

1994

# Max Greenhalgh v. Virginia Beach Federal Savings & Loan Association : Brief of Appellant

Utah Court of Appeals

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UTAH C

DOCKET NO. 940016

IN THE UTAH COURT OF APPEALS

MAX GREENHALGH, et al.,

Plaintiffs/Appellees,

vs.

VIRGINIA BEACH FEDERAL  
SAVINGS & LOAN ASSOCIATION,  
et al.,

Defendants/Appellants.

Case No. 940016-CA

Priority No. 15

BRIEF OF APPELLANTS  
VIRGINIA BEACH FEDERAL SAVINGS AND LOAN  
AND  
JEREMY SERVICE CORPORATION

APPEAL FROM ORDER OF PARTIAL SUMMARY JUDGMENT  
ENTERED IN THE THIRD JUDICIAL DISTRICT COURT  
FOR SALT LAKE COUNTY, STATE OF UTAH  
THE HONORABLE FRANK G. NOEL, PRESIDING

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**FILED**  
Utah Court of Appeals

MAR 23 1994

  
Mary T. Noonan

COMPLETE LIST OF PARTIES

Rule 24(a)(1) Utah Rules of Appellate Procedure, requires a "complete list of all parties" to the action below. There were 180 plaintiffs in the action below - their names are listed in Addendum A. The case has been settled as to 179 of the 180 plaintiffs. One plaintiff, Robert Warburton, remains. He is the appellee herein.

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### JURISDICTION

Jurisdiction is conferred on the Utah Court of Appeals pursuant to Utah Code Ann. §78-2a-3(2)(k). This case was transferred to the Court of Appeals by the Utah Supreme Court. Final judgment was entered on August 20, 1993, and defendants' Notice of Appeal was filed on September 7, 1993.

### ISSUE PRESENTED FOR REVIEW AND STANDARD OF REVIEW

The issue on appeal is whether the District Court correctly decided Cross-Motions for Partial Summary Judgment. The parties cross-moved on the issue of whether a form agreement, called a Lot Reservation Agreement, granted an easement. The Court ruled that the agreement did grant an easement. Accordingly, the District Court granted the plaintiffs' Motion for Partial Summary Judgment, and denied defendants' Motion for Partial Summary Judgment.

Entitlement to summary judgment is a question of law, and the appellate court gives no deference to the trial court's determination of the issues. State Farm Fire & Casualty Co. v. Geary, 230 U.A.R. 38 (Utah App. 1994).

### DETERMINATIVE AUTHORITIES

Utah Code Annotated §25-1-1:

No estate or interest in real  
property . . . shall be  
created, granted, assigned,  
surrendered, or declared

otherwise than by act or  
operation of law, or by deed  
or conveyance in writing  
subscribed by the party  
creating, granting, assigning,  
surrendering, or declaring the  
same . . . .

#### STATEMENT OF THE CASE

A. Nature of the Case - Plaintiffs claim they were granted easements to play dues-free golf in perpetuity at the Jeremy Ranch golf course, and that their easements survived defendant's foreclosure of the golf course.

B. Course of Proceedings - This action was begun in 1988, when plaintiffs sought to enjoin defendant Virginia Beach Federal Savings Bank's (hereafter "VBF") impending foreclosure of the Jeremy Ranch development (including the golf course). When injunctive relief was denied, VBF foreclosed. Both parties subsequently filed Motions for Partial Summary Judgment on the issue of whether the plaintiffs held easements in the golf course which survived VBF's foreclosure.

The cross-motions for partial summary judgment were decided in plaintiffs' favor in 1991. Other issues remained and went to trial in 1993. In late 1993, VBF settled with 179 of the 180 plaintiffs. Plaintiff Robert Warburton remains.

C. Disposition by District Court - The District Court granted plaintiffs' Motion for Partial Summary Judgment and denied VBF's Motion for Partial Summary Judgment, ruling that the sample Lot Reservation Agreement did grant an easement, and that such easement survived the foreclosure. The ruling is reflected in a Memorandum Decision (Addendum B) and the formal Order of Partial Summary Judgment (Addendum C).

A later ruling by the Court (in response to VBF's Motion to Define Scope of Partial Summary Judgment) clarified that the Order of Partial Summary Judgment did not decide whether individual plaintiffs held easements. Rather, the Order of Partial Summary Judgment only decided that a form agreement (entitled "Lot Reservation Agreement") did grant an easement. The question remained as to which of the 180 plaintiffs could prove they were parties to such an agreement. However, there is no issue on this appeal as to whether plaintiff Warburton was party to such an agreement. He was. The issue is whether that form agreement grants an easement.

Before trial, VBF moved for reconsideration of the Court's ruling on the Cross-Motions for Partial Summary Judgment (R. 2581), arguing that fact issues over notice precluded Partial Summary Judgment and that the Court erred

in considering extrinsic evidence. VBF's Motion for Reconsideration was denied.

After trial, Judgment and Findings were entered which incorporated the earlier Order of Partial Summary Judgment (Addendum C).

#### RELEVANT FACTS

While this case generated a voluminous file and a lengthy trial, the facts material to this appeal are narrow. VBF will attempt to present only the facts relevant to the issue on appeal: Whether the cross-motions for partial summary judgment were correctly decided.

In the late 1970's, Gerald Bagley began developing the Jeremy Ranch, a large residential development in Summit County. The developer and owner of the Jeremy Ranch was The Jeremy Ltd., of which Bagley was the sole general partner (R. 415, ¶ 4).

During the development of the Jeremy Ranch, in about 1980, Bagley began using a form agreement entitled "Lot Reservation Agreement" (hereafter "LRA") (R. 416, ¶ 6). A sample LRA appears as Addendum D. While the LRA speaks for itself, its terms can be fairly summarized as follows: The LRA was an agreement whereby a purchaser reserved a building lot at the Jeremy Ranch in exchange for a down

payment (§ 1, LRA). A "club membership" in the Jeremy Ranch Country Club was included with the purchase (§ 2, LRA).

In 1982, The Jeremy Ltd. needed additional financing to continue developing the Jeremy Ranch. Bagley began negotiating with a loan broker (R. 417, § 9, R. 626, § 1). A \$12.5 million dollar development loan was ultimately arranged with a coalition of lenders, with VBF as the lead lender. This participation loan closed in November 1982 (R. 626-7, § 3-4). The loan was secured by a first Trust Deed on the whole Jeremy Ranch development, including the golf course (R. 627-8, § 4-5). VBF's Trust Deed was recorded on December 6, 1982 (R. 628, § 6). Another loan document was an "Assignment of Lot Reservation Agreements" whereby The Jeremy Ltd. pledged as additional collateral its interest in the LRA's (many of the LRA's called for future payments to the Jeremy Ltd.). This Assignment, Addendum E hereto, had as exhibits a sample LRA and a list of LRA holders. The sample LRA and list of LRA holders were furnished to VBF before the loan closed (R. 419-20, § 18, 19, 20, R. 627, § 4, R. 629, § 10).

At the time of the November 1982 loan, VBF's only knowledge of the LRA's consisted of the sample LRA and the list of LRA holders attached to the Assignment (R. 629, § 10). In November 1982, none of the LRA holders had

recorded their LRA or any notice of interest in the golf course (R. 630, ¶ 14). In November 1982, the golf course plat was not recorded with Summit County; it was recorded the following year (R. 631, ¶ 16). When recorded, the golf course plat contained no reference to any easements or memberships (R. 631, ¶ 16). The first notice to VBF that the plaintiffs claimed a real property interest in the golf course occurred in 1988, six years after the VBF Trust Deed was recorded (R. 630-1, ¶ 15).

After The Jeremy Ltd. defaulted on its loan, VBF started foreclosure (R. 630, ¶ 13). With foreclosure imminent in late 1988, plaintiffs brought this suit and sought an injunction. When injunctive relief was denied, VBF foreclosed (R. 630, ¶ 13). Plaintiffs then pursued their claim (among others) that their LRA's granted a real property interest which survived VBF's foreclosure of its Trust Deed. The parties cross-moved for partial summary judgment on that issue, which issue is now presented here.

#### SUMMARY OF THE ARGUMENT

The LRA's did not grant real property interests superior to VBF's Trust Deed for two reasons. First, the LRA on its face does not grant an interest in real property. Second, VBF had no notice of plaintiffs' supposed interest in real property at the time of VBF's loan, and therefore

any such interest did not survive the foreclosure of VBF's Trust Deed.

The first point is a matter of law, while the second point raises a fact issue precluding summary judgment for plaintiff.

#### ARGUMENT

##### I. AS A MATTER OF LAW, THE LRA DID NOT GRANT AN INTEREST IN REAL PROPERTY.

While the acronym "LRA" is used throughout this brief, it must be remembered that the LRA was a "Lot Reservation Agreement," a contract by which the purchaser made a down payment to reserve a building lot in a Jeremy Ranch subdivision. Additionally, the Jeremy Ltd. promised the purchaser a "club membership" in a country club. The nature of that "club membership" is at issue here. Was the membership a contract interest or a real property interest? If the former, VBF prevails as a matter of law.

##### A. By its Four Corners, the LRA Did Not Convey an Easement.

An easement is an interest in land. Wells v. Marcus, 480 P.2d 129 (Utah 1971). An easement may be created in three ways, "by express agreement, by implication, or by prescription." Shultz v. Atkins, 554 P.2d 948, 951 (Id. 1976). Here, plaintiffs claim express agreements created easements. Plaintiffs claimed below that

their easements to the Jeremy Ranch golf course "were . . . created and granted by a written document . . . a Lot Reservation Agreement" (R. 416, ¶ 6).

An interest in real property arising from an express agreement must satisfy the statute of frauds, U.C.A. §25-1-1:

No estate or interest in real property . . . shall be created, granted, assigned, surrendered or declared otherwise than by act or operation of law, or by deed or conveyance in writing subscribed by the party creating, granting, assigning, surrendering or declaring the same . . . .

The Utah Supreme Court has adopted a test for determining whether a document can be construed as a conveyance of an interest in real property. In Wasatch Mines Co. v. Hopkinson, 465 P.2d 1007 (Utah 1970) the Court was asked to determine whether documents created an interest in land, namely a profit a prendre. The Court noted that, since the creation of a profit a prendre was a transfer of an interest in land, the "better view" was that it must be by deed. Id. at 1010. Nevertheless, the Court went on to consider whether documents short of a deed could convey an interest in land.

The documents under review in Wasatch Mines reflected arrangements between a landowner and a lessee

authorized to remove soil from the property. The Court framed the issue and its resolution as follows:

May the documents in evidence be construed as a conveyance of an interest in land?

A careful survey of the documents does not reveal a present intention to convey an interest in real property to defendant.

Id. at 1010.

The documents in Wasatch Mines did not rise to the level of a conveyance of a realty interest. The defendant was designated as a "distributor" and not a grantee, which the Court found to be a clear indication that it was not the intention to grant an interest in realty. Moreover, the documents did not adequately identify the interest granted or the real property description. In sum, the documents lacked the elements necessary to convey an interest in real property:

. . . [T]he documents do not identify the grantor, the grantee, the interest granted, or a description of the boundaries in a manner sufficient to construe the instruments as a conveyance of an interest in land.

Id. at 1010.

Under Wasatch Mines, these elements must be sufficiently identified before a document can be construed to grant an interest in land. A recent decision by the Utah Supreme Court affirms the "test" set out in Wasatch Mines.

In Rocky Mountain Energy v. Tax Commission, 852 P.2d 284 (Utah 1993), the Court considered a tax petitioner's argument that it had received an interest in real property. In denying that claim, the Court discussed in detail the Wasatch Mines standard:

RME relies on Wasatch Mines Co. v. Hopkinson, 24 Utah 2d 70, 465 P.2d 1007 (1970), where we stated that when a transfer of an interest in land is involved, "the better view is that it must be by deed." Id. at 74, 465 P.2d at 1010. However, we then considered the circumstances under which a document might be construed as a conveyance of an interest in land in the absence of a deed. In doing so, we focused on the document to see whether it identified the grantor, the grantee, and the interest granted or a description of the boundaries in a manner sufficient to construe the instrument as a conveyance of an interest in land. Id. After examining the written document, we held that the document did not identify the requisite elements in a manner sufficient to allow us to construe the instrument as a conveyance of an interest in land. Id. at 75, 465 P.2d at 1010.

The agreement between RME and L.A. Young does not meet the standard set out in Wasatch Mines. Not only is there uncertainty regarding the interest granted and the boundaries of the alleged interest, but there is no written document for the court to analyze. Thus, the mere oral understanding between RME and L.A. Young that permitted L.A. Young to remove slag from the property does not rise to the level of an interest in land under the test established in Wasatch Mines.

Id. at 286.

Under the Wasatch Mines standard, as affirmed by Rocky Mountain Energy, a document must sufficiently identify four elements to be construed as a conveyance of a interest in realty: Grantor, grantee, interest granted, and real property description. If a document does not meet these requirements, it cannot be construed as a grant of a realty interest.

The third requirement of Wasatch Mines, that the "interest granted" be sufficiently identified, is consistent with the Restatement of Property, §450, comment m.

Some degree of definiteness in the scope or extent of an interest is essential to its recognition as a property right . . . In order that privileges of use may be recognized as easements there must be some degree of definiteness in the privileged use.

While no particular language is mandatory, the words of the document must sufficiently identify the "interest granted" as an easement. The word "easement," of course, is the strongest identification of such a real property interest. Other language has been found sufficiently definite to grant an express easement. The words "right of way" are generally held to denote an easement. Chournos v. D'Agnillo, 642 P.2d 710, 712 (Utah 1982). Similarly, the words "right of ingress and egress" were found sufficiently definite to

create an express easement in Martinez v. Martinez, 604 P.2d 366, 368 (N.M. 1979). Words which "clearly show intention to grant an easement are sufficient, provided the language is certain and definite in its term." Id. at 368.

The LRA fails the test of Wasatch Mines. The LRA on its face does not reveal a "present intention" to convey an interest in real property. The LRA does not sufficiently identify the four elements: a grantor, grantee, interest granted, and real property description. These four elements will be addressed in turn.

The LRA identifies neither a "grantor" nor a "grantee" (Addendum A). The Jeremy Ltd. is identified as a "developer." The second party is identified as a "purchaser," which term refers to the purchase of a lot in the Jeremy Ranch. The club membership is incidental to that lot purchase:

2. Club Membership. It is understood that a Lifetime Family Membership in the Jeremy Ranch Golf and Country Club is included with the purchase of a lot on the Jeremy Ranch . . . (§ 2, LRA)

The LRA's designation of the interest as a "membership" is significant. The Wasatch Mines Court noted that "the designation of defendant as a distributor is a clear indication that it was not the intention of the parties that he was to be the grantee of an incorporeal

interest in the realty.", Id. at 1010, citing the definition of "distributor" in Words and Phrases to show that the term does not denote any type of real property interest. Similarly, a "member" denotes a right to belong to a club or association, see Words and Phrases, "Member" (1961), and carries no implication of a conveyance of an interest in realty. Rather than identifying a grantor and grantee, the LRA identifies a developer and a club member. As in Wasatch Mines, the terms used to describe the parties conveying and acquiring the interest do not indicate that the interest is in real property.

Next, the LRA does not sufficiently identify the "interest granted" to be construed as a conveyance of a real property interest. The LRA lacks the clear and definite language required by the Restatement of Property, §450, Wasatch Mines, and case law of other jurisdictions. The words "easement," "right of way," or "right of ingress and egress," are absent from the LRA. There is no language which is certain, definite, and clearly shows intention to grant an easement. Martinez, supra.

The indefinite language relied on by plaintiffs is the LRA's provision for a "lifetime family membership" in a country club (§ 2, LRA). Plaintiffs claim that language grants an easement in the golf course. What is the nature

of that real property interest? After all, the country club owned no real property - The Jeremy Ltd. always owned the golf course (R. 415, ¶ 4). Does the member have the right to use the real property whenever desired, regardless of time of day, time of season? Must the member compete for use with other golfers? Who holds this property interest, i.e., who qualifies as a "family member"? On balance, there is neither granting language nor definition to the scope of a right of use. The document does not sufficiently identify the "interest granted" to be construed as a conveyance of a real property interest.

The final element requiring sufficient identification under Wasatch Mines is "a description of the boundaries" of the burdened real property. Here, the LRA clearly fails. It contains no property description, legal or otherwise, of the golf course. The LRA could not identify boundaries to the supposed realty interest because the golf course plat was not recorded yet (R. 631, ¶ 16). The LRA itself recites that the Jeremy Ranch golf course was "to be constructed" (¶ 1, LRA). ¶ 2 of the LRA is claimed to be the "granting language," but contains no property description at all. No "golf course" is even mentioned therein. ¶ 2 describes only a membership in a club. The only property description in the LRA appears in ¶ 1, and

describes the entire Jeremy Ranch, which includes all of the residential subdivisions. Surely the plaintiffs do not claim easements over hundreds of residential lots. The document identifies no boundaries for the real property over which plaintiffs claim an easement.

Just as the LRA fails to identify the scope of use, so it fails to identify the physical scope. Because the LRA had no property description of the golf course, and there was no golf course platted at the time, the LRA could not sufficiently identify the boundaries of an interest in real property.

In sum, the LRA is facially inadequate under the Wasatch Mines test. The LRA fails to sufficiently identify grantor, grantee, interest granted, or a description of the boundaries of the interest granted. On its face, the document does not establish a present intention to convey a real property interest, just as the documents in Wasatch Mines failed to establish such an intention.

While not identified as an element under Wasatch Mines, another factor warrants mention. None of the LRA's were acknowledged or notarized. This developer and these country club members were not an unsophisticated group. Yet not one of the LRA's was recorded (R. 630, ¶ 14). While acknowledgement and recording are not required to grant a

real property interest, the lack of any acknowledgement or recording is another indication of no "present intention" to convey a interest in real property.

B. The Lower Court Erred When It Considered Extrinsic Evidence In Construing the LRA.

Perhaps recognizing the facial deficiencies of the LRA, plaintiffs below relied on various extrinsic evidence in their effort to raise the LRA to the level of an interest in real property. For example, plaintiffs relied on Affidavits of the developer and his son. (See Affidavits of Gerald Bagley, R. 798 and Tom Bagley, R. 432).

Curiously, neither party below addressed the preliminary issue of whether extrinsic evidence was even relevant to the issue of whether the LRA granted an interest in real property. On the cross-motions, neither side argued that the LRA was or was not ambiguous.<sup>1</sup> Without having the issue framed, the District Court simply found the LRA ambiguous and proceeded to rely on matters outside the LRA to determine that the LRA granted an easement.

The Court concedes that the language of the Lot Reservation Agreement is somewhat ambiguous. However, the entire record clearly demonstrates the intent of the parties to the Agreement (Addendum B, Memorandum Decision, p. 3).

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<sup>1</sup> As mentioned earlier, the issue of whether the LRA was "ambiguous" was not directly addressed until the Motion For Reconsideration (R. 2581).

In considering extrinsic evidence, the District Court erred for two reasons. First, under Wasatch Mines, the threshold issue is whether the document on its face sufficiently identifies the required elements to qualify as an interest in real property. If the document itself fails that test, there is no conveyance of an interest in real property. If the language of the document is too insufficient or indefinite to identify those elements, no amount of extrinsic evidence can "rehabilitate" it. The argument that indefinite language in the LRA is "ambiguity" which opens the door to extrinsic evidence ignores Wasatch Mines. Either the required elements are sufficiently identified or they are not. If not, no real property interest is conveyed, and no amount of extrinsic evidence can change that.

The District Court's consideration of extrinsic evidence was error for a second reason. Even if the LRA does not fail under Wasatch Mines, its indefiniteness does not automatically open the door to extrinsic evidence. The Court found the LRA ambiguous (although neither party addressed the issue at that time) and went right to extrinsic evidence. This was error.

Whether or not an ambiguity exists in a contract is a question of law, reviewed for correctness. Hall v.

Process Instruments & Control, 229 U.A.R. 37 (Utah App. 1994). "Ambiguous" means that the terms of the contract are capable of more than one reasonable interpretation because of uncertain meanings of terms, missing terms, or other facial deficiencies. Id. at 38. A contract is not ambiguous just because the parties urge diverse interpretations. Id.; Jones v. Hinkle, 611 P.2d 733, 735 (Utah 1980). In interpreting a contract and in determining whether or not it is ambiguous, a court should give the terms used their "plain and ordinary meanings . . . as they would be understood by the average, reasonable [man]." Village Inn Apartments v. State Farm, 790 P.2d 581,583 (Utah App. 1990) (citations omitted); Wood River Pipeline v. Willbros Energy, 738 P.2d 866, 871 (Kan. 1987). A court should not add words to the contract, but should attempt "to render certain the meaning of the provision in dispute by an objective and reasonable construction of the whole contract." Cornwall v. Willow Creek Country Club, 369 P.2d 928, 929 (Utah 1962).

Plaintiffs argued that their express easement springs from an undefined phrase in the LRA: The term "club membership" (§ 2, LRA). While the term "club membership" is indeed undefined, this lack of definition does not give plaintiffs carte blanche to stamp whatever meaning they wish

on the phrase. The construction urged by plaintiffs must be a reasonable interpretation, Hall, supra, or a plausible meaning. Metropolitan Property & Liability Ins. Co. v. Finlayson, 751 P.2d 254, 257 (Utah App. 1988).

Neither a lawyer nor a layman would interpret the term "club membership" to mean an easement or other interest in real property. In Black's Law Dictionary, (5th Ed.), a club is defined a "a voluntary, incorporated or unincorporated association of persons for common purposes of a social, literary, investment, political nature, or the like." In Webster's Ninth New Collegiate Dictionary, a club is defined as "an association of persons for some common object usually jointly supported and meeting periodically." Words and Phrases indicates that a "member" is a person belonging to some association, society, community, etc., or a person considered in relation to any aggregate of individuals to which he belongs. See Words and Phrases, "Member" (1961). Thus, the phrases "club" and "member" mean to belong to some association. The terms do not by any definition (legal or layman) mean "an easement or interest in real property."

Because the interpretation urged by plaintiffs was neither reasonable nor plausible, the District Court erred

in deeming the LRA "ambiguous" and considering extrinsic evidence.

C. What the LRA Did Create Was a Contract Right, i.e., a Membership In a Club.

What interest was created by the LRA's promise of a membership in a country club? The only reasonable answer is a contract right - the right to belong to an association or club. The LRA was a two-party agreement under which the developer made certain promises, including the promise of a club membership to every lot purchaser. That purchaser had a contract right to belong to the club, and to receive whatever rights and privileges members were entitled to under the club's Bylaws, Charter, etc. That is a contract interest and not a real property interest.

In this regard, there are two basic forms of clubs, "proprietary" and "equity." An equity club is one where the members themselves are the owners of the club, generally in the form of shares in the association which owns the club's real property (R. 631, ¶ 17, R. 645). A proprietary club, on the other hand, is not owned by the members, but is:

One whose property and funds belong to a proprietor who usually conducts it with a view to profit; the members, in consideration of the payment by them to the proprietor of entrance fees and subscriptions, are entitled to make such use of the premises and property . . .

as the charter or contract justifies.  
Cotton Club v. Oklahoma Tax Commission  
158 P.2d 707, 709 (Ok. 1945), quoting  
C.J.S. "Clubs," §1 at 1280.

Plaintiffs have never claimed that the Jeremy Ranch Golf and Country Club was an equity club. They have never claimed an ownership interest in the golf course. The property on which the club operated, i.e., the golf course, was owned by the developer, The Jeremy Ltd., until foreclosure in 1988. Plainly, this was a proprietary club operating on a golf course owned by the developer (R. 631, ¶ 17). Plaintiffs, as members, were "entitled to make such use of the premises and property as the charter or contract justified." Cotton Club, supra.

Plaintiffs entered into a contract promising them memberships in a club, which club never owned real property. Interests in realty were not involved.

D. Construing This Contract Interest as a Real Property Interest Would Generate Tremendous Uncertainty in Real Estate Transactions.

The incongruity of construing a "club membership" as a real property interest is readily apparent. There are many clubs in Utah, such as health clubs and private restaurant clubs, which offer memberships. Some of these clubs operate on premises owned by the proprietor. If a membership was tantamount to an easement, the members' right to use the premises would continue even if the club went out

of business. If a private club or health club closed, the members would still hold an easement in the property for the duration of their lives (or in perpetuity, as the District Court ruled here). Any lender which had made a loan on premises with an operating club would now be "behind" all club members. It would be almost impossible to encumber or alienate such property. The implication for title insurers is staggering.

This scenario underscores the sound policy of Wasatch Mines. Before a document can be construed as an interest in land, it must clearly establish a present intention to convey such a profound interest. Without this basic test being met, how are third-parties to know when documents signed by the owners encumber the property? Interests in real property cannot arise in such a haphazard way. Third-parties who deal with a property cannot be bound by a document as indefinite as the LRA, and which fails to sufficiently identify all elements required under Wasatch Mines.

There are extremely good reasons behind the policy set forth in Wasatch Mines. Buyers, sellers, lenders, and title insurers must have some parameters to rely on when implementing real estate transactions. Those known parameters allow the parties to identify the encumbrances to

the property. Without those parameters, uncertainty follows. The ability to alienate or encumber real property is hindered, and the cost of doing so increases.

Utah's statute of frauds and case law establish the parameters essential to certainty and reliability in real property transactions. The LRA does not measure up.

II. AT THE LEAST, A FACT ISSUE PRECLUDED SUMMARY JUDGMENT FOR PLAINTIFFS.

Plaintiffs obtained summary judgment by persuading the District Court on two points: The LRA granted an easement, and VBF had notice of that easement before the VBF loan in November 1982. Thus, as part of the Summary Judgment, the District Court ruled that VBF had notice of the plaintiffs' easements. This ruling is reflected in the Memorandum Decision:

It should also be noted that the record demonstrates quite clearly without dispute that Virginia Beach was advised of the Lot Reservation Agreements and of the nature of those agreements prior to the closing on the subject loans.  
(Addendum B, p. 3)

A. The Record Showed Genuine Fact Issues Regarding Notice To VBF.

The Court erred in finding that the record demonstrated "without dispute" that VBF had notice of plaintiffs' interests before the VBF loan. To the contrary, the record demonstrated significant disputes regarding what

notice VBF did or did not receive. When ruling on plaintiffs' Motion for Partial Summary Judgment, the District Court should have considered this factual dispute in the light most favorable to VBF (i.e. the Court should assume that VBF will prevail on this factual issue). D & L Supply v. Saurini, 775 P.2d 420, 421 (Utah 1989).

The District Court's finding on notice, as cited from the Memorandum Decision above, consists of two elements: VBF was advised of the LRA's (which was admitted on the record) and VBF was advised of "the nature of those agreements" prior to the VBF loan (which was hotly contested on the record).

The Court's finding that VBF was advised "of the nature of" the LRA's apparently springs from Affidavits of Gerald H. Bagley (R. 798) and his son Thomas Bagley (R. 432). Both Bagley Affidavits alleged verbal discussions with VBF representatives regarding the nature of the LRA's. However, VBF vigorously disputed these allegations of "verbal notice." Timothy F. Miller, President of VBF, stated the following in his Affidavit:

No claim was ever made by anyone prior to the loans being made that the golf club memberships identified in these documents constituted an easement or any other kind of interest in real property senior to the Trust Deeds we were placing against the property to secure our loans.

The first indication we had that the golf club memberships were claimed as interests in real property was shortly prior to the time the Complaint was filed in this case. (Emphasis added, R. 728).

In addition, David Y. Faggert, a VBF attorney, stated as follows in his Affidavit:

At the time these loans were made, the only information made available to me respecting lot reservation agreements or the Plaintiffs' golf club memberships consisted of a sample lot reservation agreement form and a list of names of purchasers attached to that sample Lot Reservation Agreement Assignment as Exhibits "A" and "B" respectively (R. 724).

Finally, in VBF's response to Interrogatory No. 8 of Plaintiffs' Second Set of Interrogatories, VBF stated:

Prior to December 1982, Virginia Beach was generally aware that there was a Jeremy Ranch Golf and Country Club and that the club had members. The only specific information which it had was contained in the sample Lot Reservation Agreement form and the list of purchasers. (Emphasis added, R. 777).

On the record before this District Court, the only uncontested fact regarding notice was this: A sample LRA and list of LRA holders were furnished to VBF before its loan closed. Every assertion by Bagley or his son of "verbal notice" regarding the nature of the LRA's was flatly disputed on the record.

Interpreting this factual dispute in the light most favorable to VBF, D & L Supply, supra, the District Court should not have found that VBF had been advised of "the nature" of the LRA's prior to closing. It was error for the Court to find that fact "without dispute" in the record.

B. The LRA Itself Did Not Impart Notice.

Plaintiff may argue that the District Court's finding on notice is harmless error, because the sample LRA itself imparted notice independent of any "verbal notice." That argument is without merit. The LRA itself imparts neither actual nor inquiry notice of an easement.

The LRA does not contain the word "easement," "right-of-way," or any other phrase reasonably recognized as granting an interest in real property. As argued above, a "club membership" is not defined in legal or layman's terms as an easement or interest in real property. Thus, the LRA on its face did not give actual notice of an easement.

The concept of inquiry notice was explained by the Utah Supreme Court in Johnson v. Bell 666 P.2d 308, 310 (Utah 1983).

[The requirement of notice is] satisfied if a party dealing with the land had information of facts which would put a prudent man upon inquiry and which, if pursued, would lead to actual knowledge as to the state of the title.

The application of this inquiry notice standard to the present case requires a two-step analysis. The first step is a fact question: Whether anything on the face of the sample LRA would lead a prudent person dealing with the property to conclude that a real property interest was intended, and that further inquiry was needed. Only if this first question is answered in the affirmative does the Court proceed to determine the second step, i.e., what information would have been yielded through inquiry.

Reasonable minds could certainly differ on this fact question. The language of the sample LRA would not give a prudent person reason to believe that an easement in real property was intended. The memberships granted were in the "Jeremy Ranch Golf and Country Club." The club never owned the golf course - that was public record. While it would be reasonable to expect members to use the golf course from time to time, there is a vast difference between allowing the members to use and giving each member an easement. It would not only be unusual, but extremely inconvenient, for clubs to actually grant easements in club premises. If the club wished to obtain a loan, sell the

premises, or enter into any other transaction affecting the premises, it would first have to obtain the consent of all members to release or subordinate their easements. The existence of club memberships would not lead a prudent person to suspect that real property interests were involved. In addition, the failure of the LRA's to be acknowledged or recorded makes it even less likely that a prudent person would be on inquiry notice.

VBF submitted below the Affidavit of Arlen Taylor, a vice-president of Stewart Title Guaranty Co., who has worked in the title insurance business since 1968 (R. 2596). Mr. Taylor has handled the title work for hundreds of commercial real estate transactions (R. 2597). The Taylor Affidavit stated that he would not have interpreted the LRA's as granting easements, nor would anything in the LRA's have caused him to make further inquiry (R. 2597). If a very experienced real estate and title professional would not have been put on inquiry by the terms of the LRA, how could a prudent layman be put on inquiry?

Nothing in the LRA itself mandated further inquiry into the nature of the plaintiffs' claims.

#### CONCLUSION

The LRA did not convey a real property interest as a matter of law. The Order of Partial Summary Judgment

should be reversed, and the District Court directed to grant VBF's Motion For Partial Summary Judgment. Alternatively, fact issues regarding notice precluded summary judgment for plaintiffs, and those issues should be remanded for trial.

DATED this 22<sup>nd</sup> day of March, 1994.

PRINCE, YEATES & GELDZAHLER

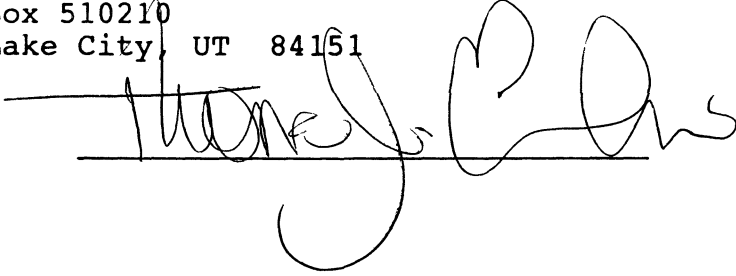
By 

Thomas J. Erbin  
Attorneys for Defendants/Appellants  
Virginia Beach Federal Savings and  
Loan and Jeremy Service Corporation

MAILING CERTIFICATE

I hereby certify that, on the 23<sup>rd</sup> day of March, 1994, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing BRIEF OF APPELLANTS to the following:

Anthony L. Rampton, Esq.  
FABIAN & CLENDENIN  
215 South State Street, 12th Floor  
P.O. Box 510210  
Salt Lake City, UT 84151

A large, stylized handwritten signature in black ink, appearing to read 'Anthony L. Rampton', is written over a horizontal line.

VBEACH.BRI

Tab A

**EXHIBIT 1**  
**TO PRETRIAL ORDER**

**LIST OF PLAINTIFFS**

1. William (Spud) Adams
- 1A. Scott Anderson
2. Tod W. Anderson
3. James Vincent Antinori
4. John Ashton
5. Gerald Bagley, Falcon Management Group, Inc.
6. Thomas Bagley, Falcon Management Group, Inc.
7. Nicholas G. Baldwin
8. Garratt T. Beesley
9. Wilford A. Beesley
10. William F. Bennion
11. Lee Benson
12. David B. Berger; Berger Lath & Plaster Co., Inc.; Berger, Inc., E & B Investments; B & W Construction, Inc.
13. Elmer B. Berger
14. Richard K. Bertoch
15. Duane F. Blackley
16. J. C. Blair
17. Brad Bohling and Michelle Bohling
18. K. L. (Mick) Boyd
19. Harold H. Brandt
20. Lynn L. Broman
21. Carl B. Brown
22. J. Garth Brown
23. Leland J. Brown and Brown-Tye, Inc.
24. William C. Card
25. James Cherrington and Linda Cherrington
26. Robert Paul Cherrington and Barbara Cherrington
27. William H. Child, R.C.Willey Home Furnishings
28. Ned Christensen
29. Terry Christiansen
30. Alton Clark and Bonnie Clark
31. Robert B. Coe, One World
32. Dean Corbett
33. Frank Corbett
34. Gordon S. Crofts
35. Charles W. (Chuck) Cronenweth
36. J. Robert Cuatto, Cuatto Investments
37. Richard B. Cuatto, Cuatto Investments
38. D. Heyward Davis
39. W. Flint Dickson
40. Mark Eaton
41. Michael L. Egan
42. David F. Elder
43. John Eldredge
44. Chester Fassio and Katherine Fassio
45. Richard Fassio and Joy Fassio
46. Arnie Ferrin, C.A.F. Enterprises, Ltd.
47. Ron Fife; Ron Fife Sales; F & B Sales
- 47A. Roger Furness
48. James R. Gaddis, James Gaddis Investment Co., Ltd.
49. Michael J. Galbos

50. Jack Gertino
51. Bill Green
52. Max Greenhalgh
53. Robert B. Hanks and Wendy Hanks
54. James N. Hanna
55. Farr W. Hansen
56. George Allen Hansen
57. Paul B. Hansen and Melinda Hansen
58. Robert R. Hansen
59. Paul M. Harman
60. Jack Harrison
61. David P. Hedderman
62. John B. Hewlett, Hewlett Brothers Financial Corp.
63. John M. Hogan
64. Thomas W. Hogan
65. Hugh Hogle
66. Harry F. Houdeshel
- 66A. Gerry Howells
67. Doyle L. Huber, Doyle L. Huber Trust
68. Don Hutchison
69. Willard F. Ice, Jr.
70. Boyd Franklin Ingalls
71. Barry N. Ingham
72. Max Jenkins
73. Glenn Jensen
74. Boyd T. Jones
75. Russ Juillerat
76. John I. Kasteler, Jr.
77. Richard Kelsey
78. Robert D. Kent
79. Michael Kladis
80. Craig Knight
81. James L. Knight
82. Roger J. Knight
83. Alfred Kofoed
84. Frank L. Leone
85. R. Bicknell Lesser
86. James L. Levy and Barbara Levy
87. Joseph M. Lewis and Lewis Bros. Stages, Inc.
88. William W. Louie
89. Jack Lowder
90. Milton B. Lubbers, Pella Intermountain
91. Lloyd D. Lysengen and Joan Lysengen
92. Maurice Malouf
- 92A. Bill Mammon
93. Woodrow Marriott
- 94A. Jack Emery, Matrix
94. Thomas F. McDonough, Paul Thomas, Inc.
95. R. S. McKnight
96. George D. Melling
97. Timothy J. Miller
- 97A. Mistletoe Financial
98. Eugene Moench, D. E. Moench Enterprises
99. Lorin L. Moench, Moench Investments, Moench Investment Co., Ltd.
100. Mark Christian Moench
101. Richard Moench, Western Financial Co.
102. Robert S. Momberger

103. Joe Mongold
104. L. Jed Morrison, J. Morrison Family Limited Partnership
105. Donald E. Moss
106. Michael J. Mullen
107. Robert Edward Murphy and Phyllis Murphy
108. Robert Naylor
109. Carl E. Nelson
110. David M. Nelson, Learning Foundation of Wyoming
111. Glen B. Nelson
112. Norman D. Nelson
113. Don A. Nichols
114. Darrel M. Nilson
115. Gordon O'Neil
116. Jack Okland
117. James Okland
118. Randy Okland
119. Okland Construction Company, Inc.
120. Paul F. Oliver, Paul Thomas Jewelers, Paul Thomas, Inc.
121. Jack H. Ollinger and Kathryn Ollinger
122. Stanley B. Parrish and Joyce Parrish
123. Robert Patterson
124. Barbara Patterson
125. Hersch Patton
126. Kay Larson Peacock, Peak Distributing Co., Inc.
127. Pete Pederson
128. Grant Petersen, Peterson Investment
- 128A. G. Reed Peterson
129. J. W. Peterson
130. Andy Pierce
131. Bruce H. Porter
132. Richard S. Prows
133. Douglas Rex
134. Roy Reynolds
- 134A. Scott Rice
135. James A. Rich, Joanne P. Rich, Wm. L. Sargent and Margaret P. Sargent
136. Bicknell A. Robbins, R & R Consultants
137. Clark Romney and Gloria Lynn Romney
- 138A. Donald Sanson
138. Peter Schultz
139. Mark A. Schwendiman
140. C. Walter Scott
141. James Shane
142. John P. Sharich
143. C. D. Shurtleff
- 143A. G. Willard Smith
144. Howard R. Sorensen, Guild Inc., H.R.S. Investments
145. Richard Sorenson, Falcon Management Group, Inc.
146. David V. Spencer
147. Van M. Spencer
148. Max M. Steele
149. Wayne F. Stoker
150. Walt R. Summerhays
151. Leland R. Tatton
152. Paul Taylor
153. Harry H. Thorpe
154. James A. Tidwell
155. Martha Tonnesen

- 156. John Tovey and Zelda Tovey
- 157. Richard Urdahl
- 158. Nate Wade
- 159. William L. Wagner and Nancy Wagner
- 160. Robert L. Warburton
- 161. John C. Williams
- 162. Darrell E. Wolfley, Darrell E. Wolfley, M.D., P.C.
- 163. Richard C. Wood, Leah C. Wood Trust
- 164. Robert W. Wood
- 165. M. James Woodward
- 166. Calvin Workman, Cal Workman, Inc. Employee Retirement Plan & Trust.
- 167. Robert L. Young

Tab B

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SUMMIT COUNTY, STATE OF UTAH

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MAX GREENHALGH, et al.,	:	MEMORANDUM DECISION
Plaintiff,	:	CIVIL NO. 10005
vs.	:	
VIRGINIA BEACH FEDERAL SAVINGS	:	
& LOAN ASSOCIATION, a foreign	:	
corporation; ATLANTIC PERMANENT	:	
FEDERAL, a foreign corporation;	:	
JEFFERSON SAVINGS & LOAN, a	:	
foreign corporation; THE JEREMY	:	
LTD., a Utah limited	:	
partnership; JEREMY SERVICE	:	
CORPORATION, a Utah corporation;	:	
and ASSOCIATED TITLE COMPANY,	:	
INC., a Utah corporation,	:	
Defendants.	:	

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The Court now has before it the parties cross motions for Summary Judgment and defendants' Motion to Strike the Affidavit of Gerald Bagley. Having read the memos and affidavits filed in connection with said motions and having heard oral argument the Court now rules as follows:

The Court denies defendants' Motion to Strike Mr. Bagley's Affidavit in its entirety. The Court will strike the last sentence of paragraph 2 except that portion that may refer to discussions relating to the matter stated therein. The Court will strike testimony relating to the corporate structure of

defendants. The Court will strike paragraph 7 of the affidavit. As to paragraphs 9, 10 and 11 the Court will strike those portions stating that Richards-Woodbury was an agent of Virginia Beach Federal Savings and Loan.

The Court will strike those portions of the first sentence of paragraph 16 and 24 that refer to the state of mind of the defendants but not those portions referring to discussions involving the affiant.

As to the cross motions for Partial Summary Judgment the Court is of the opinion that plaintiffs' hold easements in gross. The entire record before the Court demonstrates clearly the intent of the parties to the Lot Reservation Agreement. It is clear and undisputed that plaintiffs in return for the payment of a considerable sum of money were to be given a lifetime right to use the golf course and facilities. This was the right to the use of a clearly identifiable piece of land in a manner that was clearly identifiable (that is for playing golf). That right was to be transferrable and irrevocable. Under all these circumstances the rights granted are easements rather than licenses.

Defendants argues that the document in question contains none of the traditional language in grants of interests in real property. The Court is of the opinion that there is no standard language that must be employed to create an easement. The Court

must look to the nature and substance of the agreement and not just to the forms and styles of language used. The Court concedes that the language of the Lot Reservation Agreement is somewhat ambiguous. However the entire record clearly demonstrates the intent of the parties to the agreement. The record in this regard is essentially undisputed. The Court therefore, on the basis of this records feels that it can rule as a matter of law that the parties agreement rises to the level of an easement in gross.

It should also be noted that the record demonstrates quite clearly without dispute that Virginia Beach was advised of the Lot Reservation Agreements and of the nature of those agreements prior to the closing on the subject loans.

The Court is of the opinion that the easements granted prior to the loan closing survived Virginia Beach's foreclosure on the property and accordingly will grant plaintiffs' Motion for Partial Summary Judgment and deny defendant's Motion for Partial Summary Judgment.

Defendants seem to suggest that by granting plaintiffs' Motion defendants' will be forced to maintain the land in question as a golf course even if in an unprofitable condition. That matter of course is an entirely different issue and is not presently before the Court.

Counsel for plaintiffs is to prepare an order consistent with this ruling and to submit it to the Court for signature in accordance with the local rules of practice.

DATED this 14<sup>th</sup> day of July, 1991.

/s/ Frank G. Noel  
FRANK G. NOEL  
DISTRICT COURT JUDGE

Tab C

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SUMMIT COUNTY, STATE OF UTAH

-----

MAX GREENHALGH, et al.,	:	ORDER OF PARTIAL
	:	SUMMARY JUDGMENT
Plaintiffs,	:	
	:	Civil No. 10005
vs.	:	
	:	JUDGE FRANK G. NOEL
VIRGINIA BEACH FEDERAL SAVINGS	:	
& LOAN ASSOCIATE, a foreign	:	
corporation; ATLANTIC PERMANENT	:	
FEDERAL, a foreign corporation;	:	
JEFFERSON SAVINGS & LOAN, a	:	
foreign corporation; THE JEREMY,	:	
LTD, a Utah limited partnership;	:	
JEREMY SERVICE CORPORATION, a	:	
Utah corporation; ASSOCIATED	:	
TITLE COMPANY, INC., a Utah	:	
corporation,	:	
Defendants.	:	

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The Motion of plaintiffs' for Partial Summary Judgment, defendants' Cross-Motion for Partial Summary Judgment, and defendants' Motion to Strike Affidavit of Gerald H. Bagley came on regularly before the above entitled Court on May 6, 1991, at 3:00 p.m., the Honorable Frank G. Noel presiding. Plaintiffs' were represented by Wilford A. Beesley, Esq. and Stanford P. Fitts, Esq. Defendants were represented by George A. Hunt, Esq. The Court, having considered the memoranda and affidavits submitted and arguments of counsel, and being fully advised in the premises, and in accordance with the Court's Memorandum

Decision of July 11, 1991, HEREBY ORDERS, ADJUDGES AND DECREES:

1. The court denies defendants' Motion to Strike the Affidavit of Gerald H. Bagley in its entirety, but strikes those portions of the Affidavit indicated as follows:

a. The last sentence of paragraph 2 is stricken except that portion which refers to discussions relating the subject matter stated herein.

b. The testimony relating to the corporate structure of defendants is stricken.

c. Paragraph 7 of the Affidavit is stricken.

d. The portions of paragraphs 9, 10 and 11 stating that Richards-Woodbury was an agent of Virginia Beach Federal Savings and Loan are stricken.

e. The portions of the first sentence of paragraphs 16 and 24 referring to the state of mind of defendants are stricken. Those portions referring to discussions involving affiant are not stricken.

2. Plaintiffs' Motion for Partial Summary Judgment is granted. Defendants' Motion for Partial Summary Judgment is denied.

3. Plaintiffs' hold easements in gross in the property described as the Jeremy Ranch Golf Course and Clubhouse facilities.

4. The easements in gross include the right of the purchaser (founder member) and the purchasers family, for the lifetime of the purchaser, to use the Jeremy Ranch Golf Course and club house facilities subject to the same reasonable rules and regulations as other members or users with the exception that plaintiffs as Founder Members are not required to pay green fees, monthly dues for the right to use the course and clubhouse and are not subject to periodic assessments. These Founding Members rights are transferrable and irrevocable during the lifetime of the founding member.

5. Plaintiffs are entitled to exercise said rights without unreasonable interference from defendants, their successors and assigns.

DATED this 22 day of August, 1991.

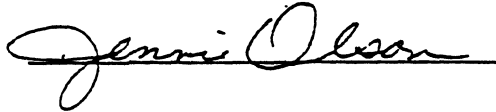
  
FRANK G. NOEL  
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Order of Partial Summary Judgment, postage prepaid, to the following, this 22 day of August, 1991:

Wilford A. Beesley  
Stanford P. Pitts  
BEESLEY, FAIRCLOUGH, CANNON & FITTS  
Attorneys for Plaintiff  
300 Deseret Book Building  
40 East South Temple  
Salt Lake City, Utah 84111

George A. Hung  
Kurt M. Frankenburg  
WILLIAMS & HUNT  
Attorneys for Defendant  
P. O. Box 45678  
Salt Lake City, Utah 84145-5678

  
\_\_\_\_\_

Tab D

LOT RESERVATION AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 1982, by and between THE JEREMY LTD., A LIMITED PARTNERSHIP, hereinafter called "DEVELOPER", and \_\_\_\_\_ hereinafter called "PURCHASER";

IN CONSIDERATION of the covenants herein contained, it is mutually agreed between parties hereto as follows:

1. Reservation Agreement: For deposit received of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00), on the total purchase price of FIFTY-THOUSAND DOLLARS (\$50,000.00), the DEVELOPER promises to reserve for the PURCHASER one (1) lot in the proposed subdivision surrounding the Jeremy Ranch Golf Course to be constructed on the Jeremy Ranch property located in Section 1, 2, and 3, Township 1 South, Range 3 East, Salt Lake Base and Meridian, Summit County, State of Utah. The PURCHASER shall have the right to select any lot in the proposed subdivision which has not been previously sold or committed to other parties at the time the PURCHASER'S rights under this Reservation Agreement are exercised. If, for any reason, PURCHASER decides to withdraw the reservation deposit, it will be refunded upon demand plus ten percent (10%) interest per annum prorated for the number of days it has been held by the DEVELOPER. Also, if the deposit is refunded to the PURCHASER, the Lifetime Membership (See Paragraph 2) will be returned to DEVELOPER.

2. Club Membership. It is understood that a Lifetime Family Membership in The Jeremy Ranch Golf and Country Club is included with the purchase of a lot on the Jeremy Ranch. There are no monthly dues, nor can any dues ever be assessed. This Membership is transferable. It may be sold without a transfer fee. It is not assessable.

3. Term. This Reservation Agreement shall extend to and expire at the time of the sale or commitment to other parties of the last lot in the proposed subdivision referred to above. If PURCHASER has not exercised his rights under this Agreement prior to that time, the lot will be forfeited, and the DEVELOPER shall keep the \$25,000 deposit, and it shall be considered to be payment in full for the aforementioned Jeremy Golf Club Lifetime Membership.

4. Exercise of Reservation Agreement. The Lot Reservation Agreement shall be exercised by written notice to DEVELOPER at 7350 Wasatch Boulevard, Salt Lake City, Utah, 84121, on or prior to the expiration of the term hereof. Title to the lot may not be taken prior to the time the lot to be selected has been properly platted and registered, all required approvals have been obtained from governmental agencies having jurisdiction over the property and the lot may be legally sold. The balance of the purchase price shall be paid at closing, which shall be within thirty (30) days from the date upon which the Agreement is exercised, at which time all general property taxes shall be prorated. At closing, the DEVELOPER shall, at its expense, provide to PURCHASER, a policy of title insurance subject only to standard and recorded or platted easements, restrictions, and reservations. Final conveyance shall be made by Warranty Deed conveying title free and clear of all liens and encumbrances except those which are shown as exceptions in the title policy.

5. This Agreement shall not be assigned by the PURCHASER to any other party and the rights granted hereunder are not transferable without the prior written consent of DEVELOPER, with the exception of those rights in paragraph 2 above.

IN WITNESS WHEREOF, the parties hereto have signed their names or caused the names of their duly authorized agents to be signed hereunder.

DEVELOPER:

THE JEREMY LTD., A Limited Partnership

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

PURCHASER:

\_\_\_\_\_

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

Tab E

## ASSIGNMENT OF LOT RESERVATION AGREEMENTS

This Assignment made and entered into as of the 26<sup>th</sup> day of December, 1982, by and between The Jeremy Ltd., a Utah limited partnership ("Borrower") and Richards-Woodbury Mortgage Corp., a Utah corporation, ("Lender").

Whereas Lender has agreed to make a loan to Borrower (the "Loan") in the amount of \$12,500,000.00 pursuant to a Note, Deed of Trust, Security Agreement and other documents, ("Loan Documents") and;

Whereas Borrower has entered into various Lot Reservation Agreements as listed on the attached Exhibit "A" (the blank form used for each individual Lot Reservation Agreement is attached as Exhibit "B") and;

Whereas Borrower as further security for the Loan has agreed to assign all of the Lot Reservation Agreements to Lender.

It is agreed as follows:

1. As further security for the Loan and as a material inducement for the Loan, Borrower does hereby sell, assign and set over to Lender all its right, title and interest in all of the Lot Reservation Agreements listed in Exhibit "A" attached hereto.

2. Borrower hereby warrants; (a) that the list of lot reservations as shown on the attached Exhibit "A" are true and correct and that the number of lots reserved, the sales price, down payment and balance due is as specified therein; (b) that none of the persons listed in Exhibit "A" have cancelled their reservation or indicated their unwillingness to purchase a lot as so specified; (c) that 45% of all funds paid after date hereof under each Lot Reservation Agreement shall be paid to Lender, to be

BULL  
THEY  
ARE  
ALL  
DIFF

applied as a loan payment as provided in the loan documents; (d) that the form contract attached hereto as Exhibit "B" is the form of the agreement used for the lot reservation of each person listed in Exhibit "A".

3. This Assignment shall remain in full force and effect until the Loan is paid in full, at which time it shall be null and void, otherwise to remain in full force and effect.

DATED this 26<sup>th</sup> day of November 1982.

THE JEREMY LTD.,  
a Utah limited partnership

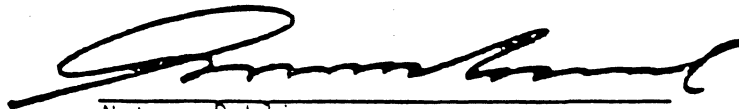
By   
Sole General Partner

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

On the 26<sup>th</sup> day of Nov., 1982, personally appeared before me GERALD H. NAGLEY, sole general partner of The Jeremy Ltd., a Utah partnership, who being by me duly sworn did say, each for himself, that they executed the foregoing instrument as such general partner on behalf of said partnership.

My Commission expires:

1/22/85

  
Notary Public  
Residing at: SALT LAKE (11)

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## EXHIBIT "A"

## JEREMY LOT RESERVATIONS - PHASES IV AND V

<u>Name</u>	<u>Address</u>	<u>Number of Lots</u>	<u>Sales Price</u>	<u>Down Payment</u>	<u>Amount Owing</u>
GORDON McDOWELL	5609 South 2300 East, S.L.C., Ut. 84117	1	20,000	20,000	--
WALT SCOTT	574 H Street, S.L.C., Ut. 84102	1	35,000	35,000	--
WILLIAM LOUIE	540 E. Second So., S.L.C. Ut. 84102	1	35,000	35,000	--
WILLIAM BROWNING	540 E. Second So., S.L.C. Ut. 84102	1	35,000	35,000	--
ROBERT PATTERSON	1737 Millbrook Way, S.L.C. Ut. 84106	1	40,000	20,000	20,000
STUART BURGLASS	4665 Quail Vista Lane, S.L.C., Ut. 84117	1	40,000	20,000	20,000
DEAN E. COY	1553 Kensington Ave., S.L.C., Ut. 84105	1	50,000	25,000	25,000
PAUL HANSEN	1710 So. 2100 East, S.L.C., Ut. 84106	2	80,000	40,000	40,000
GARTH BROWN	2626 So. 300 West, S.L.C., Ut. 84115	1	40,000	20,000	20,000
H. CLINTON TINKER	P. O. Box 702, Park City, Ut. 84060	1	40,000	20,000	20,000
ARCHIBALD ARNOLD	2490 So. 2300 East, S.L.C., Ut. 84117	1	40,000	20,000	20,000
NEIL GILSON	P. O. Box 1062, S.L.C., Ut. 84110	1	40,000	20,000	20,000
PAUL EDBERS	P. O. BOX 10, Hwy. 224, Park City, Ut. 84060	1	37,500	17,500	20,000
OKLAND CONSTRUCTION	1978 So. West Temple, S.L.C. Ut. 84115	5	150,000	150,000	--
MILTON LUBBERS	P. O. BOX 548, West Jordan, Ut. 84084	1	50,000	25,000	25,000
KEITH McLAREN	1788 So. 2500 East, S.L.C., Ut. 84108	1	20,000	20,000	--
RAY ROBINSON	540 West 2nd South, S.L.C., Ut. 84101	1	37,500	14,687	22,813
ROBERT YOUNG	1455 South 1100 East, S.L.C., Ut. 84106	1	50,000	25,000	25,000
CHUCK CRONENWETH	1369 South 1500 East, S.L.C., Ut. 84105	1	50,000	25,000	25,000
MORRIS ANDERSON	4132 West 3440 South, S.L.C., Ut. 84115	3	150,000	76,229	73,771
WILLIAM DENNION	2192 South 20th East, S.L.C., Ut. 84109	1	30,000	30,000	--
LORIN MOENCH	255 West 8th South, S.L.C., Ut. 84101	1	42,500	27,500	15,000
ELMER BERGER	6920 South 400 West, Midvale, Ut. 84047	1	50,000	25,000	25,000
DAVID HANSEN	P. O. BOX 17230, S.L.C., Ut. 84117	2	100,000	50,000	50,000
AN SPENCER	4802 SOMMET DRIVE, S.L.C., Ut. 84117	1	50,000	25,000	25,000

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JULIENY LOT RESERVATIONS - Phases IV and V cont.

<u>Name</u>	<u>Address</u>	<u>Number Of Lots</u>	<u>Sales Prices</u>	<u>Down Payment</u>	<u>Amount Owing</u>
ENNIS GIBBS	5 Walker Ct., Park City, Ut. 84060	1	20,000	20,000	-0-
ROBERT PATTERSON	1737 Millbrook Road, S.L.C. Ut. 84105	1	50,000	25,000	25,000
LOUELLA BLAZZARD	Kamas, Utah 84036	1	50,000	25,000	25,000
LEE BENSON	1225 Yale Avenue, S.L.C., Ut. 84105	2	100,000	75,000	25,000
LARK ROMNEY	730 Three Fountains Dr., Murray, Utah 84107	1	50,000	25,000	25,000
JOHN KNAPIUS	2985 So. 300 West, S.L.C., Ut. 84115	4	200,000	100,000	100,000
LLOYD LYSNGEN	1925 Bowling Ave., S.L.C., Ut. 84119	1	50,000	25,000	25,000
CLADE HARRISON	P.O. Box 17230, S.L.C., Ut. 84117	2	100,000	50,000	50,000
JACK OLLINGER	4920 Walmea Way, S.L.C., Ut. 84117	1	50,000	25,000	25,000
NORBERT BRUCKMAN	23032 Archibald, Carson, CA. 90745	1	50,000	25,000	25,000
PAUL THOMAS CO.	46 West Second So., S.L.C., Ut. 84101	1	50,000	25,000	25,000
RICH AND SARGENT	7707 Newport Way, S.L.C., Ut., 84101	1	50,000	25,000	25,000
WILLIAM CARD	3899 Parkview Drive, S.L.C., Ut. 84117	1	50,000	25,000	25,000
STAN PARRISH	4155 Parkview Drive., S.L.C., Ut. 84117	1	50,000	25,000	25,000
TED PETERS	1388 So. 700 West, S.L.C., Ut. 84104	1	50,000	25,000	25,000
WILFORD BEESLEY	36 So. State Street, S.L.C., Ut. 84111	1	40,000	40,000	-0-
DAVID HEDDERMAN	2940 So. Warr Road., S.L.C., Ut.	1	50,000	25,000	25,000
KENNETH YOUNG	1432 Capella Way, S.L.C., Ut.	1	50,000	25,000	25,000
PEAK DISTRIBUTING	62 East Granite Ave., S.L.C., Ut. 84115	1	50,000	25,000	25,000
DOYLE HUBER	1020 West 1100 So., Vernal, Ut. 84078	1	50,000	25,000	25,000
MAX JENKINS	1729 Kensington Ave., S.L.C., Ut. 84108	1	50,000	25,000	25,000
JAMES WOODWARD	4118 Camille Dr., S.L.C., Ut. 84108	1	42,500	27,500	15,000
ROD SNOW	2617 Nottingham Way, S.L.C., Ut. 84108	1	42,500	27,500	15,000
SCOTT WILLS	6830 Pine Rock Drive, S.L.C., Ut. 84121	1	42,500	27,500	15,000
MARK MOENCH	1455 So. Wasatch Dr., S.L.C., Ut. 84108	1	42,500	27,500	15,000
LUILL VAN ALYSTINE	1871 Michigan Ave., S.L.C., Utah 84108	1	42,500	27,500	15,000

JEREMY LOT RESERVATIONS - Phases IV and V cont.

<u>Name</u>	<u>Address</u>	<u>Number of Lots</u>	<u>Sales Prices</u>	<u>Down Payment</u>	<u>Amount Owing</u>
SUNNY HILLS INC.	P.O. Box 17230, S.L.C. Ut. 84117	10	500,000	250,000	250,000
DARRELL WOLFLEY	1002 East South Temple, S.L.C. Ut. 84102	1	50,000	25,000	25,000
DEAN CORPETT	2621 So. 3270 West, S.L.C., Ut. 84125 4/16/81	3	150,000	75,000	75,000
WILLIAM OLLERICH	2273 E. 6200 South, S.L.C., Ut. 84121	1	50,000	25,000	25,000
ROBERT WELLS	P.O. Box 178, Park City, Utah 84050	1	50,000	25,000	25,000
DON NICHOLS	5609 Burning Tree Dr., Cananda, CA 91011	1	50,000	25,000	25,000
PAUL RIDDELL	8324 So. Willow Creek, Sandy, Ut. 84092	1	50,000	25,000	25,000
JANES ANTONORI	P.O. Box 680040, Park City, Ut. 84060	1	50,000	25,000	25,000
WALTER SUMNERHAYS	2736 Holiday Ranch Loop Cr. Park City, Ut. 84060	1	22,000	22,000	-0-
ROBERT WABURTON	1484 Harvard Ave., SLC, Ut. 84105	1	50,000	25,000	25,000
W. D. HALVERSON	8288 Supernal Way, S.L.C., Ut. 84121	2	100,000	50,000	50,000
MATRIX CORPORATION	7106 Highland Dr., S.L.C., Ut. 84121	2	100,000	50,000	50,000
MARK SCHWENDLMANN	4370 Diana Way, S.L.C., Ut. 84117	1	20,000	20,000	-0-
NATE WALZ	1207 So. Main, S.L.C., Ut. 84111	1	20,000	20,000	-0-
RICHARD D. MOENCH	P.O. Box 11543, S.L.C., Ut. 84147	1	42,500	27,500	15,000
DARRELL NILSON	2622 Eagle Way, S.L.C., Ut. 84108	1	20,000	20,000	-0-
FARR HANSEN	167 East 6100 South, S.L.C., Ut. 84107	1	42,500	27,500	15,000
AX GREENHALGH	7350 Wasatch Boulevard, S.L.C., Ut. 84121	2	100,000	50,000	50,000
WAYNE STOKER	P.O. Box 800, S.L.C., Ut. 84110	1	50,000	25,000	25,000
BICKNEL ROBBINS	167 East 6100 So. S.L.C., Ut. 84107	1	42,500	27,500	15,000
DUANE MOSS	744 East 4th So., S.L.C., Ut. 84102	1	50,000	22,000	28,000
HOWARD SOGENSEN	7340 So. 3270 West, S.L.C., Ut. 84119	1	42,500	27,500	15,000
GEORGE MELLING	2218 Berkeley St., S.L.C., U. 84109	1	20,000	25,000	25,000
JOHN SCHMIDTCH	4017 Comet Circle, S.L.C., Ut. 84111	1	50,000	25,000	25,000
STEVEN WISCOMB	580 Matherhorn Dr., Summit Park, Ut. 81060	1	50,000	25,000	25,000
GERALD OLPIN	3553 Monte Verde Dr., S.L.C. Ut. 84117	1	50,000	25,000	25,000

JEREMY LOT RESERVATIONS - Phases IV and V cont.

<u>Name</u>	<u>Address</u>	<u>Number of Lots</u>	<u>Sales Prices</u>	<u>Down Payment</u>	<u>Amount Ow'n</u>
CHIEF FASSIO	608 East 4119 South, S.L.C., Ut. 84107	1	50,000	25,000	25,000
RICHARD FASSIO	3664 So. 5200 West, S.L.C., Ut. 84120	1	50,000	25,000	25,000
DONALD MOSS	744 East 4th South, S.L.C., Ut. 84102	1	50,000	25,000	25,000
EDWARD BROWN	718 Kearns Bldg., S.L.C., Ut. 84101	1	50,000	25,000	25,000
JACK LOWDER	2059 Wilcott Drive, S.L.C. Ut. 81109	2	40,000	40,000	--
ROBERT NAYLOR	6915 So. Pine Mountain Dr., S.L.C., Ut. 84121	1	50,000	25,000	25,000
HI-UT ENTERPRISES	7350 Wasatch Blvd., S.L.C., Ut. 84121	5	250,000	125,000	125,000
HUGH HOGLE	1627 So. Wasatch Blvd., S.L.C. Ut. 84108	1	50,000	25,000	25,000
R. B. WICKNIGHT	1406 Walker Bank Bldg., S.L.C., Ut. 84111	2	100,000	50,000	50,000
JAMES GADDIS	1214 Wilmington Ave., S.L.C., Ut. 84106	1	50,000	50,000	--
REED PETERSON	2250 So. West Temple, S.L.C., Ut. 84115	1	50,000	25,000	25,000
ALAN TAKAHASHI	523 Broadmoor Trail, Orange, Ca. 92669	1	50,000	25,000	25,000
MAURICE MALOUF	2864 Melony Drive S.L.C., Ut. 84117	1	50,000	25,000	25,000
R. V. COALSON	2358 Sidewinder Dr., Park City, Ut. 84060	1	50,000	25,000	25,000
BARRY INGHAM	P. O. Box 1226, S.L.C., Ut. 84110	1	50,000	25,000	25,000
JRANT PETERSON	2812 E. Commonweal'th, S.L.C., Ut. 84109	1	50,000	25,000	25,000
JOHN WILLIAMS	P. O. Box 27077, S.L.C., Utah. 84127	1	50,000	25,000	25,000
ROGER FURNESS	P. O. Box 27077, S.L.C., Utah. 84127	1	50,000	25,000	25,000
CARTER RENTAL	P. O. Box 27077, S.L.C., Utah 84127	1	50,000	25,000	25,000
ASIMOV'S DRYWALL	3604 So. 300 West, S.L.C., Ut. 84113	2	100,000	50,000	50,000
SAMUEL WILSON	79 West First South, S.L.C., Ut. 84101	1	50,000	25,000	25,000
LORIP TONNSEN	3522 So. West Temple, S.L.C. Ut. 84115	1	50,000	25,000	25,000
W. FLINT DICKSON	200 E. So. Temple, S.L.C., Ut. 84111	1	50,000	25,000	25,000
MARK MCGILLIS	P. O. BOX 15658, S.L.C., Ut. 84115	1	50,000	25,000	25,000
WINWOOD FURNITURE	37 West 100 South, S.L.C., Ut. 84101	2	100,000	50,000	50,000
WATER DEVELOPMENT	P. O. Box 400 Park City, Utah 84060	1	50,000	25,000	25,000

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JEREMY LOT RESERVATIONS - Phases IV and V cont.

<u>Name</u>	<u>Address</u>	<u>Number Of Lots</u>	<u>Sales Prices</u>	<u>Down Payment</u>	<u>Amount Owing</u>
DENNIS M. FICHS	353 E. Fourth So. #100, S.L.C., Ut.	1	50,000	25,000	25,000
DONALD B. BAXTER	5 Shearwater, Irvine, CA 92714	1	30,000	25,000	25,000
MICHAEL ROMNE	5310 Haywood Circle, S.L.C., Ut. 34117	1	50,000	25,000	25,000
BERGER INVESTMENTS	6920 So. 400 West, Midvale, Ut. 84047	1	50,000	25,000	25,000
BOB WOOD	4185 So. 900 East, S.L.C., Ut. 84117	1	50,000	25,000	25,000
RICHARD FROWSE	4185 So. 900 East, S.L.C., Ut. 84117	1	50,000	25,000	25,000
-YIGI WILKINSON	3112 Bay Meadows Ct, Lexington, KY. 40503	1	50,000	25,000	25,000
ROBERT R. HANSEN	2542 Skyline Drive, S.L.C., Ut. 84108	1	50,000	25,000	25,000
PETERSON, J. W. Int'l	4484 Parkview Drive, S.L.C., Ut. 84117	1	35,000	10,000	25,000
YEAMAN ENTERPRISE	4431 Parkview Drive, S.L.C., Ut. 84117	1	35,000	10,000	25,000
JAMES ALLRED	791 Clover Blossom Cr., Murray, Ut. 84107	1	50,000	25,000	25,000
JAMES DESPAIN	2217 High Mountain Dr., Sandy, Ut. 84092	1	50,000	25,000	25,000
TIM SOFFE	1476 E. Bob Lane, Sandy, Ut. 84092	1	50,000	25,000	25,000
DWIGHT G. LUMAN	6281 Cobblerock Lane, S.L.C., Ut. 84121	1	50,000	25,000	25,000
JENSEN, GLENN	3189 Terrace View, S.L.C., Ut. 84109	1	50,000	25,000	25,000
THOMAS, W. HOGAN	3669 Blue Fox Cr., West Valley, Ut. 84119	1	50,000	25,000	25,000
JOHN M. HOGAN	3681 Blue Fox Cr., West Valley, Ut. 84119	1	50,000	25,000	25,000
JM SONNICHSEN	24 Sandpiper, Irvine, CA 92714	1	50,000	25,000	25,000
BILL GREEN	3871 Barbara Way, S.L.C., Ut. 84117	1	50,000	25,000	25,000
PAUL TAYLOR	2790 So. 3020 East, S.L.C., Ut. 84109	1	42,500	27,500	15,000
DONALD THORSEN	P.O. Box 25005, S.L.C., Ut. 84125	1	50,000	25,000	25,000
JAMES CHERNINGTON	1213 Sista Dr., Sandy, Ut. 84070	1	50,000	25,000	25,000
GREG BALDWIN	2257 Laurel Kay Dr., S.L.C. Ut. 84117	1	20,000	20,000	-0-
SPUD ACAMS	1980 W. 3500 So. AC, S.L.C., Ut. 84119	1	50,000	25,000	25,000
ROBERT CHERNINGTON	315 Mutterhorn Dr., Summit Park, Ut. 84060	1	50,000	25,000	25,000
LAVENCE TAYLOR	1239 Emerson Ave., S.L.C., Ut. 84105	1	50,000	25,000	25,000
AVID POW	P.O. Box 577, Ely, NV. 89301	1	50,000	25,000	25,000

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JEREMY LOT RESERVATIONS - Phases IV and V cont.

<u>Name</u>	<u>Address</u>	<u>Number Of Lots</u>	<u>Sales Prices</u>	<u>Down Payment</u>	<u>Amount Owing</u>
WOODRUFF JAMES	4807 Dexter St., N. W. Arlington, D.C. 20007	2	15,000	55,000	30,000
JOHN GUNNELL	1400 Deacci Drive, S.L.C., Ut. 84105	1	50,000	25,000	25,000
EUGENE MOENCH	205 West 800 So., S.L.C., Ut. 84101.	1	22,000	22,000	-0-
JAMES HANNA	P.O. Box 848, Winnfield, LA 71483	1	22,000	22,000	-0-
JANET HOWELLS	4363 Zarhema Drive., S.L.C., Ut. 84117	1	42,500	27,500	15,000
SCOTT MACHINERY	4055 So. 500 West, S.L.C., Ut. 84107	1	50,000	25,000	25,000
RICARD WOOD	1375 Embassy Way, S.L.C., Ut. 84108	1	50,000	25,000	25,000
BONNIE INGALLS	4940 Wander Lane, S.L.C., Ut. 84117	1	20,000	20,000	-0-
MIKE GALPOS	P.O. Box 11592, S.L.C., Ut. 84147	1	50,000	25,000	25,000
ED MURPHY	1701 Sunnydale Lane, S.L.C., Ut.	1	50,000	25,000	25,000
JOHN TOVLY	5020 Dickens Place, S.L.C., Ut. 84103	1	50,000	25,000	25,000
ARAM JIGARJIAN	933 Avenida Oinos, Palm Springs, CA. 92262	1	50,000	25,000	25,000
CLARA DOWNARD	4075 Dublin Circle, West Valley, Ut. 84119	1	50,000	25,000	25,000
MIKE ALDRICH	P.O. Box 17230, S.L.C., Ut. 84117	2	100,000	50,000	50,000
DON SANSCH	2036 So. 13th East, S.L.C., Ut. 84106	1	50,000	25,000	25,000
DAVID CHRISTENSEN	17526 Santa Rosalia, Fountain Valley, CA 92708	1	50,000	25,000	25,000
RON STEVENS	3072 Danforth, S.L.C., Ut. 84121	1	50,000	25,000	25,000
STEVE BARRETT	P.O. Box 1325, Clearfield, Ut. 84105	1	50,000	25,000	25,000
RICHARD CALL	4786 Quail Pt. Road, S.L.C., Ut. 84117	1	50,000	25,000	25,000
SCOTT RICE	4625 So. 2300 First, S.L.C., Ut. 84117	1	50,000	25,000	25,000
DEWAYNE BLACKLEY	77 West 200 So., Suite 300, S.L.C., Ut. 84101	1	50,000	25,000	25,000
ARNIE FERRIN	2608 Sherwood Dr., S.L.C., Ut. 84109	1	42,500	27,500	15,000
JACK ELDER	3650 So. 300 West, S.L.C., Ut. 84115	1	50,000	25,000	25,000
ROBERT WILSON	P.O. Box 1084, Park City, Ut. 84060	1	50,000	25,000	25,000
JAMES LEVY	2197 So. 2200 E., S.L.C., Ut. 84109	1	50,000	25,000	25,000
LELAND TATTON	P.O. Box 694, Park City, Ut. 84060	1	50,000	25,000	25,000
CHARLES JOHANSON	181 Gary Way, No. Salt Lake, Ut. 84051	1	50,000	25,000	25,000

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JEREMY LOT RESERVATIONS - Phases IV and V cont.

<u>Name</u>	<u>Address</u>	<u>Number Of Lots</u>	<u>Sales Prices</u>	<u>Down Payment</u>	<u>Amount Owing</u>
C. GIGG BALDWIN	3519 Arcata Rd., S.L.C., Ut. 84117	1	50,000	25,000	25,000
NI L RASTMUSSEN	1909 Longview Dr., S.L.C., Ut. 84117	1	50,000	25,000	25,000
BILL CHILD	c/o R.C. Willey, 1693 W. 2700 S. Syracuse, Ut 84041	1	50,000	50,000	-0-
SHELDON CHILD	c/o R.C. Willey, 1693 W. 2700 S. Syracuse, Ut 84041	1	50,000	50,000	-0-
JAMES SHANE	9755 Wasatch Blvd., Sandy, Ut. 84092	1	50,000	25,000	25,000
RON FIFE	2334 Campus Way, S.L.C., Ut.	1	50,000	25,000	25,000
JOCK REDDISH	6078 So. 1480 East, S.L.C., Ut.	1	50,000	25,000	25,000
SHIRLEY THOMAS	5099 Holladay Blvd, S.L.C., Ut. 84117	1	50,000	25,000	25,000
MICHAEL MULLIN	8714 So. Tracy Dr., Sandy, Ut. 84092	1	62,500	31,250	31,250
THOMAS G. BAGLEY	7388 Lost Canyon Circle, S.L.C., Ut. 84121	2	100,000	50,000	50,000
RICHARD S. S. S. S.	10157 Roseboro Road, Sandy, Ut. 84902	2	100,000	50,000	50,000
CLARENCE BUSH	555 So. 2nd East, S.L.C., Ut. 84111	1	40,000	28,000	12,000

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LOT RESERVATION AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_ 1982, by and between THE JEREMY LTD., A LIMITED PARTNERSHIP, hereinafter called "DEVELOPER", and \_\_\_\_\_ hereinafter called "PURCHASER";

IN CONSIDERATION of the covenants herein contained, it mutually agreed between parties hereto as follows:

1. Reservation Agreement: For deposit received of FIFTY-FIVE THOUSAND DOLLARS (\$25,000.00), on the total purchase price of FIFTY-THOUSAND DOLLARS (\$50,000.00), the DEVELOPER proposes to reserve for the PURCHASER one (1) lot in the proposed subdivision surrounding the Jeremy Ranch Golf Course to be constructed on the Jeremy Ranch property located in Section 1, 2, and 3, Township 1 South, Range 3 East, Salt Lake Base and Meridian, Summit County, State of Utah. The PURCHASER shall have the right to select any lot in the proposed subdivision which has not been previously sold or committed to other parties at the time the PURCHASER'S rights under this Reservation Agreement are exercised. If, for any reason, PURCHASER decides to withdraw the reservation deposit, it will be refunded upon demand plus ten percent (10%) interest per annum prorated for the number of days it has been held by the DEVELOPER. Also, if the deposit is refunded to the PURCHASER, the Lifetime Membership (See Paragraph 2) will be returned to DEVELOPER.

2. Club Membership. It is understood that a Lifetime Family Membership in The Jeremy Ranch Golf and Country Club is included with the purchase of a lot on the Jeremy Ranch. There are no monthly dues, nor can any dues ever be assessed. This membership is transferable. It may be sold without a transfer fee. It is not assessable.

3. Term. This Reservation Agreement shall extend to and expire at the time of the sale or commitment to other parties of the last lot in the proposed subdivision referred to above. If PURCHASER has not exercised his rights under this Agreement prior to that time, the lot will be forfeited, and the DEVELOPER shall keep the \$25,000 deposit, and it shall be considered to be payment for the aforementioned Jeremy Ranch Golf Club Lifetime Membership.

4. Exercise of Reservation Agreement. The Lot Reservation Agreement shall be exercised by written notice to DEVELOPER at 7350 Wasatch Boulevard, Salt Lake City, Utah, 84121, on or prior to the expiration of the term hereof. Title to the lot may not be taken prior to the time the lot to be selected has been properly platted and registered, all required approvals have been obtained from governmental agencies having jurisdiction over the property and the lot may be legally sold. The balance of the purchase price shall be paid at closing, which shall be within thirty (30) days from the date upon which the Agreement is exercised, at which time all general property taxes shall be prorated. At closing, the DEVELOPER shall, at its expense, provide to PURCHASER, a policy of title insurance subject only to standard and recorded or platted easements, restrictions, and reservations. Final conveyance shall be made by Warranty Deed conveying title free and clear of all liens and encumbrances except those which are shown as exceptions in the title policy.

5. This Agreement shall not be assigned by the PURCHASER to any other party and the rights granted hereunder are not transferable without the prior written consent of DEVELOPER, with the exception of those rights in paragraph 2 above.

IN WITNESS WHEREOF, the parties hereto have signed their names or caused the names of their duly authorized agents to be signed hereunder.

DEVELOPER:

THE JEREMY LTD., A Limited Partnership

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

PURCHASER:

\_\_\_\_\_

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