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Robert J. Fleck, Norman A. Nelson, James A Suchala, Richard A. Weber, and Robert Robbins v. National Property Management, Inc., A Utah Corporation, Ski Park City West, A Utah Corporation, Ensign Company, A Limited Partnership, and William S. Richards, Trustee, and the Travelers Indemnity Co : Appellant's Brief

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ROBERT J. FLECK, NORMAN A.
NELSON, JAMES A SUCHALA,
RICHARD A. WEBER, and
ROBERT ROBBINS,

Plaintiffs-Respondents,

v.

NATIONAL PROPERTY MANAGEMENT,
INC., A Utah corporation,
SKI PARK CITY WEST, INC., A
Utah corporation, ENSIGN
COMPANY, a limited partner-
ship, and WILLIAM S.
RICHARDS, Trustee, and THE
TRAVELERS INDEMNITY CO.,

No. 15480

Defendants-Appellants.

APPELLANT'S BRIEF

Appeal from a Judgment
of the Third District Court of Salt Lake County
The Honorable J. E. Banks, Judge

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ship, and WILLIAM S.
RICHARDS, Trustee, and THE
TRAVELERS INDEMNITY CO.,

Defendants-Appellants.

No. 15480

NATURE OF THE CASE

This is an action for damages suffered by the plaintiffs brought in the posture of third party beneficiaries to an indenture and performance bond between Summit County and defendants-appellants Ensign and Travelers.

DISPOSITION BELOW

Following a trial on March 21, 1977, before The Honorable J. E. Banks, one of the judges of the Third Judicial District Court, judgment was entered for the

plaintiff against all defendants in the sum of Seven Thousand Two Hundred Dollars (\$7,200.00) plus interest.

RELIEF SOUGHT ON APPEAL

Defendants-appellants, Ensign and Travelers, seek a reversal of the judgment entered below declaring plaintiffs improper parties to bring this action, or in the alternative declaring that plaintiffs suffered no damages caused by the defendants-appellants.

STATEMENT OF THE FACTS

The defendants-appellants, Ensign and Travelers involvement in this litigation grows out of an indenture and performance bond that was entered into on January 16, 1970, in order to fulfill the requirements of Summit County Ordinance No. 58 (Exhibit 9-P, Appendix 3), wherein guarantee in lieu of improvements was required before Plat No. 1 of the Park City West Subdivision could be recorded (Exhibit 1-P). As stated in the Summit County Ordinance No. 58 (Exhibit 9-P, Appendix 3), provision for guarantee of improvements, prior to the approval and acceptance of the final plat was as follows (quoting from p.12 of the Ordinance):

The subdivider may furnish and file with the county commissioners a bond of corporate surety or with two personal sureties acceptable to the county commissioners, in an amount equal to

the cost of the improvements not previously installed as determined by the county to assure the installation of such improvements within a two (2) year period or, if otherwise provided by said commissioners, a shorter or longer period.

Patterned after the requirements of the Summit County Ordinance No. 58 (Exhibit 9-P, Appendix 3) an indenture and performance bond was executed (Exhibit 8-P, Appendix 2) providing in part that:

Principals hereby agree to cause the various improvements ... to be installed on or before two (2) years from the recordation of the said final plat. ... The surety does hereby consent to any and all alterations, modifications and revisions to the indenture secured by this bond, including, but not limited to, any extensions of time for performance, which may be agreed upon by and between the County of Summit and the principals.

At the time plaintiffs executed a Uniform Real Estate Contract (Exhibit 7-P, Appendix 1) on the three lots in the Park City West Subdivision, more than two years had passed since the final plat (spoken of in the indenture and performance bond) was recorded. During all periods that plaintiffs were negotiating for the three lots and more importantly at the time they executed the Uniform Real Estate Contract (Exhibit 7-P, Appendix 1) dated May 1, 1972, defendant Ensign was in no way involved with the sale of the land or with the plaintiffs land vendor,

one of the defendants below, National Property Management. No mention of lot purchasers was made in the bond between Summit County and the defendants-appellants - Ensign and Travelers, and it is obvious that plaintiffs were not parties to the indenture and performance bond. Advised by counsel (T.P 25, L.19-21), plaintiffs made provision in paragraph No. 24 of their Uniform Real Estate Contract (Exhibit 7-P, Appendix 1) between themselves and National Property Management (defendant below) for the installation of improvements; to be completed by December 31, 1972. The defendant National Property Management failed to perform; never installing improvements as promised in the May 1, 1972, contract (Exhibit 7, Appendix 1).

National Property Management's (defendant below) liability for improvements matured once the promised date in its contract with plaintiffs passed. As to the defendants-appellants Ensign and Travelers, to date no demand for performance has been made by Summit County, nor has Summit County asked that defendants or anyone else make the improvements concerned under the bond (T.P. 26, L. 1-16, T.P. 28, L.14-17). The bond (Exhibit 7-P, Appendix 2) and the statute (Exhibit 9, Appendix 3) provides for extensions of which Summit County has given, and until the bond is called, Ensign and Travelers remain principal and

surety, but are not in default.

At the time plaintiffs contracted for the three (3) lots, Walker Bank had a financing lien in excess of Three Hundred Thousand Dollars (\$300,000.00), Halbet Engineering had a Trust Deed of approximately One Hundred Fifteen Thousand Dollars (\$115,000.00) that was in default (Exhibit 13-D) even before plaintiffs recorded their purchase contract, and money had been advanced by Prudential Federal Savings giving them a lien.

Following defaults on the Trust Deed obligation (Exhibit 13-D, T. 24, L.27-30), and others (T.P. 25, L.5-7), the land (of which plaintiff's three lots were part) was sold, with Halbet Engineering, formerly the beneficiary under a trust deed becoming the new owner (T.P. 24, L.27-30). Any contractual interest that plaintiffs had was extinguished by the sale, and no attempt was made by plaintiffs to make any arrangements for the release of the three lots (T.P. 24, L.3-12). Since obtaining ownership of the land, Halbet Engineering have made numerous changes to the development of the area, including a shift of building and development away from the original plans as shown on the Plat No. 1 (Exhibit 1-P). Halbet has constructed its own streets and improvements and it would be impossible to build any roads in the area represented on the original Plat No. 1, (Exhibit 1-P). Further, the

defendants-appellants Ensign and Travelers could not trespass upon Halbet's property forcing the improvements to be made. Even if Summit County had called the bond, or demanded performance thereunder, which it has not done (T.P. 28, L.14-20), defendants-appellants Ensign and Travelers would be unable to place the improvements spoken of in the original indenture and performance bond (Exhibit 8-P, Appendix 2).

ARGUMENT

I. PLAINTIFFS-RESPONDENTS HAVE NO STANDING TO SUE AS THIRD PARTY BENEFICIARIES OF THE BOND BETWEEN SUMMIT COUNTY AND DEFENDANTS-APPELLANTS

The trial court erred in granting judgment against the defendants-appellants, Ensign Company, a limited partnership (hereinafter Ensign) and the Travelers Indemnity Co.

(hereinafter Travelers); basing its decision upon the finding that plaintiffs-respondents could recover as third party beneficiaries of a contract between Summit County and defendants-appellants (R.P. 125, Conclusion of Law 3).

The trial court failed to distinguish between the two separate and distinct contracts involved in this litigation; namely, a Uniform Real Estate Contract for the sale of land between the plaintiffs-respondents and one of the defendants below, National Property Management, as land vendor (Exhibit 7-P, Appendix 1) and a contract between Summit County (obligee under an Indenture and Performance Bond Exhibit 8-P, Appendix 2) and the defendants of which Ensign and Travelers are a principal and Surety respectfully. Ensign and Travelers are in no way privy to the contract growing out of the sale of land between plaintiffs-respondents and National Property Management, a defendant below. Rather, any obligations that Ensign and Travelers have must flow from the terms of their agreement with Summit County (Exhibit 8-P, Appendix 2).

Plaintiffs-respondents in their land purchase contract with their vendor, National Property Management, made explicit provision for the making of improvements (Exhibit 7-P, Appendix 1). Even though plaintiffs have made such a provision, they now look to the separate and distinct contract between Summit County and defendants-appellants Ensign and Travelers.

- A. PLAINTIFFS-RESPONDENTS WERE AT MOST INCIDENTAL BENEFICIARIES TO THE CONTRACT BETWEEN SUMMIT COUNTY AND THE DEFENDANTS-APPELLANTS, AND HAVE NO STANDING TO SUE.

This Court has had occasion to determine the rights of those who claim as third party beneficiaries. In Schwinghammer vs. Alexander 21 Utah 2d 418, 446 P.2d 414 (1968), plaintiffs obtained a judgment in the trial court on the basis that they were third party beneficiaries of an escrow agreement between the contractor of their home and a savings and loan. In reversing the trial court's decision, this Court said that the beneficiaries of a contract were divided into three classes: incidental beneficiaries, donee beneficiaries, and creditor beneficiaries. As to which class had standing to sue, this Court said:

As the law has developed in the decisions up to date, it is possible to say that the only third parties who have legal rights are the donees and the creditors of the promisee. If in buying the promise the promisee expresses an intent

that some third party shall receive either the security of the executory promise or the benefit of performance as a gift, that party is a donee of either the contract right or of the promised performance or both. If, on the other hand, the promisee's expressed intent is that some third party shall receive the performance in satisfaction and discharge of some actual or supposed duty or liability of the promisee, the third party is a creditor beneficiary. All others who may in some way be benefitted by performance have no rights and are called incidental beneficiaries ... incidental beneficiaries are all those who are not donees or creditors of the promisee.

21 Utah 2d at 420

Had plaintiffs-respondents not lost their contract rights to the land purchased, they may have been benefitted by the installation of improvements. However, under the terms of the Alexander decision there is no evidence that Summit County, the promisee-obligee, intended that the plaintiffs "receive either the security of the executory promise or the benefit of performance as a gift." Likewise, there is no evidence that Summit County intended that "some third party should receive the performance in satisfaction and discharge of some actual or supposed duty or liability of the promisee."

A finding that the plaintiffs-respondents are not third party beneficiaries does not leave them without a remedy, as under the terms of their agreement with their

land vendor, National Property Management, it was agreed that the improvements be completed by December 21, 1972. As plaintiffs-respondents have complained that the improvements have not been made, it appears clear that there is a breach of contract between plaintiffs-respondents, and their vendor, National Property Management. Whatever recourse plaintiffs-respondents have should be made under that contract and not under the contract between Summit County, and the defendants, of which Ensign and Travelers are parties.

B. SUMMIT COUNTY AS OBLIGEE UNDER THE PERFORMANCE BOND IS THE ONLY ENTITY THAT COULD BRING SUIT THEREUNDER, AND THEY HAVE NOT DONE SO.

The bond between Summit County and defendants, to which Ensign and Travelers were principal and surety respectively, was required under the terms of Summit County Ordinance No. 58 (Exhibit 9-P, Appendix 3). Statutes similar to Summit County's Ordinance No. 58 have been in existence for years in other jurisdictions, and are commonly referred to as "subdivision map acts." The purpose of such acts is to require a developer, prior to offering land, to have a plat and plan recorded along with certain guarantees of performance in line with the recorded plat. As stated in the Summit County Ordinance No. 58 (Exhibit 9-P, Appendix 3), its purpose is to protect the public by assuring that before the city or county takes responsi-

bility for maintenance of streets and facilities that it has been assured that the streets and improvements are in the proper condition so as not to burden the public with expense of making them so. See Evola vs. Wendt Construction Co. 17 C.A. 2d 21, P.2d 498 (1959), and Ragghinti vs. Sherwan 16 Cal. Rptr. 583 (1961). It has been held that the rights and liabilities under a surety bond are to be determined from the language of the bond read in light of applicable statutes. Morro Palisades Co. vs. Hartford Acc. & Indem. Co. 52 C 2d 397, 340 P.2d 628 (1959). When the bond, (Exhibit 8-P, Appendix 2) is read in light of Ordinance No. 58 (Exhibit 9-P, Appendix 3) it is clear that there is no intent expressed or implied that the bond was meant as a general insurance pool to fund damage claims that third parties might assert in the future.

Courts from other jurisdictions have been faced with attempts by third parties to make claims as third party beneficiaries under bonds similar to the one at issue in this case, and have held that a bond restricted to a municipality precludes others from suing thereon. (See McQuillin, Municipal Corporations, Vol. 13 §37.206). One of the principal cases holding that third parties are precluded from suing as third party beneficiaries to a bond is the Morro Palisades Co. vs. Hartford Acc. & Indem.

Co. supra. In that case, the California Supreme Court decided that a third party land owner had no right to sue under a performance bond between a county and a land developer. In Morro Palisades Co., the county had demanded that the developer perform as agreed in the bond, and went as far as to assign its rights to the plaintiff-land owner. In affirming the dismissal of the third party land owners action, the California Supreme Court stated:

And here the right to recover under the bond appears clearly to be a right of the county, rather than the owner of a portion of the property which might be effected by the default. It is the county which is indemnified by the express terms of the bond against loss from 'all cost and damage which it may suffer' from Westfall's default either in building the roads or in failing to fully reimburse and repay the county all outlay and expense which it may incur ... the general rule appears to be that if a public improvement faithful performance bond runs to the public body, action thereon must be brought in that body's name. ... The bond in issue here is conditioned for the benefit of the obligee county and by no possible view of its language can it be held to have been 'furnished for the direct benefit and protection' of the principal (the subdivider) or other land owners in the tract.

The Court in continuing to discuss the issue of damages said:

Plaintiff claims, however, that in any event it, as the present owner of the land in the subdivided tract, is a third party beneficiary under the bond; ie, one for whose benefit the roads were to be improved. The same may

be said of other purchasers of lots in the tract, as well as of members of the public generally, who would use the roads. What plaintiff seeks by its complaint is not to compel improvement of the subdivision's roads, but to recover in full on its own behalf, a money judgment representing the cost of such improvements. Such a recovery appears to be authorized neither by the terms of the bond itself nor any assignment which the county could make of its rights under the bond.

Accord J & J Tile Co., Inc. vs. Feinstein 348 N.Y.S. 2d 783 (1973) Sp.Ct., App. Div.), and Ragghianti vs. Sherwin supra, and City of Los Angeles vs. Meline 14 C.A. 522, 58 P.2d 690 (1936).

The action at bar presents an even stronger case than did Morro Palisades for the proposition that a third party should not be allowed to sue. In this case, Summit County has not called for the improvements to be made, has not attempted to make them itself, and has made no assignment of its rights to the plaintiffs-respondents. Plaintiffs are attempting to use the bond as a source of damages for a breach of contract between their land vendor, National Property Management, and themselves. Use of the bond to fund damage claims for breach of contract between the plaintiff and National Property Management clearly goes beyond the purpose of the bond, and is inequitable as to Ensign and Travelers, who were not privy to the contract between National Property Management and plaintiffs-

respondents. See City of University City vs. Frank Miceli & Sons R. & B. Co. 347 S.W. 2d 131 (Mo. 1961).

When one examines the indenture and performance bond (Exhibit 8-P, Appendix 2), numerous references are made to Ordinance No. 58, (Exhibit 9-P, Appendix 3). No where in that instrument is there a reference to the right of third parties to bring private damage actions, using the bond as a source of funding for those claims. Rather, the bond speaks in the following terms:

Principals hereby to cause the various improvements ... to be installed on or before two years ... and as required by said County of Summit to give a bond to guarantee the performance of completion of said improvements, and ... the surety does hereby consent to any and all alterations, modifications and revisions to the indenture secured by this bond, including, but not limited to, any extensions of time for performance...

The Summit County Ordinance, No. 58, (Exhibit 9-P, Appendix 3) under §7 (B)(1)(A) entitled Guarantee of Improvements states that:

The subdivider may furnish and file with the county commissioners a bond with corporate surety, or with two personal sureties acceptable to the county commissioners, in an amount equal to the cost of the improvements not previously installed as determined by the county to assure the installation of such improvements within a two year period or, if otherwise provided by said commissioners, a shorter or longer period. (Emphasis added)

It is clear that the indenture and performance bond, and statute-ordinance No. 58 speak only in terms of assuring the installation of improvements. There is no mention of the rights of third parties to sue for breach of contract claiming damages to property for the failure to complete the improvements. Any action under the bond would have to be brought by the obligee Summit County. As referred to above, plaintiffs' recourse must be against their land vendor, National Property Management, for breach of that separate and distinct contract, which in no way relates to the performance bond they have attempted to claim under.

Plaintiff admits that Summit County has not "called" or demanded performance under the bond. (T.P. 28, L.14-18). In addition, it is clear from the terms of the bond that extension could be granted, and in fact has been. As Summit County has not "called" the bond, under general concepts of principal and surety liability, Ensign Company as principal and Travelers as surety have no liability. Ensign's liability would ripen only upon Summit County granting no further extension and "calling" or demanding performance under the bond. As surety, Traveler's liability would arise only upon, and be contingent upon the liability of Ensign.

In Star Contracting Corp. vs. Manway Const. Co.

Inc. 32 Conn.Supp. 64, 337 A.2d 669 (1973), the Court stated the general principle applicable to principal and surety liability as follows:

It is a fundamental precept of suretyship law that the liability of the surety is conditioned on accrual of some obligation on the part of the principal; the surety will not be liable on the surety contract if the principal has not incurred liability on the primary contract.

Concluding, the Court held that the plaintiff (a third party attempting to sue as a third party beneficiary under a performance bond) had failed to set forth a viable cause of action against the principal. Accordingly, since no cause of action was made out against the principal the surety was not liable either.

In the case at bar, Summit County having the authority both under the indenture and performance bond, and pursuant to Ordinance 58 (Exhibit 9-P, Appendix 3), could have extended the period of performance under the bond, and in fact did so. No demand has been made by Summit County upon defendants-appellants, Ensign and Travelers, and accordingly no liability has ripened under the bond.

II. THE TRIAL COURT'S AWARD OF DAMAGES AGAINST ALL DEFENDANTS IS NOT SUPPORTED BY THE EVIDENCE.

Plaintiffs' only witness, Fleck, testified that Seven Thousand Two Hundred Dollars (\$7,200.00) was paid

as a down payment on the lots they had an interest in as contract purchasers. (R.P. 8, P. 10). The trial court awarded restitution of that down payment as a judgment against all of the defendants. It is clear that such an award may have been valid against National Property Management for breach of its contract (wherein it covenanted to have improvements made by December 31, 1972 - Exhibit 7-P, Paragraph 24) as vendor under a Uniform Real Estate Contract. The judgment in the amount of Seven Thousand Two Hundred Dollars (\$7,200.00) is not supportable against Ensign and Travelers, defendants-appellants. Ensign and Travelers were not parties to the contract between National Property Management and plaintiffs-respondents. Failing to recognize that, and, rather than confining its judgment to the breach between National Property Management and plaintiffs-respondents, the trial court erroneously granted judgment against all of the defendants, shifting the source of liability from plaintiffs' contract with its land vendor to the bond between Summit County and defendants, of which Ensign and Travelers were principal and surety respectively. As argued above, the indenture and performance bond (Exhibit 8-P, Appendix 2) does not list the plaintiffs as parties to it, and as mere incidental beneficiaries, they cannot claim as third party beneficiaries under it.

In the trial court, Mr. Fleck stated that nothing was paid after the initial Seven Thousand Two Hundred Dollar (\$7,200.00) down payment because of an agreement between plaintiffs-respondents and Gary Williamson, acting on behalf of National Property Management (not connected with or under the control of either Ensign or Travelers). Apparently Mr. Williamson informed plaintiffs-respondents that their obligations under the land purchase contract would be held in abeyance until improvements were made (T.P. 13, L.21-25).

The only testimony in the record from which an award of damages could have been made, were statements by Mr. Fleck as to the value of the property when purchased, and the value without the improvements made. Mr. Fleck stated that at the time they entered into the contract, the value of the land with promised improvements would have been approximately One Dollar (\$1.00) a square foot (T.P. 17, L.27-28). He went on to testify that without the improvements the property was worth approximately Twenty Five Cents (\$.25) per square foot (T.P. 20, L.17). According to Mr. Fleck's testimony, there was approximately thirty five thousand (35,000) square feet of land involved (T.P. 18, L.6-7) which when valued at Twenty Five Cents (\$.25) per square foot equals Eight Thousand Seven Hundred Fifty Dollars (\$8,750.00) too. The Eight Thousand Seven

Hundred and Fifty Dollar (\$8,750.00) figure does not match with the court's award of Seven Thousand Two Hundred Dollars (\$7,200.00), and since the only testimony as to damages involves the land value, there is no basis for the court's award of Seven Thousand Two Hundred Dollars (\$7,200.00). Further, it is important to note that based upon Mr. Fleck's testimony, plaintiffs-respondents suffered no damages. The property without improvements was worth Eight Thousand Seven Hundred Fifty Dollars (\$8,750.00) and plaintiffs had paid only Seven Thousand Two Hundred Dollars (\$7,200.00). Considering the agreement with their land vendor, plaintiffs had no further responsibility to pay under the contract and thus had Fifteen Hundred Fifty Dollars (\$1550.00) more value in the land than they had paid in. Ironically, in view of the above, Mr. Fleck proceeded to testify that plaintiffs had sufficient money to redeem or acquire a release of their property, from senior lien holders, but made no attempt to do so nor had they any plans for doing so (T.P. 24, L.27-30, T.P. 25, L.1-12). After making no effort to preserve their interests, plaintiffs-respondents now seek to use Ensign and Travelers, defendants-appellants as their "pot of gold", restoring them their down payment. This award, however, is not sustained by the testimony of Mr. Fleck, and cannot be made against Ensign and Travelers.

Any award of damages under a performance bond, as that involved in this case, could only come after Summit County had made a demand for performance, received no response, and was forced to make the improvements, looking to the amount of the bond as the source of the funds for those improvements. There is no expression or even an implied expression that the bond was meant to satisfy individual claims for a breach of contract. The obligation under the bond expresses a duty flowing solely to Summit County, the obligee who would ultimately be responsible for the streets and improvements. As the trial court's judgment stands, contractual damages, growing out of a private contractual relationship between land vendors and purchasers, can be satisfied out of a general performance bond running to Summit County; such a result is untenable. There is no evidence in the record as to costs of improvement, or any evidence even as to plaintiffs-respondents pro rata share of such a cost. Rather, plaintiffs rely solely upon a claim that their property had depreciated in value. Assuming arguendo that plaintiffs were allowed standing as third party beneficiaries, the drop in value of their property, if any, would not be the proper measure of damages when suing under a performance bond. Morro Palisades Co. vs. Hartford Acc. & Indem. Co. supra.

A. ANY DAMAGES SUFFERED BY PLAINTIFFS-RESPONDENTS WERE NOT CAUSED BY THE LACK OF IMPROVEMENTS.

Plaintiffs were receiving the advice of legal counsel at the time they entered into the contract between themselves and National Property Management, their land vendor, (T.P. 25 L.19-21). They were, or should have been aware that an interest under an executory installment land contract is at most equitable in nature, and that legal title remains in the land vendor until performance under the contract is complete. Corporation Nine vs. Taylor, 30 Utah 2d 47, 513 P.2d 418 (1973). In addition, plaintiffs testified that they knew there were prior financing liens by Prudential Federal Savings, Walker Bank, and Halbet Engineering, all senior to their contract (T.P. 24, L.21-26). Before plaintiffs recorded their contract, notice of default had been given, which included land held under contract by plaintiffs. (Exhibit 13-D, Appendix 4). A trustee's sale was held, and plaintiffs-respondents lost their contractual interest to their land. As such, it is clear that the cause of any damages that plaintiffs-respondents may have suffered was a result of not policing the payment to the underlying land financiers and the resulting trust deed sale. Plaintiffs testified that no effort was made to redeem or acquire a release of their particular lots (T.P. 25, L.1-12). After losing

their property interests, instead of claiming for breach of contract against their vendor, National Property Management, they came full circle attempting to benefit from the bond agreement between Summit County and defendants-appellants, Ensign and Travelers, claiming that the failure to install improvements caused their loss. Such a claim is clearly erroneous on two general bases: First of all, plaintiffs were never land owners, but were only contract purchasers, second, the lack of improvements did not cause their loss -- the trust deed sale did. Under advice of counsel, plaintiffs should have foreseen such a possibility, and in fact notice of default was on the record prior to recording their purchase contract (Exhibit 13-D, Appendix 4). Any loss claimed by the plaintiffs-respondents cannot be claimed to have been caused by or connected to the bond. Rather, any damages suffered by the plaintiffs were caused by the loss of their property by trust deed sale, making the issue of the bond a moot point.

III. EVEN IF PLAINTIFFS WERE PROPER PARTIES TO BRING SUIT, ENSIGN AND TRAVELERS HAVE NO LIABILITY UNDER THE BOND AS THEY ARE EXCUSED BY THE SUPERVENING IMPOSSIBILITY CAUSED BY THE TRUST DEED SALE.

A. DEFENDANTS ENSIGN AND TRAVELERS HAVE NO INTEREST IN THE LAND NOW OWNED BY HALBET ENGINEERING, PURCHASER AT THE TRUST DEED SALE AND CANNOT FORCE IMPROVEMENTS ON THE PRESENT OWNER.

Halbet Engineering, the purchaser at the trust deed sale with all title and rights in the property, has changed the planned growth of the building near Park City West (T.P. 21, L.22-30, T.P. 22, L.1-7). Defendants-appellants Ensign and Travelers have no interest in the land nor do they have the legal rights to enter onto Halbet's property and make any improvements. It is not only impractical, but impossible for defendant Ensign and Travelers to perform under the terms of the indenture and performance bonds.

Sect. 416 of the Restatement of Contracts states that:

When the existence of particular facts other than specific things or persons within the rule stated in §460 is, either by the terms of a bargain or in the contemplation of both parties necessary for the performance of a promise in the bargain, a duty to perform the promise: (a) ... (b) is discharged with if such facts subsequently do not exist within the time for reasonable performance,

Unless a contrary intention is manifested or the contributing fault of the promisor causes the nonexistence, or unless performance is possible with unsubstantial variation under the rule stated in §463.

Defendants-appellants - Ensign and Travelers are not responsible for the loss of plaintiffs-respondents interest in the lots purchased under contract. Plaintiffs' vendor, National Property Management, is the only party

that can be looked to for that loss. The fact that the land is now owned by Halbet Engineering Co. who has made their own improvements, discharges defendants-appellants Ensign and Travelers from any duty to perform under the bond.

The Supreme Court of Oklahoma recognized the exception of supervening impossibility in the case of Kansas, Oklahoma & Gulf Railway Co. vs. Grandland Grain Co. 434 P.2d 153 (Okla. 1967) when it stated that:

Where from the nature of the contract, it is evident that the parties contracted on the basis of the continued existence of the person, thing, condition, or state of things, or facts to which it relates, the subsequent perishing of the person or thing, or cessation of existence of the condition or state will excuse the performance, or terminate the contract, a condition to that effect being implied, in spite of the fact that the promise may have been unqualified.

Accord Texas Co. vs. Hogarth Shipping Co. Ltd. 41 S.Ct. 612, 256 U.S. 619 (1921).

Defendants-appellants Ensign and Travelers, have no right to trespass upon Halbet Engineering land and cannot force improvements upon that land. As such, it is impossible for Ensign and Travelers to perform under the bond.

CONCLUSION

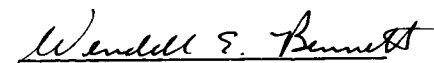
Summit County is the only party that could bring action against the defendants-appellants, Ensign and

Travelers, and has not done so, or even gone as far as to demand performance under the indenture and performance bond.

Any damages that plaintiffs may have suffered were caused by breaches of contract by their land vendor, the trust deed sale, and their decision not to redeem or obtain a release of their lots.

As plaintiffs have no claim as third party beneficiaries, and any damages suffered are not attributable to the defendants-appellants, Ensign and Travelers, this court should reverse the judgment granted below.

Respectfully submitted,


Wendell E. Bennett

UNIFORM REAL ESTATE CONTRACT

1. THIS AGREEMENT, made in duplicate this 1st day of May, A.D., 1972, by and between National Property Management, Inc., a Utah corporation hereinafter designated as the Seller, and those persons set forth in Paragraph 28 with percentage interests as set forth after the name of each, hereinafter designated as the Buyer, all residing in the state of Illinois

2. WITNESSETH: That the Seller, for the consideration herein mentioned agrees to sell and convey to the buyer, and the buyer for the consideration herein mentioned agrees to purchase the following described real property, situate in the county of Summitt, State of Utah, to-wit:

More particularly described as follows:
 Lots #7, 8 and 12, Plat #1, Park City West Subdivision; according to the official plat thereof, on file and of record in the office of the county recorder of Summitt County, State of Utah.

Entry No. 116175 Book M39
 RECORDED 6-13-72 at 9:23 AM Page 126
 REQUEST of Tracy Collins Bank & Trust
 FEE \$3.00 Wm. Y. Spaulding, Summitt, UT, Recorder

3. Said Buyer hereby agrees to enter into possession and pay for said described premises the sum of Thirty-six Thousand and no/100 Dollars (\$36,000.00), payable at the office of Seller, his assigns or order P. O. Box 308, Park City, Utah 84060 strictly within the following times, to-wit: Seven Thousand Two Hundred and no/100 7,200.00, cash, the receipt of which is hereby acknowledged, and the balance of \$ 28,800.00 shall be paid as follows:

\$360.21 commencing May 1, 1972 and \$360.21 on the first day of each succeeding month until principal and interest are paid in full. Buyer at his option may make excess payments or pay the full principal balance without penalty. Buyer agrees to pay the full unpaid balance on or before October 31, 1975.

Possession of said premises shall be delivered to buyer on the date hereof 6/13/72

4. Said monthly payments are to be applied first to the payment of interest and second to the reduction of the principal. Interest shall be charged from the date hereof on all unpaid portions of the purchase price at the rate of Seven per cent (7%) per annum. The Buyer, at his option at anytime, may pay amounts in excess of the monthly payments upon the unpaid balance subject to the limitations of any mortgage or contract by the Buyer herein assumed, such excess to be applied either to unpaid principal or in prepayment of future installments at the election of the buyer, which election must be made at the time the excess payment is made.

5. It is understood and agreed that if the Seller accepts payment from the Buyer on this contract less than according to the terms herein mentioned, then by so doing, it will in no way alter the terms of the contract as to the forfeiture hereinafter stipulated, or as to any other remedies of the seller.

6. It is understood that there presently exists an obligation against said property in favor of Walker Bank & Trust Company with an unpaid balance of \$ 312,000.00 as of date hereof, which seller agrees to discharge on or before payment in full.

7. Seller represents that there are no unpaid special improvement district taxes covering improvements to said premises now in the process of being installed, or which have been completed and not paid for, outstanding against said property, except the following None

8. The Seller is given the option to secure, execute and maintain loans secured by said property of not to exceed the then unpaid contract balance hereunder, bearing interest at the rate of not to exceed Seven percent (7%) per annum and payable in regular monthly installments; provided that the aggregate monthly installment payments required to be made by Seller on said loans shall not be greater than each installment payment required to be made by the Buyer under this contract. When the principal due hereunder has been reduced to the amount of any such loans and mortgages the Seller agrees to convey and the Buyer agrees to accept title to the above described property subject to said loans and mortgages.

9. If the Buyer desires to exercise his right through accelerated payments under this agreement to pay off any obligations outstanding at date of this agreement against said property, it shall be the Buyer's obligation to assume and pay any penalty which may be required on prepayment of said prior obligations. Prepayment penalties in respect to obligations against said property incurred by seller, after date of this agreement, shall be paid by seller unless said obligations are assumed or approved by buyer.

10. The Buyer agrees upon written request of the Seller to make application to a reliable lender for a loan of such amount as can be secured under the regulations of said lender and hereby agrees to apply any amount so received upon the purchase price above mentioned, and to execute the papers required and pay one-half the expenses necessary in obtaining said loan, the Seller agreeing to pay the other one-half, provided however, that the monthly payments and interest rate required, shall not exceed the monthly payments and interest rate as outlined above.

11. The Buyer agrees to pay all taxes and assessments of every kind and nature which are or which may be assessed and which may become due on these premises during the life of this agreement. The Seller hereby covenants and agrees that there are no assessments against said premises except the following:

None

BOOK M39 PAGE 126

The Seller further covenants and agrees that he will not default in the payment of his obligations against said property.

ADDITIONAL PROVISIONS

23. The five buyers obligate themselves to pay only that percentage of any obligation incurred hereby set forth after the name of each. If one or more fails to contribute his share, the others shall have the right to advance that share on his behalf and the amount advanced, together with interest at 18% per annum shall become a lien against the defaulting buyer's interest in the premises.

24. Seller agrees to have available sewer, street paving, and private culinary water for the subdivision by December 31, 1972. Connection fees charged by the sewer and water companies to the buyers in area will be born by buyer.

25. Buyer may trade Lot 12 for Lot 9 or may keep Lot 12 and purchase Lot 9 for \$15,000 cash, at any time within three months from the date Lot 9 becomes available. If a trade is made a title policy for Lot 9 shall be furnished forthwith and the parties shall evidence said trade by written addendum hereto. If the lot is purchased for cash, seller shall forthwith upon receipt of the purchase price convey by warranty deed and furnish title policy as set forth herein.

26. Buyer shall have an option on the 140 feet adjoining Lots 7,8,9, and 10 of a proposed subdivision contiguous on the north if such land is so subdivided. The purchase price shall be comparable to the price at which all other lots in the subdivision are offered for sell. Seller agrees that it will give buyer written notification of the recording of the proposed subdivision plat. The option shall be in effect until 15 days after receipt of such notification. Buyer may exercise the option by giving seller written notification during said 15 day period that it elects to exercise the option.

27. Notice to seller shall be mailed to P.O. Box 308, Park City, Utah 84060. Notice to buyers shall be directed to Brayton, Lowe & Hurley, 1011 Walker Bank Building, Salt Lake City, Utah 84111.

28. Buyers' names, addresses and percentages are as follows:

Richard A. Weber	32%
1639 North Linder	
Chicago, Illinois 60639	
Norman A. Nelson	20%
4153 West Cullom	
Chicago, Illinois 60641	
James A. Suchala	20%
3905 West 123rd Street	
Alsip, Illinois 60658	
Robert J. Fleck.	14%
1437 Morris Avenue	
Berkeley, Illinois 60163	
Robert Robbins	14%
7077 North Ridge	
Chicago, Illinois 60645	

29. Restrictive covenants have been recorded in Book M 22, Page 233 records of Summit County, Utan which seller represents are invalid and unenforceable. Seller agrees to hold buyer harmless from any expense or damage relating thereto including without limitation attorney's fees and other expenses involved in relation thereto. Buyer is given the option of rescinding this contract and receiving all of its payments made hereunder together with interest at 10% per annum, if within one year from date hereof said restrictive covenants have not been judicially decreed to be invalid by final unappealable decree.

30. Despite the provisions of paragraph 3, payments of both principal and interest need not be made by buyer until seller furnishes buyer a commitment in writing from Walker Bank and Trust Company, that upon performance in full by buyer, Walker Bank and Trust Company will release the above lots from its mortgage.

BOOK M39 PAGE 129

THIS INSTRUMENT, made and entered into this 11 day of November, 1970, by and between SKI PARK CITY WEST, INC., a Utah corporation; UNION COMPANY, a limited partnership of the State of Utah, and WILLIAM S. RICHARDS, as Trustee, hereinafter referred to as "Principals" and SUMMIT COUNTY, a body corporate and politic of the State of Utah, hereinafter referred to as "Obligee."

W I T N E S S E T H:

WHEREAS, pursuant to Ordinance No. 56 which was passed and ordered published by the Board of County Commissioners of SUMMIT COUNTY on the 7th day of August, 1967, the Principals herein submitted preliminary subdivision plats, plans and accompanying exhibits on the 20th day of Nov., 1969, to said County authority through its Planning Commission, and

WHEREAS, in accordance with said Ordinance No. 58 the Planning Commission rendered its preliminary approval of the above mentioned plats, plans and exhibits, subject to the Principals herein causing to be prepared final plans and documentation sufficient to meet the conditions of approval established by said Ordinance No. 58 and by the said Planning Commission, and

WHEREAS, upon compliance with the conditions of approval referred to above, it is the intention of Obligee herein to permit the Principals to file final subdivision plats in the records of the County Recorder's Office of said County, Utah, it being the purpose of this instrument to implement such compliance.

NOW, THEREFORE, the Principals hereby obligate themselves unto the Obligee, and the Obligee consents to the performance of those acts and conditions as may be suitable under the law affecting the Principals hereunder, as follows:

I
Principals hereby agree to cause the various improvements which are shown upon the plans, profiles, plats and other documents that are attached hereto, marked Exhibits numbered A to N inclusive and by reference made a part hereof to be installed on or before two (2) years from recordation of the said final plans.

APPENDIX 2

Obligee hereby agrees to release principals from any and all liability for making the improvement installations hereinabove recited in paragraph numbered "I" hereof, at such time as said installations have in fact been completed according to the appropriate plans and specifications therefor and approved and accepted by said Summit County through its Board of County Commissioners.

IN WITNESS WHEREOF, the Principals and Obligor hereunto set their respective hands and seals, on the day and year first above mentioned:

PRINCIPALS:

SKI PARK CITY WEST, INC.

By

President

ENSIGN COMPANY

By

General Partner

WILLIAM S. RICHARDS, as Trustee

ATTEST:

WITNESS:

WITNESS:

ATTEST:

County Clerk

OBLIGEE:

SUMMIT COUNTY, by and through its Board of County Commissioners

By

Chairman

SURETY BOND

Bond No. 1643762

KNOW ALL MEN BY THESE PRESENTS:

That we, SKI PARK CITY WEST, INC., a Utah corporation; ENSIGN COMPANY, a limited partnership of the State of California and WILLIAM S. RICHARDS

hereinafter referred to as "Principals" and THE
TRADING COMPANY of Hartford, Conn., corporation, duly authorized
under the laws of the State of Utah to act as Surety, hereinafter referred to as
"Surety" are hereto firmly bound unto SUMMIT COUNTY, a body corporate and
politic of the State of Utah, in the sum of One hundred sixty thousand
nine-hundred four and no/100 DOLLARS

(\$ 160,904.00) lawful money of the United States of America for the
payment whereof, well and truly to be made, said Principals and Surety bind them-
selves, their heirs, administrators, successors and assigns, jointly and
severally firmly by these presents.

The conditions of the foregoing obligation are such that whereas the
above bounden Principals have agreed to provide certain tract improvements for
the subdivisions situated in Summit County, State of Utah, known as PARK CITY
WEST, Plats "1" and "2", pursuant to the Indenture with SUMMIT COUNTY dated the
14 day of January, 1970, hereinabove set forth and as required by
the said COUNTY OF SUMMIT to give a bond to guarantee the performance and com-
pletion of said improvements, and

WHEREAS, SUMMIT COUNTY acting through its Board of County Commissioners
is willing to accept and approve said subdivision plats conditional upon the
furnishing by said Principals of a bond in the amount of One hundred sixty thousand
nine-hundred four and no/100 DOLLARS

(\$ 160,904.00) guaranteeing that the Principals will install said improve-
ments described in Exhibits numbered A to N inclusive of said
Indenture.

NOW, THEREFORE, if the said Principals shall well and truly perform
all the work specified in said Indenture in a workman-like manner and said
SUMMIT COUNTY, by and through its Board of County Commissioners, shall have
approved such work and improvements then this obligation shall be null and void,
otherwise to remain in full force and effect. The Surety does hereby consent to
any and all alterations, modifications and revisions to the Indenture secured by
this Bond, including, but not limited to, any extensions of time for performance,
which may be agreed upon by and between the County of Summit and the Principals.

SIGNED AND SEALED at Salt Lake City, Utah

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

this 16 day of June

ATTEST:

[Signature]
V. 2285
DCK

WITNESS:

[Signature]

WITNESS:

[Signature]

PRINCIPAL:

SKI PARK CEMENT, INC.

By

[Signature]
President

ENSIGN COMPANY

By

[Signature]
General Partner

WILLIAM S. RICHARDS, As Trustee

SURETY:

THE TRAVELERS INDEMNITY COMPANY

By

[Signature]
Attorney in fact

Countersigned By:

[Signature]
Utah Resident Agent

The Premium for this Bond is \$2,414.00 for the first two years or fraction thereof; \$1,207.00 Per Annum thereafter
STATE OF UTAH

(SS.
COUNTY OF SALT LAKE)

J. H. KNEETER, being first duly sworn on oath, deposes and says: That he is the attorney in fact of THE TRAVELERS INDEMNITY COMPANY, a corporation organized under the laws of the State of UTAH, and that he is duly authorized to execute and deliver the foregoing obligation; that the said TRAVELERS INDEMNITY COMPANY is authorized to execute the same and has complied in all respects with the laws of the State of Utah in reference to becoming sole surety upon bonds, undertakings and obligations. Affiant further says that the Commissioner of Insurance of the State of Utah and his successors in office, whose address is Salt Lake City, Utah, have been appointed attorney upon whom process for the State of Utah may be served according to law.

Subscribed and sworn to before me this 16 day of June, 1970.

[Signature]
NOTARY PUBLIC

Residing at [Address]

My Commission Expires:

11-15-70

State of Utah }
County of Salt Lake } ss

I, Susan D. Davis, Clerk of the District Court in and for Salt Lake County, do hereby certify that the foregoing is a true and correct copy of the Indenture & Performance Bond made between the parties on 1-16-70 as the same appears in my office.

In witness whereof I have hereunto set my hand and affix the seal of said court this 16th day of June 1976

Susan D. Davis Clerk

Laura J. Blumquist Deputy Clerk

ORDINANCE PROVIDING FOR MINIMUM STANDARDS RELATING TO THE PLATTING AND
DIVISION OF SUBDIVISIONS OF LAND IN THE UNINCORPORATED TERRITORY OF SUMMIT
COUNTY, STATE OF UTAH.

BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, UTAH, ORDAINS AS FOLLOWS:

1. GENERAL PROVISIONS.

- A. The underlying purpose and intent of this Ordinance is to promote health, safety, convenience and general welfare of the inhabitants of Summit County in the matter of subdivision of land and related matters affected by such division.
- B. Any proposed subdivision and its ultimate use shall be in the best interests of the public welfare and the neighborhood development of the area and the subdivider shall present evidence to this effect when requested by the Planning Commission of the Board of County Commissioners.
- C. In cases where unusual topographical or other exceptional conditions variations and exceptions from this Ordinance may be made by the County Commissioners after recommendation by the Planning Commission.

2. SCOPE OF ORDINANCE.

- A. No person shall subdivide any tract of land which is located wholly in the unincorporated territory of Summit County except in compliance with this Ordinance.
- B. No person shall sell or exchange or offer to sell or exchange any part of land which is a part of a subdivision of a larger tract of land, nor for recording in the office of the County Recorder any deed conveying such part of land, or any interest therein, unless such subdivision has been created in accordance with the provisions of this Ordinance.

3. DEFINITIONS.

The following words and phrases used in this ordinance shall have the following meanings hereinafter set forth:

- A. Ben-a-Fide Division of Partition of Agricultural Land for Agricultural Development Purposes. The division of agricultural land into tracts or parcels of five acres or more of agricultural land for agricultural development purposes where no dedication of any street is required to serve any such tracts of land so created.
- B. County. Summit County, Utah.
- C. County Commissioners. The Board of County Commissioners of Summit County, Utah.
- D. Lot. A parcel of land comprising a unit within a subdivision.
- E. Parcel of Land. "Parcel of Land" shall mean a contiguous quantity of land in the possession of, or owned by or recorded as the property of the landowner or person.

APPENDIX 3

F. Person. Any individual, corporation, partnership, firm or association of individuals however styled or designated.

G. Planning Commission. The Summit County Planning Commission.

H. Private Access Right-of-Way. An easement of not less than fifty (50) feet wide reserved by dedication unto the subdivider or lot owners to be used as private access to serve the lots platted within the subdivision and complying with the adopted street cross section standards of the County and maintained by the subdivider or other private agency.

I. Streets.

1. Street. A thoroughfare which has been dedicated or abandoned to the public and accepted by proper public authority, or a thoroughfare not less than twenty-six (26) feet wide which has been made public by right of use and which affords the principal access to the abutting property.

2. Street, Major. A street, existing or proposed, which serves or is intended to serve as a major traffic way and is designated on the Master Street Plan as a controlled-access highway, major street, parkway or other equivalent term to identify those streets comprising the basic structure of the street plan.

3. Street, Collector. A street, existing or proposed, of considerable continuity which is the main means of access to the Major Street System.

4. Street, Minor. A street, existing or proposed, which is supplementary to a collector street and of limited continuity which serves or is intended to serve the local needs of a neighborhood.

5. Street, Marginal Access. A minor street which is parallel to and adjacent to a limited access major street and which provides access to abutting properties and protection from through traffic.

6. Street, Private. A thoroughfare within a subdivision which has been reserved by the subdivider or lot owners to be used as private access to serve the lots platted within the subdivision and complying with the adopted street cross section standards of the County and maintained by the subdivider or other private agency.

7. Street, Cul-de-sac. A minor terminal street provided with a turnaround.

J. Subdivision. The division of any tract, lot or parcel of land owned at the time of adoption of this Ordinance as an undivided tract by one person or by joint tenants or tenants in common or by the entirety, into three (3) or more lots, plots, sites or other divisions of land for the purpose, whether immediate or future, of sale or of building development; provided, that said term shall not include a bona fide division or partition of agricultural land for agricultural development purposes. The word "subdivide" and any derivative thereof shall have reference to the term "subdivision" as herein defined.

K. Subdivision Cluster. A subdivision of land in which the lots have areas less than the minimum lot area of the zone in which the subdivision is located, but which complies with the Cluster Subdivision provision of the Zoning Ordinance of Summit County and in which a significant part of the land is privately reserved or dedicated as permanent common open space to provide an attractive low density character for the residential lots in the subdivision.

L. Subdivision, Summer Home. A subdivision of land in the mountain areas of the County for summer home usage only and not for year-around permanent living there, because of topography and the temporary nature of the occupation, road, utility and other standards and improvements are reduced to a minimum and where the naturalistic environment is maintained as much as possible.

M. Zoning Ordinance. The Zoning Ordinance of Summit County as might be adopted by the Board of County Commissioners and as amended from time to time.

Section 4. PRELIMINARY PLAN.

A. Preliminary Information. Each person who proposes to subdivide land in the unincorporated territory of the County shall confer with the Planning Commission before preparing any plats, charts of plans in order to become familiar with the County subdivision requirements and existing master plan for the territory in which the proposed subdivision lies and to discuss the proposed plan of development of the tract.

B. Subdivision Information Form and Preliminary Title Report. A Subdivision Information Form supplied to the subdivider by the Planning Commission shall be filled out and submitted, together with a Preliminary Title Report covering all property within the subdivision, to the Planning Commission with the preliminary plan.

C. Preliminary Plan Filing. A preliminary plan shall be prepared in conformance with the standards, rules and regulations contained herein and eight (8) black and white prints thereof shall be submitted to the Planning Commission for approval or disapproval. One print shall be delivered by the Planning Commission to each of the following for their information and recommendations: County Recorder, County Engineer if such exists, County Fire Marshall, County Health Department, District School Board, and company furnishing telephone, electric, water or gas service, and any other County Department considered necessary.

D. Preliminary Plan Application Fee. At the time of filing the preliminary plan the subdivider shall deposit with the County Clerk a non-refundable fee made payable to Summit County. The County Commissioners shall be resolution from time to time prescribe the amount of such fee which shall be for the purpose of reimbursing the County for the expense incidental to checking and approving of such subdivision plans and improvements.

E. Preliminary Plan Requirements.

1. The preliminary plan shall be drawn to a scale not smaller than two hundred (200) feet to the inch, and shall show:

- a. The proposed name of the subdivision.
- b. The location of the subdivision as forming a part of a larger tract or parcel where the plat submitted covers only a part of the subdivider's tract or only a part of a larger vacant area. In such case a sketch of the prospective future street system of the unplatted parts shall be submitted and the street system of the part submitted shall be considered in the light of adjustments and connections with the future street system of the larger area.
- c. Sufficient information to locate accurately the property shown on the plan.
- d. The names and addresses of the subdivider, the engineer or surveyor of the subdivision and the owners of the land immediately adjoining the land to be subdivided.
- e. Contour lines at appropriate intervals as determined by the Planning Commission.
- f. The boundary lines of the tract to be subdivided.
- g. The location, widths and other dimensions of all existing or platted streets and other important features such as railroad lines, water courses, exceptional topography and buildings within or immediately adjacent to the tract to be subdivided.
- h. Existing sanitary sewers, storm drains, water supply mains, water wells and culverts within the tract or immediately adjacent thereto.
- i. The location, widths and other dimensions of all proposed streets, private access rights-of-way, alleys, utility easements, parks, other open spaces and lots, with proper labelling of spaces to be dedicated to the public, or designated as private access rights-of-way.
- j. North point, scale and date.

2. Plans or written statements regarding the widths and type of proposed pavement, location, size and type of proposed sanitary sewers or other sewage disposal facilities, proposed water mains and hydrants and other proposed utilities, proposed storm water drainage facilities and other proposed improvements such as sidewalks and curbs and gutters shall be submitted with the Preliminary Plan.

F. Preliminary Plan Approval. Following a review of the preliminary plan the Planning Commission shall act on the plan as submitted or modified. If approved, the Planning Commission shall express its written approval with whatever conditions are attached by returning one (1) copy of the preliminary plan, signed by the Chairman of the Planning Commission, to the subdivider. If the preliminary plan is disapproved the Planning Commission shall indicate its disapproval in writing and reasons therefore by similarly signed copies. Notification of approval of the preliminary plan shall be authorization for the subdivider to proceed with the preparation of the final plat and specifications for the minimum improvements required in Sections 5 and 7 of this Ordinance.

G. Time Limitation. Approval of the preliminary plan by the Planning Commission shall be valid for a maximum period of eighteen (18) months after such approval unless, upon application of the subdivider, the Planning Commission grants an extension. If the final plat has not been submitted within the eighteen (18) months or approved extended period, the preliminary plan must again be submitted to the Planning Commission for re-approval; however, preliminary approval of a large tract shall not be voided provided that the final plat of the first section is submitted for final approval within the eighteen (18) months period.

H. Grading Limitation. No large scale excavation, grading or re-grading as determined by the Planning Commission shall take place on any land for which a preliminary subdivision plan has been submitted

until such plan has been given preliminary approval by the Planning Commission.

Section 5. FINAL PLAT.

A. Tentative Final Plat Required.

1. Prior to the submission of the final plat the subdivider shall submit two (2) copies of the tentative final plat to the Planning Commission which shall check the tentative final plat against the requirements and conditions of approval of the preliminary plan, and refer one (1) copy to the County Recorder for checking.

2. The Planning Commission shall return one (1) copy of the checked tentative final plat to the subdivider indicating thereon any changes required by the Planning Commission and/or the County Recorder.

B. Final Plat Required.

1. After compliance with the provisions of Section 4 and 5-A of this Ordinance, the subdivider shall submit a final plat with two (2) copies thereof to the Planning Commission.

2. The final plat and accompanying information shall be submitted to the Planning Commission at least five (5) days prior to a regularly scheduled Planning Commission meeting in order to be considered at said meeting.

C. Final Plat Requirements.

1. The final plat shall consist of a sheet of approved tracing linen or mylar to the outside or trim line dimensions of nineteen (19) by thirty (30) inches and the border line of the plat shall be drawn in heavy lines leaving a space of at least one-half (1/2) inch margin on all four sides of the sheet. The plat shall be so drawn that the top of the sheet faces either north or west, whichever accommodates the drawing best. All lines, dimensions and markings shall be made on the tracing linen with approved waterproof black "India" Drawing Ink". The plat shall be made to a scale large enough to clearly show all details, in any case not smaller than two hundred (200) feet to the inch, and the workmanship on the finished drawing shall be neat, clean-cut and readable. The plat shall be signed by all parties mentioned in subparagraph g. of this paragraph, duly authorized and required to sign, and shall contain the following information:

a. A subdivision name, approved by the County Recorder, and the general location of the subdivision in bold letters at the top of the sheet.

b. Where a subdivision complies with either the Cluster Subdivision provisions of the Zoning Ordinance and these regulations and/or the Summer Home provisions of these regulations, the final plat shall indicate underneath the subdivision name, the words, "Cluster Subdivision", "Summer Home Subdivision" or "Cluster Summer Home Subdivision" whichever is applicable.

c. A north point and a scale of the drawing, and the date.

d. Accurately drawn boundaries showing the proper bearings and dimensions of all boundary lines of the subdivision. These lines should be slightly heavier than street and lot lines.

e. The acreage of each lot, of each "Public Park" or "Private Common Open Space" and of the total subdivision area; the names, widths, lengths, bearings and curve data on center lines of proposed streets, alleys and easements; also the boundaries, bearings and dimensions of all portions within the subdivision as intended to be dedicated to the use of the public; the lines, dimensions, bearings and numbers of all lots, blocks and parts reserved for any reason within the subdivision. All lots are to be numbered consecutively under a definite system approved by the Planning Commission. All proposed streets shall be named or numbered consecutively under a definite system approved by the Planning Commission.

f. Parcels of land to be dedicated as public park or to be permanently reserved for private common open space shall be included in the lot numbering system and shall also be titled "Public Park" or "Private Common Open Space", whichever is applicable.

g. The standard forms approved by the Planning Commission for all subdivision plats lettered for the following:

- (1) Description of land to be included in subdivision.
- (2) Registered professional engineer and/or land surveyor's "Certificate of Survey."
- (3) Owner's Dedication Certificate.
- (4) Notary Public's Acknowledgement.
- (5) County Planning Commission's Certificate of Approval.
- (6) Certificate of Approval of

- (7) County Attorney's Certificate of Approval.
- (8) Board of County Commissioner's Certificate of Acceptance.

h. A three (3) inch by three (3) inch space in the lower right-hand corner of the drawing for recording information.

2. For Summer Home Subdivisions that are submitted in accordance with the Summer Home Subdivision provisions of these regulations the following statement shall be required on the final plat, i.e.,:

"Notice to Purchaser of Summer Home Subdivision Lots:

This subdivision has been approved in accordance with the Summer Home Subdivision provisions of the Subdivision Regulations of Summit County which waive the requirements for the provision of a dedicated public street and reduce the requirements for an approved water supply system to State Board of Health Summer Home Standards for Such Water Supply System.

D. Engineering Data Required. The subdivider shall furnish a complete set of profiles, construction and design data of all streets, existing and proposed, and all utilities to be constructed within the subdivision to the Planning Commission with the final plat.

E. Approval of Final Plat.

1. After approving and signing the final plat the Planning Commission shall then submit the plat for approval to the County Surveyor or Engineer who shall check the engineering requirements of the drawing and determine the amount of the bond to assure construction of the improvements where necessary. After approval and signature by such County Surveyor or Engineer the plat and bond agreement shall be submitted to the County Attorney and the Board of County Commissioners respectively for their approval. The final plat, bearing all official approvals as above required, shall be deposited in the office of the County Recorder for recording at the expense of the subdivider.

Any final plat, not so approved and signed, or which shall not be offered for recording within one (1) year after the date of final approval, unless the time is extended by the Planning Commission, shall not be recorded, or received for recording and shall have no validity whatever.

2. No street improvements or utilities shall be installed until after approval of the final plat by the County Surveyor or Engineer. No lots or exchange and no construction of buildings upon such lots shall begin until the final plat is so approved and recorded.

F. Final Plat - Exceptions. In subdivisions of less than ten (10) lots land may be sold by metes and bounds without the necessity of recording a final plat if all of the following conditions are met:

1. A preliminary subdivision plan shall have been first approved in writing by the Planning Commission and the County Commissioners.

2. The subdivision is not traversed by the mapped lines of a proposed street as shown on any official road map or maps of the County or proposed street or streets to be widened as shown on the Master Street Plan, and does not require the dedication of any land for street or other public purposes.

3. Each lot in the subdivision meets the requirements of Section 6-G-2 of these regulations.

4. All preliminary plan requirements have been complied with.

5. All provisions of Section 7 of these regulations have been complied with.

G. The provisions of this Section 5 requiring approval by the County Engineer or Surveyor of the Final Plat shall be waived by the County if the County does not have an Engineer or a Surveyor at the time such plat is submitted for final approval and if, at the same time, the Planning Commission executes a written waiver of such provisions in connection with approval of such plat.

Section 6. SUBDIVISION STANDARDS.

A. Streets.

1. Relation of Streets to Adjoining Street Systems.

The arrangement of streets in new subdivisions shall make provisions for the continuation of the existing streets in adjoining areas (or their proper protection where adjoining land is not subdivided) insofar as such may be deemed necessary by the Planning Commission for public requirements. The street arrangement must be such as to cause no unnecessary hardship to

Owners of adjoining property when they plat their own land seek to provide for convenient access to it.

2. Minor Streets shall approach the major or collector streets at an angle of not less than eighty (80) degrees.

3. Street Dedication. All streets in subdivisions in the unincorporated area of Summit County shall be dedicated to the County except that private streets or private access rights-of-way may be approved in Summer Home Subdivisions and under the other special circumstances as determined by the Planning Commission.

4. Major and collector streets shall conform to the width designated on the Master Street Plan wherever a subdivision falls in an area for which a Master Street Plan has been adopted. For territory where such street plan has not been completed at the time the preliminary plan is submitted to the Planning Commission major or collector streets shall be provided as required by the Planning Commission with minimum widths of one hundred (100) feet for major streets and sixty-six (66) feet for collector streets.

5. Minor Streets shall have a minimum width of sixty (60) feet, except that minor terminal streets and loop streets serving not more than ten (10) lots or minor private streets and private access rights-of-way in Summer Home Subdivisions may have widths of not less than fifty (50) feet.

6. Marginal access streets of not less than forty (40) feet in width shall be required paralleling all limited access major streets unless the subdivision is so designed that lots back onto such major streets.

7. Half-streets proposed along a subdivision boundary or within any part of a subdivision shall not be approved.

8. Standard Street Sections. All proposed streets, whether public or private, shall conform to the County Street Cross-Section standards as recommended by the Planning Commission and adopted by the County Commissioners.

B. Blocks.

1. The maximum length of blocks shall be thirteen hundred (1300) feet and the minimum length of blocks shall be five hundred (500) feet. Blocks over eight hundred (800) feet in length shall, at the discretion of the Planning Commission, be provided with a dedicated walkway through the block at its approximate center. Such walkway shall be not less than ten (10) feet in width.

2. The width of blocks shall be sufficient to allow two (2) tiers of lots or as otherwise approved by the Planning Commission because of design, terrain or other unusual conditions.

C. Lots.

1. The lot arrangement and design shall be such that lots will provide satisfactory and desirable sites for buildings and be properly related to topography and to existing and probable future requirements.

2. All lots shown on the subdivision plat shall have a minimum frontage of one hundred (100) feet and shall have a minimum area of twenty thousand (20,000) square feet, or larger if required by the State Board of Health, except as otherwise permitted by the Planning Commission, or if a Zoning Ordinance is in effect for the land covered by the subdivision then the frontage and lot area requirements shall comply with the Zoning Ordinance requirements.

3. Each lot shall abut on a public street, private street or private access right-of-way dedicated by the subdivision plat or an existing publicly dedicated street of a street which has become public right of use and is more than twenty-six (26) feet wide.

4. Corner lots shall have extra width sufficient for maintenance of required building lines on both streets.

5. Side lines of lots shall be approximately at right angles, or radial to the street line.

6. All remnants of lots below the minimum size left over after subdividing a larger tract must be added to adjacent lots rather than allowed to remain as unusable parcels.

7. The Planning Commission may require that easements for drainage through adjoining property be provided by the subdivider, and easements of not less than ten (10) feet in width for water, sewers, drainage, power lines and other utilities shall be provided in the subdivision when required by the Planning Commission.

D. Parks, School Sites and Other Public Places.

In subdividing property consideration shall be given to suitable sites for schools, parks, playgrounds, and other areas for public use.

Any provision for such open spaces should be indicated on the preliminary plan in order that it may be determined when and in what manner such areas will be dedicated to, or acquired by, the appropriate agency.

E. Cluster Subdivisions - Special Provisions.

1. Design Standards.

a. The design of the preliminary plan and final plats of the subdivision in relation to streets, blocks, lots, common open spaces and other design factors shall be in harmony with the intent of zoning regulations, elements of the Master Plan that have been adopted by the Commission and design standards recommended by the Planning Commission and approved by the County Commissioners.

b. Streets shall be so designed as to take advantage of open space vistas and to create drives with a rural or open space character.

2. Provision for Common Open Space.

a. The subdivider of a cluster subdivision shall submit plans of landscaping and improvements for the common open space. He shall also explain the intended use of the open space and provide detailed provisions as to how the improvements thereon are to be financed and the area maintained. A Cluster Subdivision must meet the requirements of the Zoning Ordinance, must assure proper use, construction and maintenance of open space facilities and must result in a development superior to conventional development in terms of its benefits to future owners of the subdivision, surrounding residents and the general public.

b. The Planning Commission may place whatever additional conditions or restrictions it may deem necessary to insure development and maintenance of the desired character including plans for disposition or reuse of property if the open space is not maintained in the manner agreed upon or is abandoned by the owners.

3. Guarantee of Common Open Space Improvements.

As assurance of completion of common open space improvement the subdivider may be required to file with the County Commissioners a surety or cash bond guaranteeing such completion, in a manner satisfactory to the County Commissioners, within two (2) years of such filing. Upon completion of the improvements for which a surety or cash bond has been filed the subdivider shall call for inspection by the Planning Commission, such inspection to be made within fourteen (14) days from the date of request. If inspection shows that landscaping and construction have been completed in compliance with the approved plan the bonds therefore shall be released. If the bonds are not released, refusal to release and reasons therefore shall be given the subdivider in writing.

4. Continuation of Common Open Space.

As assurance of continuation of common open space use in accordance with the plans approved by the Planning Commission the subdivider shall grant to an association of lot owners or to Summit County an "Open Space Easement" on and over the Common Open Space prior to the recording of the final plat which easement will not give the general public right of access but will provide that the Common Open Space remain open.

5. Maintenance of Common Open Space, etc.

a. As assurance of maintenance of the common open space and other improvements where so required the subdivider shall cause to be formed, prior to the recording of the final plat, a Lot Owners Association and shall establish articles of incorporation of the Association, by-laws and covenants outlining the purpose, organization and operation of the Association.

b. Such articles of incorporation and covenants shall, among other things, provide:

1. That membership shall be mandatory for each lot purchaser and any successive buyer.
2. That Common Open Space restrictions must be permanent, not just for a period of years.
3. That the Association must be responsible for liability insurance, local taxes and the maintenance of recreational and other facilities.
4. That lot owners must pay their pro rata share of the costs.
5. That the assessment levied by the Association shall become a lien against the property.
6. That the Association must be able to adjust the assessment to meet changed needs.

6. In the event the Lot Owners Association does not maintain the Common Open Space and Improvements as proposed and indicated at the time of subdivision the County may, at its option, do or contract to have done the required maintenance and recover the costs incident thereto by means

of a lien against the involved properties of the members of the Lot Owners Association.

F. Summer Home Subdivisions - Special Provisions.

1. Intent.

The County recognizes the need to vary or reduce the subdivision improvement standards normally required for those subdivisions proposed for temporary summer home useage only in the mountain areas of Summit County. Because of special circumstances the normal standards of public street dedication, width and improvement and an approved public water supply system to State Board of Health year round standards are reduced or are not required for such subdivisions. The County has determined that policies should be followed which will ensure that such subdivisions will remain summer home areas and will not readily be converted to year-around living in the future where the full range of improvements and services will be required by the residents.

2. Location.

Summer home subdivisions shall be approved only in those locations in the mountain areas of Summit County where the Planning Commission determines that such subdivisions will most likely be used for temporary summer living only. Such determination shall be based on accessibility, topography, mountain location and elevation which will be an indication of suitability of the land for temporary summer use or permanent year-around use.

3. Improvements Required

Summer home subdivisions may be approved with an approved public water supply sytem to State Board of Health Summer Home Standards, sanitary sewer or septic tank disposal system and private access rights-of-way or private streets, except where such streets are necessary for public traffic circulation as determined by the Planning Commission. Access to lots may be by means of private streets or private access rights-of-way.

4. Maintenance of Private Streets, Private Access Rights-of way and Other Improvements.

(a) As assurance of adequate maintenance of private streets or private access rights-of-way and other improvements on private lands where so required the subdivider shall cease to be formed, prior to the recording of the final plat, a Lot Owners Association and shall establish Articles of Incorporation of the Association, by-laws and covenants outlining the purpose, organization and operation of the Association.

(b) Such Articles of Incorporation and Covenants shall among other things, provide:

- (1) That membership shall be mandatory for each lot purchaser and any successive buyer.
- (2) That the maintenance of such private streets, private access rights-of-way or other improvements must be permanent, not just for a period of years.
- (3) That the Association must be responsible for liability insurance, local taxes, where applicable, and the maintenance of the private streets, private access fights-of-ways or other improvements.
- (4) That the lot owners must pay their pro rata share of the costs.
- (5) That the assessment levied by the Association shall become a lien against the property.
- (6) That the Association must be able to adjust the assessment to meet changed needs.

5. Conversion to Year-around Usage.

If the residents of a summer home subdivision use the lot for year-around living and therefore desire municipal type services such as an approved public water supply system to the State Board of Health year around standards, sanitary sewer or septic tank disposal system, a public dedicated street improved to County standards, together with County road maintenance, snow removal, street lighting, etc., the Summer Home Lot Owners Association shall provide or upgrade or guarantee the provision or upgrading of the required subdivision improvements for year-around subdivisions to County standards before being accepted by the County as a year-around subdivision and before County maintenance is provided.

Section 7. SUBDIVISION IMPROVEMENTS REQUIRED.

A. Except as provided in Section 7B below the owner of any land to be platted as a subdivision shall, prior to recording the final plat and at his own expense, install the following improvements according to the specifications and under the inspection of the County, except that septic tanks must be installed according to the specifications and under the inspection of the county or State Health Department:

1. Water Supply

a. Where an approved public water supply is reasonable accessible or procurable the subdivider shall install water lines or shall contract with the local water distributing agency to make the water supply available to each lot within the subdivision, such installation or contract to include laterals to the property line of each lot.

b. Where an approved public water supply is not reasonably accessible or procurable the subdivider shall, at the discretion of the Planning Commission, either:

1. Obtain from the office of the State Water Engineer approval for the drilling of individual wells on each of the lots in the subdivision and meet the requirements of the State and County Boards of Health relating to individual wells, or

2. Install a central water supply system and water lines from wells or other approved sources in accordance with the requirements of the State Board of Health and with the approval of the County.

c. In Summer Home Subdivisions the water supply need only be provided to State Board of Health Summer Home Standards.

2. Sewage Disposal

a. Where a public sanitary sewer system is within five hundred (500) feet or, in the opinion of the Planning Commission is close enough to require a connection, the subdivider shall connect with such sanitary sewer system and provide adequate lateral lines to the property line of each lot.

b. Where a public sanitary sewer system is not reasonable accessible the subdivider shall obtain approval from the County or State Health Department for individual sewage disposal for each of the lots. Subdividers shall furnish to the Health Department a report of percolation tests completed on the property proposed for subdivision in accordance with the Regulations of the Utah State Department of Public Health governing individual sewage disposal systems.

3. Storm Water. The County may require the subdivider to dispose of storm water if such provision is deemed necessary. If easements are required across abutting property to permit drainage of the subdivision it shall be the responsibility of the subdivider to acquire such easements.

4. Street Grading and Surfacing. All public and private streets and private access rights-of-way shall be graded and surfaced in accordance with the standards and rules and regulations of the County.

5. Curbs and Gutters.

a. Curbs and gutters shall be installed on existing and proposed streets by the subdivider where, in the opinion of the Planning Commission, they will be necessary to remove surface water or for safety or other reasons.

b. After recommendation by the Planning Commission the County Commissioners may waive curb and gutter improvements in subdivisions:

- (1) Which are located in a primarily agricultural or rural area, or
- (2) Where, because of excessive topography and other reasons, runoff from a curb and gutter collection system could not easily and economically be disposed of, or
- (3) Of an estate type nature where the average lot width is one hundred and fifty (150) feet or more and the average lot area is forty thousand (40,000) square feet or more.

6. Street Drainage and drainage structures shall be required by the County where necessary.

7. Sidewalks may be required by the Planning Commission for reasons of safety or public welfare in subdivisions where the average lot width is one hundred and fifty (150) feet or less.

8. Monuments. Permanent monuments shall be accurately set and established at such points as are necessary to definitely establish all lines of the plat except those outlining individual lots. Monuments shall be of a type approved by the County.

9. Fire Hydrants. Fire hydrants shall be installed. Such fire hydrants shall be of the type, size, number and installed in such locations as determined by the Planning Commission after consultation with the County Fire Marshall.

10. Staking of Lots. Survey stakes shall be placed at all lot corners so as to completely identify the lot boundaries on the ground.

B. Guarantee of Improvements.

1. Prior to approval and acceptance of the final plat as herein provided, and in lieu of actual installation of the improvements required by this Section, the subdivider may guarantee the installation thereof by one of the methods specified as follows:

a. The subdivider may furnish and file with the County Commissioners a bond with Corporate Surety, or with two (2) personal sureties acceptable to the County Commissioners, in an amount equal to the cost of the improvements not previously installed as determined by the County to assure the installation of such improvements within a two (2) year period or, if otherwise provided by said Commissioners, a shorter or longer period. The bond shall be approved by the County Commissioners and the County Attorney, or

b. The subdivider may deposit in escrow with an escrow holder approved by the County Commissioners an amount of money equal to the cost of the improvements not then installed as estimated by the County, as aforesaid, under an escrow agreement to assure the installation of said improvements within a two (2) year period or, if otherwise provided by said Commissioners, a shorter or longer period. The escrow agreement aforesaid shall be approved by the County Commission and County Attorney and shall be filed with the County Commissioners.

2. Whenever the subdivider develops a subdivision a portion at a time such development shall be in an orderly manner and in such a way that the required improvements will be continuous and all of the said improvements will be made available for the full, effective and practical use and enjoyment thereof by the lessees or grantees of any lands subdivided within the time hereinbefore specified.

C. Inspection of Improvements.

The County shall inspect or cause to be inspected all structures, streets, fire hydrants and water supply and sewage disposal systems in the course of construction, installation or repair, etc. Excavations for fire hydrants, water and sewer mains and laterals shall not be covered over or back-filled until such installation shall have been approved by the County. If any such installation is covered before being inspected and approved it shall be uncovered after notice to uncover has been issued to the responsible person by the County.

Section 8. ENFORCEMENT AND PERMITS.

The County shall not issue any permit unless the plans for the proposed erection, construction, reconstruction, alteration or use fully conform to all provisions of this Ordinance. No County Officer shall issue any permit or license for the use of any building, structure or land when such land is a part of a subdivision as defined herein until such subdivision plat has been approved and recorded in the County Recorder's Office. Any license or permit issued in conflict with this Ordinance shall be null and void.

Section 9. PENALTY.

Any person who shall violate any of the provisions of this Ordinance shall, upon conviction thereof, be punished by a fine not exceeding \$299.00 or by imprisonment in the County Jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

Section 10. VALIDITY.

If any section, sub-section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such holding shall not affect the validity of the remaining portion of this Ordinance.

Section 11. CONFLICT.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 12. REPEALER.

The Subdivision Ordinance, styled Ordinance No. 48A, adopted

by the County Commissioners on the 4th day of May, 1964, is hereby repealed.

Section 13. EFFECTIVE DATE.

This Ordinance shall take effect upon its publication, as required by law.

Passes and ordered published by the Board of County Commissioners on the 7th day of August, 1967.

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY:

(Signed) Richard W. Durrant
Richard W. Durrant, Chairman

Seal

(Signed) Carlos L. Porter
Carlos L. Porter, Member

ATTEST

(Signed) Reed D. Pace
County Clerk

(Signed) Kenneth E. Woolstenhulme
Kenneth E. Woolstenhulme, Member

ORDINANCE NO. 70

State of Utah, }
County of Summit. }

I, Richard E. Pace, Clerk of the District Court for the State of Utah, do hereby certify that the foregoing is a true and correct copy of the Ordinance #58 in the matter of the entitled 11 pages as the same appears of record and upon file in my office.

IN WITNESS WHEREOF I have here unto set my hand affix the seal of said court this 16th day of June 19 76

Richard E. Pace Clerk
By Laura L. Blouquist Deputy Clerk



Entry No.	115963	Book	M 38
RECORDED	5-23-72	CH2128	M Page 372-4
REQUEST of	Western States Title		
FEE	WINOYA COPIES, SUMMIT CO. RECORDER		
INDEXED	13-00	MA S	6/1/72

NOTICE OF DEFAULT

NOTICE IS HEREBY GIVEN: That Western States Title Company, a Utah Corporation, is Trustee pursuant to that certain Trust Deed dated November 29, 1971 and recorded December 1, 1971 in Book M34 at Pages 399-404 as Entry No. 114506 of the records of the Summit County Recorder which Trust Deed describes certain real property located in Summit County, Utah particularly described as follows:

- 1) The northerly 594 feet of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 36; and the northerly 614 feet of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 36; together with all easements and rights of way appurtenant thereto.
- 2) The E $\frac{1}{4}$ of Section 22; and
- 3) The W $\frac{1}{4}$ of the NW $\frac{1}{4}$, the SW $\frac{1}{4}$, the W $\frac{1}{4}$ of the SE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 26; and
- 4) The SE $\frac{1}{4}$ of Section 27; and
- 5) Section 35; and
- 6) The E $\frac{1}{4}$ of Section 34; and
- 7) The W $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 26; and
- 8) Beginning at a point N 89°47' E 2543.22 feet from the West quarter corner of Section 27, T. 1 S., R. 3 E., SLM, Utah, thence running South 4568.66 feet, South 43°15' West 328.70 feet; North 49°51' West 659.34 feet; North 88°11' West 1162.26 feet; North 75°48' West 289.74 feet; South 79°47' West 374.88 feet, South 948.1 feet, more or less, to the West quarter corner of Section 34, T. 1 S., R. 3 E., SLM, Utah, East 2640 feet, more or less, to the center of said Section 34; thence North 5280 feet, more or less, to the center of Section 27, T. 1 S., R. 3 E., SLM, Utah; thence South 89°47' West 96.78 feet, more or less, to the point of beginning (containing 62.07 acres, more or less).

containing a total of 1,942.07 acres, more or less.

Western States Title Company, a Utah Corporation, is likewise Trustee pursuant to a Trust Deed dated November 29, 1971 and recorded December 1, 1971 in Book M34 at Pages 405-10 as Entry No. 114507 of said records wherein the following described real property in Summit County, Utah is particularly described:

1. That certain parcel located in Section 36, T. 1 S., R. 3 E., S.L.B.M., Summit County, State of Utah, defined as follows:

Lots 7, 8 and 26 Park City West Subdivision No. 2, as shown in the records of the County Recorder of said County.

2. That certain parcel located in Section 1, T. 2 S., R. 3 E., S.L.B.M., Summit County, State of Utah, defined as follows:

Beginning at a point which is south 828.5 ft. and west 400 ft. from the NW corner of property conveyed to Spencer Osborne, et us, in a Special Warranty Deed, recorded March 31, 1969, as entry # 108801 in Bk M-20, at page 389; thence north 1°-50' west 114 ft.; thence east 400 ft., more or less, to a point which is directly south of the aforesaid NW corner set forth in the Special Warranty Deed property; thence south 114 ft.; thence west 400 ft., more or less, to the point of beginning; EXCEPT: the East 279 feet thereof.

3. That certain parcel located in Section 31, T. 1 S., R. 4 E., S.L.B.M., Summit County, State of Utah, defined as follows:

Beginning at the NW corner of Lot 13, Park City West Plat No. 1, as shown on map recorded in Summit County; thence south 180 ft.; thence east 9.59 ft.; thence south 140 ft.; thence west 765 ft.; thence south 119.84 ft.; thence west 60 ft.; thence south 24.57 ft.; thence west 141.94 ft.; thence north 464.41 ft., thence 957.35 ft., more or less, east to the point of beginning.

4. That certain parcel located in Section 31, T. 1 S., R. 4 E., S.L.B.M., Summit County, State of Utah, defined as follows:

Lots 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 20 and 21, Park City West Subdivision No. 1, as shown in the records of the County Recorder of said County.

5. That certain parcel located in Section 31, T. 1 S., R. 4 E., S.L.B.M., Summit County, State of Utah, defined as follows:

Beginning at a point 1920.30 ft. north and 1022 ft. east of the SW corner of said Section 31, running thence east 390 ft., more or less, to a point on the west line of Utah State Highway No. 248; thence 388.5 feet northerly along said highway's west line; thence west 390 ft.; thence south 388.5 ft. to the point of beginning.

6. That certain parcel located in Section 36, T. 1 S., R. 3 E., S.L.B.M., Summit County, State of Utah, defined as follows:

The south 495 ft. of the West $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 36; and, the south 330 ft. of the E $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 36.

7. That certain parcel located in Section 31, T. 1 S., R. 4 E., S.L.B.M., Summit County, State of Utah, defined as follows:

Beginning at a point 1920.30 ft. north and 901 feet east of the SW corner of said Section 31, running thence east 121 ft., more or less, thence 388.5 ft. north; thence west 121 ft; thence south 388.5 ft. to the point of beginning.

In each said Trust Deed, Ski Park City West, Inc., a Utah Corporation, is Trustor and Halbat Engineering, Inc., is Beneficiary. The obligations secured by each Trust Deed include payment of a promissory note therein referred to payable at the times and in the amounts and together with the rate of interest therein set forth.

The beneficial interest under said Trust Deeds and the obligations secured thereby are owned by Halbat Engineering, Inc., a California Corporation.

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A breach of, and default in the obligations for which said Trust Deed and each of them is security has occurred in that Trustor has failed to pay a principal payment of \$5,000.00 due on April 1, 1972 and an interest payment of \$2,012.50 due March 31, 1972 and has further failed to pay when due all encumbrances, charges and liens which appear to be prior or superior to said Trust Deed and each of them, all as secured thereby.

By reason of such default, Trustee and Beneficiary have elected and do hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated May, 23, 1972.

WESTERN STATES TITLE COMPANY

BY:

Lewis S. Livingston
Lewis S. Livingston
President

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On the 23rd day of May, 1972 personally appeared before me Lewis S. Livingston the signer of the within and foregoing instrument, personally known to me to be the President of Western States Title Company, a Utah Corporation, who being on oath first duly sworn did say he signed the aforesaid instrument pursuant to authority of a resolution of the Board of Directors of Western States Title Company and the said Lewis S. Livingston duly acknowledged to me that said Corporation executed the same.

My commission expires: 2-2-73

Shirley J. Anderson
Notary Public

Residing at Salt Lake City, Utah

BOOK M38 PAGE 374.

MAILING CERTIFICATE

I certify that on the 26th day of May, 1978,
I mailed a true and correct copy of the foregoing Appellant's
Brief, first-class, postage prepaid, to John W. Lowe, attorney
for the respondents, at 1011 Walker Bank Building, Salt Lake
City, Utah 84111.



Sue Smith