

1990

Zions First National Bank v. Overthrust Oil and Gas Coporation : Addendum to Brief on Appeal

Utah Supreme Court

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Bruce J. Nelson; Allen, Nelson, Hardy and Evans; attorneys for respondents.

Lorin N. Pace; attorney for defendants.

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ZIONS FIRST NATIONAL BANK and :
 4447 ASSOCIATES, a Utah General :
 Partnership, by and through its :
 General Partner, ROBERT D. KENT, :

Plaintiffs and Respondents :
 vs. :

OVERTHRUST OIL & GAS CORPORATION, :
 a Utah Corporation; BERTAGNOLE :
 INVESTMENT COMPANY LIMITED PART- :
 NERSHIP, a Utah Limited Partner- :
 nership; FAUST LAND, INC., a Utah :
 Corporation; JOSEPH L. PENTZ; :
 CAPITOL THRIFT & LOAN; RICHARD A. :
 CHRISTENSON, :

Defendants :

ADDENDUM TO
 BRIEF ON APPEAL OF
 OVERTHRUST OIL & GAS CORPOR-
 ATION AND FAUST LAND, INC.
 DEFENDANTS AND APPELLANTS
 (Subject to Assignment to
 the Court of Appeals)

Appeal No. 90 391

OVERTHRUST OIL & GAS CORPORATION, :
 a Utah Corporation, and FAUST :
 LAND, INC. a Utah Corporation, :

Cross Claim Plaintiffs :
 and Appellants, :
 vs. :

CAPITOL THRIFT & LOAN, a Utah :
 Corporation, and RICHARD A. :
 CHRISTENSON, an individual, :

Cross Claim Defendants :
 and Respondents :

Bruce J. Nelson, Esq.
 ALLEN, NELSON, HARDY & EVANS
 215 South State Street, #900
 Salt Lake City, Utah 84111
 Attorneys for Plaintiffs
 and Cross-Claim Respondents

Lorin N. Pace, Esq.
 Beneficial Life Tower, #1200
 Salt Lake City, Utah 84111
 Attorney for FAUST LAND and
 OVERTHRUST OIL & GAS CORP.,
 Defendants and Cross Claim
 Plaintiffs

R. Stephen Marshall, Esq.
 VANCOTT, BAGLEY, CORNWALL & MCCARTHY
 50 South Main, #1600
 Salt Lake City, Utah 84144
 Attorneys for Defendants RICHARD A.
 CHRISTENSON and CAPITOL THRIFT & LOAN,
 Defendants and Cross-Claim Defendants

FILED

NOV 13 1990

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

ZIONS FIRST NATIONAL BANK and :
4447 ASSOCIATES, a Utah General :
Partnership, by and through its :
General Partner, ROBERT D. KENT, :

Plaintiffs and Respondents :
vs. :

OVERTHRUST OIL & GAS CORPORATION, :
a Utah Corporation; BERTAGNOLE :
INVESTMENT COMPANY LIMITED PART- :
NERSHIP, a Utah Limited Partner- :
nership; FAUST LAND, INC., a Utah :
Corporation; JOSEPH L. PENTZ; :
CAPITOL THRIFT & LOAN; RICHARD A. :
CHRISTENSON, :

Defendants :

ADDENDUM TO
BRIEF ON APPEAL OF
OVERTHRUST OIL & GAS CORPOR-
ATION AND FAUST LAND, INC.
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(Subject to Assignment to
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a Utah Corporation, and FAUST :
LAND, INC. a Utah Corporation, :
:

Cross Claim Plaintiffs :
and Appellants, :
vs. :
:

CAPITOL THRIFT & LOAN, a Utah :
Corporation, and RICHARD A. :
CHRISTENSON, an individual, :
:

Cross Claim Defendants :
and Respondents :

Bruce J. Nelson, Esq.
ALLEN, NELSON, HARDY & EVANS
215 South State Street, #900
Salt Lake City, Utah 84111
Attorneys for Plaintiffs
and Cross-Claim Respondents

Lorin N. Pace, Esq.
Beneficial Life Tower, #1200
Salt Lake City, Utah 84111
Attorney for FAUST LAND and
OVERTHRUST OIL & GAS CORP.,
Defendants and Cross Claim
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R. Stephen Marshall, Esq.
VANCOTT, BAGLEY, CORNWALL & MCCARTHY
50 South Main, #1600
Salt Lake City, Utah 84144
Attorneys for Defendants RICHARD A.
CHRISTENSON and CAPITOL THRIFT & LOAN,
Defendants and Cross-Claim Defendants



AGREEMENT

THIS AGREEMENT is made and entered into this 30th day of September, 1987, by and between ZIONS FIRST NATIONAL BANK (hereinafter "Zions"), 4447 ASSOCIATES, a Utah General Partnership (hereinafter "4447"), BERTAGNOLE INVESTMENT COMPANY LIMITED PARTNERSHIP, a Utah Limited Partnership (hereinafter "BIC"), BERTAGNOLE PROPERTIES, a Utah Limited Partnership (hereinafter "BP"), LEO BERTAGNOLE, HAROLD BERTAGNOLE, GENE BERTAGNOLE, and JAY BERTAGNOLE (hereinafter collectively referred to as "Bertagnoles"), EMANUEL A. FLOOR (hereinafter "Floor"), and RICHARD A. CHRISTENSON (hereinafter "Christenson"). Zions and 4447 are sometimes hereinafter collectively referred to as "Lenders" and BIC, BP, Bertagnoles, and Floor are sometimes hereinafter collectively referred to as "Borrowers".

WITNESSETH

WHEREAS, on March 14, 1983, Zions loaned the sum of \$3,015,000.00 to BIC, BP, Christenson and Franklin Financial (hereinafter sometimes referred to as "Loan #1") as evidenced by that certain Promissory Note dated March 14, 1983, as renewed by that certain Promissory Note dated March 14, 1984, as amended by that certain Extension and Modification Agreement dated March 27, 1985, and that certain Supplemental

Deed of Trust and Note Modification Agreement dated June 24, 1986. Such Note was secured by some of the various parcels of real property described below; and

WHEREAS, on June 8, 1984, Zions loaned the sum of \$1,389,418.76 to BIC and BP (hereinafter sometimes referred to as "Loan #2") as evidenced by that certain Promissory Note dated June 8, 1984, as amended by that certain Extension and Modification Agreement dated December 31, 1985, and that certain Supplemental Deed of Trust and Note Modification Agreement dated June 24, 1986. Such Note was secured by some of the various parcels of real property described below; and

WHEREAS, on September 28, 1984, Zions loaned the sum of \$1,000,000.00 to Capitol Thrift & Loan Company (hereinafter sometimes referred to as "Loan #3") as evidenced by that certain Promissory Note dated September 28, 1984. Such note was secured by some of the various parcels of the real property described below; and

WHEREAS, on May 17, 1984, Valley Bank and Trust Company loaned the sum of \$833,510.52 to BIC and BP (hereinafter sometimes referred to as Loan #4) as evidenced by that certain Promissory Note dated May 17, 1984. Such Note was secured by some of the various parcels of real property described below. A portion of such Note, and certain security therefor, have been previously assigned from Valley Bank and Trust Company to 4447 on July 30, 1987.

WHEREAS, 4447 has acquired from Zions a participation in the payee's interest in Loans #1, #2, and #3 set forth above; and

WHEREAS, default has occurred in the repayment of the obligations on Loans #1, #2, #3 and #4; and

WHEREAS, BP has filed a Chapter 11 Petition for Bankruptcy in the United States Bankruptcy Court for the District of Utah on May 7, 1987 (#87C-02269); and

WHEREAS, BIC has filed a Chapter 11 Petition for Bankruptcy in the United States Bankruptcy Court for the District of Utah on February 20, 1987 (#87C-00814); and

WHEREAS, the Bertagnoles and Floor are general partners in BIC and each of the Bertagnoles have filed Chapter 11 Petitions in the United States Bankruptcy Court for the District of Utah; and

WHEREAS, the parties hereto have previously executed a "Settlement Agreement" on July 3, 1987, which Agreement preliminarily set forth the agreement of the parties, which Settlement Agreement contemplated the execution of this more formal, comprehensive agreement between the parties, and which prior Settlement Agreement is superceded by the terms of this Agreement; and

WHEREAS, subject to the various court approvals necessary to effectuate the agreement of the parties as set forth herein, the parties hereto desire to enter into this

Agreement to settle such defaults, to transfer various properties in satisfaction of loan obligations, and to release each other from further liability in connection with the loans, all subject to the following terms and conditions:

NOW, THEREFORE, in consideration of the mutual covenants, obligations, releases and transfers set forth herein, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement, the following definitions shall apply:

a. Real Property. The following real property is subject to this Agreement and defined as set forth below:

(1) The "Tooele Property" shall mean that certain real property located in Tooele County, State of Utah, consisting of approximately 3,492.82 acres, the legal description of which is attached hereto as Exhibit "A" and incorporated herein by reference. Fee ownership of such property is presently vested in the name of Overthrust Oil & Gas Co.

(2) The "Kimball Property" shall mean that certain real property located in Salt Lake City, Salt Lake County, State of Utah, located at approximately 150 North Main Street, the legal description of which is attached hereto as Exhibit "B" and incorporated herein by reference.

Fee ownership of such property is presently vested in the name of Kimball Associates, a Utah corporation (which is also in Chapter XI bankruptcy at the present time).

(3) The "North Park Property" shall mean that certain real property located in Summit and Wasatch Counties, State of Utah, consisting of approximately 5,340 acres near the Silver Creek Junction of Interstate 80, the legal description of which is attached hereto as Exhibit "C" and incorporated herein by reference. Fee ownership of such property is presently vested in the name of Bertagnole Properties.

(4) The "Redwood Road Property" shall mean that certain real property located at approximately 2395 South Redwood Road in Woods Cross, Davis County, State of Utah, consisting of (a) an undivided 66.70% interest in that certain 40-acre parcel described in and encumbered by that certain Trust Deed dated March 14, 1983, recorded March 15, 1983, in the office of the Davis County Recorder as Entry No. 635222 (the undivided 66.70% fee ownership of such property is presently vested in the name of Bertagnole Properties); and (b) an undivided 66.70% interest in the approximate 10

acres fronting Redwood Road immediately adjacent to the 40 acres described above; the legal description to all of which is attached hereto as Exhibit "D" and incorporated herein by reference.

(5) The "Deer Hollow Property" shall mean that certain real property located in Morgan County, State of Utah, consisting of approximately 160 acres, the legal description of which is attached hereto as Exhibit "E" and incorporated herein by reference. Fee ownership of such property is not presently vested in the name of Christenson but can be obtained by Christenson to fulfill the terms of this Agreement.

(6) The "properties" shall mean the Tooele, Kimball, North Park, Redwood Road and Deer Hollow properties.

b. Miscellaneous. The following miscellaneous terms are defined as follows:

(1) "Mineral Rights" shall mean all oil, gas, and other mineral rights (appertaining to the North Park and Tooele Properties) which were owned and/or controlled by BIC or BP as of or after the dates the particular properties affected thereby were secured by trust deeds to either Zions or Valley Bank and Trust Company, as the case may be.

(2) "Water Rights" shall mean all rights to the use of water as may be evidenced by beneficial use of water on the North Park and Tooele Properties and as may be evidenced by diligence claims, water user claims, certificates of appropriation, applications to appropriate governing authorities (whether approved or unapproved), exchange applications (whether approved or unapproved), water stock, or contracts which were owned and/or controlled by BIC or BP as of or after the dates the particular property affected thereby was secured by trust deed to either Zions or Valley Bank and Trust Company, as the case may be.

(3) "North Park Property Leases" shall mean and encompass the following:

(a) that certain Lease between Overthrust Oil & Gas Corporation, as Lessor, and Conoco, Inc., as Lessee, dated October 10, 1983; and

(b) that certain Grazing Lease between Overthrust Oil & Gas Corporation and Steve Peiterson affecting Section 35 of the North Park Property.

2. Transfers and/or Sales. Borrowers and Christenson agree to stipulate to the entry of an Order by the Bankruptcy Court to allow a sale of the Tooele, North Park and Redwood Road Properties pursuant to Section 363 of the U.S. Bankruptcy Code and the Lenders' Trust Deeds on such properties. In the event the Bankruptcy Court refuses to allow a Section 363 sale of any or all of such properties, Borrowers and Christenson hereby agree to stipulate to relief from the automatic stay of bankruptcy to allow a foreclosure of such Trust Deeds on the properties under applicable state law. Borrowers and Christenson hereby waive any defense, claim, or legal right to object to the validity of the lien interest of Lenders, that any foreclosure would violate the one-action rule, or that Lenders are otherwise unable to foreclose on such properties. Prior to any Section 363 sale of the North Park Property, BIC and BP will arrange a Reconveyance of that certain Trust Deed relating to Section 35 thereof, dated August 2, 1985, in favor of Shirley Thorup, Trustee, in the original amount of \$40,000.00.

The 10-acre portion of the "Redwood Road Property" shall be conveyed to Lenders by BIC by way of Special Warranty Deed if the sale of said 10-acre portion pursuant to 11 U.S.C. Section 363 is not approved. ✓

Christenson agrees to transfer to Lenders, by way of Warranty Deed, the "Deer Hollow Property", free and clear of

all liens and encumbrances, other than those specified in the attached Exhibit "F". Such conveyance shall be subject to a one-year option in favor of Christenson or his designee to repurchase such property for the sum of \$200,000.

Borrowers and Christenson shall also use best efforts to cause the issuance of an Amended and Restated First Trust Deed on the "Kimball Property", in the form attached hereto as Exhibit "G", secured by a renewal Promissory Note to be executed by the owner thereof (Kimball Associates), in the form attached hereto as Exhibit "H", in the original principle amount of \$350,000.00, with interest-only payments at 8-1/2% per annum and a five-year call. Simultaneous with the issuance of the Amended and Restated First Trust Deed on the "Kimball Property", Zions and 4447 agree to reconvey the Trust Deeds in favor of Zions and presently securing Loan #1 and Loan #3 which presently encumber the Kimball Property and the property immediately adjacent thereto.

Borrowers and Christenson also agree to use best efforts to cause the transfer, to Lenders, of all "Mineral Rights" and "Water Rights", as respectively defined in Sections 1.b(1) and 1.b(2) of this Agreement, relating to the Tooele and North Park Properties.

3. Assignment of Leases. Borrowers agree to transfer and assign the Lenders, or otherwise use best efforts to cause the transfer and assignment, of any and all leases

affecting the North Park, Deer Hollow, or Redwood Road properties. Copies of the presently identified leases are attached hereto as Exhibit "I" and incorporated herein by reference. It is agreed and understood that all payments previously received on such payments shall belong to the persons or entities having received the same, and that there shall be no proration of future lease payments--the same to belong to Lenders.

4. Mineral and Water Rights Transfer; Stock Transfer and Pledge. On or before October 31, 1987, Borrowers shall use best efforts to cause the Mineral Rights and the Water Rights to be transferred to the Lenders, free and clear of any and all liens, claims and encumbrances. It is acknowledged that some or all of the Mineral Rights and the Water Rights to be transferred to Lenders are owned by Overthrust or other third parties which are not parties to this Agreement.

Subject to Bankruptcy Court approval, Borrowers agree to cause the transfer to Lenders at the time of execution hereof Ten Million (10,000,000) shares of the common Stock (the "shares") of Overthrust Oil & Gas Company, a Utah corporation ("Overthrust").

As additional consideration for this settlement, and subject to the transfer of the Mineral Rights and the Water Rights to the Lenders as hereinafter provided, within the

time provided, Lenders agree to grant to BIC, or its assigns, an option in form satisfactory to Lenders to repurchase such shares at any time during the five (5) years following the date on which occurs the latter of the transfer to the Lenders of the Mineral Rights or the transfer to the Lenders of the Water Rights at an option price of Ten Cents (\$.10) per share. Borrowers covenant that the person or entity transferring any portion of the shares to Lenders has good and marketable title to such shares, free and clear of all liens, claims and encumbrances of whatever nature or description.

5. Option to Repurchase and Right of First Refusal on North Park Property. For a period calculated from the date of recordation of the transfer of the North Park Property to the Lenders, Lenders grant to Borrowers a sole six (6) month right to repurchase the North Park Property at a price calculated as follows:

(1) The combined total owing to Zions and 4447 on notes secured by the North Park Property, including accrued interest, costs and fees through the date of redemption; (2) reduced by credits for the \$350,000 note given on the Kimball Property, the Tooele Property valued at \$50 per acre (or sale price in the event a Section 363 foreclosure of the tooele property is completed) and the value of the Redwood Road Property (agreed to be \$155,000); (3) all of the foregoing, plus the statutory 6% applicable to rights of redemption under the laws of the State of Utah.

Any exercise of this right of repurchase must include the entire acreage, although Lenders shall have the right, in

their sole discretion, to consider partial release of acreage.

Upon the expiration of the six-month repurchase period referred to above, Borrowers shall thereafter have an additional eighteen (18) month right of first refusal to match any bona fide offer on the North Park Property, or any portion thereof, that is received and accepted by the Lenders subject to such right of first refusal, and shall have a thirty (30) day period following the receipt of written notice of any such offer in which to match any such offer.

6. First Security Financial Litigation. With respect to the litigation that has been initiated by Lenders against First Security Financial with respect to the collection of a certain Asset Purchase Agreement between Christenson and First Security Financial, it is understood and agreed that said Asset Purchase Agreement and any cause of action against First Security Financial arising thereunder have been unconditionally assigned to Zions. It is agreed that Christenson will cooperate fully in giving assistance to Zions in connection with said litigation, including without limitation, giving Zions access to all documents and information available to Christenson relating to the Asset Purchase Agreement and the transaction between Christenson and First Security Financial relating to said Asset Purchase Agreement; provided, however, Zions acknowledges that a

Settlement Agreement between First Security Financial and Christenson requires Christenson to keep such Settlement Agreement confidential, and Zions agrees that Christenson shall not be required to violate the terms of such Settlement Agreement and shall not violate any laws or any other duties he may have in connection with his cooperation with Zions. It is also agreed and understood that no credit will be given to the Borrowers for any amount received by Zions and 4447 as a result of such litigation, except that the full amount of any such amount received by Zions and 4447 shall be credited against the total amount owing by the Borrowers to Zions and 4447 (the "Total Zions Indebtedness") in the event the Borrowers pay off the Total Zions Indebtedness within the six (6) month period contemplated by paragraph 5 herein.

7. Real Property Taxes. Lenders agree to accept the Tooele, North Park, Redwood Road and Deer Hollow properties subject to outstanding delinquent real property taxes on all of said properties of up to an aggregate amount of \$15,000. Any outstanding and delinquent taxes in excess of such amount shall be paid by Borrowers at closing.

8. Miscellaneous.

a. The parties agree that the terms of this Agreement shall be kept confidential. In addition, the terms of any final conveyances and settlement shall also be kept confidential, except for the disclosures

necessary to the bankruptcy court to accomplish the intent of this Agreement.

b. This Agreement is also subject to the cooperation and performance of persons or entities not a party to this Agreement to accomplish the intent hereof. This Agreement is also subject to obtaining the various bankruptcy approvals contemplated herein. Furthermore, this Agreement is subject to the transfer to Lenders of the mineral and water rights referred to above, to the satisfaction of Lenders, as well as the removal of the Shirley Thorup Trust Deed described above in paragraph 2.

c. Closing of this Agreement shall occur in the offices of Allen Nelson Hardy & Evans at 215 South State Street, Suite 700, Salt Lake City, Utah, on ~~Friday~~ ^{Monday}, ~~September 18,~~ ^{November 30,} 1987, at the hour of 3:00 o'clock p.m. A condition precedent of closing of the transfers contemplated herein is that Borrowers and Christenson deliver all Assignments, Deeds, and necessary documents to perform their obligations hereunder. Any documents executed to accomplish the intent of this Agreement shall be held in escrow until all documents have been executed, title reports have been updated, any necessary bankruptcy court approvals or other conditions herein have been accomplished. In the event any requirement of

this Agreement cannot be achieved, and is not waived by both of the Lenders, the entire Agreement shall be thereafter null and void at the option of either Zions or 4447, and in such an event, any executed documents shall be returned to the party executing the same. Lenders shall have the right, but not the obligation, to waive any condition precedent to closing and to proceed with the closing notwithstanding the failure of Borrowers to complete any condition precedent of closing.

d. Christenson agrees to use his best efforts to assist Lenders to obtain the interest of any other parties who may continue to have an interest in the Redwood Road Property by way of sale, exchange, or other transfer on terms acceptable to Lenders.

e. It is agreed between Lenders and Christenson that to the extent provided in the next sentence herein, the release by Lenders of any deficiency judgment liability against Christenson is conditioned upon the accuracy of the deposition testimony of Christenson given pursuant to that deposition taken June 15, 1987. In the event that it is subsequently determined that any information provided at such deposition is knowingly inaccurate or contains any material misrepresentation as to his personal assets, liabilities and net worth, any

release of Christenson from further liability pursuant to this Agreement shall be void.

9. General Releases. Upon the transfer and recordation of the documents required herein, it is agreed that Lenders on the one hand and Borrowers, Christenson, Franklin Financial, Capitol Thrift and Loan and the trustees of CAPE TRUST, a qualified pension and profit sharing plan, on the other hand, shall be mutually released from any and all obligation and liability to each other in connection with, or in any way related to, Loans #1, #2, #3, and #4, except for any duties, responsibilities, and rights set forth in this Agreement and documents and instruments executed in connection herewith. In such an event, Lenders specifically acknowledge that Borrowers' and Christenson's personal obligations under such Loans will be terminated and Lenders' sole remedy shall be against the real properties which are the subject of this Agreement.

10. Representations and Warranties of Borrowers. Borrowers represent, warrant and covenant to Lenders as follows:


a. Each of the Borrowers will cooperate to obtain the requisite Bankruptcy Court approvals described herein, and each is authorized with power to enter into and carry out the terms of this Agreement.

b. The tenant leases set forth in Exhibit "I" attached hereto and incorporated herein by reference comprise all of the leases relating to all or any portion of the properties. To the best of Borrowers' knowledge, said tenant leases are each in good standing, valid and in full force and effect. None of said leases are in default and there are no conditions other than those previously disclosed to Lenders in writing which in the passage of time may constitute a default of any of the leases.

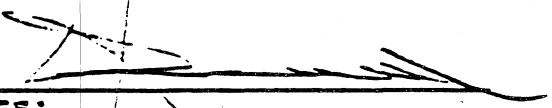
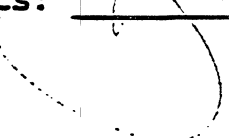
The foregoing representations and warranties shall survive the closing hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective the day, month and year first above written.

ZIONS FIRST NATIONAL BANK

By: 
Its: 

4447 ASSOCIATES

By: 
Its: 

BERTAGNOLE INVESTMENT COMPANY

By: Emanuel A. Floor
Its: Wq. General Partner

By: Harold Bertagnole
Its: Wq. General Partner

BERTAGNOLE PROPERTIES
BERTAGNOLE INVESTMENT COMPANY,
Its general partner

By: Emanuel A. Floor
Its: Wq. General Partner

By: Harold Bertagnole
Its: Wq. General Partner

Richard A. Christenson
RICHARD A. CHRISTENSON

Leo Bertagnole
LEO BERTAGNOLE

Harold Bertagnole
HAROLD BERTAGNOLE

Gene Bertagnole by
Marcia Bertagnole attorney in
GENE BERTAGNOLE

Jay Bertagnole
JAY BERTAGNOLE

Emanuel A. Floor
EMANUEL A. FLOOR

RDK-040
9/18/87

EXHIBIT "A"
(Tooele Property)

The following property located in Tooele County, State of Utah:

PARCEL 1:

Northwest 1/4 of the Northeast 1/4, Northwest 1/4, Lots 2 and 3, of Section 27, Township 4 South, Range 5 West, Salt Lake Meridian.

The part of the Southeast 1/4 of Section 17, Township 4 South, Range 5 West, lying Southerly of Division Line.

That part of Section 21, Township 4 South, Range 5 West, Salt Lake Meridian, lying Southerly of Division Line.

North 1/2 of the Northeast 1/4, Southeast 1/4 of the Northeast 1/4 of Section 29, Township 4 South, Range 5 West, Salt Lake Meridian.

That part of Section 22, Township 4 South, Range 5 West, lying Southerly of Division Line.

North 1/2 of the Northwest 1/4, Northwest 1/4 of the Northeast 1/4 of Section 23, Township 4 South, Range 5 West, Salt Lake Meridian.

That part of the South 1/2 of Section 15, Township 4 South, Range 5 West, Salt Lake Meridian, lying South of Division Line.

North 1/2 of Section 28, Township 4 South, Range 5 West, Salt Lake Meridian.

That part of East 1/2 of Section 20, Township 4 South, Range 5 West, Salt Lake Meridian, lying Southerly of Division Line.

That part of West 1/2 of the West 1/2 of Section 14, Township 4 South, Range 5 West, Salt Lake Meridian, lying Southerly from Division Line, Less 15 acres to Ana Conda.

Also that portion of the following described tracts lying Northerly from the Division Line particularly described as follows, and located in Township 4 South, Range 5 West, Salt Lake Meridian:

Beginning at the highest ridge line of the West Boundary of the Southwest 1/4, Southeast 1/4 of Section 17 and running in a Southeasterly direction along said ridge line to a peak approximately in the center of Northeast 1/4 of Section 21

which peak is shown on a map prepared by the U.S. Department of the Interior Geological Survey, covering Stockton, Utah, as being 6543 feet high and running thence North 62°30' East 8976 feet, more or less, to a point on the East boundary of the West 1/2 of the West 1/2 of Section 14, which final point is approximately on the East-West quarter section line.

PARCEL 2:

North 1/2 of Section 16, Township 4 South, Range 5 West, Salt Lake Meridian.

PARCEL 3:

South 1/2 of Section 35, Township 6 South, Range 5 West, Salt Lake Meridian.

PARCEL 4:

East 1/2 of the North 1/2 of Section 15, Township 8 South, Range 6 West, Salt Lake Meridian.

PARCEL 5:

East 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 21, Township 8 South, Range 6 West, Salt Lake Meridian.

PARCEL 6:

East 1/2 of the East 1/2 of Section 9, Township 8 South, Range 6 West, Salt Lake Meridian.

PARCEL 7:

East 1/2 of the West 1/2 of Section 12, Township 8 South, Range 6 West, Salt Lake Meridian.

PARCEL 8:

An undivided 1/2 interest in the North 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 8, Township 6 South, Range 5 West, Salt Lake Meridian.

RDK-041

EXHIBIT "B"
(Kimball Property)

The following property located in Salt Lake County, State of Utah:

Condominium Units together with their attached common areas which lie in The South 1/2 of:

Beginning at a point 37.25 feet South from the Southwest corner of Lot 4, Block 93, Plat "A" Salt Lake City Survey, and running thence East 298 feet; thence North 136.25 feet; thence West 298 feet; thence South 136.25 feet to the place of beginning.

Said property has been converted to a condominium under the Utah Condominium Ownership Act as Evidenced by a Declaration and By-Laws of the Kimball Condominiums dated September 22, 1978, and recorded October 20, 1978, in Book 4758, Page 303, Entry No. 3185154, Official Records, and the Record of Survey Map recorded October 20, 1978, in Book 78-10, Page 297, Entry No. 2185155, Official Records, and as amended in subsequent declarations.

RDK-042

EXHIBIT "C"
(North Park Property)

TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN

SECTION 11:	ALL
SECTION 12:	ALL
SECTION 13:	ALL
SECTION 14:	NE1/4NE1/4; S1/2NE1/4, SE1/4, SE1/4NW1/4, NE1/4SW1/4
SECTION 23:	N1/2, SE1/4
SECTION 24:	ALL
SECTION 25:	ALL, EXCEPT E1/2NE1/4, NE1/4SE1/4
SECTION 26:	NE1/4, E1/2SE1/4
SECTION 36:	ALL

TOWNSHIP 1 NORTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN

SECTION 35:	ALL, excepting therefrom: The existing interstate highway and right of way owned by the State of Utah and the existing railroad tracks and right of way owned by Union Pacific
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EXHIBIT "D"
(Redwood Road Property)

An undivided 66.70% interest in the following property located in Davis County, State of Utah:

Beginning at a point 127 and 8/21 rods and 431.75 feet South along the Section line from the Northeast corner of Section 24, Township 2 North, Range 1 West, Salt Lake Meridian, in the City of Woods Cross, and running thence South 431.75 feet along the East line of said section, thence North 89°48'31" West 5,044.59 feet along a line parallel to the North line of said section, thence North 431.75 feet, thence South 89°48'31" East 5,044.59 feet parallel to the North line of said section to the point of beginning. Containing 40.0 acres, more or less.

Also, the adjacent 10 acres of real property fronting Redwood Road adjacent to the above parcel.

EXHIBIT "E"
(Deer Hollow Property)

Those portions of Lots 1, 2 and 8, and the South 1/2 of the North 1/2 of Section 26, Township 1 North, Range 3 East, Salt Lake Base and Meridian, that are in Morgan County, Utah.



Commitment for Title Insurance

TICOR TITLE INSURANCE COMPANY, (a stock company), a California corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations thereunder shall cease and terminate one hundred eighty (180) days after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

This Commitment shall not be valid or binding until countersigned below by a validating signatory of the Company.

TICOR TITLE INSURANCE COMPANY

By

A handwritten signature in black ink, appearing to read "Gerald L. Apple", written over a circular embossed seal of the company.

President

Attest

A handwritten signature in black ink, appearing to read "Evelyn M. Smith", written over the same circular embossed seal.

Secretary

Countersigned:

A handwritten signature in black ink, appearing to read "Michael J. Jensen", written over a horizontal line.

Validating Signatory

Schedule

August 14, 1987 skip

Commitment No.
81689Effective Date of Commitment
July 9, 1987 at 8:00 a.m.

Your No.

Prepared for:
Mr. Skip Christensen

Inquiries should be directed to:

363-8000 Title Officer: Michael J. Jensen

1. Policy or Policies to be issued:

		<u>Amount</u>	<u>Premium</u>
(a) <input checked="" type="checkbox"/> ALTA Owners Policy —	Form <u>B</u> -1970	\$ _____	\$ _____

Proposed Insured: TO BE DETERMINED

(b) <input type="checkbox"/> ALTA Loan Policy, 1970, (Amended 10/17/70)		\$ _____	\$ _____
---	--	----------	----------

Proposed Insured:

2. The estate or interest in the land described or referred to in this Commitment and covered herein is a Fee S

3. Title to said estate or interest in said land is at the effective date hereof vested in:

ZIONS FIRST NATIONAL BANK, N.A. and 4447 ASSOCIATES, a Utah partnership

4. The land referred to in this Commitment is located in the County of Morgan
State of Utah and described as follows:Those portions of Lots 1, 2 and 8, and the South 1/2 of the North 1/2 of Section 26,
Township 1 North, Range 3 East, Salt Lake Base and Meridian, that are in Morgan Coun
Utah.

+

The following are the requirements to be complied with:

1. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.

Judgments have been searched in the names of ZIONS FIRST NATIONAL BANK, N.A. and 4447 ASSOCIATES, a Utah partnership, for the past eight years and none were found of record.

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Standard Exceptions:
 - (a) Rights or claims of parties in possession not shown by the public records.
 - (b) Easements, or claims of easements, not shown by the public records.
 - (c) Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.
 - (d) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
 - (e) Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
 - (f) Taxes or assessments which are not shown as existing liens by the public records.
3. Special Exceptions:
 - a) Taxes for the year 1987, now a lien, not yet due or payable. Taxes for the year 1986 have not been paid in the amount of \$720.28. (Serial No. 001-001-035-01)
 - b) Preliminary Tax Sale in favor of Morgan County for delinquent general taxes for the year 1984, entered in Tax Sale Records for the year 1984. Subject to redemption including penalty, interest and costs.

Subsequent delinquencies for the year 1985 in the amount of \$701.72 and 1986 in the amount of \$707.23 were added to said sale, together with interest, penalty and costs.
 - c) Said property is included within the boundaries of Morgan City and is subject to any charges and assessments levied by them as a result of services provided. Charges are current.
 - d) Excepting and reserving all oil, gas, and other minerals of every kind and description underlying the surface of the subject property and subject to the right of entry for the purposes of exploring and extracting such minerals as

(Continued)

MMITMENT NO.

81689

contained in that certain Special Warranty Deed recorded August 8, 1978 in Book M21, at Page 10, records of Morgan County, Utah.

+

EXHIBIT "G"

WHEN RECORDED, MAIL TO:

Bruce J. Nelson, Esq.
ALLEN NELSON HARDY & EVANS
215 South State, Suite 700
Salt Lake City, Utah 84111

AMENDED TRUST DEED
With Assignment of Rents

THIS TRUST DEED amends and modifies that certain Trust Deed dated _____, 198__, recorded _____, 198__, as Entry No. _____ in Book _____, Page _____, of the official records of the Salt Lake County Recorder.

THIS TRUST DEED, made this _____ day of _____, 1987, between KIMBALL ASSOCIATES, a Utah corporation, as TRUSTOR, whose address is _____, ZIONS FIRST NATIONAL BANK, as TRUSTEE and ZIONS FIRST NATIONAL BANK, in trust, of One South Main Street, Salt Lake City, Utah 84111, 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, State of Utah:

See Exhibit "A"

COMMONLY KNOWN AS: 150 North Main Street
Salt Lake City, Utah

Together with all buildings, fixtures and improvements thereon or hereafter constructed 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 promissory note in the sum of \$350,000.00, 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,

refinancing, modifications, or consolidations 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; and (5) all other presently existing or hereafter incurred obligations of trustor to other encumbrances on the property.

IT IS MUTUALLY AGREED THAT:

Trustor will not during the term of this Trust Deed assign, transfer or convey its interest or right in and to said property, without the prior written consent of Beneficiary, which consent shall not unreasonably be withheld. In the event Trustor shall assign, transfer or convey any of its interest or right in said property without the prior written consent of the Beneficiary, such assignment, transfer or conveyance shall constitute a default on the part of Trustor hereunder and Beneficiary shall thereupon have the right, at its election, to exercise any of the rights provided for in the event of Trustor's default specified herein.

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building which may be constructed thereon; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

Trustee, 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.

2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the property and improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary.

In event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf, insurance in favor of the Beneficiary alone. If insurance cannot be secured by the Trustor to provide the required coverage, this will constitute an act of default under the terms of this Trust Deed.

3. 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 Trustee; and should Beneficiary or Trustee 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 Trustee.

4. To pay at least 10 days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

5. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment or either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in his absolute discretion as he may deem

necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

6. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the annual percentage rate or 18% until paid, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

7. Should said property or any part thereof be taken or damaged 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 attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

8. 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 secured hereby, Trustee may (1) 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) grant any extension or modification of the terms of this loan; (e) 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 agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

9. 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. 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.

10. 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 (Trustor hereby consenting to the appointment of Beneficiary as such receiver), 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 sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, 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.

11. 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 said 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.

12. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

13. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness incurred hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written Notice of Default and of election to cause said property to be sold to satisfy the obligations hereof, and Trustee shall file such Notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

14. After the lapse of such time as may then be required by law following the recordation 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 seventy-two (72) hours 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 the annual percentage rate applicable to this obligation from date of expenditure; (4) all other sums secured hereby; and of such proceeds with the County Clerk of the county in which the sale took place.

15. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

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 proceedings 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 so 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 it at the address hereinabove set forth.

22. In the event any portion of this Trust Deed is declared invalid by a court of law or by legislative enactment all other provisions not so affected shall be valid and binding upon the parties hereto.

KIMBALL ASSOCIATES, a Utah
Corporation

By: _____
Its: _____

ACKNOWLEDGMENT

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

On the ____ day of _____, 1987, personally
appeared before me _____ the
signer(s) of the above instrument, who duly acknowledged to
me that he executed the same on behalf of Kimball Associates,
a Utah corporation, pursuant to authority of a resolution of
the Board of Directors thereof.

My Commission Expires: _____

NOTARY PUBLIC
Residing at:

RDK-048
9/17/87

EXHIBIT "H"

AMENDED PROMISSORY NOTE

\$350,000.00
Salt Lake City, Utah
_____, 1987

FOR VALUE RECEIVED, the undersigned promises to pay to the order of ZIONS FIRST NATIONAL BANK, a National Association, at its office at One South Main Street, Salt Lake City, Utah, the sum of \$350,000.00 in lawful of the United States with interest thereon in like money at the rate of eight and one-half percent (8-1/2%) per annum from date hereof until maturity or default and thereafter, both before and after judgment, at the rate of eighteen percent (18%) per annum until paid.

This Note modifies and supercedes a previous Note of _____, 198____, and is made in settlement of claims, causes of action, and disputes arising out of such prior Note and an accompanying Trust Deed.

Repayment shall be made on the following dates:

- a. Six (6) months from the date hereof, a payment of accrued interest shall be made to the Payee;
- b. Nine (9) months from the date hereof, a payment of accrued interest shall be made to the Payee;
- c. Twelve (12) months from the date hereof, a payment of accrued interest shall be made to the Payee;
- d. Thereafter, monthly interest-only payments shall be made to Payee; and
- e. The total principal, less any accrued and unpaid interest, shall be due and payable five (5) years from the date of this Note.

If default be made in the payments required herein, time being the essence hereof, then the entire balance, with interest as aforesaid, shall at the election of the holder hereof, and without notice of said election, at once become due and payable.

If the Note becomes in default as aforesaid, the undersigned agrees to pay to the holder hereof all collection costs, including reasonable attorneys fees and legal expenses, in addition to all other sums due hereunder, and the payee may offset against this loan any bank account or other amounts owed by the bank in any capacity to the undersigned.

The undersigned and all endorsers, sureties and guarantors hereof hereby jointly and severally waive presentment for payment, demand, protest, notice of protest, and of nonpayment and of dishonor, and consent to extensions of time, renewals, waivers or modifications without notice and further consent and to the release of any security, or any part thereof, with or without substitution. This note is secured by a First Trust Deed on real property located at approximately 150 North Main Street, Salt Lake City, Utah, the validity of which is hereby acknowledged.

KIMBALL ASSOCIATES, a Utah
Corporation

By: _____
Its: _____

RDK-049
9/17/87

GRAZING LEASE

COPY
No. Park

1. OVERTHRUST OIL AND GAS CORPORATION, a Utah Corporation, herein referred to as Lessor, hereby leases to Steve Peherson, for stock grazing and pasturing of sheep and cattle during the year May 1, 1987 to April 30, 1988, the following described 5,780 acres of land located in Summit County, State of Utah, to-wit:

TOWNSHIP 1 NORTH, RANGE 4 EAST, S.L.B.&M.

Section 35: All

TOWNSHIP 1 SOUTH, RANGE 4 EAST, S.L.B.&M.

Section 11: All

Section 12: All

Section 13: All

Section 14: NE 1/4NE 1/4; S 1/2NE 1/4; SE 1/4;
SE 1/4NW 1/4; NE 1/4SW 1/4

Section 23: N 1/2; SE 1/4

Section 24: All

Section 26: NE 1/4; E 1/2SE 1/4

Section 25: All

Section 36: All

TOWNSHIP 1 SOUTH, RANGE 4 EAST

Section 30: NE 1/4; N 1/2ofNW 1/4; SW 1/4of
NE 1/4; NW 1/4 of SW 1/4

TOWNSHIP 1 NORTH, RANGE 4 EAST

All of Section 35, excepting therefrom: The Existing interstate freeway right of way owned by the State of Utah and the existing railroad tracks.

2. This lease agrees to pay to the lessor as rental for the above-described land \$1.25 per acre for the period of this lease, amounting to \$7,225.00, payable one-half for an agreed acreage of 5780 acres plus or minus, amounting to \$3,612.50, on the signing of the lease, and the remaining one-half, in the amount of \$3,612.50 on or before November 1, 1987.

3. The lessee agrees to avoid over-grazing of the land herein-above described and upon expiration of the term of the lease to deliver the land to the lessor in as good condition as when the same was entered upon the lessee, reasonable use thereof and damages by the elements expected.

4. The lessee agrees that the land will not be sub-leased without the written permission of the lessor and that lessor may have reasonable access to, over and through the leased property anytime during the term of this lease.

5. Time is of the essence of this lease. Any default in payment of rentals or in mis-use of the land shall be grounds for cancellation of the lease.

6. Lessor and/or its agents, shall have the right to reasonable access to the land being leased hereon at anytime deemed necessary by the lessor.

7. This lease is only a grazing lease. Lessor shall have the right to lease these same lands in part or in whole for any other purposes not in conflict with the grazing rights granted hereon.

8. Lessee agrees to hold harmless and indemnify the Lessor for any and all liabilities that may arise from the actions of the lessee.

DATED this _____ day of _____, 1987.

OVERTHRUST OIL & GAS CORPORATION,
a Utah Corporation, Lessor

George S. Woodhead, Officer

Steve Peherson

CONOCO - OVERTHRUST OIL & GAS LEASES

NORTH PARK AREA

cc
No

Date: October 10, 1983

Term: 4 years

Royalty: 1/6 of all oil produced - at market price
1/6 of all gas sold

Termination and Annual Rental Fee

Termination on October 10, 1984, unless pay \$1 per acre per year extension.

Said \$1 per acre was paid in October of 1984; therefore, lease is good until October 10, 1985, at which time another \$1,500 is due.

Dry Well

If well drilled is dry, then renewals still must be paid.

Shut-in Well

If oil or gas is discovered but is shut-in and not produced or sold, then the annual rental fee shall be \$25 per acre.

Damages - Proximity of Wells

Conoco is to pay for damages to land. No well is to be drilled closer than 200 feet to a house or barn now on the premises.

Completion of Well

Conoco may automatically extend the lease if a well is commenced prior to expiration but not finished.

Pooling

Allowed within the same section.

Assignment

Either party may assign.

Surrender

Conoco may surrender lease at will in whole or in part.

Consent

Written consent from surface owners required prior to operations.

FEE	ALAN SPRIGGS, SUMMIT CO. RECORDER
S <u>10.00</u>	By <u>[Signature]</u>
RECORDED	DEC 8 1983 at <u>10:03</u> M.

QUIT-CLAIM DEED

R.O.

Bertagnole Investment Company Limited Partnership, grantor, of Summit County, Utah, hereby QUIT-CLAIM to Overthrust Oil and Gas Corporation, grantee, of Salt Lake City, Salt Lake County, Utah for good and valuable consideration, the sufficiency of which is hereby acknowledged, an undivided 100% interest in and to all minerals, except sand and gravel, in and under and that may be produced from the following described tracts of land in Summit and Wasatch Counties, Utah:

Township 1 South, Range 4 East, S.L.M.

- ✓ Section 14: S1/2NE1/4, SE1/4NW1/4, NE1/4SW1/4, S/E1/4
- ✓ Section 24: S1/2SW1/4
- ✓ Section 36: All

Township 1 South, Range 5 East, S.L.M.

- ✓ Section 30: Lots 1, 2, 3, NE1/4NW1/4, NE1/4

WITNESS the hand of said grantor, this 5th day of December, 1983

By: [Signature]
 EMANUEL A. FLOOR
 Managing General Partner
 Bertagnole Investment Company
 Limited Partnership

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

On the 5th day of December, 1983, personally appeared before me Emanuel A. Floor, who being by me duly sworn, did say that he is the Managing General Partner of Bertagnole Investment Company Limited Partnership and that the within and foregoing instrument was signed in behalf of said Limited Partnership by authority and said Emanuel A. Floor duly acknowledged to me that said Limited Partnership executed the same.

[Signature]
 NOTARY PUBLIC
 Residing at: Salt Lake City, Utah

My Commission Expires:
11/5/86

SALT LAKE CITY, UT. 84116

REQUEST OF UTAH TITLE & ABSTRACT
FEE
\$ 9.50
RECORDED NOV 7 1983
at 1:40

QUIT-CLAIM DEED

R.O.

Bertagnole Investment Company Limited Partnership,
grantor, of Summit County, Utah, hereby QUIT-CLAIM to
Overthrust Oil and Gas Corporation, grantee, of Salt Lake City,
Salt Lake County, Utah for good and valuable consideration, the
sufficiency of which is hereby acknowledged, an undivided 100%
interest in and to all minerals, except sand and gravel, in and
under and that may be produced from the following described
tracts of land in Summit and Wasatch Counties, Utah:

Township 1 South, Range 4 East, S.L.M.

- ✓ Section 14: S1/2NE1/4, SE1/4NW1/4,
NE1/4SW1/4, S/E1/4
- ✓ Section 24: S1/2SW1/4
- ✓ Section 36

Township 1 South, Range 5 East, S.L.M.

- ✓ Section 30: Lots 1, 2, 3, NE1/4NW1/4,
NE1/4

WITNESS the hand of said grantor, this 16th day
of September, 1983

By: [Signature]
EMANUEL A. FLOOR
Managing General Partner
Bertagnole Investment Company
Limited Partnership

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

On the 16th day of September, 1983, person-
ally appeared before me Emanuel A. Floor, who being by me duly
sworn, did say that he is the Managing General Partner of
Bertagnole Investment Company Limited Partnership and that the
within and foregoing instrument was signed in behalf of said
Limited Partnership by authority and said Emanuel A. Floor duly
acknowledged to me that said Limited Partnership executed the
same.

[Signature]
NOTARY PUBLIC
Residing at: S.L. County

My Commission Expires:
11-1-86

CASHIER, WYOMING

AGREEMENT, Made and entered into this 10th day of October, 1993
by and between Overthrust Oil & Gas Corporation
5225 Wiley Post Way, Suite 290 Salt Lake City, Utah 84116

CONOCO, INC., Box 1267, Ponca City, OK 74603, A Delaware CO, hereinafter called lessor (whether one or more) and hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of ten and more Dollars (\$10.00) cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased, and let and by these presents does grant, demise, lease and let unto the said lessee, its successors and assigns for the sole and only purposes of surveying by geological, geophysical and all other methods, mining and operating for oil and gas, and laying pipe lines, and building tanks, power stations and structures thereon to produce, save and take care of said products, all that certain tract of land, together with any reversionary rights therein, situate in the County of Summit and Wasatch State of Utah, described as follows, to wit:

TOWNSHIP 1 SOUTH, RANGE 4 EAST, SLM

Section 36: All, including a tract of land
in the SE/4SE/4 lying in Wasatch County, Utah

and containing 640.00 acres, more or less.
It is agreed that this lease shall remain in force for a term of Four (4) years from date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee, its successors and assigns.

In consideration of the premises the said lessee covenants and agrees:

- 1/6 First. The lessee shall deliver to the credit of lessor as royalty, free of cost in the pipe line to which lessee may connect its wells, the equal one-sixth (1/6) part of all oil produced and saved from the leased premises, or, at lessee's option, may buy or sell such one-sixth (1/6) royalty and pay lessor 1/6 the market price for oil of like grade and gravity prevailing in the field on the day such oil is run into pipe lines or into storage tanks.
- RL Second. To pay lessor one-sixth (1/6) of the proceeds received for gas sold from each well where gas only is found, or the market value at the well of such gas used off the premises, and lessor to have gas free of cost from any well for all stoves and all inside lights in the principal dwelling house on such land during the same time by making his own connections with the well at his own risk and expense.
- RL Third. To pay lessor one-sixth (1/6) of the market value at the well for gas produced from any oil well and used off the premises, or for the manufacture of casing-head gasoline or dry commercial gas.

If no well be commenced on said land on or before the 10th day of October, 1994, this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor or to the lessor's credit in the

ZIONS FIRST NATIONAL Bank at 135 East 6100 South, SLC, Utah 841
or its successor or successors, or any bank with which it may be merged, or consolidated, or which succeeds to its business or assets or any part thereof, by purchase or otherwise, which shall continue as the depository regardless of changes in the ownership of the said land, the sum of SIX HUNDRED FORTY AND NO/100 ***** DOLLARS.

which shall operate as a rental and cover the privilege of deferring the commencement of a well for twelve months from said date. In like manner and upon like payments or tenders the commencement of a well may be further deferred for like periods of the same number of months successively. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred. Rentals may be paid by check or draft and may be remitted by mail. Mailing of rental on or before the rental-paying date shall be deemed a timely tender thereof and shall preclude termination of this lease. Notwithstanding the death of the lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors and administrators of such person.

Should any well drilled on the land above described be a dry hole or cease to produce and there are no other producing well or wells on the land or drilling operations are not being conducted thereon, then and in that event if a well is not commenced before the next ensuing rental-paying date after the expiration of ninety (90) days from the date of such dry hole or cessation of production, this lease shall terminate as to both parties, unless the lessee, on or before the rental-paying date next ensuing after the expiration of ninety (90) days from the date of the completion of the dry hole or cessation of production, shall resume the payment of rentals in the same amount and in the same manner as hereinbefore provided, and it is agreed upon resumption of the payment of rentals, as above provided, the last preceding paragraph hereof, governing the payment of rentals and the effect thereof, shall continue in force as though there had been no interruption in the rental payment. If a dry hole should be drilled or if production ceases at any time subsequent to ninety (90) days prior to the beginning of the last year of the primary term, no rental payment or operations are necessary in order to keep the lease in force during the remainder of the primary term.

RL If at any time, either before or after the expiration of the primary term of this lease, there is any gas well on the lands covered hereby, or on other lands with which said lands are pooled or unitized, which is capable of producing in paying quantities, but which is shut-in either before or after production therefrom, and the production therefrom is not being sold or used, lessee agrees to pay or tender to the mineral owners in the depository bank named in the lease, as royalty, a sum equal to the amount of delay rentals payable under this lease. Such payments shall be made on or before the shut-in royalty payment date, as herein defined, next accruing after the expiration of ninety (90) days from the date the well was shut-in, unless prior to such date gas from the well is produced and sold or used. In like manner, on or before each succeeding shut-in royalty payment date while such gas well remains shut-in, lessee shall make payment of shut-in gas royalty in the same amount and manner. A shut-in gas well capable of producing in paying quantities shall be considered under all provisions of this lease as a producing well and this lease shall be in force and effect in like manner as though the gas therefrom were actually being produced and sold or used. The term "gas well" shall include wells capable of producing natural gas, condensate, dissolved, or any gaseous substance, and wells classified as gas wells by any governmental authority. The term "shut-in royalty payment date" shall mean any rental-paying date of this lease if within the primary term, or any subsequent anniversary thereof, if after the primary term, or any anniversary date of this lease if no rental-paying date is specified herein.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid the lessor only in the proportion which his interest bears to the whole and undivided fee. However, such rentals shall be increased at the next succeeding rental anniversary after lessee has been notified of any reversion having occurred to cover the interest so acquired.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells and reservoirs of lessor. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

RL Lessee shall pay for damages caused by its operations to existing crops on said lands. When requested by the lessor, lessee shall bury his pipe lines below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall have the right to drill to completion with reasonable diligence and dispatch (1) any well commenced within the term of this lease and (2) any well commenced before the completion of a well which has been commenced within such term. If oil and gas or either of them be found in paying quantities in any such well, this lease shall continue and be in force with like effect as if such well had been completed within the term of years herein first mentioned. same section

RL Lessee is hereby granted the right and power to pool or combine the acreage covered by this lease, or any portion thereof, with other land, lease or leases in the vicinity thereof at any time and from time to time, whether before or after production, when in Lessee's judgment it is necessary or advisable to do so for the prevention of waste and the conservation and greatest ultimate recovery of oil or gas. Such pooling shall be into a unit or units not exceeding in area the acreage prescribed or required in any Federal or State law, order, rule or regulation for the drilling or operation of one well, or for obtaining the maximum allowable production from one well, or 40 acres each for the production of oil, or 640 acres each for the production of gas, whichever is the larger, plus a tolerance over the maximum area of 40 acres for the production of oil or 640 acres for the production of gas to include additional acreage in any irregular governmental subdivision or lot or portion thereof. Such pooling shall be effected by Lessee's executing and filing in the office where this lease is recorded an instrument identifying and describing the pooled acreage. The production of pooled substances and development and operation on any portion of a unit so pooled, including the commencement, drilling, completion and operation of a well thereon, shall be considered and construed, and shall have the same effect, except for the payment of royalty, as production, development and operation on the leased premises under the terms of this lease. The royalties herein provided shall accrue and be paid to Lessor on pooled substances produced from any unit in

their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be on the lease until after the lessee has been furnished with a written transfer or assignment or a certified copy thereof; and it is hereby agreed in this lease shall be assigned as to a part or parts of the above described lands and the assignee or assignees of such part or parts shall fail or make default the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers or parts of said lands which the said lessee or any assignee thereof shall make due payment of said rental assignment of this lease, in whole or in part, shall as to the extent of such assignment relieve and discharge the lessee of all obligations hereunder.

Compliance with any now or hereafter existing act, bill or statute purporting to be enacted by any Federal or State legislative authority, or with judgments, decrees, rules, regulations made or promulgated by State or Federal courts, State or Federal offices, boards, commissions or committees purporting to be made under authority of any such act, bill or statute, shall not constitute a violation of any of the terms of this lease or be considered a breach of any clause, obligation, covenant, undertaking, condition or stipulation contained herein, nor shall it be or constitute a cause for the termination, for reversion or revesting of any estate or interest herein and hereby created and set out, nor shall any such compliance confer any right of entry or be a basis of any action for damages or suit for the forfeiture or cancellation hereof; and while any such purport to be in force and effect they shall, when ceasing to be in force or effect, be null and void, to the extent of such compliance operates as a modification of the terms and conditions of this lease where inconsistent therewith. Lessee may at any time surrender this lease, in whole or in part, by delivering or mailing a release to the lessor, or by placing a release of record in proper county. In the event of a partial release, the annual delay rental above mentioned shall be reduced proportionately.

Lesser hereby releases and relinquishes any right of homestead, dower or courtesy they or either of them may have in or to the leased land. Lesser hereby agrees that the lessee shall have the right at any time to, for lessor, by payment, any mortgage, taxes or other liens on the above described lands in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

This lease and all its terms, conditions and stipulations binds each executing lessor and shall extend to and be binding on his assigns, heirs and all successors, and those of the lessee, though unassigned by other lessors named herein.

Written consent will be obtained from surface owners before operation commenced on the described lands. Said consent will not be unreasonably withheld by surface owners.

IN WITNESS WHEREOF, We sign the day and year first above written.

(SEAL) Overthrust Oil & Gas Corporation

(SEAL) Ron K. Mitchell

(SEAL) By: Ron K. Mitchell

(SEAL) President

STATE OF _____ }
COUNTY OF _____ } SS.

Arizona, Colorado, Idaho, Kansas, Montana
Nebraska, Nevada, New Mexico, North Dakota,
South Dakota, Utah, Wyoming
ACKNOWLEDGMENT — INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this _____

19_____, personally appeared _____

and _____ to me known to be the identical person

described in and who executed the within and foregoing instrument of writing and acknowledged to me that _____

executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires _____ Notary Public

STATE OF _____ }
COUNTY OF _____ } SS.

Arizona, Colorado, Idaho, Kansas, Montana
Nebraska, Nevada, New Mexico, North Dakota,
South Dakota, Utah, Wyoming
ACKNOWLEDGMENT — INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this _____

19_____, personally appeared _____

and _____ to me known to be the identical person

described in and who executed the within and foregoing instrument of writing and acknowledged to me that _____

executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires _____ Notary Public

State of UTAH }
County of Salt Lake } SS.

ACKNOWLEDGMENT (For use by Corporations)

On this 10th day of October A. D. 19 83, before me personally

appeared Ron K. Mitchell to me personally known, who, being

me duly sworn, did say that he is the President of Overthrust Oil & Gas Corporation

and that the seal affixed to said instrument is the corporate seal of said corporation

and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and

Ron K. Mitchell acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal this 10th day of October A. D. 19 83

(SEAL) _____ Notary Public.

My Commission expires 11/5/86

This instrument was filed for record on the _____

day of _____ 19_____, at _____

o'clock _____ M., and duly recorded in

Volume _____ Page _____

_____ of the records of this office.

By _____

When recorded return to _____

OIL AND GAS LEASE

EASPER WYOMING

AGREEMENT, Made and entered into this 10th day of October, 19 83
by and between Overthrust Oil & Gas Corporation
5225 Wilev Post Wav, Suite 290, Salt Lake City, Utah 84116

CONOCO, INC. Box 1267, Ponca City, OK 74603, A Delaware Corp., hereinafter called lessor (whether one or more) and
hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of ten and more Dollars (\$10 00-)

cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased, and let and by these presents does grant, demise, lease and let unto the said lessee, its successors and assigns for the sole and only purposes of surveying by geological, geophysical and all other methods, mining and operating for oil and gas, and laying pipe lines, and building tanks, power stations and structures thereon to produce, save and take care of said products, all that certain tract of land, together with any reverationary rights therein, situate in the County of Summit Utah, described as follows, to wit:

TOWNSHIP 1 SOUTH, RANGE 4 EAST SLM
Section 14: S1/2NE1/4, SE1/4NW1/4,
NE1/4SW1/4, SE1/4

and containing 320.00 acres, more or less.

It is agreed that this lease shall remain in force for a term of FOUR (4) years from date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee, its successors and assigns.

In consideration of the premises the said lessee covenants and agrees:

One Sixth (1/6) FR

1/6 First. The lessee shall deliver to the credit of lessor as royalty, free of cost in the pipe line to which lessee may connect its wells, the equal FR ~~amount~~ part of all oil produced and saved from the leased premises, or, at lessor's option, may buy or sell such ~~amount~~ royalty and pay lessor the market price for oil of like grade and gravity prevailing in the field on the day such oil is run into pipe lines or into storage tanks.

1/6 Second. To pay lessor ~~amount~~ of the proceeds received for gas sold from each well where gas only is found, or the market value at the well of such gas used off the premises, and lessor to have gas free of cost from any well for all stoves and all inside lights in the principal dwelling house on such land during the same time by making his own connections with the well at his own risk and expense.

1/6 Third. To pay lessor ~~amount~~ of the market value at the well for gas produced from any oil well and used off the premises, or for the manufacture of casing head gasoline or dry commercial gas.

If no well be commenced on said land on or before the 10th day of October, 19 84, this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor or to the lessor's credit in the

ZIONS FIRST NATIONAL Bank at 135 East 6100 South, SLC, Utah 84

or its successor or successors, or any bank with which it may be merged, or consolidated, or which succeeds to its business or assets or any part thereof, by purchase or otherwise, which shall continue as the depository regardless of changes in the ownership of the said land, the sum of

THREE HUNDRED TWENTY and NO/100 ***** DOLLARS.

which shall operate as a rental and cover the privilege of deferring the commencement of a well for twelve months from said date. In like manner and upon like payments or tenders the commencement of a well may be further deferred for like periods of the same number of months such, namely. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred. Rentals may be paid by check or draft and may be remitted by mail. Making of rental on or before the rental-paying date shall be deemed a timely tender thereof and shall preclude termination of this lease. Notwithstanding the death of the lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors and administrators of such person.

Should any well drilled on the land above described be a dry hole or cease to produce and there are no other producing well or wells on the land or drilling operations are not being conducted thereon, then and in that event if a well is not commenced before the next ensuing rental paying date after the expiration of ninety (90) days from the date of such dry hole or cessation of production, this lease shall terminate as to both parties, unless the lessee, on or before the rental paying date next ensuing after the expiration of ninety (90) days from the date of the completion of the dry hole or cessation of production, shall resume the payment of rentals in the same amount and in the same manner as hereinbefore provided, and it is agreed upon resumption of the payment of rentals, as above provided, the last preceding paragraph hereof, governing the payment of rentals and the effect thereof, shall continue in force as though there had been no interruption in the rental payment. If a dry hole should be drilled or if production ceases at any time subsequent to ninety (90) days prior to the beginning of the last year of the primary term, no rental payment or operations are necessary in order to keep the lease in force during the remainder of the primary term.

FR If at any time, either before or after the expiration of the primary term of this lease, there is any gas well on the lands covered hereby or on other lands with which said lands are pooled or unitized, which is capable of producing in paying quantities, but which is shut in either before or after production therefrom, and the production therefrom is not being sold or used, lessee agrees to pay or tender to the mineral owners in the depository bank named in the lease, as royalty, a sum equal to the amount of delay rentals payable under this lease. Such payments shall be made on or before the shut in royalty payment date, as herein defined, next accruing after the expiration of ninety (90) days from the date the well was shut in, unless prior to such date gas from the well is produced and sold or used. In like manner, on or before each succeeding shut in royalty payment date while such gas well remains shut in, lessee shall make payment of shut in gas royalty in the same amount and manner. A shut in gas well capable of producing in paying quantities shall be considered under all provisions of this lease as a producing well and this lease shall be in force and effect in like manner as though the gas therefrom were actually being produced and sold or used. The term "gas well" shall include wells capable of producing natural gas, condensate, distillate, or any gaseous substance, and wells classified as gas wells by any governmental authority. The term "shut in royalty payment date" shall mean any rental paying date of this lease if within the primary term, or any subsequent anniversary thereof, if after the primary term, or any anniversary date of this lease if no rental paying date is specified herein.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided shall be paid the lessor only in the proportion which his interest bears to the whole and undivided fee. However, such rentals shall be increased at the next succeeding rental anniversary after lessee has been notified of any reversion having occurred to cover the interest so acquired.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells and reservoirs of lessor. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

FR Lessee shall pay for damages caused by its operations ~~on~~ on said lands. When requested by the lessor, lessee shall bury its pipe lines below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall have the right to drill to completion with reasonable diligence and dispatch (1) any well commenced within the term of this lease and (2) any well commenced before the completion of a well which has been commenced within such term. If oil and gas or either of them be found in paying quantities in any such well, this lease shall continue and be in force with like effect as if such well had been completed within the term of years herein first mentioned. same section

FR Lessee is hereby granted the right and power to pool or combine the acreage covered by this lease, or any portion thereof, with other land, lease or leases in the ~~vicinity~~ thereof at any time and from time to time, whether before or after production, when in Lessee's judgment it is necessary or advisable to do so for the prevention of waste and the conservation and greatest ultimate recovery of oil or gas. Such pooling shall be into a unit or units not exceeding in area the acreage prescribed or required in any Federal or State law, order, rule or regulation for the drilling or operation of one well, or for obtaining the maximum allowable production from one well, or 40 acres each for the production of oil, or 640 acres each for the production of gas, whichever is the larger, plus a tolerance over the maximum area of 40 acres for the production of oil or 640 acres for the production of gas to include additional acreage in any irregular governmental subdivision or lot or portion thereof. Such pooling shall be effected by Lessee's executing and filing in the office where this lease is recorded an instrument identifying and describing the pooled acreage. The production of pooled substances and development and operation on any portion of a unit so pooled, including the commencement, drilling, completion and operation of a well thereon shall be considered and construed, and shall have the same effect, except for the payment of royalty, as production, development and operation on the leased

their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be on the lease until after the lease has been furnished with a written transfer or assignment or a certified copy thereof; and it is hereby agreed in this lease shall be assigned as to a part or parts of the above described lands and the assignee or assignees of such part or parts shall (fail or make) the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it cov or parts of said lands which the said lease or any assignee thereof shall make due payment of said rent assignment of this lease, in whole or in part, shall as to the extent of such assignment relieve and discharge the lease of all obligations hereunder.

Compliance with any now or hereafter existing act, bill or statute purporting to be enacted by any Federal or State legislative authority, or with judgments, decrees, rules, regulations made or promulgated by State or Federal courts, State or Federal offices, boards, commissions or committees purporting to be made under authority of any such act, bill or statute, shall not constitute a violation of any of the terms of this lease or be considered a any clause, obligation, covenant, undertaking, condition or stipulation contained herein, nor shall it be or constitute a cause for the termination, reversal or revesting of any estate or interest herein and hereby created and set out, nor shall any such compliance confer any right of entry or be basis of any action for damages or suit for the forfeiture or cancellation hereof; and while any such purport to be in force and effect they shall, when with by lease or assigns, to the extent of such compliance operate as modifications of the terms and conditions of this lease where inconsistent ther

Lease may at any time surrender this lease, in whole or in part, by delivering or mailing a release to the lessor, or by placing a release of record proper county. In the event of a partial release, the annual delay rental above mentioned shall be reduced proportionately.

Lessor hereby releases and relinquishes any right of homestead, dower or courtesy they or either of them may have in or to the leased land.

Lessor hereby agrees to defend the title to the lands hereunder described, and agrees that the lease shall have the right at any time for lessor, by payment, any mortgage, taxes or other liens on the above described lands in the event of default of payment by lessor, and be subroge rights of the holder thereof.

This lease and all its terms, conditions and stipulations binds each executing lessor and shall extend to and be binding on his assigns, heirs and successors, and those of the lease, though unsigned by other lessors named herein.

Written consent will be obtained from surface owners before operations commenced on the described lands. Said consent will not be unreasonable withheld by surface owners.

IN WITNESS WHEREOF, We sign the day and year first above written.

(SEAL) Overthrust Oil & Gas Corporation
(SEAL) Ron K. Mitchell
(SEAL) By: Ron K. Mitchell
(SEAL) President

STATE OF _____ }
COUNTY OF _____ } SS. Arizona, Colorado, Idaho, Kansas, Montana
Nebraska, Nevada, New Mexico, North Dakota,
South Dakota, Utah, Wyoming
ACKNOWLEDGMENT — INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this _____

_____, 19____, personally appeared _____ and _____, to me known to be the identical persons

described in and who executed the within and foregoing instrument of writing and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires _____ Notary Public

STATE OF _____ }
COUNTY OF _____ } SS. Arizona, Colorado, Idaho, Kansas, Montana
Nebraska, Nevada, New Mexico, North Dakota,
South Dakota, Utah, Wyoming
ACKNOWLEDGMENT — INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this _____

_____, 19____, personally appeared _____ and _____, to me known to be the identical persons

described in and who executed the within and foregoing instrument of writing and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires _____ Notary Public

State of UTAH }
County of Salt Lake } SS. ACKNOWLEDGMENT (For use by Corporation)

On this 10th day of October, A. D. 1983, before me personally appeared Ron K. Mitchell, to me personally known, who, by me duly sworn, did say that he is the President of Overthrust Oil & Gas Corporation

and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, a Ron K. Mitchell acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal this 10th day of October, A. D. 1983
(SEAL) CAROL McCLELLAN
Notary Public

My Commission expires 11/5/86

This instrument was filed for record on the _____ day of _____, 19____ at _____ o'clock _____ M., and duly recorded in Volume _____ Page _____ of the records of this office.

When recorded return to _____

By _____ Depute

OIL AND GAS LEASE

LACER, WOODS

AGREEMENT, Made and entered into this 10th day of October, 1983
by and between Overthrust Oil & Gas Corporation
5225 Wiley Post Way, Suite 290, Salt Lake City, Utah 84116

CONOCO, INC., Box 1267, Ponca City, OK 74603, A Delaware CO., hereinafter called lessor (whether one or more) and hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of ten and more Dollars (\$10.00-)

cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of lessee to be paid, kept and performed, has granted, demised, leased, and let and by these presents does grant, demise, lease and let unto the said lessee, its successors and assigns for the sole and only purposes of surveying by geological, geophysical and all other methods, mining and operating for oil and gas, and laying pipe lines, and building tanks, power stations and structures thereon to produce, save and take care of said production,

all that certain tract of land, together with any reversionary rights therein, situate in the County of Summit Utah
State of Utah, described as follows, to wit:

TOWNSHIP 1 SOUTH, RANGE 4 EAST SLM
Section 24: S/2SW/4

TOWNSHIP 1 SOUTH, RANGE 5 EAST, SLM
Section 30: Lots 1, 2, 3 NE/4NW/4, NE/4

and containing 400.74 acres, more or less.
It is agreed that this lease shall remain in force for a term of FOUR years from date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee, its successors and assigns.

In consideration of the premises the said lessee covenants and agrees:

One Sixth (1/6)

First. The lessee shall deliver to the credit of lessor as royalty, free of cost in the pipe line to which lessee may connect its wells, the equal 1/6 ~~one-sixth~~ part of all oil produced and saved from the leased premises, or, at lessee's option, may buy or sell such ~~one-sixth~~ royalty and pay lessor the market price for oil of like grade and gravity prevailing in the field on the day such oil is run into pipe lines or into storage tanks.

1/6 Second. To pay lessor ~~one-sixth~~ (1/6) of the proceeds received for gas sold from each well where gas only is found, or the market value at the well of such gas used off the premises, and lessor to have gas free of cost from any well for all stoves and all inside lights in the principal dwelling house on such land during the same time by making his own connections with the well at his own risk and expense.

1/6 Third. To pay lessor ~~one-sixth~~ (1/6) of the market value at the well for gas produced from any oil well and used off the premises, or for the manufacture of casing-head gasoline or dry commercial gas.

If no well be commenced on said land on or before the 10th day of October, 1984, this lease shall terminate as to both parties, unless the lessee on or before that date shall pay or tender to the lessor or to the lessor's credit in the

ZIONS FIRST NATIONAL

Bank at 135 East 6100 South, SLC, Utah

or its successor or successors, or any bank with which it may be merged, or consolidated, or which succeeds to its business or assets or any part thereof, by purchase or otherwise, which shall continue as the depository regardless of changes in the ownership of the said land, the sum of

FOUR HUNDRED AND 74/100 DOLLARS.

which shall operate as a rental and cover the privilege of commencing a well for twelve months from said date. In like manner and upon like payments or tenders the commencement of a well may be further deferred for like periods of the same number of months successively. And it is understood and agreed that the consideration first recited herein, the down payment, covers not only the privileges granted to the date when said first rental is payable as aforesaid, but also the lessee's option of extending that period as aforesaid, and any and all other rights conferred. Rentals may be paid by check or draft and may be remitted by mail. Mailing of rental on or before the rental-paying date shall be deemed a timely tender thereof and shall preclude termination of this lease. Notwithstanding the death of the lessor, or his successor in interest, the payment or tender of rentals in the manner provided above shall be binding on the heirs, devisees, executors and administrators of such person.

Should any well drilled on the land above described be a dry hole or cease to produce and there are no other producing well or wells on the land or drilling operations are not being conducted thereon, then and in that event if a well is not commenced before the next ensuing rental-paying date after the expiration of ninety (90) days from the date of such dry hole or cessation of production, this lease shall terminate as to both parties unless the lessee, on or before the rental-paying date next ensuing after the expiration of ninety (90) days from the date of the completion of the dry hole or cessation of production, shall resume the payment of rentals in the same amount and in the same manner as hereinbefore provided, and if it agreed upon resumption of the payment of rentals, as above provided, the last preceding paragraph hereof, governing the payment of rentals and the effect thereof, shall continue in force as though there had been no interruption in the rental payment. If a dry hole should be drilled or if production ceases at any time subsequent to ninety (90) days prior to the beginning of the last year of the primary term, no rental payment or operations are necessary in order to keep the lease in force during the remainder of the primary term.

If at any time, either before or after the expiration of the primary term of this lease, there is any gas well on the lands covered hereby, or on other lands with which said lands are pooled or unitized, which is capable of producing in paying quantities, but which is shut-in either before or after production therefrom, and the production therefrom is not being sold or used, lessee agrees to pay or tender to the mineral owners in the depository bank named in the lease, as royalty, a sum equal to the amount of delay rentals payable under this lease. Such payments shall be made on or before the shut-in royalty payment date, as herein defined, next accruing after the expiration of ninety (90) days from the date the well was shut-in, unless prior to such date gas from the well is produced and sold or used. In like manner, on or before each succeeding shut-in royalty payment date while such gas well remains shut-in, lessee shall make payment of shut-in gas royalty in the same amount and manner. A shut-in gas well capable of producing in paying quantities shall be considered under all provisions of this lease as a producing well and this lease shall be in force and effect in like manner as though the gas therefrom were actually being produced and sold or used. The term "gas well" shall include wells capable of producing natural gas, condensate, distillate, or any gaseous substance, and wells classified as gas wells by any governmental authority. The term "shut-in royalty payment date" shall mean any rental-paying date of this lease if within the primary term, or any subsequent anniversary thereof, if after the primary term, or any anniversary date of this lease if no rental-paying date is specified herein.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rental herein provided shall be paid the lessor only in the proportion which his interest bears to the whole and undivided fee. However, such rentals shall be increased at the next succeeding rental anniversary after lessee has been notified of any reversion having occurred to cover the interest so acquired.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells and reservoirs of lessor. Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

Lessee shall pay for damages caused by its operations ~~including~~ ^{including} on said lands. When requested by the lessor, lessee shall bury his pipe line below plow depth. No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall have the right to drill to completion with reasonable diligence and dispatch (1) any well commenced within the term of this lease and (2) any well commenced before the completion of a well which has been commenced within such term. If oil and gas or either of them be found in paying quantities in any such well, this lease shall continue and be in force with like effect as if such well had been completed within the term of year herein first mentioned. same section

Lessee is hereby granted the right and power to pool or combine the acreage covered by this lease, or any portion thereof, with other land, less or leases in the vicinity thereof at any time and from time to time, whether before or after production, when in Lessee's judgment it is necessary or advisable to do so for the prevention of waste and the conservation and greatest ultimate recovery of oil or gas. Such pooling shall be into a unit or units exceeding in area the acreage prescribed or required in any Federal or State law, order, rule or regulation for the drilling or operation of one well, or obtaining the maximum allowable production from one well, or 40 acres each for the production of oil, or 640 acres each for the production of gas whichever is the larger, plus a tolerance over the maximum area of 40 acres for the production of oil or 640 acres for the production of gas to include additional acreage in any irregular governmental subdivision or lot or portion thereof. Such pooling shall be effected by Lessee's executing and filing in the office where this lease is recorded an instrument identifying and describing the pooled acreage. The production of pooled substances and development and operation on any portion of a unit so pooled, including the commencement, drilling, completion and operation of a well thereon, shall be deemed and construed, and shall have the same effect, as the production, development and operation of a well thereon, on the land

If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall be their heirs, executors, administrators, successors or assigns, but no change in the ownership of the land or assignment of rentals or royalties shall be on the lease until after the lease has been furnished with a written transfer or assignment or a certified copy thereof; and it is hereby agreed in this lease shall be assigned as to a part or parts of the above described lands and the assignee or assignees of such part or parts shall fail or make the payment of the proportionate part of the rents due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers or parts of said lands which the said lease or any assignee thereof shall make due payment of said rents assignment of this lease, in whole or in part, shall as to the extent of such assignment relieve and discharge the lease of all obligations hereunder.

Compliance with any now or hereafter existing act, bill or statute purporting to be enacted by any Federal or State legislative authority, or with judgments, decrees, rules, regulations made or promulgated by State or Federal courts, State or Federal offices, boards, commissions or committees purporting to be made under authority of any such act, bill or statute, shall not constitute a violation of any of the terms of this lease or be considered a breach of any clause, obligation, covenant, undertaking, condition or stipulation contained herein, nor shall it be or constitute a cause for the termination, forfeiture or revocation of any estate or interest herein and hereby created and set out, nor shall any such compliance confer any right of entry or be basis of any action for damages or suit for the forfeiture or cancellation hereof; and while any such purpose to be in force and effect they shall, when with by lease or assigns, to the extent of such compliance operate as modifications of the terms and conditions of this lease where inconsistent therewith.

Lease may at any time surrender this lease, in whole or in part, by delivering or mailing a release to the lessor, or by placing a release of record proper county. In the event of a partial release, the annual delay rental above mentioned shall be reduced proportionately.

Lessor hereby releases and relinquishes any right of homestead, dower or courtesy they or either of them may have in or to the leased land.

Lessor hereby releases and relinquishes any right of homestead, dower or courtesy they or either of them may have in or to the leased land. Lessor hereby releases and relinquishes any right of homestead, dower or courtesy they or either of them may have in or to the leased land. Lessor hereby releases and relinquishes any right of homestead, dower or courtesy they or either of them may have in or to the leased land. Lessor hereby releases and relinquishes any right of homestead, dower or courtesy they or either of them may have in or to the leased land.

IN WITNESS WHEREOF, We sign the day and year first above written.

(SEAL) Overthrust Oil & Gas Corporation
(SEAL) By: Ron K. Mitchell
(SEAL) President

STATE OF _____ } SS.
COUNTY OF _____ }
Arizona, Colorado, Idaho, Kansas, Montana
Nebraska, Nevada, New Mexico, North Dakota,
South Dakota, Utah, Wyoming
ACKNOWLEDGMENT — INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this _____

19_____, personally appeared _____

and _____, to me known to be the identical person

described in and who executed the within and foregoing instrument of writing and acknowledged to me that _____

executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires _____ Notary Public

STATE OF _____ } SS.
COUNTY OF _____ }
Arizona, Colorado, Idaho, Kansas, Montana
Nebraska, Nevada, New Mexico, North Dakota,
South Dakota, Utah, Wyoming
ACKNOWLEDGMENT — INDIVIDUAL

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this _____

19_____, personally appeared _____

and _____, to me known to be the identical person

described in and who executed the within and foregoing instrument of writing and acknowledged to me that _____

executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires _____ Notary Public

State of UTAH }
County of Salt Lake } SS.
ACKNOWLEDGMENT (For use by Corporation)

On this 10th day of October, A. D. 1983, before me personally appeared _____

_____ Ron K. Mitchell _____ to me personally known, who, being

me duly sworn, did say that he is the President of Overthrust Oil & Gas Corporation

_____ and that the seal affixed to said instrument is the corporate seal of said corporation

and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, as

_____ Ron K. Mitchell _____ acknowledged said instrument to be the free act and deed of said corporation.

Witness my hand and seal this 10th day of October, A. D. 1983.

(SEAL) _____ Notary Public.

My Commission expires 11/5/86

This instrument was filed for record on the _____

day of _____ 19_____, at _____

_____ o'clock _____ M., and duly recorded in

Volume _____ Page _____

_____ of the records of this office.

By _____

When recorded return to _____

CALLISTER, DUNCAN & NEBEKER
PAUL R. INCE (A4345)
Suite 800 - Kennecott Building
Salt Lake City, Utah 84133
Telephone: (801) 530-7300

Attorneys for Zions First National Bank



75 w
7819

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

ZIONS FIRST NATIONAL BANK,)
a National Association,)
Plaintiff,)
vs.)
FIRST SECURITY FINANCIAL, a)
Utah corporation,)
Defendant.)

COMPLAINT

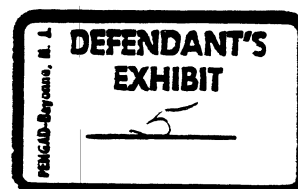
Civil No. C 87-1578

Honorable Judge J. J. [illegible]

* * * * *

Plaintiff Zions First National Bank ("Zions"), for causes of action against defendant First Security Financial ("FSF"), alleges as follows:

1. Zions is a national association with its principal place of business located at One South Main, Salt Lake City, Utah.



2. FSF is a Utah corporation with its principal place of business located at 135 South Main, Salt Lake City, Utah.

3. On or about December 10, 1982, FSF entered into that certain Asset Purchase Agreement (the "Asset Purchase Agreement") among FSF, Capitol Thrift and Loan Company, a Utah corporation ("Capitol"), Richard A Christensen, an individual ("Christensen"), and Bruce L. Moesser, an individual ("Moesser"). A true and correct copy of the Asset Purchase Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

4. On or about December 13, 1982, FSF, Capitol, Christensen and Moesser entered into that certain Closing Agreement dated December 13, 1982 (the "Closing Agreement"), a true and correct copy of which is attached hereto as Exhibit "B" and incorporated herein by reference.

5. Pursuant to the terms of the Asset Purchase Agreement, as modified by the Closing Agreement (collectively the "Purchase Agreement"), FSF purchased certain assets and assumed certain liabilities of Capitol.

6. The purchase price for the assets transferred to FSF pursuant to the Purchase Agreement was \$1,207,777.42, of which \$200,000.00 allegedly was paid to Capitol by FSF on December 13, 1982. The balance of \$1,007,777.42 was to be paid to Capitol by FSF on December 13, 1985.

7. Interest on the deferred portion of the purchase price was to accrue interest at an annual rate of ten percent (10%) and to be paid in quarterly installments, with the first such interest installment due March 13, 1983.

8. On or about September 28, 1984, Capitol executed and delivered to Zions that certain promissory note in the original principal sum of \$1,000,000.00, together with interest to accrue at an annual rate of two and one-half percent (2.5%) above Zions' base rate (the "Capitol Note"). A true and correct copy of the Capitol Note is attached hereto as Exhibit "C" and incorporated herein by reference.

9. As security for payment of the Capitol Note and pursuant to that certain Assignment and Security Agreement dated September 28, 1984 executed by Capitol in favor of Zions (the "Assignment"), Capitol assigned to Zions, and granted Zions a security interest in, all amounts owing to Capitol and

all rights of Capitol to receive payment from FSF pursuant to the Purchase Agreement. A true and correct copy of the Assignment is attached hereto as Exhibit "D" and incorporated herein by reference.

10. Pursuant to both the Assignment and that certain UCC-financing statement no. 988897 filed with the State of Utah on October 1, 1984 (the "UCC-1"), Zions has a valid, properly perfected and enforceable security interest in both the amount owing to Capitol and Capitol's right to receive payments under the Purchase Agreement. A true and correct copy of the UCC-1 is attached hereto as Exhibit "E" and incorporated herein by reference.

11. FSF had actual knowledge of the Assignment pursuant to the following:

(a) Notice of the Assignment was sent to FSF on or about September 28, 1984 (the "Notice"). A true and correct copy of the Notice is attached hereto as Exhibit "F" and incorporated herein by reference;

(b) Christensen, who executed the Assignment as president of Capitol, was president of FSF at the time Christensen executed the Assignment.

12. Capitol has defaulted on the Capitol Note by failing to pay both interest and principal in accordance with the terms and conditions of the Capitol Note.

13. Demand has been made by Zions upon FSF for payment to Zions of the amounts due and owing under the Purchase Agreement and such demand has been refused.

14. Zions is informed and believes, and on the basis of said information and belief alleges, that there is a balance owing to Capitol by FSF under the Purchase Agreement.

15. Pursuant to the Assignment, Zions is entitled to all amounts owing to Capitol by FSF under the Purchase Agreement.

WHEREFORE, Zions prays for judgment against FSF as follows:

1. A determination by the Court of the amounts due and owing to Capitol by FSF under the Purchase Agreement;

2. An order requiring FSF to pay to Zions the amount owing by FSF to Capitol under the Purchase Agreement;

3. Reasonable attorney's fees and costs incurred herein;
and

4. Such other and further relief as the Court deems
equitable and just.

Dated the 3rd day of March, 1987.

CALLISTER, DUNCAN & NEBEKER

By Paul R. Ince
Paul R. Ince
Attorneys for Zions First
National Bank

CDN17091

THIS IS A TRUE COPY OF THE
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH.

DATE: August 30, 1988

Deputy Court Clerk
DEPUTY COURT CLERK

12

STOCK PURCHASE AGREEMENT

This Agreement is made and entered into this 30th day of June, 1984, by, between and among RICHARD A. CHRISTENSON, a resident of Salt Lake City, Utah (hereinafter referred to as the "Seller"), and LEO M. BERTAGNOLE, JR., HAROLD W. BERTAGNOLE, JAY R. BERTAGNOLE, GENE L. BERTAGNOLE, MYRTLE B. JENSEN, EMANUEL A. FLOOR, and RON K. MITCHELL (hereinafter individually referred to as the "Buyer" and collectively as "Buyers").

RECITALS:

A. The Seller owns 2,500 shares of the 10,000 issued and outstanding shares of common stock of KIMBALL ASSOCIATES, INC., a Utah corporation, (hereinafter referred to as "KIMBALL").

B. The ~~Seller is indebted to First National Bank in the amount of approximately Eight Hundred Seventy Thousand Dollars (\$870,000.00) (the "Zions Debt"), pursuant to the terms of an open line of credit established in the name of Richard A. Christenson and guaranteed by Capitol Utility and Loan, also known as The Capitol Company, and the Seller desires to be released from his obligation to repay a portion of the Zions Debt in exchange for the transfer of his stock in KIMBALL to the Buyers. The Buyers are willing to assume a portion of the Zions Debt of the Seller in exchange for the Seller's stock in KIMBALL.~~

C. The Seller desires to sell, and the Buyers desire to purchase, all of the shares of the common stock of KIMBALL currently owned by Seller, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

PURCHASE AND TRANSFER OF THE SHARES

Section 1.01. Sale and Transfer of the Shares. In reliance upon the representations and warranties set forth herein and subject to the terms and conditions set forth in this Agreement, on the Closing Date (as hereinafter defined),

binding unless executed in writing by the party making such waiver.

Section 8.12. Number and Gender. Unless the context requires otherwise, as used herein the singular shall include the plural and singular and each gender shall include both other genders.

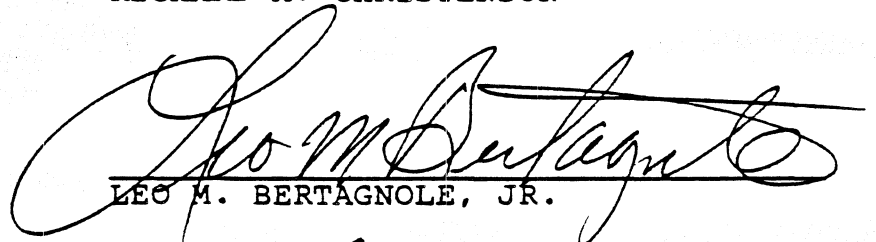
Section 8.13. Restrictive Endorsement. After execution of this Agreement, and until Closing, the certificate representing the Shares shall be endorsed with language reciting that the ownership and transfer of the Shares is subject to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.


SELLER:

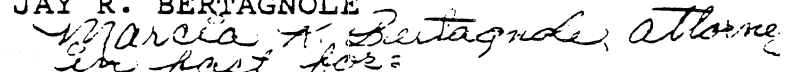
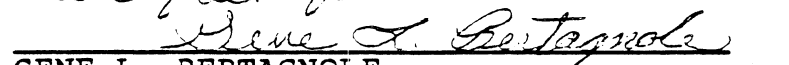

RICHARD A. CHRISTENSON


BUYERS:

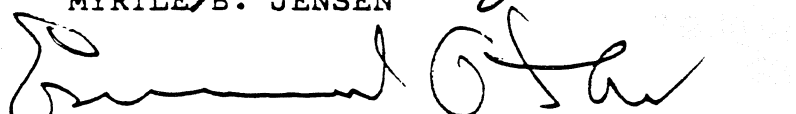

LEO M. BERTAGNOLE, JR.

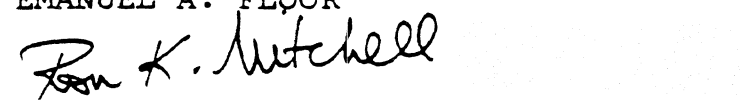

HAROLD W. BERTAGNOLE


JAY R. BERTAGNOLE



GENE L. BERTAGNOLE


MYRTLE B. JENSEN


EMANUEL A. FLOOR


RON K. MITCHELL

**DEFENDANT'S
EXHIBIT**

13

RICHARD A. CHRISTENSON

(A) ORION BANK,
BANK OF UTAH

(B) CASH FLOW - 1

January 16, 1984

Manny Floor & Ron Mitchell
c/o Bertagnole Properties
5225 Wiley Post Way #290
Salt Lake City, Utah 84116

Dear Manny & Ron:

I would like to present a plan that would allow you to acquire the 49 year old Capitol Thrift and Loan (now known as The Capitol Company). I agreed not to be in the thrift and loan business in competition with First Security when I assumed the Presidency of First Security Financial last year. They have been most gracious in allowing me to do my tax planning as I've phased out my various business activities.

Capitol has had an excellent reputation in the community and has some unusual attributes that should make it a profitable acquisition for you. The following are some of these things:

1. The ability to offer checking privileges to customers on a draft type basis. The only difference between this type of a checking account and normal bank type checks is that the clearing process must be handled by another bank on a draft basis. Customers of Foothill Thrift comment that they don't know the difference between their Foothill Thrift checks and those of any other institution.
2. The ability to offer IRA, KEOGH and NOW accounts just like any bank or savings and loan association.
3. The authorization to take in deposits on a ratio of up to \$10 from the public for every liquid dollar of capital you have in the business. New companies must start at a 5 to 1 ratio and earn the higher ratio over a period of time by performance and profitability.

we get all cash flow

from KUBALL / Public with v

we get cash flow (1st sec note)

we grow

we take capital 169

- can it be returned?
4. To receive direct deposit of Social Security, Veterans Administration, and other government checks directly into the savings accounts of depositors.
 5. A license located at 2nd South and Main Street in the heart of Salt Lake's Financial Center.
 6. Attractive offices and a favorable lease that can either be assumed in total for its remaining term or to sublet the space all or in part to existing temporary tenants.

In all of its 49 year history Capitol has been profitable every single operating year. We have certified audits to verify the performance and capability of the company. Although you will not be buying loans or savings accounts, you will be buying the Capitol name and location. This location has had a following for many years and has proven itself as the audits will show.

IC gets
done

I am desirous of structuring this deal to minimize my taxes. For this reason I would not want to take cash but want to deal with an entity that is creative and will accomodate my needs. With this in mind I would like to propose the following scenario. I would sell my interest in the Capitol Company for the amount of the contract I have with First Security Bank, which is \$1,007,777.42, plus a 10% premium.

I have an \$870,000 loan with Zion's Bank which Capitol has signed on as a guarantor. I would want this obligation assumed or refinanced by you so that I would have no further responsibility. The balance of \$287,777.42 could be payable together with buyout of my interest in Bertagnole Properties, which I'll discuss after giving you some detail on the First Security contract.

The \$1,007,777.42 First Security contract receivable bears interest at 10% and is payable quarterly with the next payment due March 17, 1984, and is paid in full December 17, 1985. This contract calls for any accounts that are classified as "doubtful" or "loss" by the Utah State Department of Financial Institutions to be charged to the Reserve for Loss account that was transferred to First Security along with our loans and real estate owned. At the time of purchase these receivables and real estate owned amounted to \$8,303,757.13 with a reserve of \$234,849.31. Currently the total receivable and real estate owned amount to approximately \$3,300,000 and the reserve account to approximately \$152,000. Almost 95% of the Capitol accounts are real

Mr. Floor & Mr. Mitchell

January 17, 1984

Page Three

estate secured so in the unlikely event that the nonre-fundable reserve was eaten up, that portion of the contract would be paid back in real estate or mortgages backed by the real estate instead of cash.

As we discussed over lunch with Manny several weeks ago, I would also like to propose a long-term "no lose" type buyout of my interest in Bertagnole Properties. If the acquisition of the Capitol Company and my interest in Bertagnole Properties could be combined, a number of things would be beneficially addressed such as:

1. You would have total control of the now proven Kimball Project.
2. You would have your own financial institution with all the flexibility this would provide:
 - a. Direct Deposit Savings
 - b. NOW Accounts
 - c. Mortgage banking and brokering.
 - d. Servicing income on contracts, etc., placed with other institutions.
3. The ability to "synergize" the East Canyon Resort project with a wholly owned Kimball-Park City project and not be concerned about conflicts with a non-family outside owner.

My proposal is simple and straightforward as the following schedule indicates:

Price:

My interest in Bertagnole Properties	\$3,750,000
My interest in Capitol Company	<u>1,100,000</u> ✓
	\$4,850,000
Less assumption of Zions Bank line	<u>870,000</u> ✓
	\$3,980,000

let get Mr. P. McC

Mr. Floor & Mr. Mitchell
January 17, 1984
Page Four

Terms:

\$3,980,000 to be paid without interest on the following schedule:

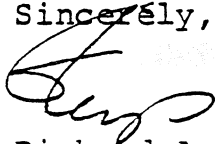
January 15, 1985	\$110,000
January 15, 1986	\$120,000
January 15, 1987	\$140,000
January 15, 1988	\$160,000
January 15, 1989	\$180,000
January 15, 1990	\$200,000
January 15, 1991	\$250,000

1160

And \$250,000 per year plus an amount equal to the increase of the Consumer Price Index until paid. *from that Base.*

The reason I am structuring the deal this way is to create an option sale contract that will give me capital gains treatment on the \$3,980,000. I'm sure it doesn't matter to you but there is a considerable difference to me. Your comments would be appreciated.

Sincerely,



Richard A. Christenson

RAC:aw

3980.000
1100.000

2820.000
11 years

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR TOOELE COUNTY, STATE OF UTAH

* 3RD DISTRICT COURT

ZIONS FIRST NATIONAL BANK,
et al.,

Plaintiffs,

v.

OVERTHRUST OIL & GAS CORP.,
et al.,

Defendants.

Civil No. CV88-087

Transcript of:

MEMORANDUM DECISION

* * *

BEFORE THE HONORABLE HOMER F. WILKINSON, JUDGE

Salt Lake City, Utah

Thursday, September 7, 1989

APPEARANCES

For the Plaintiff:
Zions Bank

BRUCE J. NELSON
Attorney at Law
215 South State St., #700
Salt Lake City, Utah 84111

For the Defendant:
Overthrust Oil & Gas

LORIN N. PACE
Attorney at Law
136 E. South Temple, #1200
Salt Lake City, Utah 84111

For the Defendant:
Capitol Thrift and
Richard Christenson

R. STEPHEN MARSHALL
Attorney at Law
50 South Main St., #1600
Salt Lake City, Utah 84144

REPORTER: SUZANNE WARNICK, RPR, CSR
Official Court Reporter
240 East 400 South, #534
Salt Lake City, Utah 84111
801-535-5479

1 THURSDAY, SEPTEMBER 7, 1989; 8:50 A.M.

2 M E M O R A N D U M D E C I S I O N

3
4 (By telephone conference call with all parties.)

5 THE COURT: As I say, I am going to give you
6 the findings of facts, and one of you will be preparing
7 the findings of facts and conclusions of law in the
8 case.

9 The Court does find that the Agreement of
10 September 30, 1987 is a valid agreement. That the
11 agreement does give the plaintiff the right -- well, th
12 plaintiff, it would be their right to set it aside if
13 there is any failure in the terms of the agreement.
14 That the Overthrust matter would amount to a failure of
15 the agreement.

16 That plaintiffs are estopped from setting th
17 agreement aside based on the fact that approximately tw
18 years have elapsed and plaintiff has elected to treat i
19 as a valid agreement, and have in filing suit against
20 Overthrust and in filing suit against the receivables
21 and have not proceeded to give any notice as far as any
22 intent to set it aside.

23 That under the agreement Capitol Thrift and
24 Christenson were released or are released from
25 liability.

1 That Overthrust was not a party to the
2 agreement. That Woodhead, as president of Overthrust,
3 was involved in the negotiations of the agreement and
4 had full knowledge of it, of its contents and the
5 implications that would follow.

6 That Woodhead agreed to convey the Overthrust
7 property pursuant to the agreement. That he agreed to
8 get permission from the board of directors to convey the
9 property. Of course that was at a later date that he
10 agreed to do that. That Woodhead suggested a friendly
11 suit, the intent being that Overthrust would not contest
12 the suit. That Woodhead's actions were outside the
13 authority which he had as president of the corporation
14 and would not be binding on the corporation, Overthrust.

15 That the Overthrust mortgage was given by
16 Bertagnole, the owner of the property or majority
17 stockholder, and nobody has contested this mortgage.
18 That Overthrust through Bertagnole did receive benefit
19 from the mortgage. That Overthrust was not an
20 accommodation party as defined in the statutes.

21 That Bertagnole had an interest in the
22 Capitol Thrift who was the maker of the note. That
23 pursuant to this common interest of Bertagnole's, that
24 the holder, that's the plaintiff, could release the
25 mortgage -- that should be could release the maker,

1 Capitol Thrift, without releasing the mortgage of
2 Overthrust.

3 That even though Bertagnole had an interest
4 in both Capitol Thrift and Overthrust, they were two
5 separate entities. That Overthrust would have a right
6 of subrogation against Capitol Thrift. That Christenso
7 was a guarantor of the note, which means that if all
8 else failed, that he would be responsible. That the
9 plaintiffs in the agreement released Christenson. That
10 Overthrust would not have a right of subrogation agains
11 Christenson.

12 That the First Security receivables were
13 specifically given for security for the note, the loan
14 in question. That Section 35 in Summit County was
15 specifically given for security for the note or the loa
16 in question. That the other properties referred to as
17 the boot were intermingled with Bertagnole, with Capito
18 Thrift and with Christenson. And all were involved as
19 far as the notes, series of notes, between them and the
20 bank, the plaintiff.

21 That the plaintiff's cause of action for
22 foreclosure on the Overthrust property is granted, but
23 stayed pending Overthrust's receiveing credit for the
24 receivables for Section 35 and for an apportionate shar
25 of the boot. It had been argued one-fifth. I am sayin

1 that this should be determined as to what the overall
2 obligations are. And they should be given the share
3 that they are entitled to, taking into consideration the
4 size of their note, unless there are any of these boots
5 that were specifically given and tied to one of the
6 prior loans, prior notes. If that be the case where it
7 was specifically tied to that note, then of course it
8 would not be considered as what we refer to as the boot
9 and considered as far as apportioning the share.

10 I think that covers it. Any questions?

11 MR. NELSON: Your Honor, this is Bruce
12 Nelson. I presumed that you might have made a finding
13 as to the amount owing less the credit that you have
14 indicated that was testified to by Mr. Potts.

15 THE COURT: Yes, I did. I did not -- I'll
16 have to look back in my notes. I didn't know that was
17 really in question.

18 MR. NELSON: It wasn't. But I think you need
19 to make a finding as to any amount owing as to
20 foreclosure.

21 THE COURT: I agree with you, and I should
22 have done that. And the amount owing would have been
23 the amount of the loan plus any amount in the -- what
24 was the amount stated? I can't see it. Is there any
25 objection?

1 MR. NELSON: I don't have it in front of me,
2 but I think it was \$1,461,000 approximately.

3 THE COURT: That sounds reasonable. I could
4 find my notes.

5 MR. NELSON: I don't think any of us have any
6 question as to what was testified to.

7 MR. PACE: I remember Mr. Potts testifying to
8 it. It was somewhere in excess of \$1,450,000.

9 THE COURT: That's what I recall. But I have
10 it specifically in my notes if there is any question.
11 Otherwise, I am going to accept the figure that Bruce
12 has read.

13 MR. NELSON: That's fine, your Honor. This i
14 Bruce. The question regarding the stay, are you
15 indicating that foreclosure cannot proceed until the
16 lawsuit with First Security has been completed, or are
17 you saying we may foreclose now?

18 THE COURT: I don't want to hold you back fro
19 any rights that you have as far as the property. And
20 that question came in my mind as I was deciding the
21 case. And the question is, how are you going to
22 foreclose as far as the amount of the property without
23 knowing what you have the right to take?

24 MR. MARSHALL: Well, can I interrupt? This i
25 Steve Marshall. I am sort of not involved in this

1 particular issue, but one suggestion might be to go
2 ahead and foreclose now. And then if there is a
3 recovery on the First Security lawsuit which would give
4 an excess to Zions Bank, then maybe Zions could be
5 ordered to pay that over to Overthrust.

6 THE COURT: Well, I think that is a solution.
7 But I don't know if Lorin would object to that in that I
8 don't know if he wants to keep some of the property or
9 if they want to foreclose the property and settle it out
10 and take their money.

11 MR. PACE: Judge, I don't know exactly what
12 they ought to take with respect to all of this. I am
13 wondering if I could prompt the reporter, if she could
14 send this out and I receive a copy of the Memorandum
15 Decision. Then I suppose you were going to ask one of
16 us to draft these findings and conclusions.

17 THE COURT: Yes. I am going to ask Bruce
18 Nelson to do it.

19 MR. PACE: It's always appropriate for the
20 winner to do that.

21 MR. NELSON: I would be glad to do that, your
22 Honor.

23 MR. PACE: At any rate, it seems to me that
24 there may be some questions, Judge, that maybe all of us
25 would want to raise either prior to the drafting of

1 those items or after. For instance, I think the Court
2 indicated that we should receive credit on the note als
3 for Section 35. Section 35 was sold as a part of a
4 block of property. Nevertheless, I think we would be
5 entitled to credit against the note for that amount.

6 I think we also probably need to make
7 additional findings of fact and maybe an additional
8 evidentiary hearing to deal with the question of boot.
9 Because until we have a finite debt to work against, we
10 don't have a finite debt to foreclose against.

11 THE COURT: That's one of the reasons why I
12 said that the foreclosure was stayed pending. I don't
13 know.

14 MR. PACE: Maybe, Judge, we could get a copy
15 of our discussions from the reporter. And reporter, if
16 you are there. We could maybe then we could have
17 another conference with the Court.

18 THE COURT: That's fine. How about the other
19 two of you?

20 MR. MARSHALL: I have no problem.

21 MR. NELSON: This is Mr. Nelson. I have no
22 problem with that, your Honor. Perhaps after we review
23 that we could get together in conference, maybe in your
24 office, and discuss the best way to handle that.

25 MR. PACE: Thank you, Judge. I know this has

1 presented a number of problems, and I appreciate your
2 attention to it. I know it causes some concern, but
3 that's what judges are called upon to do.

4 THE COURT: It wasn't the easiest decision.
5 But like you say, that comes with the territory. I
6 assume you are ordering a copy of it, so I'll tell the
7 reporter.

8 MR. PACE: This is Lorin speaking. I presume
9 the others want copies.

10 MR. NELSON: Let's mail us all a copy. I
11 would be happy to pay.

12 MR. MARSHALL: Steve Marshall here. That's
13 the same for me.

14 THE COURT: That's what I'll say to the
15 reporter, that all three of you will split the cost. Is
16 that right?

17 MR. NELSON: Okay. Thank you very much, your
18 Honor.

19 MR. PACE: Thank you.

20 MR. MARSHALL: Thank you, Judge.

21 (This concludes this Memorandum Decision.)

22 * * *

23

24

25

C E R T I F I C A T E

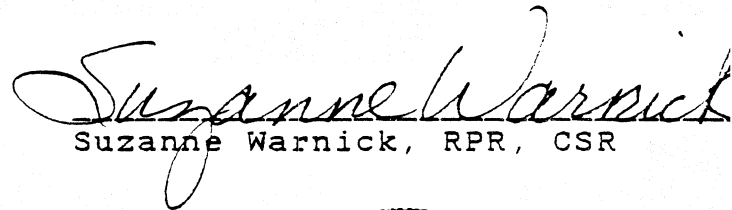
STATE OF UTAH)
:
COUNTY OF SALT LAKE)

I, SUZANNE WARNICK, RPR, CSR, do certify that
I am a Registered Professional Reporter and Certified
Shorthand Reporter and Notary Public in and for the
State of Utah.

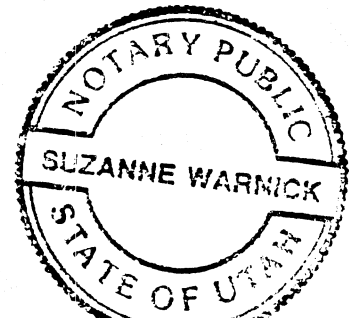
That at the time and place of the proceedings
in the foregoing matter, I appeared as the court
reporter in the Third Judicial District Court, Honorable
Judge Homer F. Wilkinson, and thereat reported in
stenotype all of the proceedings had therein;

That thereafter, my said shorthand notes of
the Judge's Memorandum Decision were transcribed by
computer into the foregoing pages; and that this
constitutes a full, true and correct transcript of the
same.

WITNESS MY HAND and official seal at Salt Lake
City, Utah, this 12th day of September, 1989.


Suzanne Warnick, RPR, CSR

My commission expires:
1 April 1991.



IN THE THIRD JUDICIAL DISTRICT COURT

9

TOOELE COUNTY, STATE OF UTAH

ZIONS FIRST NATIONAL BANK and)
4447 ASSOCIATES, a Utah General)
Partnership, by and through its)
General Partner, ROBERT D. KENT,)

Plaintiffs,)

vs.)

OVERTHRUST OIL & GAS CORPORATION)
a Utah Corporation; BERTAGNOLE)
INVESTMENT COMPANY LIMITED)
PARTNERSHIP, a Utah Limited)
Partnership; FAUST LAND, INC., a)
Utah Corporation; JOSEPH L. PENTZ;)
CAPITOL THRIFT & LOAN; RICHARD A.)
CHRISTENSON, JOHN DOES 1 thru 100)
and any and all persons who may)
claim any right, title or interest)
in and to the property which is)
the subject of this action,)

Defendants,)

OVERTHRUST OIL & GAS CORPORATION)
a Utah Corporation, and FAUST)
LAND, a Utah Corporation,)

Cross Claim Plaintiffs,)

vs.)

CAPITOL THRIFT & LOAN, a Utah)
Corporation, and RICHARD A.)
CHRISTENSON, an individual,)

Cross Claim Defendants.)

JUDGMENT AND DECREE
OF FORECLOSURE

H 3/4 24/1 7/6 13/2 19/6

Civil No. 88-087

The above-referenced matter came on for trial before the
Honorable Homer F. Wilkinson, Judge of the above-entitled Court,

on Thursday, August 31, 1989. Plaintiffs were represented by their counsel, Bruce J. Nelson, Esq., of the law firm of Allen Nelson Hardy & Evans. Defendants Overthrust Oil & Gas Company and Faust Land, Inc., were represented by their counsel, Lorin N. Pace, Esq. Defendants Capitol Thrift & Loan and Richard Christensen were represented by their counsel, R. Stephen Marshall, Esq., of the law firm of VanCott, Bagley, Cornwall & McCarthy. The Court, having listened to the evidence submitted at trial, having heard the testimony of witnesses and considered the exhibits offered into evidence, and the Court having considered the various stipulations of counsel, arguments presented at trial, and miscellaneous memoranda and briefs submitted concurrently therewith, and the Court having previously entered its Superseding Findings of Fact and Conclusions of Law and the Court being thereby fully advised in the premises, and good cause appearing:

IT IS HEREBY ORDERED, AJUDGED AND DECREED:

1. The real property located in Tooele County, Utah, more particularly described on the attached Exhibit "A", is security under a Trust Deed dated May 20, 1986, for an unpaid debt owed to the Plaintiffs in the amount of \$1,157,115.50 as of August 31, 1989, with interest accruing thereafter at the rate of 12% per annum, with a per diem of \$380.42. Such amount consists of unpaid principal, accrued interest, an attorneys fee of \$5,000.00, and a credit for payments applied to such loan in connection with a September 30, 1987, Settlement Agreement.

2. The foregoing described property, or such portion thereof as may be sufficient to pay the foregoing amounts and the accruing costs herein and expenses of sale, shall be sold at public auction by the Sheriff of Tooele County, State of Utah, in the manner prescribed by law for the foreclosure of mortgages. The Sheriff, out of the proceeds of such sale shall retain first his costs, disbursements, and commissions, and then pay to Plaintiffs, or to their attorneys, the accrued and accruing costs of this action, then the amount owing to Plaintiffs for principal, interest, and costs, or so much of such sums as such proceeds will pay, and the surplus, if any, shall be accounted for and paid over to the Clerk of this Court subject to this Court's further order.

3. The interest of all Defendants are subordinate to the interest of the Plaintiffs in the property subject to the Trust Deed.

4. All persons having an interest in the subject premises shall have the right, upon producing satisfactory proof of interest, to redeem the same within the time provided by law for such redemption. From and after the expiration of the period of redemption as provided by law, all Defendants and each of them, and all persons claiming by, through, or under them, and any other person or entity, shall be forever barred and foreclosed of all right, title, interest, and estate in and to the subject premises and from and after the delivery of the Sheriff's Deed to the subject premises, the grantee named therein shall be given possession thereof.

5. No deficiency judgment shall be hereafter awarded inasmuch as the obligors on the note have been released from liability or were otherwise discharged in bankruptcy.


6. Defendant Faust Land, Inc., as current owner of the property in Tooele, is entitled to possession of the subject premises and all rights pertaining thereto during the period of redemption as provided by law.

7. The Crossclaims of Defendants Overthrust and Faust Land, Inc., are hereby dismissed with prejudice and on the merits as to Defendant Richard A. Christenson.

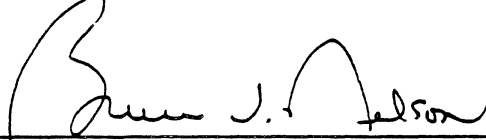
8. As between Defendants Overthrust and Christenson, each party shall bear their own costs and fees herein. The issue of fees of Defendants Overthrust and Faust against Capitol Thrift & Loan under any subrogation claim is reserved for future determination by the Court.

DATED this 30 day of March, 1990.

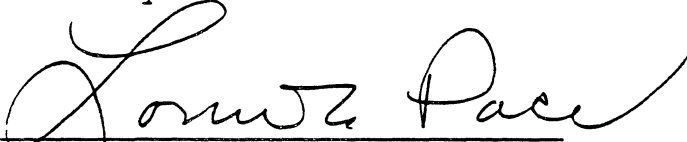
BY THE COURT:


Homer F. Wilkinson
District Court Judge

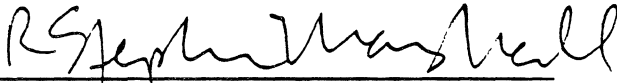
APPROVED AS TO FORM:



Bruce J. Nelson, Esq.
Attorney for Plaintiffs



Lorin N. Pace, Esq.
Attorney for Defendant Overthrust
and Faust Land, Inc.



R. Stephen Marshall, Esq.
Attorney for Defendants
Capitol Thrift & Loan and
Richard A. Christenson

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EXHIBIT "A"

PARCEL NO. 1:

Northwest 1/4 of the Northeast 1/4, Northwest 1/4, Lots 2 and 3, Section 27, Township 4 South, Range 5 West, Salt Lake Meridian, containing 249.86 acres;

The part of the Southeast 1/4 of Section 17, Township 4 South, Range 5 West, lying southerly of Division Line, containing 10 acres;

That part of Section 21, Township 4 South, Range 5 West, Salt Lake Meridian, lying southerly of Division Line, containing 480 acres;

North 1/2 of the Northeast 1/4, Southeast 1/4 of the Northeast 1/4, Section 29, Township 4 South, Range 5 West, Salt Lake Meridian, containing 120 acres;

That part of Section 22, Township 4 South, Range 5 West, lying southerly of Division Line, containing 619.16 acres.

North 1/2 of the Northwest 1/4, Northwest 1/4 of the Northeast 1/4, Section 23, Township 4 South, Range 5 West, Salt Lake Meridian, containing 120 acres;

That part of the South 1/2, Section 15, Township 4 South, Range 5 West, Salt Lake Meridian, lying south of Division Line, containing 58.80 acres;

North 1/2, Section 28, Township 4 South, Range 5 West, Salt Lake Meridian, containing 320 acres.

That part of the East 1/2, Section 20, Township 4 South, Range 5 West, Salt Lake Meridian, lying southerly of Division Line, containing 310 acres.

That part of the West 1/2 of the West 1/2, Section 14, Township 4 South, Range 5 West, Salt Lake Meridian, lying southerly from Division Line, less 15 acres to Ana Conda containing 45 acres.

Also that portion of the following described tracts lying Northerly from the Division Line particularly described as follows, and located in Township 4 South, Range 5 West, Salt Lake Meridian:

Beginning at the highest ridge line of the West Boundary of the Southwest 1/4 of the Southeast 1/4, Section 17 and running in a Southeasterly direction along said ridge line to a peak approximately in the center of Northeast 1/4 Section 21 which peak is shown on a map prepared by the U.S. Department of the Interior Geological Survey, covering Stockton, Utah, as being 6543 feet high

and running thence North 62°30' East 8976 feet, more or less, to a point on the East boundary of the West 1/2 of the West 1/2, Section 14 which final point is approximately on the East-West quarter section line.

PARCEL NO. 2:

North 1/2, Section 16, Township 4 South, Range 5 West, Salt Lake Meridian, containing 320 acres.

PARCEL NO. 3:

South 1/2, Section 35, Township 6 South, Range 5 West, Salt Lake Meridian, containing 320 acres.

PARCEL NO. 4:

East 1/2 of the West 1/2 of Section 15, Township 8 South, Range 6 West, Salt Lake Meridian, containing 160 acres.

PARCEL NO. 5:

East 1/2 of the Southwest 1/4, Northwest 1/4, Section 21, Township 8 South, Range 6 West, Salt Lake Meridian, containing 20 acres.

PARCEL NO. 6:

East 1/2 of the East 1/2, Section 9, Township 8 South, Range 6 West, Salt Lake Meridian, containing 160 acres.

PARCEL NO. 7:

East 1/2 of the West 1/2, Section 12, Township 8 South, Range 6 West, Salt Lake Meridian, containing 160 acres.

PARCEL NO. 8:

North 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 8, Township 6 South, Range 5 West, Salt Lake Meridian, containing 20 acres.

PARCEL NO. 9:

South 1/2, Section 36, Township 3 North, Range 11 West, Salt Lake Meridian, containing 320 acres.

IN THE THIRD JUDICIAL DISTRICT COURT

TOOELE COUNTY, STATE OF UTAH

ZIONS FIRST NATIONAL BANK and)
4447 ASSOCIATES, a Utah General)
Partnership, by and through its)
General Partner, ROBERT D. KENT,)
Plaintiffs,)

vs.)

OVERTHRUST OIL & GAS CORPORATION)
a Utah Corporation; BERTAGNOLE)
INVESTMENT COMPANY LIMITED)
PARTNERSHIP, a Utah Limited)
Partnership; FAUST LAND, INC., a)
Utah Corporation; JOSEPH L. PENTZ;)
CAPITOL THRIFT & LOAN; RICHARD A.)
CHRISTENSON, JOHN DOES 1 thru 100)
and any and all persons who may)
claim any right, title or interest)
in and to the property which is)
the subject of this action,)
Defendants,)

SUPERSEDING
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 88-087

OVERTHRUST OIL & GAS CORPORATION)
a Utah Corporation, and FAUST)
LAND, a Utah Corporation,)
Cross Claim Plaintiffs,)

vs.)

CAPITOL THRIFT & loan, a Utah)
Corporation, and RICHARD A.)
CHRISTENSON, an individual,)
Cross Claim Defendants.)

The above-referenced matter came on for trial before the
Honorable Homer F. Wilkinson, Judge of the above-entitled Court,

on Thursday, August 31, 1989. Plaintiffs were represented by their counsel, Bruce J. Nelson, Esq., of the law firm of Allen Nelson Hardy & Evans. Defendants Overthrust Oil & Gas Company and Faust Land, Inc., were represented by their counsel, Lorin N. Pace, Esq. Defendants Capitol Thrift & Loan and Richard Christenson were represented by their counsel, R. Stephen Marshall, Esq., of the law firm of VanCott, Bagley, Cornwall & McCarthy. The Court considered the evidence submitted at trial, heard the testimony of witnesses, considered the exhibits offered into evidence, considered the various stipulations of counsel, the arguments presented at trial, and miscellaneous memoranda and briefs submitted concurrently therewith.

Subsequent to trial held on August 31, 1989, this Court made previous Findings of Fact and Conclusions of Law which were executed by the Court on October 23, 1989. Such Findings of Fact and Conclusions of Law delayed for future determination the issue of the amount of "boot" to be credited to the Promissory Note which is the subject of this action. Pursuant to hearing on Monday, November 13, 1989, the Court considered such issue. At such hearing, the Plaintiffs were represented by their counsel Bruce J. Nelson, Esq. Defendants Overthrust Oil and Gas Corporation and Faust Land, Inc., were represented by their counsel Lorin N. Pace, Esq. The Court made certain rulings following the conclusion of counsels' argument at such hearing. Subsequently, counsel for the Plaintiff submitted proposed Supplemental Findings of Fact and Conclusions of Law to which objections were made by counsel for

Defendants Overthrust and Faust Land, Inc. A hearing on such objections was held by the Court on February 8, 1990. Bruce J. Nelson, Esq., was present representing the Plaintiffs. Lorin N. Pace, Esq., was present representing Defendants Overthrust and Faust Land, Inc. R. Stephen Marshall, Esq., was present representing Crossclaim Defendants Capitol Thrift & Loan and Richard A. Christenson. At such hearing, the Court considered the written objections and arguments of counsel, and the Court, having reviewed the pleadings, documents, and exhibits on file herein, made certain rulings relating to amendment of the original Findings of Fact and Conclusions of Law, the proposed Supplemental Findings of Fact and Conclusions of Law, and the written objections thereto.

Pursuant to such ruling, the Court now makes and enters the following Findings of Fact and Conclusions of Law which are intended to supersede any previous Findings and Conclusions previously executed by the Court or submitted by the parties for consideration by the Court.

FINDINGS OF FACT

1. In early 1983, Zions First National Bank advanced the first of a series of large loans, principally arranged through Defendant Richard A. Christenson and affiliates of Bertagnole Properties, a Utah partnership.

2. The first loan advanced by Plaintiff Zions First National Bank was made on March 13, 1983, in the amount of \$3,015,000.00 to Defendant Bertagnole Investment Company Limited Partnership, Defendant Richard A. Christenson, an entity known as Franklin

Financial, and a Utah limited partnership known as Bertagnole Properties.

3. The second loan advanced by Plaintiff Zions First National Bank was made on June 8, 1984, in the amount of \$1,389,418.76 to Defendant Bertagnole Investment Company Limited Partnership, and a Utah limited partnership known as Bertagnole Properties.

4. A third loan, which is the subject of this action, was made by Plaintiff Zions First National Bank on September 28, 1984, to Defendant Capitol Thrift & Loan Company in the amount of \$1,000,000.00 (hereinafter "note"). Such loan was a renewal of prior loans to Defendant Capitol. Such loan was guaranteed by Defendant Richard A. Christenson. The loan was subsequently secured by a Trust Deed dated May 26, 1986, on approximately 3,500 acres of undeveloped real property located in Tooele County, State of Utah (hereinafter "Tooele Property"). The loan was further secured by an interest in property known as the Section 35 Property located in Summit County, and also by a pledge of receivables formerly owed to Richard A. Christenson, Bruce L. Moesser and Capitol Thrift & Loan Company (hereinafter "First Security Bank receivables").

5. Neither Overthrust nor Faust Land, Inc., were makers on any of the notes to Plaintiff Zions.

6. As the time of such pledge of property, principals of Defendant Bertagnole Investment Company Limited Partnership controlled approximately 80% of Defendant Overthrust Oil & Gas

Company Stock. Owners of Defendant Overthrust Oil & Gas Company were substantially similar to owners of Defendant Bertagnole Investment Company Limited Partnership and Bertagnole Properties.

7. The Bertagnole partnerships and members of the Bertagnole family also held substantial interests in Defendant Capitol Thrift & Loan Company.

8. Each of the three above-described loans subsequently became in default.

9. 4447 Associates, a Utah partnership, has acquired a participation interest in and to Plaintiff Zions First National Bank's interest to such three Promissory Notes.

10. Subsequent to the execution of the above-described Trust Deed, Defendant Overthrust conveyed title to the Tooele Property to Defendant Faust Land, Inc. Defendant Faust is a wholly-owned subsidiary of Defendant Overthrust.

11. Subsequent to the default on the Notes, Plaintiffs Zions First National Bank and 4447 Associates engaged in extended settlement negotiations with the obligors on such Notes.

12. On September 30, 1987, following the settlement negotiations, the Plaintiffs and the obligors under the three Promissory Notes executed a Settlement Agreement. Such Agreement was executed between the Plaintiffs, Bertagnole Investment Company Limited Partnership, Bertagnole Properties, several individuals from the Bertagnole family, Emanuel A. Floor, and Richard A. Christenson. The Settlement Agreement contemplated the foreclosure of various parcels of property securing the three Notes, as well

as the payment of certain "boot" by the obligors under such Notes, all in exchange for a contemplated release of liability to the obligors on such Notes.

13. Defendants Overthrust and Faust Land, Inc., were not parties to the September 30, 1987, Settlement Agreement.

14. The following "boot" was given to Plaintiffs by one or more of the note obligors or guarantors at or about the time of the September 30, 1987, Settlement Agreement:

a. 10,000,000 shares of restricted stock in Defendant Overthrust Oil & Gas Company. The stock was subject to an option to repurchase for ten cents (10¢) per share before September 30, 1993;

b. Release of a \$40,000 First Trust Deed having priority to the interest of the Plaintiffs in Section 35 in Summit County;

c. Certain property to be contributed by Richard A. Christenson, known as the Deer Hollow Property, consisting of approximately 160 acres of undeveloped real property located in Morgan County, State of Utah;

d. A two-thirds interest in 10 acres of real property located in Davis county, State of Utah, known as the Redwood Road Property; and

e. Certain mineral rights associated with other Summit County property known as the North Park Property.

No attempt was made in the September 30, 1987, Settlement Agreement to allocate the boot specifically to any of the three delinquent

notes, but was intermingled and credited to the total value of all three notes.

15. George Woodhead served as President of Defendant Overthrust during the periods of time relevant to negotiations and execution of the Settlement Agreement. Mr. Woodhead was involved in the negotiations of the Agreement and had full knowledge of the terms and contents thereof. Mr. Woodhead also had knowledge of the implications which would follow the execution of the Settlement Agreement.

16. Subsequent to the execution of the Settlement Agreement but prior to the scheduled foreclosure sales contemplated therein, it was determined by the parties to such Agreement that the Tooele County Property, which is the subject of this lawsuit, could not be foreclosed in the Bankruptcy Court as contemplated under the Settlement Agreement.

17. After a discussion of options available to effectuate the intent of the Settlement Agreement without the contemplated bankruptcy sale of the Tooele County Property, George Woodhead, as President of Defendant Overthrust Oil & Gas Company, agreed to convey the Tooele County Property to the Plaintiffs pursuant to the Agreement. He agreed to get permission from the Board of Directors of Overthrust to convey the property. No deed was ever given.

18. Mr. Woodhead subsequently suggested to counsel for the Plaintiffs that the Plaintiffs should file a friendly foreclosure suit with the intent being that Defendant Overthrust would not contest the suit.

19. George Woodhead's actions, in indicating a deed would be executed or in suggesting a friendly foreclosure which would not be contested, were outside the authority which he had as president of the corporation and were not binding upon Defendants Overthrust and Faust Land, Inc.

20. The amount owing on the third Note referenced in paragraph 4 above, as of August 31, 1989, was the sum of \$1,461,226.70, without deduction for boot settlement amounts and unearned interest on amounts ruled by the Court to have been paid on September 30, 1987.

21. The fair market value of the Tooele Property, pursuant to testimony of George Woodhead, is \$410,000.00.

22. Plaintiffs have filed a lawsuit against First Security Bank to seek collection of the First Security Bank receivables but have not collected any funds from such suit. First Security Bank is contesting any liability in such action.

23. The interest pledged to the Plaintiffs in the Section 35 property had a value of \$79,200.00 at the time of the September 30, 1987, Settlement Agreement.

24. The Shirley Thorpe Trust Deed on the Section 35 property, which Trust Deed was released at or about the time of the September 30, 1987, Agreement, had a value to Plaintiff's interest in the amount of \$21,200.00.

25. Based upon testimony received at trial, the Court finds the value of the mineral rights in Summit County to have been the

sum of \$450,000.00, as of the date of the September 1987 Settlement Agreement.

26. The Court finds the value of the Deer Hollow Property to have been the sum of \$200,000.00 at or about the time of the September 30, 1987, Settlement Agreement.

27. The Court finds the value of the Redwood Road Property to have been the sum of 155,000.00 at or about the time of the September 30, 1987, Settlement Agreement.

28. Pursuant to testimony given at trial, the Court concludes that the value of the 10,000,000 shares of Overthrust Oil & Gas Company stock, as of the date of September 1987, was the sum of \$250,000.00.

29. Plaintiffs have been required to retain the services of legal counsel to foreclose the property which is the subject of this action.

From the foregoing findings of fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. The September 30, 1987, Settlement Agreement was and is a valid and binding agreement.

2. Failure of the Plaintiffs to be allowed to foreclose against the Tooele Property presently owned by Defendant Faust Land, Inc., would have constituted a failure of consideration of the September 30, 1987, Settlement Agreement.

3. The Plaintiffs would be estopped from setting aside the September 30, 1987, Settlement Agreement based on the fact that

approximately two years have elapsed since its execution, and the Plaintiffs have elected to treat it as a valid agreement, have filed the instant action of foreclosure and undertaken other action to collect receivables against First Security Bank, and have not given any notice to set aside such Agreement.

4. Under the terms of the Settlement Agreement of September 30, 1987, Defendants Capitol Thrift & Loan and Richard A. Christenson have been released from liability on the three loans of Zions First National Bank described in the above Findings of Fact in paragraphs 2, 3 and 4 thereof.

5. George Woodhead, as President of Defendant Overthrust, did not have authority to bind the Defendant Overthrust in connection with his agreements to convey title to the Tooele County Property to the Plaintiffs or to suggest an uncontested friendly foreclosure of such property. George Woodhead's actions after the September 30, 1987, Settlement Agreement were outside his authority as president of Overthrust and are not binding on the corporation.

6. The Trust Deed on the Tooele County Property, dated May 20, 1986, and recorded in the office of the Tooele County Recorder on May 21, 1986, is a valid and binding Trust Deed supported by adequate consideration of the September 28, 1984, loan by Plaintiff Zions First National Bank.

7. Defendant Overthrust received a benefit from the granting of the Trust Deed by virtue of the fact that the Bertagnole Partnerships and family members owned a majority of the stock of Defendant Overthrust.

8. Defendant Overthrust was not an accommodation party in connection with the third loan of September 28, 1984, as the term accommodation party is used in the statutes of the State of Utah.

9. The Tooele property Trust Deed should be foreclosed in the same manner as a mortgage to satisfy the unpaid obligations of the September 28, 1984 loan. The interests in the Tooele Property of all Defendants are subordinate to the Trust Deed interest of the Plaintiffs. There should be no right to a deficiency judgment against the Defendants following foreclosure of the Trust Deed.

10. The unpaid amount of the loan should be reduced by the value of the Section 35 property as set forth herein, the value of the Shirley Thorpe First Trust Deed on such property as set forth herein, as well as the value of any other "boot" received at the time of the Settlement Agreement.

11. The combination of the value of the Section 35 property (\$79,200.00) and the value of the released Shirley Thorpe Trust Deed (\$21,200.00), being a total of \$100,400.00, should be credited directly to the amount owing on the Promissory Note.

12. Inasmuch as the Settlement Agreement treated all "boot" received towards the three outstanding loans owed by people affiliated with the Bertagnole Family, it is impossible to determine with exactness what boot should be applied to which of the three loans. The Court determines that the parties must have intended a pro rata application of the boot. The obligation owing on the loan which is the subject of this lawsuit constituted 19.79% of the total obligation of all three loans. As a result, 19.79%

of the value of the remaining "boot" should also be applied to the amount owing on the Note which is the subject of this lawsuit.

13. The value of the remaining "boot" is:

a.	Summit County water and mineral rights	\$ 450,000.00
b.	Deer Hollow Property	200,000.00
c.	Redwood Road Property	155,000.00
d.	Overthrust Stock	<u>250,000.00</u>
	TOTAL	\$1,055,000.00

As a result, the sum of \$208,784.50, constituting 19.79% of the above total, should be credited to the amount owing on the Promissory Note which is the subject of this action.

14. In summary, the following amounts should be credited to the Promissory Note which is the subject of this action.

a.	Amount owing as of date of trial	\$1,461,000.00
b.	Less Section 35 and Shirley Thorpe credits	<u>[100,100.00]</u>
	SUBTOTAL	\$1,360,900.00
c.	Less pro rata credit from remaining "boot"	<u>[208,784.50]</u>
	TOTAL AMOUNT OWING (as of date of trial)	\$1,152,115.50

15. Interest on the foregoing amount should accrue at the judgment rate of 12% per annum from and after August 31, 1989.

16. In addition to the foregoing, the Plaintiffs should be required to give credit on the Note which is the subject of this action, any amounts received from the pending First Security Bank lawsuit. Plaintiffs should be required to pursue such lawsuit in

good faith and are entitled to pursue the same either through trial or settlement as they deem appropriate.

17. Release of the obligors' liability on the note did not satisfy the unpaid note, nor release the Trust Deed on the Tooele Property, because the September 30, 1987, Settlement Agreement clearly contemplated such result.

18. The action of filing the lawsuit by Plaintiffs to liquidate the First Security receivables has not extinguished the amount owing on the note.

19. Defendants Overthrust and Faust Land, Inc., have a right of subrogation against Capitol Thrift & Loan to the extent Defendant Overthrust has shown it would be damaged by the expected foreclosure as may be subsequently determined by the Court. Defendant Overthrust has no right of subrogation against Defendant Christenson. Defendant Overthrust's Crossclaim against Defendant Christenson should be dismissed. After completion of the foreclosure, Defendants Overthrust and Faust may petition this Court for an additional hearing on damages. Such Defendants' claim for attorneys fees may be determined and considered at such later hearing.

20. Bertagnole, Capitol Thrift & Loan, and Overthrust were all separate entities and were not agents of each other.

21. The foreclosure of the Tooele Property should not be delayed pending a completion of the lawsuit against First Security Bank.

22. This Court should enter a Decree of Foreclosure authorizing the Sheriff of Tooele County to proceed with a

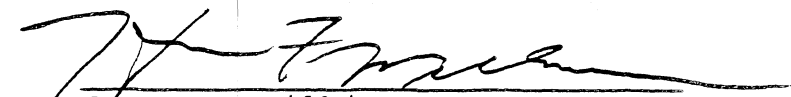
Sheriff's Sale, in accordance with the law and practice of this Court and the statutes of the State of Utah, of the real property located in Tooele County which is the subject of this action. Any amount received at the sale, or the amount of any final credit bid by the Plaintiffs, should reduce the amount owing on the Note as set forth in paragraph 4 above.

23. However, any monies received from the net receivables in the First Security Bank lawsuit (after crediting litigation costs, fees and expenses) should also be applied to any residual amount owing on the Note which is the subject of this action. In the event net receivables create a surplus over and above any remaining amount owing on the Note, the same shall be tendered into Court and any parties who may claim an interest in and to such surplus may seek appropriate legal relief to obtain any amounts to which they may be properly entitled.

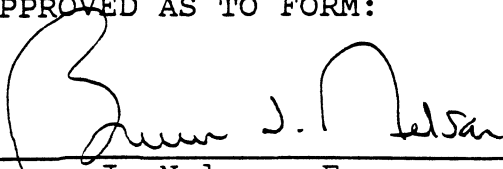
24. In addition to the amounts owing on the note as set forth above, Plaintiffs are entitled to an attorneys fee in this matter in the amount of \$5,000.00.

DATED this 30 day of March, 1990.


BY THE COURT:


Homer F. Wilkinson
District Court Judge

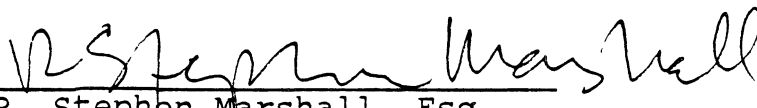
APPROVED AS TO FORM:



Bruce J. Nelson, Esq.
Attorney for Plaintiffs



Lorin N. Pace, Esq.
Attorney for Defendant Overthrust
and Faust Land, Inc.



R. Stephen Marshall, Esq.
Attorney for Defendants
Capitol Thrift & Loan and
Richard A. Christenson

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