

2009

# Golden Meadows Properties L.C., aka Golden Meadows Properties LLC v. Michael Strand and Cari Allen : Reply Brief

Utah Court of Appeals

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James C. Swindler; Prince, Yeates & Geldzahler; Wayne Petty; Moyle & Draper.

Michael Strand and Cari Allen; Pro Se.

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IN THE UTAH COURT OF APPEALS

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GOLDEN MEADOWS PROPERTIES L.C., aka  
GOLDEN MEADOWS PROPERTIES LLC

Plaintiff and Appellee,

vs.

MICHAEL STRAND and CARI ALLEN,

Defendants and Appellants.

---

REPLY BRIEF OF APPELLANTS'

District Court No. 070700488

Appellate Court No. 20090012-CA

---

APPEAL FROM SECOND JUDICIAL DISTRICT COURT  
DAVIS COUNTY, STATE OF UTAH

THE HONORABLE JUDGE GLEN R. DAWSON, PRESIDING

---

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FILED  
UTAH APPELLATE COURTS

JAN 25 2010

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(i) Anderson v. Industrial Com'n of Utah, 696 P.2d 1219 Utah, 1985. (ii) U.S.C.A. Const. Amends. 5, 14. (iii) Notice to Quit. (iv) Trust Deed between B.I. Associates and The Citizens Bank. (v) Trust Deed between Michael Strand and The Citizens Bank.

## ARGUMENT

Golden Meadows arguments with respect to the Appellants Points I and II concerning disqualification requires this Court to look beyond speculation and make specific determinations concerning the following issues:

### I JURISDICTION IS PROPER

A fair trial in a fair tribunal is a basic requirement of due process. This Court has jurisdiction to analyze the evidence that has been presented by the Appellants pursuant to *Ina Marie Johnson v. Neldon Paul Johnson* 2004 UT App 13 (Not for Official Publication) where this Court held that issues regarding a motion to disqualify may be raised in an appeal after entry of an order denying the rule 60(b) motion. *See Amica Mut. Ins. Co. v. Schettler*, 768 P. 2d 950, 970 (Utah Ct, App. 1989) (“It is well settled under Utah law, an order denying relief under [r]ule 60(b) is a final appealable order.”). Accordingly, under the circumstances of this case where the Rule 60(b) Motion was filed concurrently with the Rule 63 Motion and, both rely on the same Affidavit by Strand [R. 2963], it is proper for the Appellants to raise issues regarding the motion to disqualify in the appeal taken from the December 12, 2008 Order denying the Appellants’ Rule 60(b) Motion.

### II. PREJUDICE IS PRESUMED

One of the fundamental principles of due process is that all parties to a case are entitled to an unbiased, impartial judge. Because this action and Judge Dawson’s prior representation of the Internal Revenue Service against Strand and his entities in 1989 involve the same fundamental questions of ownership with respect to the same furniture,

the same house and the same property (Strand's home and furniture of 32 years), the same evidence (the 1985 lease), the same individuals (Petty and Strand) and the same entities (Nupetco Associates<sup>1</sup> and B.I. Associates<sup>2</sup>)<sup>3</sup>, actual prejudice need not be shown since the law presumes prejudice in such circumstances. U.S.C.A. Const. Amends. 5, 14. *Anderson v. Industrial Com'n of Utah*, 696 P.2d 1219 Utah, 1985. [Addendum at 1-4].

### III. THE RECENT DECISION IN BANGERTER V. PETTY, 2009 UT 67 ENSURES THE RIGHT TO DUE PROCESS

Judge Dawson held that the statute of limitations barred Strand in actual possession of the real property under a claim of ownership from asserting a quiet title action and litigating his defenses. The Summary Judgment ruling entered by Judge Dawson at pg. 3 second to last line states: "*Absent the Lease, the residence that is the subject of this action (the "Property") would still have belonged to Nupetco Associates ("Nupetco") following the 1985 trustee's sale and therefore could not have been attached by Strand's creditors*"<sup>4</sup>. This conclusion is contradicted by the ancient documents associated with the 1989 IRS Action including the May 19, 1989 Affidavit by Neuman Petty for Nupetco [R. 2987 (lease 2995)] and the Application for Subordination [R.

---

<sup>1</sup> A Neuman Petty entity. A party to the 1982 Agreement [R. 650] and the owner and sole member and manager of Golden Meadows.

<sup>2</sup> A d.b.a. of Strands. A party to the 1982 Agreement (the owner of the 3.2 million dollars worth of production equipment referred to in R. 650) and, a guarantor of the \$390,000 loan with Citizen's Bank that is at issue in this action [R. 1775 ¶¶16, 1793, 1794 and 1795 (See Addendum pgs. 6-8 ), 1838-1839¶¶'s 5-6]

<sup>3</sup> [R. 2963]

<sup>4</sup> [R. 2704]

2999]. Due process required the Appellants an opportunity to discover and present that evidence.

It was error for Judge Dawson to engage in ex parte contacts with opposing counsel concerning the “jurisdiction issue” and “developments” [R. 2250 (09/18/07), 3715]. It was error for Judge Dawson to deny the Appellants discovery motions and further sanction them for seeking information about the Notice to Quit and the 1985 lease [R. 1911]. It was error for Judge Dawson to strike Strands rebuttal testimony [R. 2213] and further misinterpret and judge the credibility of the stricken averments or parties, or witnesses or the weight of the evidence<sup>5</sup> [R. 2702]. And, it was error for Judge Dawson to fail to comply with Judge Kay’s Rule 63(b)(3)(B) request [R. 3034] and judicial bias rules which required him to submit an affidavit for the record [R. 3053].

It was error for Judge Dawson to preside in this case. Strand’s affidavit<sup>6</sup> remains uncontroverted. It is the only affidavit on the record regarding his Rule 63 Motion and, it is supported by ancient documents. Golden Meadows response does not satisfy its burden of rebutting Strand’s affidavit with similar testimony under oath as neither Neuman Petty, Wayne Petty nor Judge Dawson have filed rebuttal affidavits.

Consistent with the Appellants Opening Brief at pages 30 through 33, the Appellants respectfully request this court to interpret the four corners of the Notice to Quit [Addendum at 5] and weigh the issue and the evidence against the position taken by

---

<sup>5</sup> which issues are pending appeal before this court in case number 20080838-CA

<sup>6</sup> [R. 2963]

Golden Meadows<sup>7</sup> and the 12 denials by Judge Dawson in the form of: I do not recall, I have no memory and I have no prior knowledge.

#### IV. GOLDEN MEADOWS STRATEGY IS AS OBVIOUS AS IT IS IMPROPER

The basic issues before this Court, in this appeal, deal with fundamental fairness in court procedure and maintaining a level playing field for all parties. The legal strategy and arguments presented by opposing counsel *ie:* attorneys James Swindler and Wayne Petty, require this Court to interpret the four corners of the Notice to Quit that governs this action [Addendum at 5] and determine whether or not Nupetco and the furniture, furnishings and personal property had any role in this litigation which would permit discovery (See Appellants Opening Brief at pgs 20-21 at ¶¶'s 16-20).

When Petty and Swindler are not obfuscating the true facts of this case or ferociously attacking the nature of Strand and Allen's character with false representations and disingenuous comments, they utilize the client of record (Golden Meadows) to litigate the claims of Neuman Petty and Nupetco and then, through the use of date of its formation (1995), this inanimate corporate identity is used to impede the Appellants discovery and preclude them from rebuttal. Golden Meadows sole member and manager is Nupetco thus depriving the Appellants from discovering the knowledge that is imputed to it from its agents in this case *ie:* Neuman Petty, Wayne Petty and Ralph Petty *ie:* members and managers of Nupetco. This vicious circle and seamy strategy is clearly in

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<sup>7</sup> In contradiction to the Notice to Quit [Addendum at 5], their objection to the Appellants Motion to Stay [R. 2335], and Neuman Petty's May 19, 1989 Affidavit [R. 2987], which relies on the 1985 lease and states that on April 18, 1989 the IRS executed a levy on property located at 1199 South 1500 East and removed the fixtures attached to the residence and the furniture located in said property [R. 2995].



violation of the law<sup>8</sup> and Rule 3.1 through 3.5 of the Utah Rules of Professional Conduct and should not be tolerated. Golden Meadows reliance on judicial estoppel against Strand in the face of the 1989 IRS seizure, Neuman Petty's May 19, 1989 Affidavit and the subsequent payment by Strand to the IRS, fails as a matter of law. It is a clear and desperate attempt to obfuscate and confuse the issues and Golden Meadows has not and cannot establish the required elements set forth in *Orvis v. Johnson* 177 P. 3d 600 (Utah 2008).

The Summary Judgment ruling on appeal that is designated as case no. 20080838-CA was in error and contrary to law. Strand's claims and defenses were not precluded by the Statute of Limitations<sup>9</sup>. The entry of Summary Judgment against him was inappropriate and due process requires that Strand be afforded a fair trial in a fair tribunal. Golden Meadows arguments with respect to the Appellants Rule 60(b) Motion, the Motion to Quash or Stay Execution of Judgment and the Property Bond are unpersuasive, are not supported by the record and, do not require any response except to bring to this Court's attention that Golden Meadows challenges to the issues pending appeal and its statements of fact are unsupported with no foundation and no evidence. Golden Meadows inappropriately attributes most of its claims in reliance on speculation about Neuman Petty and or Nupetco's alleged positions or claims. Such behavior has been the case throughout these proceedings which has resulted in the Appellants (i) being

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<sup>8</sup> A corporations' knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. *Wardley Better Homes and Gardens v. Cannon*, 61 P. 3d 1009 (Utah 2002).

<sup>9</sup> *Bangerter v. Petty* 2009 UT 67 (2009).


sanctioned for attempting to discover information about the claims asserted for Neuman Petty and or Nupetco by Golden Meadows (ii) the Appellants rebuttal testimony being stricken [R. 1319 and 2213] and (iii) Strand being inappropriately evicted from his home of 32 years on Summary Judgment Motion, in spite of his trust claims [R. 45 ¶19, 46 ¶30, 47 ¶34, 46 ¶31 and 2702].

According to the facts of the 1989 IRS collection action against Strand, and, consistent with Strands claims, Strand is the owner of the property that is the subject matter of this action.

#### CONCLUSION

Judge Dawson was not qualified to act on this case. For the reasons stated above and by the Appellants in their Opening Brief, the Appellants respectfully request this Court to require Judge Dawson's immediate recusal and vacate his orders as proscribed by the Cannons of Judicial Conduct and the United Supreme Court in *Liljeberg v. Health Servs. Acquisition Corp.* U.S. 847, 108 S. Ct. 2197 (1988).

Respectfully Submitted this 25 day of January, 2010.

  
Michael Strand

  
Cari Allen

CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered by the method indicated below <sup>2</sup>a true and correct copy of the foregoing postage prepaid if by mail, this 25 day of January, 2010, to:

☐ FEDERAL EXPRESS  
☒ U.S. MAIL  
☐ HAND DELIVERY  
☐ TELEFAX TRANSMISSION

James C. Swindler  
Prince Yeates & Geldzahler  
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Salt Lake City, UT 84111

Wayne Petty  
Moyle & Draper  
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Salt Lake City, UT 84111

  
\_\_\_\_\_

## ADDENDUM

(i)	Anderson v. Industrial Com'n of Utah, 696 P.2d 1219 Utah, 1985.....	1-3
(ii)	U.S.C.A. Const. Amends. 5, 14.....	4
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**C**

Supreme Court of Utah.  
 Sarah Ann ANDERSON, Plaintiff,  
 v.

The INDUSTRIAL COMMISSION OF UTAH, Department of Employment Security, Barco of Utah, State Insurance Fund, and Second Injury Fund, Defendants.  
 No. 19128.

Feb. 15, 1985.

On review of worker's compensation order, the Supreme Court, Stewart, J., held that claimant was denied due process by issuance of reaffirmance order by administrative law judge who was counsel for second injury fund when case was argued before judge who subsequently retired.

Reversed and remanded.

West Headnotes

**[1] Constitutional Law 92 ⚡4186**

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)7 Labor, Employment, and Public Officials

92k4186 k. Workers' Compensation and Employers' Liability. Most Cited Cases  
 (Formerly 92k301(4))

Worker's compensation applicant was denied due process by issuance of order, which reaffirmed retired judge's order, by administrative law judge who was formerly counsel for second injury fund when case was argued before judge who subsequently retired. U.C.A.1953, 35-1-82.53, 78-7-1(3); U.S.C.A. Const.Amends. 5, 14.

**[2] Constitutional Law 92 ⚡3955**

92 Constitutional Law

92XXVII Due Process

92XXVII(E) Civil Actions and Proceedings

92k3955 k. Bias and Prejudice in General.

Most Cited Cases

(Formerly 92k305(1))

One fundamental principle of due process is that all parties to case are entitled to unbiased, impartial judge. U.S.C.A. Const.Amends. 5, 14.

**[3] Judges 227 ⚡39**

227 Judges

227IV Disqualification to Act

227k39 k. Nature and Effect in General.

Most Cited Cases

Fairness requires not only absence of actual bias of judge, but endeavors to prevent even possibility of unfairness. U.S.C.A. Const.Amends. 5, 14.

**[4] Administrative Law and Procedure 15A ⚡314**

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(A) In General

15Ak314 k. Bias, Prejudice or Other Disqualification to Exercise Powers. Most Cited Cases  
 Principle that all parties to case are entitled to unbiased, impartial judge, applies with as much force to administrative proceedings as it does to judicial trials. U.S.C.A. Const.Amends. 5, 14.

**[5] Administrative Law and Procedure 15A ⚡314**

15A Administrative Law and Procedure

15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents

15AIV(A) In General

15Ak314 k. Bias, Prejudice or Other Disqualification to Exercise Powers. Most Cited Cases  
 Although statute which requires trial judge to disqualify himself if he has previously appeared as at-

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torney in case does not literally apply to administrative proceedings, principle it embodies is useful and persuasive guide in reviewing administrative proceedings. U.C.A.1953, 78-7-1(3).

#### [6] Judges 227 ¶47(1)

##### 227 Judges

##### 227IV Disqualification to Act

##### 227k47 Acting as Counsel or Other Participation in Cause

##### 227k47(1) k. In General. Most Cited

##### Cases

Actual prejudice need not be shown where judge has previously been involved in case as attorney, since law presumes prejudice in such circumstances. U.S.C.A. Const.Amends. 5, 14.

\*1220 Thom D. Roberts, Salt Lake City, for plaintiff.

Frank V. Nelson, James R. Black, Gilbert A. Martinez, Salt Lake City, for defendants.

STEWART, Justice:

In 1978 the plaintiff, Sarah Anderson, injured her knee while working for Barco of Utah, a defendant. The injury necessitated a knee operation, and plaintiff applied to the Industrial Commission for worker's compensation benefits. Barco's insurer, the State Insurance Fund, settled with appellant.

After the operation, plaintiff's knee did not heal and she missed several months of work. A degenerative condition in her knee caused it to deteriorate, necessitating two more operations. In 1980 she applied to the Industrial Commission for additional compensation. A medical panel found a 17.5% permanent partial physical impairment, which was caused partly by the industrial accident, and partly by a pre-existing degenerative knee condition. The panel further found that after the first knee surgery, plaintiff's knee condition should have stabilized in three months, and that any temporary total disability after three months was due to the pre-existing degenerative knee condition. The administrative

law judge, Judge Foley, adopted the medical panel's findings, and ordered compensation for thirteen weeks for temporary total disability and found a 17.5% permanent partial disability.

The plaintiff objected to the findings as erroneous, and Judge Foley granted a further hearing as allowed by statute. U.C.A., 1953, section 35-1-82.53 (Supp.1983). At the hearing, the plaintiff adduced the testimony of her personal physician, Dr. McQueen. We are unable to review this testimony because the transcript of that hearing has been lost. The plaintiff asserts that Dr. McQueen testified that the medical panel set plaintiff's permanent partial impairment rating too low and improperly based its finding of the time required for stabilization on normal recovery rates.

Section 35-1-82.53 provides that when a case is reopened and a further hearing held, the administrative law judge will enter a supplemental order. However, after the second hearing Judge Foley neither reaffirmed nor modified his previous findings and order, nor did he enter a supplemental order, although counsel for plaintiff requested him to do so.

\*1221 Judge Foley retired in July or August, 1982, and was succeeded by Mr. Timothy Allen, who had been counsel for the Second Injury Fund when this case was argued before Judge Foley. In January, 1983, Judge Allen issued an order reaffirming the previous order and dismissing plaintiff's objections to the court's findings. Plaintiff sought review by the Industrial Commission, which declined to hear the matter.

We need not consider all plaintiff's arguments on appeal, since one is dispositive.

[1][2][3] It was error for Judge Allen to preside in this case, since he was formerly an attorney for one of the parties. One of the fundamental principles of due process is that all parties to a case are entitled to an unbiased, impartial judge. "A fair trial in a fair tribunal is a basic requirement of due process."

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(Cite as: 696 P.2d 1219)

*In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed.2d 942 (1955). Fairness requires not only an absence of actual bias, but endeavors to prevent even the possibility of unfairness.

[4][5] This principle applies with as much force to administrative proceedings as it does to judicial trials. *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689, 1698, 36 L.Ed.2d 488 (1973); *Vali Convalescent & Care Institution v. Industrial Commission*, Utah, 649 P.2d 33, 37 (1982). Utah law requires a trial judge to disqualify himself if he has previously appeared as an attorney in the case. U.C.A., 1953, section 78-7-1(3). Although this statute does not literally apply to administrative proceedings, the principle it embodies is a useful and persuasive guide in reviewing administrative proceedings. See 3 K. Davis, *Administrative Law Treatise* section 196 (2d ed. 1980).

In *Amos Treat & Co. v. Securities and Exchange Commission*, 306 F.2d 260 (D.C.Cir.1962), the court held that an SEC commissioner should not have participated in revocation proceedings, since he formerly had been responsible for initiating and conducting the investigation of the company subject to revocation. The court stated: " 'The fundamental requirements of fairness in the performance of [quasi-judicial] functions require at least that one who participates in a case on behalf of any party ... take no part in the decision of that case by any tribunal on which he may thereafter sit.' " *Id.* at 264 (quoting *Trans World Airlines v. Civil Aeronautics Board*, 254 F.2d 90, 91 (D.C.Cir.1958)).

[6] In other words, when a judge has previously been involved in a case as an attorney, there is no need to show actual prejudice. The law presumes prejudice in such circumstances. Judge Allen should have disqualified himself in this case.

The defendants acknowledge that Judge Allen should not have acted in this case, but argue that the error was harmless because it did not affect the outcome in the case. Specifically, they argue that Judge Allen's written order merely memorializes

what Judge Foley had already decided at the close of the second hearing. They assert that Judge Foley ruled from the bench that the plaintiff's objections were dismissed and that the medical panel's findings would not be modified.

The record does not support the defendants' factual assertions. As noted earlier, the transcript of the second hearing was lost, and hence the record does not reflect what Judge Foley said at the close of the second hearing. Although Judge Allen's order states that "it appears from the file that [plaintiff's] counsel was advised ... at the termination of the hearing" that his objections were dismissed, we find nothing in the record to support this statement.

We therefore set aside the Commission's order and remand this case for submission of the issue to another administrative law judge.

Reversed and remanded.

HALL, C.J., and DURHAM, HOWE and ZIMMERMAN, JJ., concur.

Utah, 1985.

*Anderson v. Industrial Com'n of Utah*  
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END OF DOCUMENT

**Amendment 5 - Trial and Punishment, Compensation for Takings. Ratified 12/15/1791.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Amendment 14 - Citizenship Rights. Ratified 7/9/1868. *Note History***

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



## NOTICE TO QUIT

To: Michael Strand, Cari Allen and All Occupants of the Property  
Date: August 23, 2007  
Re: Residence and Lot Located at 1199 S. 1500 E., Bountiful, UT (the "Property")

The undersigned represents Golden Meadows Properties, L.C. ("Golden Meadows"), the owner of the Property described above.

You are tenants at will occupying the Property at the pleasure of Golden Meadows.

Notice is hereby given that you are required to surrender and quit the Property, including the removal of all your belongings therefrom (but none of the furniture, furnishings and personal property belonging to Nupetco Associates) within five (5) calendar days after service of this Notice on you. If you fail to do so, you will be in unlawful detainer of the Property and will be liable for three times the damages caused thereby, including the fair rental value of the Property from and after the expiration of such five-day period.

PRINCE, YEATES & GELDZAHLER

By 

James C. Swindler  
Attorney for Golden Meadows Properties, L.C.

175 E. 400 S., Suite 900  
Salt Lake City, UT 84111

Telephone: 801-524-1000

The Citizens Bank

285 West North Temple

Salt Lake City, Utah 84103

Space Above This Line For Recorder's Use

MAILED  
RECORDED  
SALT LAKE CO. UT  
JAN 19 1982  
Citizens Bank

3648941

## TRUST DEED

With Assignment of Rents

THIS TRUST DEED, made this ..... day of ..... February, 19. 82.

between ..... B. I. Associates, Inc., a Utah  
Corporation, as TRUSTOR,

whose address is .....  
(Street and number) (City) (State)  
The Citizens Bank

....., as TRUSTEE,\* and  
The Citizens Bank

....., as BENEFICIARY,

WITNESSETH: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST,  
WITH POWER OF SALE, the following described property, situated in Salt Lake County,  
County, State of Utah, including, but not limited to, a lease hold interest  
therein granted by Salt Lake City Corporation to Seigel Mobile Home  
Group, Inc. and thereafter assigned to Trustor:

Beginning at a point 1924.53 feet more or less,  
North 0°02'38" East and 436 feet more or less,  
South 89°57'22" East from the South quarter  
corner of Section 33, T. 1 N., R. 1 W., Salt  
Lake Base and Meridian, said point further  
described as being station 61+83.00 North and  
8+51.00 West on the Airport Grid System (A.G.S.)  
Eastside; and running thence North 0°02'38" East  
88.0 feet, thence South 89°57'22" East 60.0  
feet, thence South 0°02'38" West 88.0 feet;  
thence North 89°57'22" West 60.0 feet to the  
point of beginning.

Contains 5,280 square feet, or 0.12 acres, more  
or less.

Together with all buildings, fixtures and improvements thereon and all water rights, rights of  
way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances  
thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof,  
SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon  
Beneficiary to collect and apply such rents, issues, and profits;

FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by a pro-  
missory note ~~dated December 4, 1981~~ in the principal sum of \$390,000.00, made by \*\*  
Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein  
set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of  
each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as  
hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory  
note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums  
expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest  
thereon as herein provided.

\*NOTE: Trustee must be a member of the Utah State Bar; a bank, building and loan association or savings  
and loan association authorized to do such business in Utah; a corporation authorized to do a trust business in  
Utah; or a title insurance or abstract company authorized to do such business in Utah.

\*\*Michael Strand

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on trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at 10% per annum from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

16. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

17. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

18. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

19. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

20. This Trust Deed shall be construed according to the laws of the State of Utah

21. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

Signature of Trustor

B. I. Associates, Inc.

By Mike Strand

(If Trustor an Individual)

STATE OF UTAH  
COUNTY OF

ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, personally

appeared before me \_\_\_\_\_,  
the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

Notary Public residing at:

My Commission Expires:

(If Trustor a Corporation)

STATE OF UTAH  
COUNTY OF

ss.

On the 17 day of February, A.D. 1982, personally

appeared before me Mike Strand, who being by me duly sworn,  
says that he is the PRESIDENT of B. I. Associates, Inc.,  
the corporation that executed the above and foregoing instrument, and that said instrument was  
signed in behalf of said corporation by authority of its bylaws (or by authority of a resolution  
of its board of directors) and said Mike Strand acknowledged  
to me that said corporation executed the same.

Notary Public residing at:

My Commission Expires: 9/18/83

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WHEN RECORDED, MAIL TO:  
Recorded at request of SECURITY TITLE COMPANY Order No. 76077 Fee Paid 6.00  
Date DEC 7 1981 At 2:00 P M CAROL DEAN PAGE Recorder Davis Co  
By Carol Dean Page Deputy Book 887 Page 63  
THE CITIZENS BANK  
285 WEST NORTH TEMPLE

SALT LAKE CITY, UTAH 84103 Space Above This Line For Recorder's Use  
ATTN: L.S. LIVINGSTON

SECOND  
TRUST DEED

605336

With Assignment of Rents

THIS TRUST DEED, made this 4th day of December, 1981,  
between MICHAEL STRAND

as TRUSTOR,

whose address is 1199 South 1500 East Bountiful Utah  
(Street and number) (City) (State)

THE CITIZENS BANK, as TRUSTEE,\* and

THE CITIZENS BANK, as BENEFICIARY,

WITNESSETH: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST,  
WITH POWER OF SALE, the following described property, situated in DAVIS  
County, State of Utah:

All of Lot 203, CANYON CREST PLAT NUMBER "9", a subdivision of  
part of Section 28, Township 2 North, Range 1 East, Salt Lake  
Meridian, in the City of Bountiful, according to the official  
plat thereof.

☐ ☐ ☒

Abstracted  
☐ Indexed  
☐ Entered

Platted  
☐ Compared  
☐

Together with all buildings, fixtures and improvements thereon and all water rights, rights o.  
way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances  
thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof,  
SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon  
Beneficiary to collect and apply such rents, issues, and profits;

FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by a pro-  
missory note of even date herewith, in the principal sum of \$ 390,000.00, made by  
Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein  
set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of  
each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as  
hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory  
note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums  
expended or advanced by Beneficiary under or pursuant to the terms hereof together with interest  
thereon as herein provided.

\*NOTE: Trustee must be a member of the Utah State Bar; a bank, building and loan association or savings  
and loan association authorized to do such business in Utah; a corporation authorized to do a trust business in  
Utah; or a title insurance or abstract company authorized to do such business in Utah.