechter  
Acting Director