

2000

# Kenneth M. Hall v. Debora Hall : Brief of Appellee

Utah Court of Appeals

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Donald W. Winters; Attorney for Appellee.

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IN THE UTAH COURT OF APPEALS

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Trial Court No. 984402025

Appellate Case No. 20001104-CA

Priority Classification 15

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KENNETH M. HALL,

Appellant,

V.

DEBORA HALL,

Appellee

Appeal from rulings of the Honorable Guy R. Burningham  
Judge of the Fourth District Court

---

BRIEF OF APPELLEE

---

Respectfully Submitted,  
Donald W. Winters #3527  
Attorney for Appellee  
375 E. 790 South  
Pleasant Grove, UT 84062  
Telephone: (801) 796-3437

STATEMENT REGARDING ORAL ARGUMENT

Counsel requests oral argument

Utah Co

CLERK OF COURT  
Clerk of Court

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## **TABLE OF AUTHORITIES**

### **CASES**

*Jackson v. Jackson*, 617 P.2d 338,340 (Utah 1980)

*Workman v. Workman*, 652 P.2d 931, 933 (Utah 1982)

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BRIEF OF APPELLEE

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Appellee submits the following as his Brief herein:

**JURISDICTIONAL AUTHORITY**

Appellee concurs with Appellants statement of Jurisdiction.

### **NATURE OF THE PROCEEDINGS**

Appellee concurs with Appellant's statement of the nature of the proceedings.

### **ISSUES PRESENTED ON APPEAL AND STANDARD OF REVIEW**

Appellant accepts Appellee's statement of the issues presented to this Court and the standard of review as stated in Appellant's Brief.

### **STATUTORY PROVISIONS**

Appellant has correctly referenced the applicable statutory provisions within Appellant's Brief.

### **STATEMENT OF THE CASE**

Appellee concurs with Appellants statement of the case as presented within Appellant's Brief.

### **FACTS**

Appellee shall also refer to the parties herein as Ken and Debora for ease of reference. Appellee shall use the same notation as Appellant in referring to pleadings in the Record, paragraph numbers, and the trial transcript.

The parties do not disagree on the statement of facts until paragraph 14 of said in Appellant's Brief. At that point the facts as seen by the parties seriously Statement diverge.

## **DISPUTED FACTS**

1. The parties did discuss dividing the property prior to the loan.

A. Testimony of Debora at p. 60 lines 1 through 19 of Tp.

B. Defendant's Exhibit 1 (Plaintiff's Exhibit's 4 and 11) containing both the Trust Deed Note for the loan of March 11, 1993 and the Quitclaim Deed of even date granting to Ken an interest in the house and one acre but not in the raw land.

2. Appellant claims (paragraph 17, page 6, Appellant's Brief) there was no written agreement between the parties wherein Ken agreed to obtain a VA loan in exchange for a one half interest in only the home and one acre and not in the adjacent forty acres. Again Appellee references

A. Testimony of Debora at p. 60 lines 1 through 19 of Tp.

B. Defendant's Exhibit 1 (Plaintiff's Exhibit's 4 and 11) containing both the Trust Deed Note for the loan of March 11, 1993 and the Quitclaim Deed of even date granting Ken an interest in the house and one acre but not in the raw land.

## **ARGUMENT**

Point1. Appellant argues there is no evidence that Ken understood that the forty acres of undeveloped land would not be part of the marital estate. Appellant further references the amended findings of fact at paragraph 16 where the trial court found that at the time of the signing of the V.A. loan documents, the parties discussed the remaining 40 acres with Debora stating that such was to remain her separate property.



Appellant claims the referenced finding is clearly erroneous for lack of any evidence in support thereof.

Debora testified at Tp. 60 as follows:

Q: Were there conversations after the marriage and before taking out the loan or about the same time frame?

A: We went in and spoke with Linda Whitehead at First Security Bank, and it was discussed that the First Security Bank would not loan on raw land.

Q: So you went in and that was discussed. Are you saying that you and Ken were both present?

A: Yes. We were both present.

Q: Were there asny other discussions about --

A: Well, numerous discussions throughout the marriage about it. It was always a sore spot with Ken, because he had had property at one time and didn't have it anymore. At one time he was trying to talk to me into signing over some property, so he could go down and file a farm plate on his truck, anything to try to keep his name on some of the property.

Q: But at any time did you ever deed him any interest in what we referred to as the acreage or the raw--

A: No. He knew exactly how I felt about it.

Additionally, at trial as portion of Defendant's Exhibit 1 and also as Plaintiff's

Exhibits 4 and 11 the Court received both the Trust Deed Note of March 11, 1993 and the Quitclaim Deed of the same date by which Ken received from Debora an interest in the house and one acre. Had Ken any objection to this arrangement, March 11, 1993 would have been the appropriate time to make objection, since he had control of the situation due his VA loan entitlement.

The Court was fully justified in finding as it did that the parties at the time of signing the VA loan had discussed the remaining 40 acres with Debora stating that such was to remain her separate property. The finding of the trial court was not clearly erroneous, but fully justified by the totality of testimony and evidence.

Point 2: Appellant asserts all property awarded to Debora in her previous marriage became marital property during her marriage to Ken when he utilized his V.A. entitlement to pay for it.

In support of this assertion Appellant references the case of *Workman v. Workman*, 652 P. 2d 931(Utah) 1982). The present case can readily be differentiated from *Workman* due to significant factual differences. In *Workman*, the wife paid from her own funds to clear liens against a house purchased by the parties. These funds apparently included the monies realized by the sale of a home which had been her separate property. In our present case, Ken expended no financial resources at the time of the financing with First Security Bank, but rather, used his Veteran's Benefits. Ken received for this a full one-half interest in the house and one acre for his pledge of benefits. This constituted a

substantial consideration being paid to Ken. Additionally, unlike Workman, these parties were not buying a house.

Appellant further references *Jackson v. Jackson*, 617 P.2d 338, 340,1 (Utah 1980) for the proposition that the status of property prior to a divorce decree is not binding on the trial court in making a property distribution. (Quoting)

"The trial court is empowered to make such distributions as are just and equitable, and may compel such conveyances as are necessary to that end."

It follows from this very language that the trial court, in seeking equity may also decline to order conveyance of property, such as it did in the present case.

In further support of the Appellee's position on this point the Court's attention is drawn to the Ruling of Judge Burningham issued February 7, 2000, attached to this Brief, in which he also differentiates the present case from both Workman and Jackson.

The court properly exercised discretionary power in ruling that no interest in the raw land would be ordered conveyed to Ken as part of the Divorce Decree.

Point 3. Appellant asserts that equity demands that the property was part of the marital estate. To support this claim Appellant presents what it refers to as Scenario I and Scenario II to allegedly show that there was no marital estate equity in the house and one acre after the making of the VA loan.

Appellant's Scenario II, the post VA loan scenario, overlooks paragraph 15 of the amended Findings of Fact in this case. That paragraph reads: "After this loan, the equity remaining in the house and one acre was approximately \$32,000.00, of which one-half

then belonged to each party as their share of what had then become marital property."

Judge Burningham clearly took into account the contribution of Ken's VA entitlement as having a value and found that Ken immediately realized a \$16,000.00 gain by the pledge of his entitlement.

Paragraph 27 of the amended findings of fact and conclusions of law went on to determine the equity in the property at the time of divorce to be \$43,000.00, after deduction of debts owing by both parties and therefore determined Ken had an equity interest of one half of \$43,000.00.

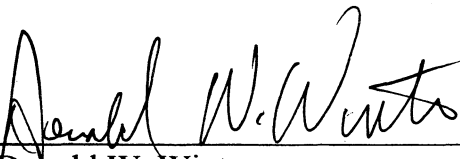
Clearly the trial court took into account all the facts before it in balancing the equities, and determined that equity required Debora retain the raw land and both Debra and Ken divide the existing equity in the house and one acre.

### **CONCLUSION**

Based upon the foregoing, Debora uirges

- A. that the trial court's ruling be affirmed,
- B. that Ken be awarded no further interest,
- C. that she be awarded her attorney's fees and costs incurred herein.

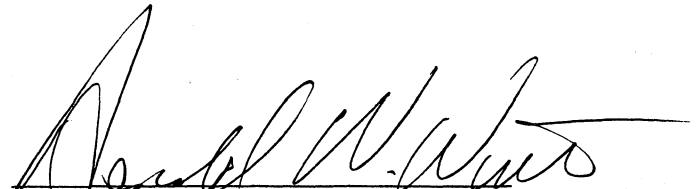
Respectfully submitted,

  
Donald W. Winters

### MAILING CERTIFICATE

The undersigned hereby certifies that on this 6<sup>th</sup> day of August, 2001, he mailed two true and correct copies of the foregoing brief, postage pre-paid to:

Thomas R. Blonquist  
40 South Sixth East  
Salt Lake City, Utah 84102



Donald W. Winters

## **ADDENDUM**

FILED

Fourth Judicial District Court  
of Utah County, State of Utah  
JANIMA D. SMITH, Clerk  
3/8/00 Q/B Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH

KENNETH M. HALL	<b>RULING</b>
Petitioner,	CASE NO. 984402025
vs.	DATE: February 7, 2000
DEBORA HALL	JUDGE: GUY R. BURNINGHAM
Respondent.	

This matter came before the Court under Rule 4-501 on Petitioner's Motion for Reconsideration of Memorandum Decision. The court has reviewed the file, considered the memoranda of counsel, and upon being advised in the premises, now makes the following:

RULING

1. On or about December 20, 1999, the Court entered its Memorandum Decision for the above-entitled case.
2. On or about January 3, 2000, Petitioner filed a Motion for Reconsideration of Memorandum Decision with supporting memorandum.
3. On or about January 14, 2000, Respondent submitted a Response to Petitioner's Motion for Reconsideration.
4. On or about January 28, 2000, Respondent filed a Notice to Submit for Decision.
5. Petitioner cites *Workman v. Workman* in support of his contention that the entire 40 acre parcel at issue should be considered marital property. The Court in *Workman* upheld the trial court's property division by stating that in "some instances, equity will require that each party to a divorce recover the separate property he or she brought to the marriage. However, that rule is not invariable, and we find no abuse of discretion in the district court's not applying it in the circumstances of this case." 652 P.2d 931 (Utah 1982).
6. *Workman* is distinguished from the present case in that there, the wife paid from her own funds to clear liens against a home purchased by the parties. These funds apparently included monies realized by the sale of a home which had been her separate property. In our

present case, Petitioner expended no financial resources at the time of the financing with First Security Bank, but rather, used his Veterans Benefits. Furthermore Petitioner did receive a full one-half interest in the house and one acre parcel for his pledge of benefits, constituting sufficient consideration.

7. The language in *Workman* cannot be properly interpreted to mean that the Court *must* vary from the “rule” that each party recover the separate property brought into the marriage. The Court in *Workman* makes clear reference to the discretion of the trial court in determining marital versus separate property. The language in *Workman* affirms the Court’s broad discretion.

8. The Court in *Workman* cited their earlier ruling in *Jackson v. Jackson* to support the award. The Court in *Jackson* states, “The trial court in a divorce action is vested with plenary power to distribute marital property according to the demands of justice, and it may consider all relevant factors in the making of such a distribution, including the financial situation of the parties, the present and expected income, etc.” 617 P.2d 338 (Utah 1980). *Jackson* establishes the equitable power of the courts in dividing property.

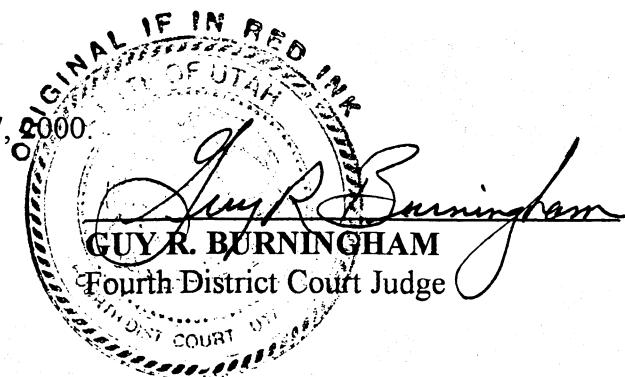
9. The above-mentioned cases serve to emphasize the Court’s ability to exercise discretion in determining property division. In the present case the Court had the discretion to determine that the vacant land was the separate property of the Respondent.

10. Therefore the Court REAFFIRMS its earlier Ruling.

11. Any other motions to be determined should be submitted separately giving opposing counsel the opportunity to respond.

12. Counsel for the Respondent is requested to prepare an Order consistent with the terms of this ruling and submit to opposing counsel for approval before submission to the Court for signature.

DATED at Provo, Utah, February 7, 2000.



cc: Thomas R. Blonquist  
Donald W. Winters



<b>DEFENDANT'S</b>	
EXHIBIT NO	1
CASE NO	
DATE	CLK

VA Form 26-4342a (Rev. 1-1-10)  
The National Veterans Title VA  
1157 Acquires to Federal National  
Mortgage Association

CERTIFIED AS A FULL TRUE AND CORRECT  
COPY OF THE ORIGINAL DOCUMENT  
OLD REPUBLIC TITLE COMPANY OF  
JAM  
**TRUST DEED NOTE**

08-058-001-0518573-0

UTAH

PROVO

, Utah

\$ 82,882.00

March 11, 1993.

# THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT

For Value Received, the undersigned promise(s) to pay to  
First Security Bank of Utah, N.A., or order,  
the principal sum of Fifty-Two Thousand Eight Hundred Fifty-Two and No/100  
Dollars (\$ 82,882.00), with interest from date at the rate of Eight  
per centum ( 8.0000 %) per annum on the unpaid balance until paid. The  
said principal and interest shall be payable at the office of First Security Bank of Utah, N.A.  
425 S. Main Street, Salt Lake City, UT 84111 in Salt Lake City, Utah  
or at such other place as the holder may designate in writing delivered or mailed to the debtor,  
First Security Bank of Utah, N.A.  
in monthly installments of Three Hundred Eighty-Seven and 81/100  
Dollars (\$ 387.81 ), commencing on the first day of May 1993, and continuing on the first day of  
each month thereafter until this note is fully paid, except that, if not sooner paid, the final payment of principal and  
interest shall be due and payable on the first day of April 2023.

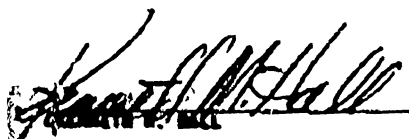

Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not  
less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less. Prepayment in full shall be  
credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the  
next following installment due date or thirty days after such prepayment, whichever is earlier.

If any deficiency in the payment of any installment under this note is not made good prior to the due date of the  
next such installment, the entire principal sum and accrued interest shall at once become due and payable without  
notice at the option of the holder of this note. Failure to exercise this option shall not constitute a waiver of the right  
to exercise the same in the event of any subsequent default. If action be instituted on this note, the undersigned  
promise(s) to pay such sum as the Court may fix as attorney's fees.

The makers and endorser severally waive prosecution, protest and demand, notice of protest, demand and of  
dishonor and nonpayment of this note, and expressly agree that this note, or any payment thereunder, may be extended  
from time to time without in any way affecting the liability of the makers and endorser thereof.

This note is secured by a Trust Deed of even date executed by the undersigned on certain property described  
therein and represents money actually used for the acquisition of said property or the improvements thereon.

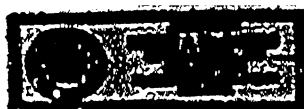
Given under the hand and seal of each party.


 [SEAL]  [SEAL]

\_\_\_\_\_[SEAL]\_\_\_\_\_[SEAL]

This is to Certify that this is the note described in and secured by a Trust Deed of even date herewith, on real  
estate situated in UTAS County, Utah.

Dated, March 11, 1993



  
Phillip Hill  
Notary Public

ENT 25497 BK 3104 PG 775

Any deficiency in the amount of any such aggregate monthly payment shall, unless made good prior to the due date of the next such payment, constitute an event of default under this Trust Deed. At Beneficiary's option, Trustor will pay a "late charge" not exceeding four per centum (4%) of any installment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such late charge shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses incurred hereby.

3. If the total of the payments made under (a) of paragraph 2 preceding shall exceed the amount of the payments actually made by the Beneficiary in trust for ground rents, taxes or assessments, or insurance premiums, as the case may be, such excess may be released, applied on any indebtedness secured hereby, or be credited by Beneficiary as trust on subsequent payments to be made by Trustor for such items. If, however, such monthly payments shall not be sufficient to pay such items when the same shall become due and payable, then Trustor shall pay to Beneficiary as trustee any amount necessary to make up the delinquency within thirty (30) days after written notice from the Beneficiary, stating the amount of the deficiency, which notice may be given by mail. If it is so, then Trustor shall tender to Beneficiary, in accordance with the provisions hereof, full payment of the entire indebtedness secured hereby. Beneficiary or trustee shall, in discharging the amount of indebtedness covered by the payment of Trustor, have no claim against Beneficiary under the provisions of (A) of paragraph 2 hereof. If there shall be a default under any of the provisions of this Trust Deed and thereafter a sale of said property in accordance with the provisions hereof, or if the Beneficiary exercises said property, otherwise after default, Beneficiary shall apply, at the time of the commencement of such proceedings, or at the time the property is otherwise applied, the amount then remaining to the credit of Trustor under (A) of paragraph 2 preceding, as a credit on the interest accrued and unpaid and the balance to the principal then remaining unpaid on said note.

#### To Protect the Security of This Trust Deed, Trustor Agrees:

4. To protect and preserve said property and to maintain it in good condition and repair.

5. Not to remove or demolish any building or improvement thereon.

6. To complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged, or destroyed thereon, and pay when due all costs incurred therefor, and, if the land secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Trustor further agrees:

(a) to commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and

(b) to allow Beneficiary to inspect said property at all times during construction.

Trustor, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

7. Not to commit or permit waste of said property.

8. To comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting said property.

9. To provide and maintain bonded insurance, of such type or types and amounts as Beneficiary may from time to time require, on the improvements now or hereafter on said property, and except when payment for all such premiums has heretofore been made under (a) of paragraph 2 hereof, to pay promptly when due any premiums therefor, and to deliver all policies to Beneficiary, which delivery shall constitute an assignment to Beneficiary of all return premiums.

10. To deliver to and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extension or renewal thereof or supplements thereto.

11. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the rights or powers of Beneficiary or Trustor; and should Beneficiary or Trustor elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustor.

12. To pay at least ten (10) days before delinquency all assessments upon water company stock, and all rents, assessments and charges for water, apparatus and used in connection with said property, to pay, when due, all encumbrances, charges, and taxes with interest, on said

property or any part thereof, which at any time appear to be prior or superior hereto, to pay all reasonable title, title, and expenses of this Trust.

13. Should Trustor fail to make any payment or to do any act or have provided, then Beneficiary or Trustor, but without obligation so to do and without notice to or demand upon Trustor, and without releasing Trustor from any obligations then existing, may elect to do the same, in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustor being authorized to enter upon said property for such purpose; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustor; pay, purchase, contract, or compromise any encumbrance, charge or lien which reasonably appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts are reasonably necessary therefor, including cost of evidence of title, and reasonable counsel fees.

14. To pay within thirty (30) days after demand all sums properly expended hereunder by Beneficiary or Trustor, with interest from date of expenditure at the rate provided for in the principal indebtedness, and the expenses thereof shall be secured hereby.

15. To do all acts and make all payments required of Trustor and of the owner of said property to make said note and this Trust Deed eligible for guaranty or insurance under the provisions of Chapter 37, Title 38, United States Code, and agrees not to do or cause or suffer to be done, any act which will void such guaranty or insurance during the existence of this Trust Deed.

#### It is Mutually Agreed That:

16. Should said property or any part thereof be taken or destroyed by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may after deducting therefrom all its expenses, including reasonable attorney's fees, apply any moneys so received by it, at its option, either to the restoration of the damaged property or to the reduction of the indebtedness. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustor may require.

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17. That upon the request of Beneficiary, Trustor shall execute and deliver a supplemental note or notes for the sum or sums advanced by Beneficiary for the alteration, modernization, improvement, maintenance, or repair of said property, for taxes or assessments against the same and for any other purpose authorized hereunder. Said note or notes shall be secured hereby on a parity with and as fully as if the advance evidenced thereby were included in the note first described above. Said supplemental note or notes shall bear interest at the rate provided for in the principal indebtedness and shall be payable in approximately equal monthly payments for such period as may be agreed upon by the creditor and debtor. Failing to agree on the maturity, the whole of the sum or sums so advanced shall be due and payable thirty (30) days after demand by the creditor. Maturity shall be the maturity extended beyond the original maturity of the note first described above.

18. If, excepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment then due of all other sums so secured or to declare default for failure so to pay.

19. This Trust Deed shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness or any part thereof secured hereby.

20. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor's fees for any of the services mentioned in this paragraph shall be \$5.

21. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable, save and excepting rents, issues, royalties, and profits arising or accruing by reason of any oil, gas, or mineral lease of said property. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time, or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

22. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name and for or otherwise collect said rents, issues, and profits, including

those past due and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

23. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

24. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default. If Beneficiary desires said property to be sold, it shall deposit with Trustee this Trust Deed and all promissory notes and documents evidencing expenditures secured hereby, shall deliver to Trustee a written notice of default and of election to cause said property to be sold, in the form required by law, which shall be duly filed for record by Trustee or Beneficiary.

25. (a) After the lapse of such time as may then be required by law following the recording of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand 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 such 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 (1) 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 purchase at the sale.

(b) When Trustee sells pursuant to the powers herein, Trustee shall apply the proceeds of the sale to payment of the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorney's fees actually incurred, which Trustee's and attorney's fees shall not in the aggregate exceed the following amounts based upon the amount secured hereby and remaining unpaid: 6 2/3 per centum on the first \$1000 thereof, 2 per centum on the next \$7000 thereof, and 1 1/3 per centum on the balance thereof; and then to the lien in subparagraph (c) in the order stated.

(c) After paying the items specified in subparagraph (b) if the sale is by Trustee, or the proper court and other costs of foreclosure, the proceeds of sale shall be applied in the order stated to the payment of:

(1) Cost of any evidence of title procured in connection with said sale and of any revenue stamps;

(2) All sums expended under the terms hereof, not then repaid, with accrued interest at the rate provided for in the principal indebtedness;

(3) All other sums then secured hereby;

(4) Rebate to the Veterans Administration for any sums paid by it on account of the payment of interest on the indebtedness secured hereby; and

(C) 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 said land lies.

24. (A) Upon the occurrence of any default hereunder, Beneficiary shall have the option to foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property.

(B) No power or remedy herein conferred is exclusive of, or shall prejudice any other power or remedy of Trustee or Beneficiary.

(C) The exercise of any power or remedy on one or more occasions shall not exclude the future exercise thereof from time to time upon the conditions provided herein. In the event of any default hereunder, Beneficiary may, at its option, elect to foreclose this Trust Deed, it may foreclose the amount of all costs and expenses incurred in such proceedings, including a reasonable attorney's fee in such amount as shall be fixed by the court but not in excess of the amount actually charged by and to be paid (1) the attorney for the plaintiff.

25. Beneficiary may from time to time substitute a trustee or trustees to any Trustee named herein or solely hereunder as trustees of this Trust Deed. Upon such appointment and without conveyance to the trustee or trustees, the latter shall be vested with all the powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Trust Deed and its place of record, which, when recorded in the office of the County Recorder of the county or counties in which said property is located, shall be conclusive proof of proper appointment of the successor Trustee. The foregoing power of substitution and the procedure therefore shall not be exclusive of the

power and procedure provided for by law for the substitution of a Trustee or Trustees in the place of the Trustee or Trustees named herein.

26. The holder by Trustee or Beneficiary of any default of Trustee shall not be liable for the same to the extent of the value of any other or similar default subsequently occurring.

27. This Trust Deed shall have in and bind the heirs, legacies, devisees, administrators, executors, successors, and assigns of the parties herein. All obligations of Trustee hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including assignees of the indebtedness secured hereby, whether or not named in Beneficiary's title, and whether by operation of law or otherwise. Whenever this Trust Deed contains the words "the party," the plural has implied and the use of any gender shall include all genders.

28. 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 pay any sums hereto of pending sale under any other Trust Deed, and any action or suit on the part of Trustee or Beneficiary, Trustee shall be a party, notice being given by registered mail.

29. If the indebtedness secured hereby is purchased or assigned under the laws of the United States, District of Columbia, or any other state, the laws of the state in which the property is located shall govern the rights, duties and liabilities of the parties hereto, and any provisions of the law or other instruments, executed in connection with the indebtedness which are inconsistent with the laws of the state in which the property is located shall be null and void.

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

31. The undersigned Trustee requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinafter set forth.

BN15497 N 3104 R 777

*Kenneth M. Hall*  
KENNETH M. HALL  
DERBIE HALL  
DERBIE HALL

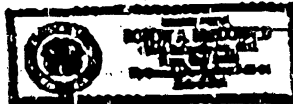
STATE OF UTAH

COUNTY OF UTAH

On the 11th day of March, A.D. 1945 personally appeared before me  
KENNETH M. HALL and DERBIE HALL, husband and wife

the signor(s) of the above instrument, who duly acknowledged to me that he executed the same.

My commission expires  
7-15-44



Notary Public residing at:  
Pineville, Utah

### REQUEST FOR FULL RECONVEYANCE

(Do not record. To be used only when indebtedness secured hereby has been paid in full.)

To: Trustee,

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Trust Deed. Said note, together with all other indebtedness secured by said Trust Deed has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Trust Deed, to cancel said note above mentioned, and all other evidences of indebtedness secured by said Trust Deed, delivered to you herewith, together with the said Trust Deed, and to reconvey, without warranty, to the parties designated by the terms of said Trust Deed, all the estate now held by you thereunder.

Dated \_\_\_\_\_, 19\_\_\_\_

Mail reconveyance to \_\_\_\_\_

PAGE 4

Recorded at Request of \_\_\_\_\_

ENT 15496 BK 3104 PG 773  
NINA B. REID, UTAH CO. RECORDER BY MB  
1993 MAR 17 2:45 PM FEE 7.00  
RECORDED FOR OLD REPUBLIC TITLE OF UTAH

at \_\_\_\_\_ M. Fee Paid \$ \_\_\_\_\_

by \_\_\_\_\_ Dep. Book \_\_\_\_\_ Page \_\_\_\_\_ Ref.: \_\_\_\_\_

Mail tax notice to \_\_\_\_\_ Grantee(s) \_\_\_\_\_ Address 18185 West 1540 North Fairfield, Ut 84013

ORT # 27239

## QUIT-CLAIM DEED

DEBBIE G. WILSON HALL  
of Fairfield, \_\_\_\_\_, County of Utah, \_\_\_\_\_, State of Utah, hereby  
QUIT-CLAIM to \_\_\_\_\_ grantor

Kenneth M. Hall and Debbie Hall, Husband and Wife as Joint Tenants

of Fairfield, Utah, \_\_\_\_\_ grantee s  
ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATION-----for the sum of  
~~XXXXXXXXXX~~

the following described tract of land in \_\_\_\_\_ Utah, \_\_\_\_\_ County,  
State of Utah:

All of Lot 2, Block 9, FAIRFIELD SURVEY.

Witness the hand of said grantor, this 11th day of  
March, A. D. one thousand nine hundred and ninety three

Signed in the presence of \_\_\_\_\_

*Debbie G. Wilson Hall*  
Debbie G. Wilson Hall

STATE OF UTAH, \_\_\_\_\_ } st.

County of Utah

On the 11th day of March  
thousand nine hundred and ninety three  
Debbie G. Wilson Hall

personally appeared before me

A. D. one

the signer of the foregoing instrument who duly acknowledge to me that she executed the same.



*Roberta McDonald*  
Notary Public.

My commission expires 7-25-94

Address: Provo, Utah

BLANK NO. 103 - © GEN. PTO. CO. - 2415 SO. 2400 EAST - SALT LAKE CITY

1           Q     Were there conversations after the marriage and  
2 before taking out the loan or about the same time frame?

3           A     We went in and spoke with Linda Whitehead at First  
4 Security Bank, and it was discussed that the First Security  
5 would not loan on raw land.

6           Q     So you went in and that was discussed. Are you  
7 saying that you and Ken were both present?

8           A     Yes. We were both present.

9           Q     Were there any other discussions about --

10          A     Well, numerous discussions throughout the marriage  
11 about it. It was always a sore spot with Ken, because he  
12 had had property at one time and didn't have it anymore. At  
13 one time he was trying to talk me into signing over some  
14 property, so he could go down and file a farm plate on his  
15 truck, anything to try to keep his name on some of the  
16 property.

17          Q     But at any time did you ever deed him any interest  
18 in what we referred to as the acreage or the raw --

19          A     No. He knew exactly how I felt about it.

20          Q     What is the final area we were discussing about it  
21 today, the sale of the Lehi property prior to the marriage?  
22 Do you recall what was done with the money you received? My  
23 father thought it was about \$30,000, and you testified it  
24 was \$21,000. I am not sure about amounts right now. Do you  
25 recall what happened to that property?