

1995

# Golden Meadows, Inc., a Utah corporation v. Douglas B. Coons and Laura Coons : Brief of Appellant

Utah Court of Appeals

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Mark T. Ethington; Day & Barney; Attorneys for Golden Meadows; Larry L. Whyte; Attorneys for Crowley.

Carvel R. Shaffer; Attorney for Appellees.

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Utah Court of Appeals

MAY 23 1996

IN THE UTAH COURT OF APPEALS

GOLDEN MEADOWS, INC., a  
Utah corporation,  
  
Plaintiff/Appellant,

vs.

DOUGLAS B. COONS and  
LAURA COONS,  
  
Defendants/3rd Party  
Plaintiffs/Appellees,

vs.

DEBRA G. CROWLEY and  
MICHAEL E. CROWLEY,  
  
3rd Party Defendants/  
Appellants.

Marilyn M. Branch  
Clerk of the Court

Case No. 950762-CA

Priority No. 15

UTAH COURT OF APPEALS  
BRIEF

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BRIEF OF APPELLANTS

Appeal from Order Denying Motion to Vacate or Modify and Order  
Confirming Arbitration Award, Second District Court, Davis County,  
State of Utah, Honorable Jon Memmott, Presiding

Mark T. Ethington  
DAY & BARNEY  
45 East Vine Street  
Murray, Utah 84107  
Attorneys for Appellant  
Golden Meadows

Larry L. Whyte  
265 East 100 South #300  
Salt Lake City, Utah 84111  
Attorney for Appellants  
Debra & Michael Crowley

Carvel R. Shaffer  
110 West Center  
Bountiful, Utah 84010  
Attorney for Appellees  
Douglas & Laura Coons

IN THE UTAH COURT OF APPEALS

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GOLDEN MEADOWS, INC., a	)	
Utah corporation,	)	
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	
	)	Case No. 950762-CA
DOUGLAS B. COONS and	)	
LAURA COONS,	)	
	)	Priority No. 15
Defendants/3rd Party	)	
Plaintiffs/Appellees,	)	
	)	
vs.	)	
	)	
DEBRA G. CROWLEY and	)	
MICHAEL E. CROWLEY,	)	
	)	
3rd Party Defendants/	)	
Appellants.	)	

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BRIEF OF APPELLANTS

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Mark T. Ethington  
DAY & BARNEY  
45 East Vine Street  
Murray, Utah 84107  
Attorneys for Appellant  
Golden Meadows

Larry L. Whyte  
265 East 100 South #300  
Salt Lake City, Utah 84111  
Attorney for Appellants  
Debra & Michael Crowley

Carvel R. Shaffer  
110 West Center  
Bountiful, Utah 84010  
Attorney for Appellees  
Douglas & Laura Coons

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### STATEMENT OF JURISDICTION

Golden Meadows and the Crowleys appeal the Order Denying Motion to Vacate or Modify Arbitration Agreement and Order Confirming Arbitration Award, entered on August 16, 1995 by the Honorable Jon M. Memmott of the Second Judicial District Court, Davis County, State of Utah. The Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. §78-31a-19 (1985), and has transferred this appeal to the Court of Appeals pursuant to Utah Code Ann. §78-2a-3(2)(k) (1992).

### STATEMENT OF ISSUES OF APPEAL AND STANDARD OF REVIEW

#### A. Issues on Appeal

1. Whether the District Court erred in refusing to vacate the arbitration award on the grounds that the award was obtained by undue means and/or on the grounds that the arbitrator showed partiality, was guilty of misconduct that prejudiced the rights of any party or that the arbitrator exceeded his powers.

2. Whether the District Court erred in refusing to vacate the arbitration award due to the arbitrator's manifest disregard of the law.

3. Whether Golden Meadows is entitled to an award for interest, late fees, penalties, costs and attorney's fees as

a matter of law.

4. Whether Mrs. Crowley is entitled to an award of costs and attorney's fees as a matter of law.

5. Whether Mr. Coons is entitled to an award whatsoever, and if so whether the maximum amount to which Mr. Coons is entitled is \$5,000, as liquidated damages pursuant to the Real Estate Purchase Contract.

B. Standard of Review

Golden Meadows and the Crowleys are seeking this Court's review of the District Court's Order denying Motion to Vacate or Modify Arbitration Agreement and Order Confirming Arbitration Award. The proper construction of UCA §78-31a-14, the Utah Arbitration Act, is a question of law. DeVore v. IHC Hospitals, Inc., 884 P.2d 1246,1251 (Utah 1994); State v. Larsen, 865 P.2d 1355, 1357 (Utah 1993); State v. James, 819 P.2d 781, 796 (Utah 1991). Questions of law are reviewed for correctness with no deference being given to a district court's conclusions. Ward v. Richfield City, 798 P.2d 757, 759 (Utah 1990).

**STATEMENT OF THE CASE**

A. Parties

**Golden Meadows, Inc.** ("Golden Meadows") is a Utah

corporation in good standing and is the holder of the construction loan obtained by Coons for the home that is the subject matter of this dispute.

**Debra Crowley** ("Mrs. Crowley") is Michael Crowley's wife and is the purchaser of the home that is the subject matter of this dispute pursuant to a Real Estate Purchase Contract.

**Michael Crowley** ("Mr. Crowley") is the husband of Debra Crowley and is also the President of Golden Meadows, Inc., which purchased the construction loan for the home in question. Michael and Debra Crowley will be collectively referred to as ("Mr. & Mrs. Crowley" and/or "the Crowleys").

**Douglas Coons** ("Mr. Coons") is a homebuilder, and at all times relevant herein was doing business as Douglas B. Coons Construction in Davis County, Utah.

**Laurie Coons** ("Mrs. Coons") is the wife of Douglas Coons. She is also a guarantor of a construction loan obtained by Douglas Coons for the purpose of constructing the home that is the subject matter of this dispute. Douglas and Laurie Coons will be collectively referred to as ("Mr. and Mrs. Coons")

**B. Nature of the Case**

In or about June, 1992, Douglas Coons secured a building lot at 35 South Viewcrest Drive, Bountiful, Utah. Mr. Coons is a home builder and earns his living by building and selling homes. At all times relevant hereunder, Mr. Coons did

business as a sole proprietor under the assumed name of Douglas B. Coons Construction. After securing the building lot, Mr. Coons obtained a construction loan from Zions Mortgage Company for the purpose of financing the construction a large, custom home on this lot for the specific purpose of selling the home. Mrs. Coons executed the Construction Loan Agreement as a guarantor. (A copy of the Construction Loan Agreement is found in the Addendum as Exhibit "A"). The construction loan was in the principal amount of \$179,000. In connection with the obtaining of the construction loan, Mr. Coons also executed a Trust Deed Note and a Trust Deed, securing payment of the indebtedness, and his wife, Mrs. Coons executed a guarantee of the Trustee Deed Note. (A copy of the Trust Deed Note along with a copy of the continuing guarantee are collectively found in the Addendum as Exhibit "B" and a copy of the Trust Deed is found in the Addendum as Exhibit "C").

Construction on the home progressed slowly and was enjoined by order of the Second Judicial District Court for a lengthy period of time due to Mr. Coons' refusal and failure to comply with the building restrictions running with the property and which were recorded in the Office of the Davis



County Recorder.<sup>1</sup>

By January, 1994, construction on the home had resumed and Mr. Coons began advertising it for sale. In January, 1994, Mrs. Crowley first looked at the home and in February, 1994, Mrs. Crowley agreed to purchase the home from Mr. Coons upon its completion for a total purchase price of \$335,000. The agreement for the purchase of the home is contained in a standard preprinted Real Estate Purchase Contract dated February 1, 1994 and in a seven (7) page hand-written Addendum dated February 3, 1994 and drafted by Mr. Coons. (A copy of the Real Estate Purchase Contract and seven page Addendum dated February 3, 1994 are found in the Addendum as "Exhibit "D)"). The purpose of the Addendum was to set forth the finish items, materials and allowances for the completion of the home. On or about February 28, 1994 the parties executed an additional three (3) page Addendum dated February 28, 1994, a copy of which is found in the Addendum as Exhibit "E". It was anticipated that the home would be completed and that closing thereon would occur on April 15, 1994.

At the time the Real Estate Purchase Contract and the Addenda thereto were executed, and at all times thereafter,

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<sup>1</sup> Architectural Control Committee of Granada Hills No. 7, by and through its members, John E. Cawley, Richard R. Green and Steven R. Facer vs. Douglas Coons dba Doug Coons Construction, Civil No. 920700327, 2nd District Court, Davis County, State of Utah.

Mr. Coons held himself out as a licensed contractor. However, Mr. Coons contractor's license had expired long before on July 31, 1993 and was expired all during the time he was completing the Crowley's home.<sup>2</sup> Mr. Coons failed to pay the required license fee and had further failed to submit the required financial documents to the State of Utah which resulted in his license expiring. Mr. Coons operated without a license until he was caught. On September 2, 1994, more than a year since his license had expired, Mr. Coons was issued a citation for engaging in construction without a license. Mr. Coons admitted committing the offense and was assessed a fine. Upon payment of his fine and renewal fee his license was reinstated. (Copies of the Citation issued to Mr. Coons, along with copies of his Notice of Response, Administrative Hearing Report and pertinent pages of Mr. Weiler's deposition are collectively found in the Addendum as Exhibit "F").

Between February 1, 1994 and August 31, 1994, Mrs. Crowley spent in excess of \$90,000, in addition to the purchase price of the home, for improvements to the home and for which she sought credit from Mr. Coons. However, Mr.

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<sup>2</sup> George Weiler, Bureau Manager of the Construction Trades Licensing Bureau, Division of Occupational and Professional Licensing, Department of Commerce, State of Utah testified that according to state licensing records over which he was a custodian, Mr. Coons' contractor's license expired July 31, 1993 and was not reinstated until September 16, 1994. (See Exhibit "F" in the accompanying Addendum).

Coons refused to give Mrs. Crowley any credit for these additional monies which she had spent on the home, resulting in disputes arising between the Crowleys and Mr. Coons regarding the type and quality of finish of the home, what allowances were to be included in the final purchase price as opposed to what were "extras" to be paid by Mrs. Crowley, as well as when closing would occur.

In July, 1994, Mr. Coons demanded that Mrs. Crowley immediately close on the purchase of the home despite the fact that construction was not yet completed on the home. When Mrs. Crowley refused to close prematurely Mr. Coons, by two letters, one dated July 22, 1994 and the other dated July 28, 1994, unilaterally declared a default of the Real Estate Purchase Contract and further declared that he was retaining Mrs. Crowley's \$ 5,000 earnest money deposit as liquidated damages. (Copies of these two letters are found in the Addendum as Exhibit "G"). Mr. Coons even went so far as to attempt to sell the home to a third-party, who turned out to be a business associate of his. (Copy of second Real Estate Purchase Contract is found in Addendum as Exhibit "H").

From June 26, 1992 to July 1, 1994, Mr. Coons sought and obtained extension of his construction loan from Zions Mortgage Company. (Copies of the 4 extension agreements are collectively found in the Addendum as Exhibit "I"). On August 15, 1994 Mr. Coons' 4th extension agreement on the

construction loan expired and the full amount of the loan of \$179,000 plus accrued interest was due and payable to Zions Mortgage Company. After August 15, 1994, Zions Mortgage Company did not issue any further extension agreements and Mr. Coons did not make his payment to Zions Mortgage Company when due on August 15, 1994, or at any time thereafter.

In order to protect her investment and interest in the home and to prevent Mr. Coons from selling it out from underneath her, Mrs. Crowley filed a Notice of Interest with the Davis County Recorder in August of 1994. On August 24, 1994, Golden Meadows purchased Mr. Coons' construction loan from Zions Mortgage Company, which was now in default for the sum of \$177,916.62. In connection therewith, Zions Mortgage Company assigned all of its interest in the Construction Loan Agreement, Trust Deed and Trust Deed Note to Golden Meadows. (Copies of Golden Meadows check and of Zions Mortgage Company's assignment are found collectively in the Addendum as Exhibit "J").

Golden Meadows commenced collection and foreclosure proceedings against the Coonses and the property respectively. On or about October 6, 1994, this action was commenced by Golden Meadows which filed a verified complaint against Mr. and Mrs. Coons for, among other things, their default on the construction loan. The Coonses filed an Answer and Counterclaim, making various allegations against Golden

Meadows. Shortly thereafter, the Coonses filed a Third-Party Complaint against Mr. and Mrs. Crowley, alleging among other things fraud, breach of title and sought to quiet title in the property. Brief discovery was conducted by the parties between October 1994 and December, 1994. The parties attempted to mediate their disputes, but to no avail, at which time the parties submitted the matter to arbitration. On December 22, 1994, a Notice of Arbitration and Stay of Proceedings was filed by counsel for Golden Meadows. The parties proceeded to arbitration without a formal arbitration agreement.

The arbitration proceedings commenced on February 14, 1995 and continued for the next three days. The parties did not retain the services of a court reporter and no formal record of the arbitration proceedings was maintained. An Arbitration Award dated February 24, 1995 was issued. Among other things is found that:

- 1) Mrs. Crowley had not breached the Real Estate Purchase Contract;
- 2) that Mr. Coons was an unlicensed contractor;
- 3) that Golden Meadows was the successor-in-interest to Construction Loan Agreement, Trust Deed Note and Trust Deed, having paid face value for them; and
- 4) at closing Golden Meadows was entitled to be paid the sum it paid to Zions bank when it purchased the construction

loan in question.

Subsequently the district court ordered the house to be sold with the proceeds therefrom being placed in escrow pending the ultimate resolution of the parties' disputes. From the escrowed funds, the district court authorized a withdrawal to pay the principal amount owed to Golden Meadows in full, as provided by the Arbitration Award. The remainder of the funds continue to be held in escrow.

Due to numerous and obvious omissions and errors, the parties filed requests for reconsideration and clarification with the arbitrator, resulting in three additional days of further proceedings and in the issuance of a Supplement to Arbitration Award dated May 1, 1995. The Supplement to Arbitration Award only addressed the credits due the respective parties and failed to address any other issue. Defects and deficiencies continue to exist in the Arbitration Award and Supplemental to Arbitration Award. (Copies of the Arbitration Award and Supplement to Arbitration Award are collectively found in the Addendum as Exhibit "K"). Golden Meadows and the Crowleys timely filed a Motion to Set Aside Arbitration Agreement or in the Alternative, Motion to Vacate and/or Modify Arbitration Award and a supporting memorandum.

On August 16, 1995 an Order Denying Motion to Vacate or Modify Arbitration Agreement and Order Confirming Arbitration Award was entered. (A copy of the Order is found in the

Addendum as Exhibit "L"). On September 15, 1995 Golden Meadows and the Crowleys timely filed their Notice of Appeal.

#### SUMMARY OF ARGUMENT

Golden Meadows and the Crowleys submit that the Arbitration Award and the Supplement to Arbitration Award must be vacated by this Court. The basis for the vacation is two-fold. First Golden Meadows and the Crowleys submit that by virtue of the arbitrator's Award and Supplement being in direct contradiction of the law, the arbitrator exceeded his powers, showed partiality, engaged in misconduct prejudicial to the rights of the parties and demonstrating the award was procured by undue means, and must be vacated pursuant to UCA §78-31a-14. Second, Golden Meadows and the Crowleys submit that the arbitrator demonstrated a manifest disregard of the law requiring vacation of the Arbitration Award and Supplement to Arbitration Award pursuant to common law and case law.

The specific reversible errors of law which the arbitrator committed are:

- 1) failing to award Golden Meadows its interest, late fees and penalties and its costs and attorney's fees even though these were all provided for by the terms and conditions of the Construction Loan Agreement, Trust Deed and Trust Deed

Note which were legally assigned to Golden Meadows, and to which Golden Meadows was legally entitled, particularly since there was no finding that Golden Meadows was in breach of any of the terms and conditions of these documents, and since Mr. Coons had defaulted on the Construction Loan Agreement and Trust Deed Note;

2) failing to award Mrs. Crowley her costs and attorney's fees even though these were provided for by the terms and conditions of the Real Estate Purchase Contract to the prevailing party, which the arbitrator found her to be Mrs. Crowley on the issue of breach;

3) awarding Mr. Coons any amount whatsoever since he was an unlicensed contractor at the time the contract was entered into and at the time the alleged cause of action arose, and by law was prohibited from commencing or maintaining any action whatsoever, let alone collecting any sum as a result thereof, and since he had already defaulted on the Construction Loan and Trust Deed Note. In the alternative, awarding Mr. Coons any amount over \$5,000 since he elected to forego any additional sums, having elected to retain Mrs. Crowley's \$5,000 earnest money deposit as liquidated damages, pursuant to the terms and conditions of the Real Estate Purchase Contract.



## ARGUMENT

### POINT I:

#### THE DISTRICT COURT ERRED IN REFUSING TO VACATE THE ARBITRATION AWARD AND SUPPLEMENT TO ARBITRATION TO AWARD PURSUANT TO UCA §78-31a-14

Golden Meadows and the Crowleys submit that the District Court erred in refusing to vacate the arbitration award pursuant to UCA §78-31a-14 on the grounds that the award was obtained by undue means and/or on the grounds that the arbitrator showed partiality, was guilty of misconduct that prejudiced the rights of any party or that the arbitrator exceeded his powers.

Golden Meadows and the Crowleys recognize at the outset the long-standing policy of Utah law that favors arbitration as a speedy and inexpensive method of adjudicating disputes. Allred v. Educators Mut. Ins. Ass'n, 909 P.2d 1263, 1265 (Utah 1995); DeVore v. IHC Hospitals, Inc., 884 P.2d 1246, 1251 (Utah 1994); Utility Trailer Sales of Salt Lake, Inc. v. Fake, 740 P.2d 1327, 1329 (Utah 1987); Robinson & Wells, P.C. v. Warren, 669 P.2d 844, 846 (Utah 1983); Giannopoulos v. Pappas, 80 Utah 442, 449, 15 P.2d 353, 356 (1932). Relying upon the public policy and law in support of arbitration, Utah courts have, as a general rule, limited their judicial review of arbitration awards confirmed pursuant to the Act to those grounds and procedures provided for under the act. Allred, at 909 P.2d

1263, 1265; DeVore, at 884 P.2d 1247, 1251.

Utah Code Annotated §78-31a(14) provides that:

"(1) Upon motion to the court by any party to the arbitration proceeding for vacation of the award, the court shall vacate the award if it appears:

(a) the award was procured by corruption, fraud, or other undue means;

(b) an arbitrator, appointed as a neutral, showed partiality, or an arbitrator was guilty of misconduct that prejudiced the rights of any party;

(c) the arbitrators exceeded their powers;

(d) the arbitrators refused to postpone the hearing upon sufficient cause shown, refused to hear evidence material to the controversy, or otherwise conducted the hearing to the substantial prejudice of the rights of a party; or

(e) there was no arbitration agreement between the parties."

Golden Meadows and the Crowleys each contend that the Arbitration Award should be vacated pursuant to subsections (a), (b) and (c) above on the grounds the arbitrator exceeded his powers, showed partiality and/or because the award was procured by undue means, by virtue of his issuing an Arbitration Award and Supplement to Arbitration Award in direct conflict to long established legal principles. It has been determined that an arbitrator exceeds his powers when he grants an award contrary to established law. Leechburg Area School Dist. v. Leechburg Ed. Ass'n, 380 A.2d 1203, 1205 (Pa.1977). Likewise manifest infidelity to what the arbitrator knows to be the law but which he deliberately disregards may be regarded as the use of "undue means"

or "partiality" within the statutes authorizing the vacating or modifying of an arbitration award. San Martine Compania De Navegacion S.A. v. Saguenay Terminals, Ltd., 293 F.2d 796 (9th Cir. 1961).

This Court is being asked to review gross errors of law that are readily apparent from the face of the Arbitration Award. When, as in this case, the arbitrator not only failed to apply the law, but ignored the law in order to fashion his own "equitable" remedy, the subjective rights of the parties have been prejudiced, requiring action by this Court. Obviously, understanding, but blatantly refusing to follow the law is evidence that the arbitrator exceeded his powers by ruling beyond the boundaries of the law, is evidence of partiality or misconduct which prejudices the rights of the victimized party, demonstrates that the award procured with undue means, thus satisfying the statutory standards set forth above for setting aside an arbitration award.

Specific examples of the law the arbitrator blatantly ignored include:

- 1) The arbitrator ignored the clear language of the construction loan documents and ignored construing case law in refusing to award Golden Meadows its interest, late fees and penalties after the arbitrator had already awarded Golden Meadows its principal;

- 2) The arbitrator ignored the clear language of the construction loan documents and ignored the construing case law in

refusing to award Golden Meadows its costs and attorney's fees;

3) The arbitrator ignored the clear language of the Real Estate Purchase Contract and ignored the construing case law in refusing to award Mrs. Crowley her costs and attorney's fees;

3) The arbitrator ignored the clear language of the §58-55-604 of the Utah Construction Trades Licensing Act and the supporting case law which prohibits unlicensed contractors from commencing or maintaining any action for collection or compensation;

4) The arbitrator ignored the clear language of the Real Estate Purchase Contract, ignored Mr. Coons' letters and ignored the corresponding case law in awarding Mr. Coons any sum above \$5,000 which remedy he had previously elected as liquidated damages.

#### POINT II:

THE DISTRICT COURT ERRED IN REFUSING TO VACATE THE  
ARBITRATION AWARD AND SUPPLEMENT TO ARBITRATION TO  
AWARD PURSUANT TO THE JUDICIALLY-CREATED STANDARD OF  
"MANIFEST DISREGARD OF THE LAW"

Golden Meadows and the Crowleys submit that the District Court erred in refusing to vacate the arbitration award pursuant to the judicially-created standard of "manifest disregard of the law" on the grounds that the arbitrator, knowingly disregarded the law on several points in his Arbitration Award and Supplement to Arbitration Award.

In addition to the provisions of the arbitration act cited

above, Golden Meadows and the Crowleys submit that this Court can and should vacate an arbitration award when it appears obvious from the face of the award that the arbitrator exhibited "manifest disregard for the law", as was done in this matter. Golden Meadows and the Crowleys acknowledge that to date, it appears that Utah has not adopted this proposed standard. Allred, at 909 P.2d 1263, 1265; DeVore, at 884 P.2d 1247, 1251. Nevertheless, Golden Meadows and the Crowleys are unaware of any Utah case which affirmatively rejects this standard, and Golden Meadows and the Crowleys submit that the State of Utah and this Court should now accept this standard.

At least three (3) reasons exist why the "manifest disregard of the law" standard should be accepted. First it is consistent with the provisions of the statute governing vacation of awards under the arbitration act. Second, it is the standard adopted in by the Federal Arbitration Act which governs disputes arising out of the loan documents in this very matter. Third is because it promotes fairness and justice. When parties enter into arbitration they presume, and rightfully so, that the arbitrator will be governed by the same laws, statutes and principles as those governing any court, judge or jury. There is a reasonable anticipation that the statutes and case law will be followed and enforced if necessary. Arbitration is currently being heralded as a quick, and fair alternative to an overloaded judicial system. The public policy behind arbitration is undermined by arbitrators

who ignore the law, as in the instant action. This Court must take control of arbitration procedures, once and for all and provide an effective way to review and correct arbitration awards that demonstrate a manifest disregard to the law. While it can be strongly argued that the statute intended the same result, the standard of review needs to be expanded by the adoption of this new standard to eliminate any doubt and to promote the justice and fair play that should accompany arbitration proceedings.

In 1953, the United States Supreme Court, reviewed a case under the Federal Arbitration Act found at 9 U.S.C. §1, et seq. In that case, Wilko v. Swan, 346 U.S. 417, 436-437, 74 S.Ct. 182, 187-188, 98 L.Ed. 168 (1953), the Court held, among other things that the parties were bound by an arbitrator's decision that was not in "manifest disregard" of the law. Thus was the beginning of a judicially-created standard, grounded in common law, for the vacation of arbitration awards, in addition to the specific statutory grounds as found within the Federal Arbitration Act. In 1983, the U.S. Supreme Court expanded this judicially-created standard, allowing vacation of arbitration awards that violate public policy. W.R. Grace and Co. v. Local Union 759, 461 U.S. 757, 764-766, 103 S.Ct. 2177, 2182-2183, 76 L.Ed.2d 298 (1983). Although the Wilko case was subsequently overruled on other grounds<sup>3</sup>, it nevertheless remains good law for purposes of vacating

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<sup>3</sup> See Rodriguez de Quijas v. Shearson/American Express, Inc. 490 U.S. 477, S.Ct. 1917, 104 L.E.2d 526 (1960)

an arbitration award due to the arbitrator's "manifest disregard of law". See First Options of Chicago v. Kaplan, \_\_\_ U.S. \_\_\_, 115 S.Ct. 1920, 1922-1923, 131 L.Ed.2d 985 (1995). This judicially-created standard for vacating arbitration awards has been followed and defined by the federal district court for Utah and the 10th Circuit court of appeals, in addition to other federal district courts and courts of appeal. See, i.e. Jeppsen v. Piper, Jaffray & Hopwood, Inc., 879 F.Supp. 1130, 1133 (D.Utah, 1995)[ "manifest disregard of law" required in order to set aside arbitrator's award, is willful inattentiveness to governing law amounting to more than error or misunderstanding with respect to law]; Kelley v. Michaels, 59 F.3d 1050, 1052, (10th Cir. 1995); ARW Exploration Corp. v. Aguirre, 45 F.3d 1455, 1463 (10th Cir. 1995); Seymour v. Blue Cross/Blue Shield, 988 F.2d 1020, 1022 (10th Cir. 1993).

In further support for this Court adopting this standard, Golden Meadows would direct the Court's attention to page 2 paragraph (f) of the Trust Deed Note (Exhibit "B" in the Addendum) which provides that "Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 U.S.C. Section 1 et seq. shall apply to the construction and interpretation of this Arbitration paragraph." By its very terms, the Trust Deed Note itself adopts the federal standard, which includes the "manifest disregard of the law" standard. Therefore, the district court erred in refusing to vacate the Arbitration Award and the Supplement to Arbitration Award on the grounds of

"manifest disregard of the law".

The federal cases which have discussed the meaning of manifest disregard of the law" have concluded that it involves more than simply a misapplication of the law. It results where, as here, the record reveals that the arbitrator clearly understands the law but deliberately disregards it. See San Martine, at 293 F.2d 796, 801.

In addition, various states have likewise adopted this standard. In 1993, the Supreme Court of our sister state of Nevada adopted this judicially-created, common law standard when it held that a district court's power of review is limited to statutory grounds, but "when an arbitrator manifestly disregards the law, a reviewing court may vacate an arbitration award. Wichinsky v. Mosa, 109 Nev. 84, 847 P.2d 727 (1993). More recently, the case of Graber v. Comstock Bank, 905 P.2d 1112 (Nev. 1995) affirms the Wichinsky decision as the better approach, despite a split in authority on this matter. Graber, at 905 P.2d 1112, 1115. The Graber court stated "a district court had the authority and obligation to review the arbitrator's award to determine whether the arbitrator manifestly disregarded the law." Id. 116. The Graber court limited the scope of judicial review by adopting the standard that:

"review under the manifest disregard standard does not entail plenary judicial review. City of Boulder v. General Sales Drivers, 100 Nev. 117, 694 P.2d 498 (1985). Instead when searching for a manifest disregard for the law, a court should attempt to locate arbitrators who appreciate the significance of



clearly governing legal principles but decide to ignore or pay no attention to those principles. See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker, 808 F.2d 930, 933 (2d Cir. 1986). The governing law alleged to have been ignored must be well-defined, explicit, and clearly applicable. Id. at 934. Further courts are not at liberty to set aside arbitration awards because of an arguable difference regarding the meaning or applicability of laws. Id." Graber, at 905 P.2d 1112, 1116.

See, also, Duquesne Light Co. v. New Warwick Min. Co., 660 A.2d 1341 (Pa.Super 1995); U.S. for Use & Benefit of Skip Kirchdorfer, Inc. v. Aegis/Zublin Joint Venture, 869 F.Supp. 387 (E.D.Va 1994); Amerispec Franchise v. Cross, 452 S.E.2d 188 (Ga.App. 1994); Chrobak v. Edward D. Jones & Co., 878 S.W.2d 760 (Ak.App. 1994).

Golden Meadows and the Crowleys submit that a blatant disregard of the applicable rule of law cannot be tolerated in arbitration proceedings. To do so would undermine the very purpose for which arbitration exists. As such, Golden Meadows and the Crowleys submit that the time has come for this Court to expand the statutory grounds of review of arbitration awards to include the judicially-created standard of "manifest disregard of the law", particularly since the very terms of the agreements between to parties so provides. The adoption of this standard does not have to, and in fact in the jurisdictions where it has been adopted, has not resulted in an undermining of the arbitration process or the public policy behind arbitration. Rather, it simply gives the court an opportunity to correct wrongs that should be corrected,

and a way to control arbitrary and capricious decisions of arbitrators that have no basis in law, and which could otherwise go undisturbed under the statutory review standards.

POINT III:

MRS. CROWLEY IS ENTITLED TO AN AWARD OF  
COSTS AND ATTORNEY'S FEES

In February, 1994 Mrs. Crowley and Mr. Coons signed a Real Estate Purchase Contract, wherein Mr. Coons agreed to sell to Mrs. Crowley the subject house upon its completion. Paragraph 17 of that contract provides that "in any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees." Mr. Coons claimed that Mrs. Crowley breached the Real Estate Purchase Contract because she failed to close when Mr. Coons demanded despite the fact that he had not yet completed construction of the home. Despite Mr. Coons' assertions and allegations, the Arbitrator found that Mrs. Crowley did not breach the Real Estate Purchase Contract. Specifically, the arbitration award provides that "The failure to close the sale on April 15, 1994, did not constitute a breach of the contract...." Mrs. Crowley successfully defended against Mr. Coons' claims that she breached the purchase contract and, as the prevailing party is entitled to an award of her attorney's fees and costs. Nevertheless, the Arbitrator failed and refused to award Mrs. Crowley her costs and attorney's fees. This ruling is in clear violation of the law which provides for the payment of attorneys

fees. The Utah Supreme Court has recognized that a party in whose favor judgment is rendered is the "prevailing party" for purposes of awarding attorney's fees. Highland Construction Co. v. Stevenson, 636 P.2d 1034 (Utah 1981). In Occidental/Nebraska Federal Sav. Bank v. Mehr, 791 P.2d 217 (Utah.App. 1990) this Court specifically held that where there is a right to attorney's fees, the party who successfully defends against a claim may recover the fees attributable to those claims on which he was successful.

It has been a long-standing rule in this state that if attorney's fees are provided for by contract they shall be awarded in accordance with the terms of the contract and should be enforced by the court. See, e.g. Dixie State Bank v. Bracken, 764 P.2d 985 (Utah 1988); Trayner v. Cushing, 688 P.2d 856 (Utah 1984); Kerr v. Kerr, 610 P.2d 1380 (Utah 1980); Regional Sales Agency, Inc. v. Reichert, 784 P.2d 1210 (Utah App. 1989), cert. granted 795 P.2d 1138. Inasmuch as the awarding of costs and attorney's fees was part of the contract which the parties signed, the Court is bound to award them. Grahn v. Gregory, 800 P.2d 320 (Utah App. 1990). The Arbitrator's award ignores the law on this subject, within the meaning of the statute awarding attorney's fees. Mrs. Crowley was the prevailing party when the arbitrator found that there was no breach of the Real Estate Purchase Contract due to closing not occurring as scheduled in the contract. The arbitrator's failure to award fees and costs to Mrs. Crowley is wrong as a matter of law, subjecting the award to vacation under the standards set forth

in UCA §78-31a-14, in addition to the judicially-created standard of "manifest disregard of the law" as adopted by the U.S. Supreme Court and other courts.

POINT IV:

GOLDEN MEADOWS IS ENTITLED TO AN AWARD FOR  
INTEREST, LATE FEES AND PENALTIES AND FOR  
ITS COSTS AND ATTORNEY'S FEES

Golden Meadows is entitled to an award of its interest, late fees and penalties and for its costs and attorney's fees. On August 24, 1994, Golden Meadows purchased Mr. Coons' construction loan from Zions Mortgage Company, resulting in Zions Mortgage Company assigning its interest in the loan and the associated and supporting documents to Golden Meadows. This purchase/assignment was an arms length transaction for valuable consideration. As the assignee, Golden Meadows stepped into the shoes of Zions Mortgage Company, and is entitled to all of the rights and remedies to which Zions Mortgage Company would have otherwise been entitled. See, e.g. Jack B. Parson Companies v. Nield, 751 P.2d 1131 (Utah 1988)

It is undisputed that Mr. Coons was in breach and default of the terms and conditions of the Construction Loan Agreement and Trust Deed Note as of August 15, 1994. It is obvious that Zions Mortgage Company chose to sell the note and trust deed to Golden Meadows rather than again extend the note or to commence foreclosure proceedings.

Pursuant to the Construction Loan Agreement, the Coonses

agreed to pay all loan amounts, including interest, costs, charges and fees, page 1 ¶2 & ¶5. In addition the Construction Loan Agreement specifically provides remedies to Golden Meadows as the holder of the note in the event of default. Among other things, Golden meadows was entitled to, among other things:

- 1) take possession of the property and advance funds for its finish which funds would be secured by the trust deed, page 2 ¶1(a) & (b);

- 2) that the rights available under the Construction Loan Agreement are cumulative and in addition to all other rights and remedies afforded at law or existing in the Trust Deed or Trust Deed Note, page 2 ¶2; and

- 3) have Coonses pay for all costs and attorney's fees in the event of a breach by the Coonses, page 3 ¶6;

The Trust Deed Note also provides, among other things:

- 1) for the interest rate for the loan to Mr. Coons, page 1 ¶¶a-g;

- 2) that a late charge of 5.0% of the total monthly installment may be added to any payment not received within 15 days after it is due, page 1 ¶h;

- 3) In the event of default, Golden Meadows as the holder may at its option declare the entire amount due and payable and may commence collection and enforcement action with all costs of collection and attorney's fees to be paid by the Coonses, page 1;

- 4) In case of arbitration, the arbitrator shall award

recovery of all costs and fees (including reasonable attorney's fees, administrative fees, arbitrators' fees and court costs, page 1 ¶c; and

5) Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 U.S.A.C. Section 1 et seq., shall apply to the construction and interpretation of this arbitration paragraph, page 2 ¶f.

The Trust Deed provides among other things that:

1) should the Coonses fail to make any payment Golden Meadows without notice may take any action it deems necessary, including expending whatever amounts it deems necessary for any purpose including the employment of counsel, all of which shall be added to the loan amount and which shall bear interest at the rate provided in the Trust Deed Note, page 2 ¶6;

The trust deed also contains standard arbitration provisions including the adoption of the federal arbitration act as the governing law, as the Trust Deed Note did. Mr. Coons obviously read and understood these documents before he signed them. They appear to be standard preprinted forms used generally by lending institutions. As such, Golden Meadows as the current holder of these documents is entitled to all of the rights and remedies afforded thereunder.

It is significant to note that it is undisputed that Mr. Coons was in default of the terms and conditions of these documents on the day that Golden Meadows purchased his loan from Zions Mortgage.

It is further significant to note that the arbitrator made no finding that Golden Meadows had in any way breached its agreements under the terms and conditions of the documents. There having been no finding of default made against Golden Meadows, the only presumption that one can draw is that Golden Meadows was not in breach of any of the terms or conditions of these documents. Nevertheless, the arbitrator failed to award Golden Meadows the relief it was otherwise entitled to under the terms and conditions of the documents.

Just as with Mrs. Crowley, the arbitrator ignored the law in fashioning his own "equitable" remedy. This he may not do. Nevertheless, the arbitrator, ignoring the applicable law, ruled that Golden Meadows was entitled to the principal amount only. For the same reasons, and based upon the same authority, as set forth in Point III above, Golden Meadows is entitled to have the terms and conditions of its contracts honored, particularly where it was not found to be in breach in any way. In addition, Golden Meadows would direct this Court's attention to the recent and similar case of Sylvester v. Abdalla, 903 P.2d 410 (Or.App. 1995), which it considers to be instructive on this issue. In that case, the arbitrator found in favor of Sylvester, but failed to award attorney's fees and costs although the contract specifically provided for attorney's fees and costs to the prevailing party. On appeal, the Court found that attorney's fees must be awarded and that the arbitrator was wrong as a matter of law for failing to do

so. Golden Meadows is entitled to the benefit of the terms and conditions of the loan documents and which Mr. Coons accepted. To do otherwise would prejudice the rights of Golden Meadows and reward Mr. Coons for his default.

The arbitrator erred as a matter of law to award Golden Meadows its interest, late fees and penalties on the trust deed note and to award it its costs and attorney's fees as provided in the various loan documents, requiring vacation of his award under either legal theory set forth above in Points I and II.

POINT V:

MR. COONS IS NOT ENTITLED TO ANY AWARD WHATSOEVER,  
BECAUSE HE WAS NOT A LICENSED CONTRACTOR

It is undisputed that Mr. Coons' was without a contractor's license from July 31, 1993 through September 16, 1994. It was during this period of time that he entered into the Real Estate Purchase Contract with Mrs. Crowley, agreeing to complete the building of the house in question for her. It was also during this period of time that he demanded that Mrs. Crowley close prematurely and purportedly declared a default and breach. UCA §58-55-604 provides that:

"No contractor may act as agent or commence or maintain any action in any court of the state for collection of compensation for performing any act for which a license is required by this chapter without alleging and proving that he was a properly licensed contractor when the contract sued upon was entered into, and when the alleged cause of action arose."



In construing this statute this Court has ruled that a contractor who is barred from bringing suit under this section is probably also barred from recovery under the equitable theory of quantum meruit. See Govert Copier Painting v. Van Leeuwen, 801 P.2d 163 (Utah App. 1990). The arbitrator recognized that Mr. Coons did not have a contractor's license, but then sanctioned Mr. Coons' omission by stating that Mr. Coons was building the house on spec for his own occupancy and thus did not need a license. While that may have been true prior to February 1, 1994, it is undisputed that Mr. Coons entered into a Real Estate Purchase Contract with Mrs. Crowley in February, 1994. By the very nature, terms and conditions of that Contract, Mr. Coons agreed to build the house for Mrs. Crowley. Mr. Coons was prohibited from bringing any action whatsoever against Mrs. Crowley and was prohibited from seeking or obtaining any recovery from her. Nevertheless, the Arbitrator again, in an attempt to fashion an "equitable" remedy, ignored the law, and apportioned various sums between the parties. Had the arbitrator followed the dictates of the statute he would have refused to award Mr. Coons any amount because of Mr. Coons' failure to renew his contractor's license. Mr. Coons is simply not entitled to any funds whatsoever, by virtue of state law. The Crowleys submit that the arbitrator's act of awarding any sums to Mr. Coons is in plain violation of the law requiring vacation of the arbitration award on either of the legal theories propounded previously herein.

POINT VI:

IF MR. COONS IS ENTITLED TO AN AWARD  
HE IS LIMITED TO \$5,000


The Real Estate Purchase Contract signed by Mr. Coons provides that "If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and sue Buyer to enforce Seller's rights." In July, 1994, Mr. Coons declared Mrs. Crowley to be in default of the Real Estate Purchase Contract and further declared he was retaining her \$5,000 earnest money deposit as his liquidated damages. It has generally been held that parties to a contract may agree to liquidated damages in the case of breach and such agreements are generally enforceable. Warner v. Rasmussen, 704 P.2d 559 (Utah 1985); Madsen v., Anderson, 667 P.2d 44 (Utah 1983). If Mr. Coons is entitled to any award whatsoever, he has elected to limit the amount of his recovery to \$5,000. Mr. Coons is bound by the terms and conditions of the contract which he signed. He does not have cumulative rights under the contract. He made an election and should be bound by his actions. His election was to retain the \$5,000 earnest money deposit. By having so elected his remedy, Mr. Coons is foreclosed by law from suing Mrs. Crowley for additional sums. The arbitrator failed to limit Mr. Coons award to \$5,000 in clear violation of this contractual provision. For the reasons set forth and based upon the case law all set forth above, the Crowleys submit that the arbitrator committed error requiring vacation of

the arbitration agreement.

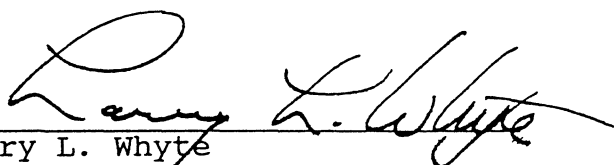
CONCLUSION

Golden Meadows and the Crowleys request that this Court vacate the Arbitration Award and Supplement to Arbitration Award for the reasons set forth herein.

DATED this 23rd day of May, 1996.

  
Mark T. Ethington  
Day & Barney

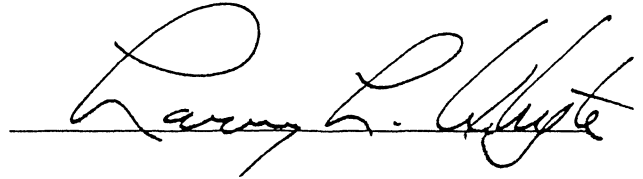
Attorneys for Appellant  
Golden Meadows

  
Larry L. Whyte

Attorney for Appellants  
Michael & Debra Crowley

Certificate of Mailing

I hereby certify that on this 23rd day of May, 1996, I served two (2) copies of the foregoing by place them in the United States Mail, postage prepaid and addressed to Carvel Shaffer, 110 West Center, Bountiful, Utah 84010.

A handwritten signature in black ink, reading "Larry L. Kuyte", is written over a horizontal line.

Tab A

Loan No.

## CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (hereinafter "Agreement") is made and executed this 28th day of June, 1992, by the undersigned TRUSTORS in favor of ZIONS MORTGAGE COMPANY, a Utah Corporation (hereinafter "Lender"), for the purpose of obtaining a construction loan from the Lender (hereinafter "Loan"), which loan is to be evidenced by a Trust Deed Note (hereinafter "Note") executed by Trustors, in the original principal amount of \$179,000.00 dated June 26, 1992 and in favor of the Lender and is to be secured by a first Trust Deed on that certain real property located in the County of DAVIS, State of UTAH, more particularly described as follows (hereinafter known as "Property"):

LOT 12, GRANADA HILLS SUBDIVISION NO. 7 A SUBDIVISION OF PART OF SECTION 21, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

### COVENANTS OF TRUSTORS

Trustors, jointly and severally, further agree as follows:

1. To commence actual construction work of the improvements to be constructed on the Property (hereinafter "Improvements") within thirty (30) calendar days from the date of this Agreement, and to complete the same, including all necessary utility connections, within 273 days of this Agreement and in a good workmanlike manner and in accordance with plans and specifications to be submitted by the Trustors to the Lender and approved by the Lender (approved plans and Specifications hereinafter referred to as "Plans"), and in accordance with the requirements of all State and local authorities, laws and regulations, and of the Federal Housing Administration, Veterans Administration, or other authority having an interest in the financing or construction of said Improvements. Copies of any permits required are to be submitted to the Lender if Lender request such.
2. To pay all Loan expense. Without limiting the generality of the foregoing, such expense shall include all of the indirect costs associated with the Loan transaction and the construction of the improvements, including, but not limited to all title, escrow, recording and tax service charges, costs of survey and appraisal, revenue stamps, and mortgage tax, if any, insurance premiums, inspection fees, engineering fees, brokerage commissions, and any expenses, fees or charges incurred by the Lender in connection with the processing or administration of the Loan. If the Loan is to be guaranteed or insured by an agency of the United States Government, Loan expense shall also include all expenses in connection with such insurance or guaranty. The Lender may also set aside reasonable reserves for estimated future Loan expense, future interest, insurance and taxes accruing during the term of the Loan, off-site improvements, tax and insurance deposits to be set aside under the terms of the Trust Deed and for other contingencies.
3. To maintain, at all times, the Loan in balance. The Loan shall only be deemed to be in balance when the undisbursed proceeds of the Loan equal or exceed the sum of (a) the interest payments projected for the remainder of the term of the Loan, as estimated by the Lender (but only if interest is to be paid out of the Loan proceeds as provided below); (b) the total estimated Loan expense as estimated by the Lender; and (c) the amount necessary, based upon the Lender's estimate, to pay for the completion of the Improvements in accordance with the Plans. If at any time the Loan is not in balance, Trustor shall, within five (5) days after the Lender gives Trustors written notice of that fact, deposit with the Lender such funds as are requested by the Lender to place the Loan in balance, which funds shall be disbursed by Lender in accordance with the terms of this Agreement before any further disbursements of the Loan proceeds are made.
4. To furnish the Lender, before any funds are disbursed from Loan proceeds, (a) an ALTA Title Policy with extended coverage, insuring the Lender a first lien position on the property. Should any work of any character be commenced on, or any materials delivered upon or to the property, or in connection with said Improvements prior to the time the Trust Deed is recorded, the Lender, as its sole option, may cancel the transaction and the Trustors shall reimburse the Lender for any and all expenses incurred up to that point, including but not limited to, recording and reconveyance fees, appraisal fee, title costs, etc.
5. To pay interest, principal and all other payments in accordance with the terms of the Note and the Trust Deed, provided, however, that until the Loan proceeds shall have been fully disbursed, interest shall be charged only on sums actually disbursed from the Loan proceeds, from the dates of the respective disbursements. The Lender shall determine monthly the amount of accrued interest on the Loan and such interest shall be paid directly from the Loan proceeds and the interest reserve initially set, or upon the agreement of the Trustors and the Lender, the Trustors shall pay the interest from sources other than Loan Proceeds. Trustors, from time to time, may wish to deposit additional funds to Loan to cover interest payments and this will be acceptable to the Lender. If the interest reserve is depleted at any time during the life of the Loan, the Lender shall notify Trustors and request the interest payments be paid by the Trustors so that the Loan proceeds may be used exclusively for the completion of the project. Lender shall have the right at any time, however, to apply any or all of the remaining Loan proceeds toward the payment of interest due, extension fees due or other sums which may accrue or be due and owing.

That no materials, equipment, fixtures or any other part of the improvements shall be purchased or installed under additional sales agreements or other arrangements wherein the right is reserved or accrues to anyone to remove or possess any such items or to consider them as personal property

To secure and at all times maintain and promptly pay when due all premiums for the following types of insurance: Builder's all risk (b) Multi-peril Policy on the Property (c) Flood Insurance (if in a flood plane) (d) Bodily injury Liability Insurance with limits of not less than \$100,000 per person, \$300,000 per occurrence and \$300,000 minimum for property damage per occurrence, and (e) Workers Compensation Insurance which may be required by the State.

policies of fire and extended coverage and other casualty insurance required by the terms of this Agreement shall contain an endorsement or agreement by the insured that any loss shall be payable in accordance with the terms of such policy notwithstanding any negligent act of the Trustees which might otherwise result in forfeiture of the insurance. policies shall provide that the insurer will waive all rights of set-off, counterclaim or deduction against others. All policies required shall also be in form and substance acceptable to the Lender.

policies of insurance shall contain a "Mortgagee Protection Clause" naming the Lender as an additional insured or payee as appropriate. Trustees shall furnish the Lender with an original policy of all required insurance.

Without the prior consent of the Lender the undersigned will not alter in any way any of the Plans or other documents of the Loan transaction. The undersigned hereby agree to deposit with the Lender any proceeds required to carry any Lender approved alterations, additions or extras prior to any approved changes being made.

Representatives of the Lender shall have the right to enter upon the Property at all times during the term of the loan and until the Loan is paid in full. If, at any time, the Lender or any of its representatives, find that the work materials do not conform with the Plans, it shall have the right to stop the work and order replacement or correction of the work or materials and withhold all payments from the Loan until the same is satisfactory within ten (15) days from the date the Lender notifies the Trustees, the Trustees will be deemed to be in default of this Agreement and the Loan shall be due and payable in full.

In the event any liens or claims are asserted or filed against the Property, the Lender, without notice, may pay the Lender's discretion all such liens or claims, or purchase assignments thereof, or may contest the validity of any of them, paying all costs and expenses of contesting the same including reasonable attorney's fees, from the Loan proceeds. Should such amounts exceed the balance of the Loan Proceeds, such additional amounts may be expended by the Lender at its option and request such excess to be reimbursed by the Trustees to the Lender.

#### DISBURSEMENT OF LOAN PROCEEDS

To receive disbursements of the Loan proceeds and any funds deposited with the Lender, Trustees must submit requests to the Lender on the Lenders prescribed form, not more than once a month, unless the Lender agrees to more frequent disbursements. Subject to the provisions of this Agreement, the Lender will disburse the proceeds of the Loan and will disburse the funds deposited pursuant to the terms of this Agreement to pay for the construction costs approved by the Lender and shown on the cost breakdown previously submitted to and approved by the Lender (hereinafter "Cost Breakdown"); provided however, that disbursements to pay for construction costs shall only be made with respect to costs of labor actually performed on the Improvements and materials actually in place and incorporated into the improvements, together with a pro rata portion of any overhead and contractor's fees approved by the Lender. The Lender will disburse the proceeds of the Loan and will disburse the funds deposited pursuant to the terms of this Agreement, to pay for Trustees' financing and development costs as shown on the Cost Breakdown, only if such costs have been approved by the Lender and only if Trustees have provided the Lender with evidence satisfactory to the Lender that such costs have actually been incurred and are payable. Regular inspections will be made by Lender prior to any disbursements. Inspection fees will be assessed on the type of project.

Before requesting any payment, the Trustees agree to furnish the Lender, if requested, lien waivers or lien termination receipts in a form satisfactory to Lender, waiving or subordinating to the lien of the Trust Deed, all claims and claims of liens against the Property for work done or materials furnished for the Improvements; also, receipts showing the expenditure of the amount equal to the amount proposed to be disbursed from the Loan Proceeds shall be provided to Lender.

The undersigned Trustees agree that all funds disbursed to any of the undersigned Trustees will be immediately used to pay bills and charges for labor and/or material and that until all such bills and charges are paid in full and the improvements completed to the satisfaction of the Lender, Trustees are not to use the moneys for any other purpose, and will keep records satisfactory to and open to the inspection of the Lender, showing that funds advanced by the Lender have been used exclusively in said construction as herein specified. Any written order, receipt or other document issued by any of the undersigned Trustees shall be binding upon all of the undersigned Trustees and the Lender shall be fully protected in acting thereupon.

#### DEFAULT AND REMEDIES

Should any of the undersigned Trustees default in the performance of any agreement contained herein or in any of the documents evidencing or supporting the Loan; or should work cease on the Improvements, specifically including completion of the Loan by the Lender under the terms of this Agreement, or for any other reason whatsoever, for fifteen (15) calendar days; or, if the Improvements shall be damaged or destroyed by fire or other casualty; or, in the case of death of any of the undersigned Trustees; or of any bankruptcy, reorganization, or liquidation proceeding, or any insolvency or receivership proceeding is commenced by or against Trustees, or any guarantor of the Loan, or any one of them; or if any of the undersigned shall convey any title or interest in any of the Property; or should any lien be asserted, filed or recorded against the Property; or should any condition or circumstance arise or exist at any time by reason of governmental order, decree or regulation, or circumstance not controlled by the parties hereto, which would prevent or delay the construction and completion of the Improvements in compliance with the Plans in an orderly and expeditious manner; or if an F.H.A. Loan Commitment or a Certificate of Commitment by the Veterans Administration of the United States of America issued on or pertaining to the Property, should terminate at any time, then and in any of such events, at its option, the Lender may, without notice:

- (a) declare all indebtedness secured by the Trust Deed immediately due and payable and disburse the remaining Loan proceeds and all funds deposited with the Lender by Trustees pursuant to the terms of this Agreement and credit the same in such manner as the Lender elects upon the indebtedness being declared due the Lender, and thereupon the Lender shall be released from all obligations to the undersigned Trustees under this Agreement, or, (b) take possession of the Property and let contracts for or proceed with the finishing of the Improvements and pay the cost thereof out of the Loan proceeds, should such costs amount to more than the balance of the Loan proceeds, then such additional costs may be expended at its option by the Lender and they shall be secured by the Trust Deed.

The rights and remedies of the Lender are cumulative and in addition to all other rights or remedies afforded by the Trust Deed and the exercise of any of such rights shall not operate to waive or cure any default existing under the Trust Deed Note, nor to invalidate any Notice of Default or any act done pursuant to such notice and shall not prejudice any rights of the Lender under the Trust Deed or Note.

## GENERAL PROVISIONS

1. The undersigned Trustors do hereby irrevocably appoint and authorize the Lender, as agent, to execute and file or record any Notice or other document that the Lender deems necessary or advisable to protect the interest of the Lender under this Agreement or the Trust Deed.

The waiver by the Lender of any breach or breaches hereof shall not be deemed to be or constitute a waiver of any subsequent breach or breaches of the undersigned hereunder.

3. The Lender shall have the right at its sole option to commence, appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds of the Loan proceeds and in connection therewith pay necessary expenses, employ counsel and pay counsel's reasonable fee. All sums paid or expended by the Lender under the terms of this Agreement in excess of the Loan proceeds shall be considered to be an additional loan to the undersigned Trustors and the repayment thereof, together with interest thereon at the then current rate being charged under the Note shall be secured by the Trust Deed and shall be due and payable without notice within thirty (30) days from the date of payment of the same by the Lender and the undersigned Trustors jointly and severally agree to pay the same.

4. This Agreement is made for the sole benefit and protection of the undersigned Trustors, the Lender and their respective heirs, executors, administrators successors and assigns, and no other person or persons shall have any right of action herein. Time is of the essence of this Agreement.

5. Trustors shall not have the right to extend the term of the Loan beyond the original maturity date of the Note. The Lender agrees to consider extension of the term of the Loan upon written request from Trustors prior to the maturity date of the Note. Any such extension shall be upon such terms and for such periods as the Lender shall determine.

6. If Trustors, or any of them, breach any term, covenant, or condition of the Agreement, the Lender may employ an attorney or attorneys to protect the Lender's rights hereunder, and Trustors shall pay the Lender reasonable attorney's fees and costs incurred by the Lender, whether or not action is actually commenced against Trustors by reason of such breach. Trustors shall also pay to the Lender any attorney's fees and costs incurred by the Lender with respect to any insolvency or bankruptcy proceedings or other action involving Trustors or any of them or any guarantor.

7. The default by Trustors under the terms of the Note, Trust Deed or any other document evidencing, securing or relating to the administration of the Loan shall constitute a default under the terms of this Agreement and the default by Trustors under the terms of this Agreement shall constitute a default under the terms of the Note, Trust Deed, and any other document evidencing, securing, or relating to the administration of the Loan. Trustors agree to fully and faithfully perform in a timely manner each and every one of the terms, covenants and conditions contained in the Note, Trust Deed, and every other document evidencing, securing or relating to the administration of the Loan. The obligations imposed herein upon Trustors shall be the joint and several obligations of Trustors.

8. Should the Lender sell a participation in the Loan to another lender or financial institution, Trustors hereby grant a continuing pledge and security interest and/or right of set off upon any and all moneys and other property of the Trustors now or hereafter held or received by any such participant. The right of set off to any such participant granted herein shall only be available to such participant at such time as the Lender declares a default under this Agreement or any of the Loan documents.

9. Trustors have made a careful investigation of the financial responsibility of the contractor and are satisfied that the contractor's responsibility is such as to justify the waiving of the contractor's completion and lien bond. Consequently, Trustors request that Lender consent to the construction proceeding without requiring the contractor to furnish said bond. Trustors hereby agree to protect and indemnify Lender against any loss sustained by Lender by reason of Lender having waived the lien and completion bond.

10. This Agreement and all Loan documents shall be governed by and construed in accordance with the laws of the State of Utah.

The undersigned Trustors have not been coerced or forced into signing the Agreement or any other document of this transaction but are signing because they have requested this Loan themselves from the Lender and have reviewed completely all documents of the transaction, including but not limited to Appraisal, Cost Breakdown, Note, Trust Deed, etc.


Dated this 26th day of June, 1992.

  
DOUGLAS B. COONS

ZIONS MORTGAGE COMPANY

BY:   
FERRIS WARD, Construction Loan Manager

For the purpose of inducing the Lender to accept the foregoing Agreement, the undersigned hereby guarantee the performance by Trustors of all of their obligation under said Agreement.

  
Laurie Coons



Tab B

**TRUST DEED NOTE**

(Construction Loan)

DO NOT DESTROY THIS NOTE: When paid, this Note, with Trust Deed securing same, must be surrendered to Trustee for cancellation, before reconveyance will be made.

179,000.00

Bountiful, Utah

June 26, 1992

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to ZIONS MORTGAGE COMPANY, a Utah Corporation or order, the principal sum of One Hundred Seventy Nine Thousand and No/100 ..... DOLLARS (\$ 179,000.00 ) payable as follows, viz:

- a. Interest shall accrue hereunder at an annual rate of 2.000 % above, the base rate of interest, (as defined below), being offered by Zions First National Bank, as the same may change or be adjusted from time to time. Upon any default hereunder which is not cured within ten days, the interest rate hereon shall immediately increase to an annual rate of 5.000 % above the Base Rate.
- b. The Base Rate of said Bank on the date of this Note is 6.500 % per annum. The interest rates payable hereon shall be effective both before and after judgment.
- c. The rate of interest applicable under this Note shall change on the first day of each month following a change in Base Rate, except that the rate of interest applicable shall at no time be less than 8.000 %.
- d. The maximum interest rate on this obligation shall not exceed 18.000 %.
- e. Interest payments shall be payable on demand, and, monthly.
- f. The entire outstanding principal balance and accrued but unpaid interest shall be paid in full on or before March 26, 1993.
- g. Interest is based on a year of 365/365.
- h. A late charge of 5.0% of the total monthly installment may be added to any payment that is not received within 15 days after the payment is due.

This Note is payable in lawful money of the United States of America to Zions Mortgage Company, a Utah Corporation at its Main Office, at 4460 South Highland Drive, Salt Lake City, Utah 84124, or at such other place as the legal holder hereof may designate in writing, delivered or mailed to the debtor.

In case of default in payment of any said installments of principals and interest or any part thereof, it shall be optional with the legal holder of this Note to declare the entire principal sum hereof due and payable, and proceedings may at once be instituted for the enforcement and collection of the same by law. If this Note is placed with an attorney for collection, or if suit be instituted for collection, then in either event, the undersigned agrees to pay reasonable attorney's fees.

---The makers, sureties, guarantors and endorers hereof severally waive presentment for payment, protest, notice of protest and of non-payment of this Note, and consent that this Note and any payment due or to become due hereunder may be extended renewed without previous demand or notice.

This Note is to be governed by and construed in accordance with the laws of the State of Utah.

This Note is given for an actual loan of the above amount and is secured by a Trust Deed of even date herewith and Construction Loan Agreement.

**ARBITRATION DISCLOSURES:**

1. ARBITRATION IS USUALLY FINAL AND BINDING ON THE PARTIES AND SUBJECT ONLY TO A VERY LIMITED REVIEW BY A COURT.
2. THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.
3. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED AND DIFFERENT FROM COURT PROCEEDINGS.
4. ARBITRATORS' AWARDS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY ARBITRATORS IS STRICTLY LIMITED.
5. A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE BANKING INDUSTRY.
6. IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

**ARBITRATION PROVISIONS:**

(a) Any controversy or claim between or among the parties, including but not limited to those arising out of or relating to this Note or any agreements, security instruments relating to the pledge of collateral, or instruments relating hereto or delivered in connection herewith, and including but not limited to a claim based on or arising from an alleged tort, shall at the request of any party be determined by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in Salt Lake City, Utah. The arbitrator(s) shall have the qualifications set forth in subparagraph (c) hereto. All statutes of limitations which would otherwise be applicable in a judicial action brought by a party shall apply to any arbitration or reference proceeding hereunder.

(b) In any judicial action or proceeding arising out of or relating to this Note or any agreements, security instruments relating to the pledged collateral or instruments relating hereto or delivered in connection herewith, including but not limited to a claim based on or arising from an alleged tort, if the controversy or claim is not submitted to arbitration as provided and limited in subparagraph (a) hereto, all decisions of fact and law shall be determined by a reference in accordance with Rule 53 of the Federal Rules of Civil Procedure or Rule 53 of the Utah Rules of Civil Procedure or other comparable, applicable reference procedure. The parties shall designate to the court the referee(s) selected under the auspices of the American Arbitration Association in the same manner as arbitrators are selected in Association-sponsored arbitration proceedings. The referee(s) shall have the qualifications set forth in subparagraph (c) hereto.

(c) The arbitrator(s) or referee(s) shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association. A single arbitrator or referee shall be knowledgeable in the subject matter of the dispute. Where three arbitrators or referees conduct an arbitration or reference proceeding, the claim shall be decided by a majority vote of the three arbitrators or referees, at least one of whom must be knowledgeable in the subject matter of the dispute and at least one of whom must be a practicing attorney. The arbitrator(s) or referee(s) shall award recovery of all costs and fees (including reasonable attorneys' fees, administrative fees, arbitrators' fees, and court costs). The arbitrator(s) or referee(s) also may grant provisional or ancillary remedies such as, for example, injunctive relief, attachment, or the appointment of a receiver, either during the pendency of the arbitration or reference proceeding or as part of the arbitration or reference award.

(d) Judgment upon an arbitration or reference award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration or reference award is binding upon the parties only if the amount does not exceed Four Million Dollars (\$4,000,000.00); if the award exceeds that limit, either party may commence legal action for a court trial de novo. Such legal action must be filed within thirty (30) days following the date of the arbitration or reference award; if such legal action is not filed within that time period, the amount of the arbitration or reference award shall be binding. The computation of the total amount of an arbitration or reference award shall include amounts awarded for arbitration fees, attorneys' fees, interest, and all other related costs.

(e) At the Bank's option, foreclosure under the deed of trust or mortgage may be accomplished either by exercise of a power of sale under the deed of trust or by judicial foreclosure. The institution and maintenance of an action for judicial relief or pursuit of a judicial or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy to arbitration if any other party contests such action for judicial relief.

(f) Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., shall apply to the construction and interpretation of this Arbitration paragraph.

Douglas B. Coons  
DOUGLAS B. COONS

TO THE ORDER OF GOLDENS<sup>144</sup> MEADOW, Inc., without recourse

ZIONS MORTGAGE COMPANY

By: Stephen B. Malinsky  
Title: Operations Manager

Date: August 15<sup>th</sup>, 1994

#### DEFINITION OF BASE RATE

The following definition of Lender's Base Rate may be utilized in any and all documents evidencing loans, present or future, from Zions First National Bank ("Zions"):

Zions' Base Rate means an index which is determined daily by the published commercial loan variable rate index held by any two of the following banks: Chemical Bank, Wells Fargo Bank N.A., and Bank of America N.T. & S.A. In the event no two of the above banks have the same published rate, the bank having the median rate will establish Zions' Base Rate. If, for any reason beyond the control of Zions, any of the aforementioned banks becomes unacceptable as a reference for the purpose of determining the Base Rate used herein, Zions may, five days after posting notice in Zions Bank offices, substitute another comparable bank for the one determined unacceptable. As used in this paragraph, "comparable bank" shall mean one of the ten largest commercial banks headquartered in the United States of America. This definition of Base Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the applicable interest rate used herein. It is not the lowest rate at which Zions may make loans.

## CONTINUING GUARANTEE (All Debts)

This Continuing Guarantee (hereafter "Guarantee") is made by the undersigned Laurie Coons (hereinafter "Guarantor"), to Zions First National Bank (hereinafter "Lender"), a national association having its principal office at One South Main Street, Salt Lake City, Utah, as an inducement to Lender to make a loan or loans to Douglas B. Coons (hereinafter "Borrower").

For good and valuable consideration, receipt of which is hereby acknowledged, Guarantor, as a compensated guarantor, agrees as follows:

1. **Guarantee.** Guarantor absolutely and unconditionally, without limitation as to the amount of liability, guarantees to Lender that Borrower shall promptly and fully perform, pay and discharge all of its present and future liabilities, obligations and indebtedness to Lender of whatever nature, including any and all extensions, renewals, or modifications thereof, whether direct or indirect, joint or several, absolute or contingent, secured or unsecured, matured or unmatured, and whether originally contracted with or otherwise acquired by Lender, regardless of amount including, without limitation, (a) a promissory note dated June 26, 1992 in favor of Lender executed by Borrower in the original principal amount of One hundred seventy-nine thousand 0/100 dollars (\$ 179,000.00), and any and all renewals, extensions and modifications thereof; and (b) all overdrafts, now existing or hereafter arising, on any account Borrower may maintain with Lender (all of which liabilities, obligations and indebtedness are herein individually and collectively referred to as "Indebtedness").

2. **Guarantee of Payment.** This Guarantee is an absolute and unconditional guarantee of payment and not of collectability.

3. **Guarantee Unconditional.** The liability of Guarantor hereunder is not conditional or contingent upon the genuineness, validity, sufficiency or enforceability of the Indebtedness or any instruments or agreements related thereto (hereinafter collectively referred to as "Agreements") or any security or collateral therefor (hereinafter collectively referred to as "Collateral"). Lender shall not be required to (a) proceed against the Borrower by suit or otherwise, (b) foreclose, proceed against, liquidate or exhaust any of the Agreements or Collateral, or (c) exercise, pursue or enforce any right or remedy Lender may have against the Collateral, any other Guarantor (whether hereunder or under a separate instrument), any other party, or otherwise, prior to proceeding against Guarantor.

4. **Agreement to Pay; Attorney's Fees.** If the Borrower fails to pay any Indebtedness promptly as the same becomes due, or otherwise fails to perform any obligation under any of the Agreements, Guarantor agrees to pay on demand the entire Indebtedness together with interest thereon as provided in the instruments and agreements evidencing the Indebtedness, and all losses, costs, attorneys fees and expenses which may be suffered by Lender by reasons of the Borrower's default or the default of Guarantor hereunder, specifically including, but without limitation, all attorneys fees and costs incurred by Lender in pursuing collection of the Indebtedness from Borrower, and all attorneys fees and costs incurred by Lender in enforcing this Guarantee. Additionally, Guarantor agrees to pay all expenses, including attorneys fees and legal expenses, incurred by Lender in any bankruptcy proceedings of any type involving such Guarantor, Borrower, the Indebtedness, or any Collateral, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.

5. **Waiver by Guarantor.** Guarantor expressly and absolutely, without affecting the liability of Guarantor hereunder:

- (a) Waives notice of acceptance by Lender of this Guarantee, the offer of guarantee contemplated by this Guarantee, or any other notice which may be required relative to the acceptance of this Guarantee;
- (b) Waives demand, protest, notice of dishonor or nonpayment or presentment for payment of any note, agreement, or other evidence of the Indebtedness;
- (c) Waives notice of the failure of any party to pay to Lender any Indebtedness held by Lender as collateral for any Indebtedness;
- (d) Waives notices of any kind in bringing and prosecuting any action on any note, agreement, or other evidence of the Indebtedness, diligence in connection with the collection on any note, agreement, or other evidence of Indebtedness and the handling of any Collateral existing, or to exist, in connection therewith;
- (e) Waives all offsets and counterclaims which Guarantor may at any time have to any claim or Lender against the Borrower;
- (f) Waives notice of transactions which have occurred under or relating to or affecting this Guarantee;
- (g) Waives notice of any adverse change in the Borrower's condition, financial or otherwise, or of any other fact which might materially increase Guarantor's risk, whether or not Lender has knowledge of the same; and
- (h) Waives any right to require Lender to exhaust any Collateral for the Indebtedness or to first proceed against any other person or property, including, without limitation, any such rights arising from the Utah one-action rule, Utah Code § 78-37-1, or any other one-action rule.

6. **Consent to Lender's Acts.** Guarantor hereby authorizes and consents to Lender at any time and from time to time, without notice or further consent of Guarantor, doing the following and Guarantor agrees that the liability of Guarantor shall not be released, diminished, impaired, reduced, exonerated, or affected by:

- (a) The taking or accepting, or the failure by Lender to take or accept, any other collateral or guarantee for the Indebtedness;
- (b) The modification, extension, renewal or consolidation of any note, agreement, or other evidence of the Indebtedness, to the granting of any other credit, and to the acceleration of maturity of the Indebtedness;
- (c) Any complete or partial release, withdrawal, waiver, surrender, exchange, substitution, subordination, impairment, loss, compromise, or other modification of the Collateral or any collateral which may be taken by Lender in the future, or any other guarantee at any time existing in connection with the Indebtedness;
- (d) The complete or partial release or substitution of Borrower, Guarantor or any other guarantors on the Indebtedness;
- (e) Any renewal, extension, modification, acceleration, consolidation, adjustment, indulgence, forbearance, waiver or compromise of the payment of any part or all of the Indebtedness, or any liability of Guarantor or any other party or any other guarantee therefor, or the performance of any covenant contained in any agreement had or to be had in connection with the Indebtedness, the Agreements, or the Collateral, either with or without notice to or consent of Guarantor;
- (f) Any neglect, delay, omission, failure, or refusal of Lender to take or prosecute any action for the collection of the Indebtedness or any part thereof, or for the enforcement of any provision of any of the Agreements, or to foreclose or exhaust, or take or prosecute any action in connection with any Collateral existing or created in the future, or any guarantee of the Indebtedness, specifically including, but without limitation, the failure of Lender to perfect any security interest in any Collateral;
- (g) Any increase or decrease in the rate of interest on any note, agreement, or other evidence of the Indebtedness;
- (h) Acceptance of any partial payments on the Indebtedness and the application of such partial payments to part of the Indebtedness; or
- (i) Lender's exercising any and all rights and remedies available to Lender by law, at equity or agreement, even if the exercise thereof may affect, modify, or eliminate Guarantor's right of subrogation against the Borrower or any other party.

7. **Lender's Remedies.** In the event Lender obtains another guarantee for the Indebtedness or there is more than one Guarantor under this Guarantee, Guarantor agrees that Lender, in its sole discretion, may (a) bring suit against Guarantor and/or the guarantors under any other guarantee, or any of the Guarantors individually, for the Indebtedness, (b) compromise or settle with any one or more of Guarantor and/or the guarantors under any other guarantee for such consideration as Lender may deem proper, and (c) release one or more of Guarantor and/or the guarantors under any other guarantee from liability. Guarantor further agrees that such action shall not impair or affect the rights of Lender to collect the entire Indebtedness from Guarantor pursuant to this Guarantee.

8. **Application of Payments.** Without affecting any obligation created hereby or hereunder, Guarantor grants to Lender full power and authority, in its discretion and at any time and in such manner and on such terms as it deems fit, with or without notice to Guarantor, to apply any one or more payments by, or recoveries from, the Borrower or any guarantor or any sums realized from the Collateral in such manner and in such order of priority as Lender deems fit, whether or not such obligation is due at the time of such application.

9. **Term of Guarantee.** This Guarantee shall remain in full force and effect until all Indebtedness has been fully paid. No termination of this Guarantee by Guarantor shall be effective. If Guarantor delivers to Lender, and Lender actually receives, a written notice signed by Guarantor electing not to guarantee any new extension of credit that may be granted by Lender to Borrower after its receipt of such notice, such notice shall terminate the applicability of this Guarantee to any new Indebtedness created thereafter but such notice shall not affect the obligations of Guarantor hereunder as to any and all Indebtedness existing at the time such notice is received and as to any and all interest, attorneys fees, and other expenses owing or to become owing in relation to such existing Indebtedness.

10. **Subrogation.** Guarantor will not exercise any right of subrogation it may acquire, by any payment hereunder or otherwise, unless and until all Indebtedness has been paid in full. If any amount is paid to Guarantor on account of such right of subrogation while any Indebtedness remains unpaid, such amount will be paid forthwith to Lender to be credited against the Indebtedness, whether matured or unmatured.

11. **Cumulative Rights.** The rights and remedies herein conferred are cumulative and not exclusive of any other rights or remedies and shall be in addition to every other right, power and remedy herein specifically or hereafter existing at law, in equity or by statute which Lender might otherwise have and may be exercised from time to time and as often and in such order as may be deemed expedient by Lender. No delay or omission by Lender in the exercise of any such right, power or remedy or in the pursuance of any remedy shall impair any such right, power, or remedy or be construed to be a waiver of any default or to be an acquiescence therein.

12. **Governing Law.** This Guarantee shall be governed by, and construed in accordance with, the laws of the State of Utah.

13. **Binding Effect.** This Guarantee may be executed and delivered to Lender prior to the consummation of the loan or loans constituting the Indebtedness. This Guarantee shall nonetheless be considered a binding, enforceable Guarantee upon its execution and delivery to Lender.

14. **Entire Agreement.** This Guarantee constitutes the entire agreement between Lender and Guarantor, constitutes all representations, express or implied, between Lender and Guarantor and may not be altered, amended or modified except in writing signed by Lender and Guarantor. All prior and contemporaneous agreements and representations, express or implied, are merged herein.

15. **Severability and Interpretation.** Each provision of this Guarantee is intended to be severable. Any provision of this Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references in this Guarantee to the singular shall be deemed to include the plural when the context so requires, and vice versa. References in the collective or conjunctive shall also include the disjunctive unless the context otherwise clearly requires a different interpretation. All references shall include the masculine, feminine and neuter when the context so requires.

16. **Continuing Guarantee.** All agreements, representations, warranties, and covenants made herein by Guarantor shall survive the execution and delivery of this Guarantee and shall continue in effect so long as the Indebtedness or any portion thereof is outstanding and unpaid, notwithstanding any termination of the Guarantee. All agreements, representations, warranties, and covenants made herein by Guarantor shall survive any bankruptcy proceedings. This Guarantee shall bind the party making the same, and its successors, assigns, heirs, executors, and personal representatives. The death, insolvency, bankruptcy, disability, or lack of corporate power of Borrower, Guarantor, or any party at any time which is liable for the payment of any part or all of any Indebtedness will not affect this Guarantee.

17. **Notices.** Any demand or notice may be made or given by mailing written demand or notice to Lender and Guarantor at the address of Lender and Guarantor set forth below, or at such other address of which Lender or Guarantor shall have notified the other party in writing:

If to Guarantor:

Laurie Coons

673 West 2300 South

West Bountiful, UT 84087

If to Lender:

Zions First National Bank

One South Main

Salt Lake City, UT 84111

Demand or notice shall be deemed to have been made or given upon mailing as aforesaid, or, if given by any other means, upon receipt by Guarantor or receipt by Lender at the aforesaid office.


18. **Joint and Several Liability, Multiple Guarantors.** If Guarantor consists of more than one party, the liability of such parties hereunder shall be joint and several. All of the agreements, obligations, representations, and warranties contained herein shall apply to each Guarantor.

19. **Jurisdiction of Utah Courts.** Guarantor acknowledges that by execution and delivery of this Guarantee, Guarantor has transacted business in the State of Utah and Guarantor hereby voluntarily submits himself to the jurisdiction of courts located in the State of Utah as to all matters relating to or arising from this Guarantee.

20. **Captions.** The captions or headings in this Guarantee are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Guarantee.

DATED: June 26, 1992

Guarantor:

  
Laurie Coons

Tab C

ZIONS MORTGAGE COMPANY  
559 West 500 South, Suite B-110  
Bountiful, Utah 84010

Loan No.:  
Order No.: 16051

E# 930299 BK 1510 PG 400  
CAROL DEAN PAGE, DAVIS CNTY RECORDER  
1992 JUL 1 3:47 PM FEE 11.00 DEP MEC  
REC'D FOR WESTERN STATES TITLE COMPANY

(Space Above This Line For Recorder's Use)

## DEED OF TRUST

THIS TRUST DEED, made this 26th day of June, 1992, between  
DOUGLAS B. COONS a married man

, as TRUSTOR, whose address is

673 WEST 2300 SOUTH, BOUNTIFUL, UTAH 84010  
(Street and number) (City)

(State)

ZIONS FIRST NATIONAL BANK, N.A.

, as TRUSTEE, and

ZIONS MORTGAGE COMPANY, a Utah Corporation

, as BENEFICIARY.

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

LOT 12, GRANADA HILLS SUBDIVISION NO. 7 A SUBDIVISION OF PART  
OF SECTION 21, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE  
AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE  
AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

04-116-0012

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

FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by a Trust Deed Note of even date herewith, in the principal sum of \$ 179,000.00, made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; (4) any amounts which may be due under a Construction Loan Agreement of even date herewith between Trustors and Beneficiary; and (5) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

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 thereon; to complete or restore promptly and in good and workmanlike manner 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; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property, Trustor further agrees:

- (a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary.
- (b) To allow Beneficiary to inspect said property at all times during construction.
- (c) To furnish such lien waivers as Beneficiary may require.
- (d) Comply with all terms and conditions of any Construction Loan Agreement which may be executed in connection with this Trust Deed.

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 improvements now existing or hereafter erected or placed on said property. At Beneficiary's request, Trustor shall deliver certificates or policies evidencing such insurance. 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 deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. 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.

5. 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.

6. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, 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 of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees. Any payments made by Beneficiary or Trustee hereunder shall constitute additional indebtedness secured hereby and shall bear interest at the interest rate provided in the Trust Deed Note.

7. At Beneficiary's request, 1/12 of the annual taxes and fire insurance premiums will be paid monthly to Beneficiary.

8. At Beneficiary's reasonable request, Trustor shall provide evidence of the value of the property covered by this Trust Deed by delivering to Beneficiary appraisals of the property in a form satisfactory to Beneficiary from appraisers acceptable to Beneficiary. Trustor acknowledges that Trustor will provide appraisals which meet with the requirements of this section should such appraisals be requested or required by any agency having regulatory authority over Beneficiary or any affiliated company of Beneficiary.

9. At Beneficiary's request, Trustor shall provide current financial information concerning Trustor and the property in form and content acceptable to Beneficiary.

#### IT IS MUTUALLY AGREED THAT:

10. In the event Trustor shall assign, transfer or convey any interest or right in said property without the prior written consent of Trustee, such assignment, transfer or conveyance shall constitute a default on the part of Trustor hereunder and Trustee thereupon shall have the right, at its election, to exercise any of the rights provided for in the event of Trustor's default specified herein.

11. 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 or 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 or action and proceeds as Beneficiary or Trustee may require.

12. 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 (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) 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 hereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.



accordance with plans and specifications satisfactory to Beneficiary.

- (b) To allow Beneficiary to inspect said property at all times during construction.
- (c) To furnish such lien waivers as Beneficiary may require.
- (d) Comply with all terms and conditions of any Construction Loan Agreement which may be executed in connection with this Trust Deed.

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 improvements now existing or hereafter erected or placed on said property. At Beneficiary's request, Trustor shall deliver certificates or policies evidencing such insurance. 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 deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. 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.

5. 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.

6. 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 of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees. Any payments made by Beneficiary or Trustee hereunder shall constitute additional indebtedness secured hereby and shall bear interest at the interest rate provided in the Trust Deed Note.

7. At Beneficiary's request, 1/12 of the annual taxes and fire insurance premiums will be paid monthly to Beneficiary.

8. At Beneficiary's reasonable request, Trustor shall provide evidence of the value of the property covered by this Trust Deed by delivering to Beneficiary appraisals of the property in a form satisfactory to Beneficiary from appraisers acceptable to Beneficiary. Trustor acknowledges that Trustor will provide appraisals which meet with the requirements of this section should such appraisals be requested or required by any agency having regulatory authority over Beneficiary or any affiliated company of Beneficiary.

9. At Beneficiary's request, Trustor shall provide current financial information concerning Trustor and the property in form and content acceptable to Beneficiary.

#### IT IS MUTUALLY AGREED THAT:

10. In the event Trustor shall assign, transfer or convey any interest or right in said property without the prior written consent of Trustee, such assignment, transfer or conveyance shall constitute a default on the part of Trustor hereunder and Trustee thereupon shall have the right, at its election, to exercise any of the rights provided for in the event of Trustor's default specified herein.

11. 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 or 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 or action and proceeds as Beneficiary or Trustee may require.

12. 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 (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) 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.

13. 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. Et 980299 8K 1510 Pg 402

14. 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 other 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.

15. 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 compensations 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 hereunder or invalidate any act done pursuant to such notice.

16. 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.

17. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured 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 of some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

18. 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 compelled 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 in such manner and for such period as provided in accordance with Utah law in effect at the time of such 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 hereof. 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 evenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at 10% per annum from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

19. 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.

20. 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.

21. 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.

22. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, 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.

23. 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.

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

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

26. ARBITRATION  
ARBITRATION DISCLOSURES:

E: 980299 BK 1510 PG 403

1. ARBITRATION IS USUALLY FINAL AND BINDING ON THE PARTIES AND SUBJECT ONLY TO A VERY LIMITED REVIEW BY A COURT.
2. THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.
3. PRE-ARBITRATION DISCOVERY IS GENERALLY MORE LIMITED AND DIFFERENT FROM COURT PROCEEDINGS.
4. ARBITRATORS' AWARDS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY ARBITRATORS IS STRICTLY LIMITED.
5. A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE BANKING INDUSTRY.
6. IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

ARBITRATION PROVISIONS:

(a) Any controversy or claim between or among the parties, including but not limited to those arising out of or relating to the Note or any agreements, security instruments relating to the pledge of collateral, or instruments relating hereto or delivered in connection herewith, and including but not limited to a claim based on or arising from an alleged tort, shall at the request of any party be determined by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in Salt Lake City, Utah. The arbitrator(s) shall have the qualifications set forth in subparagraph (c) hereto. All statutes of limitations which would otherwise be applicable in a judicial action brought by a party shall apply to any arbitration or reference proceeding hereunder.

(b) In any judicial action or proceeding arising out of or relating to the Note or any agreements, security instruments relating to the pledged collateral or instruments relating hereto or delivered in connection herewith, including but not limited to a claim based on or arising from an alleged tort, if the controversy or claim is not submitted to arbitration as provided and limited in subparagraph (a) hereto, all decisions of fact and law shall be determined by a reference in accordance with Rule 53 of the Federal Rules of Civil Procedure or Rule 53 of the Utah Rules of Civil Procedure or other comparable, applicable reference procedure. The parties shall designate to the court the referee(s) selected under the auspices of the American Arbitration Association in the same manner as arbitrators are selected in Association-sponsored arbitration proceedings. The referee(s) shall have the qualifications set forth in subparagraph (c) hereto.

(c) The arbitrator(s) or referee(s) shall be selected in accordance with the rules of the American Arbitration Association from panels maintained by the Association. A single arbitrator or referee shall be knowledgeable in the subject matter of the dispute. Where three arbitrators or referees conduct an arbitration or reference proceeding, the claim shall be decided by a majority vote of the three arbitrators or referees, at least one of whom must be knowledgeable in the subject matter of the dispute and at least one of whom must be a practicing attorney. The arbitrator(s) or referee(s) shall award recovery of all costs and fees (including reasonable attorneys' fees, administrative fees, arbitrators' fees, and court costs). The arbitrator(s) or referee(s) also may grant provisional or ancillary remedies such as, for example, injunctive relief, attachment, or the appointment of a receiver, either during the pendency of the arbitration or reference proceeding or as part of the arbitration or reference award.

(d) Judgment upon an arbitration or reference award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration or reference award is binding upon the parties only if the amount does not exceed Four Million Dollars (\$4,000,000.00); if the award exceeds that limit, either party may commence legal action for a court trial de novo. Such legal action must be filed within thirty (30) days following the date of the arbitration or reference award; if such legal action is not filed within that time period, the amount of the arbitration or reference award shall be binding. The computation of the total amount of an arbitration or reference award shall include amounts awarded for arbitration fees, attorneys' fees, interest, and all other related costs.

(e) At the Bank's option, foreclosure under this deed of trust or mortgage may be accomplished either by exercise of a power of sale under this deed of trust or by judicial foreclosure. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(f) Notwithstanding the applicability of other law to any other provision of this Agreement, the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., shall apply to the construction and interpretation of this Arbitration paragraph.

Signature of Trustor

Douglas B. Coons  
DOUGLAS B. COONS

E: 980299 BK 1510 PG 404

INDIVIDUAL ACKNOWLEDGEMENT

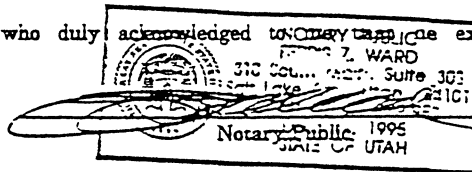
STATE OF UTAH, DAVIS County ss:

On this 26th day of June, 1992, personally appeared before me DOUGLAS B. COONS  
a married man

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

Residing at:

My commission expires:



CORPORATION ACKNOWLEDGEMENT

STATE OF UTAH, DAVIS County ss:

On this 26th day of June A.D., 1992, personally appeared before me \_\_\_\_\_

\_\_\_\_\_, who being by me duly sworn, did say that he is the

\_\_\_\_\_ of \_\_\_\_\_  
and that the above instrument was signed in behalf of said Corporation by authority of a resolution of its

Board of Directors and said \_\_\_\_\_ acknowledged to me that said  
Corporation executed the same.

Residing at:

\_\_\_\_\_  
Notary Public

My commission expires:

(Do not record)

REQUEST FOR FULL RECONVEYANCE

(To be used only when indebtedness secured hereby has been paid in full)

TO: Trustee.

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

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

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

Tab D



# REAL ESTATE PURCHASE CONTRACT

This is a legally binding Contract. Utah State Law requires that licensed real estate agents use this form, but the Buyer and the Seller may legally agree in writing to alter or delete provisions of this form. If you desire legal or tax advice, consult your attorney or tax advisor.



## EARNEST MONEY RECEIPT

The Buyer Debra H. Cronby offers to purchase the Property described below and delivers check as Earnest Money Deposit \$ 5,000.00 in the form of check to be deposited within three business days after Acceptance of this offer to purchase by all parties.

Received by none on \_\_\_\_\_ (Date)  
Brokerage Phone Number \_\_\_\_\_

1. PROPERTY: 3550 Vinecrest Drive  
City Bountiful County Blaine, Utah.

1.1 Included Items. Unless excluded herein, this sale shall include all fixtures presently attached to the Property: plumbing, heating, air-conditioning and venting fixtures and equipment, water heater, built-in appliances, light fixtures and bulbs, bathroom fixtures, curtains and draperies and rods, window and door screens, storm doors, window blinds, awnings, installed television antenna, satellite dishes and system, wall-to-wall carpets, automatic garage door opener and transmitter(s), fencing, trees and shrubs. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: none

1.2 Excluded Items. The following items are excluded from this sale \_\_\_\_\_

2. PURCHASE PRICE AND FINANCING. Buyer agrees to pay for the Property as follows:

\$ 5,000.00 Earnest Money Deposit  
Existing Loan: Buyer agrees to assume and pay an existing loan in this approximate amount presently payable at \$ \_\_\_\_\_ per month including principal, interest (presently at \_\_\_\_\_ % per annum), ☐ real estate taxes, ☐ property insurance premium and ☐ mortgage insurance premium. Buyer agrees to pay any transfer and assumption fees. Seller ☐ shall ☐ shall not be released from liability on said loan. Any net differences between the approximate balance of the loan shown above and the actual balance at Closing shall be adjusted in ☐ Cash ☐ Other \_\_\_\_\_.  
Proceeds from New Loan: Buyer reserves the right to apply for any of the following loans under the terms described below.  
☐ Conventional ☐ FHA ☐ VA ☐ Other \_\_\_\_\_ . Seller agrees to pay \$ \_\_\_\_\_ toward Discount Points and Buyer's other loan and closing costs, to be allocated at Buyer's discretion.  
☐ For a fixed rate loan: Amortized and payable over \_\_\_\_\_ years, interest shall not exceed \_\_\_\_\_ % per annum; monthly principal and interest payment shall not exceed \$ \_\_\_\_\_, or  
☐ For an Adjustable Rate Mortgage (ARM): Amortized and payable over \_\_\_\_\_ years; initial interest rate shall not exceed \_\_\_\_\_ % per annum; initial monthly principal and interest payments shall not exceed \$ \_\_\_\_\_. Maximum Life Time Interest rate shall not exceed \_\_\_\_\_ % per annum.  
Seller Financing: (See attached Seller Financing Addendum)

\$ \_\_\_\_\_ Other: \_\_\_\_\_  
Balance of Purchase Price in Cash at Closing

\$ 330,000.00 Total Purchase Price

2.1 Existing/New Loan Application. Buyer agrees to make application for a loan specified above within \_\_\_\_\_ calendar days (Application Date) after Acceptance. Buyer will have made Loan Application only when Buyer has: (a) completed, signed, and delivered to the Lender the initial loan application and documentation required by the Lender; and (b) paid all loan application fees as required by the Lender. Buyer will continue to provide the Lender with any additional documentation as required by the Lender. If, within seven calendar days after receipt of written request from Seller, Buyer fails to provide to Seller written evidence that Buyer has made Loan Application by the Application Date, then Seller may, prior to the Qualification Date below, cancel this Contract by providing written notice to Buyer. The Brokerage, upon receipt of a copy of such written notice, shall release to Seller, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit without the requirement of any further written authorization from Buyer.

2.2 Qualification. Buyer and the Property must qualify for a loan for which application has been made under section 2.1 within \_\_\_\_\_ calendar days (Qualification Date) after Acceptance. The Property is deemed qualified if, on or before the Qualification Date, the Property, in its current condition and for the Buyer's intended use, has appraised at a value not less than the Total Purchase Price. Buyer is deemed qualified if, on or before the Qualification Date, the Lender verifies in writing that Buyer has been approved as of the verification date.

2.3 Qualification Contingency. If Seller has not previously voided this Contract as provided in Section 2.1, and either the Property or Buyer has failed to qualify on or before the Qualification Date, either party may cancel this Contract by providing written notice to the other party within three calendar days after the Qualification Date, otherwise Buyer and the Property are deemed qualified. The Brokerage, upon receipt of a copy of such written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization of Seller.

3. CLOSING. This transaction shall be closed on or before April 15, 1994. Closing shall occur when: (a) Buyer and Seller have signed and delivered to each other (or to the escrow/title company), all documents required by this Contract, by the Lender, by written escrow instructions and by applicable law; and (b) the monies required to be paid under these documents, have been delivered to the escrow/title company in the form of cashier's check, collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the escrow Closing fee, unless otherwise agreed by the parties in writing. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated as set forth in this Section. Unearned deposits on tenancies shall be transferred to Buyer at Closing. Prorations set forth in this Section, shall be made as of ☒ date of Closing ☐ date of possession ☐ other \_\_\_\_\_

4. POSSESSION. Unless otherwise agreed in writing by the parties, Seller shall deliver possession to Buyer within 8 hours after Closing.

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this Contract the listing agent MLA represents ☐ Seller ☐ Buyer, and the selling agent MLA represents ☐ Seller ☐ Buyer. Buyer and Seller confirm that prior to signing this Contract written disclosure of the agency relationship(s) was provided to him/her. ( ) Buyer's Initials ( ) Seller's Initials.

6. TITLE TO PROPERTY AND TITLE INSURANCE. (a) Seller has, or shall have at Closing, fee title to the Property and agrees to convey such title to Buyer by general warranty deed, free of financial encumbrances as warranted under Section 10.6; (b) Seller agrees to pay for and furnish Buyer at Closing with a current standard form owner's policy of title insurance in the amount of the Total Purchase Price; (c) the title policy shall conform with Seller's obligations under subsections (a) and (b) above. Unless otherwise agreed under subsection 8.4, the commitment shall conform with the title insurance commitment provided under Section 7.

7. SELLER DISCLOSURES. No later than 3 calendar days after Acceptance, Seller will deliver to Buyer the following Seller Disclosures: (a) a Seller property condition disclosure for the Property, signed and dated by Seller; (b) a commitment for the policy of title insurance required under Section 6, to be issued by the title insurance company chosen by Seller, including copies of all documents listed as Exceptions on the Commitment; (c) a copy of all loan documents relating to any loan now existing which will encumber the Property after Closing; and (d) a copy of all leases affecting the Property not expiring prior to Closing. Seller agrees to pay any title commitment cancellation charge under subsection (b).

8. GENERAL CONTINGENCIES. In addition to Qualification under Section 2.2 this offer is: (a) subject to Buyer's approval of the content of each of the items referenced in Section 7 above; and (b) ☒ is not subject to Buyer's approval of an inspection of the Property. The inspection shall be paid for by Buyer and shall be conducted by an individual/company of Buyer's choice. Seller agrees to fully cooperate with such inspection and a walk-through inspection under Section 11 and to make the Property available for the same.

8.1 Buyer shall have 3 calendar days after Acceptance in which to review the content of Seller Disclosures, and, if the inspection contingency applies, to complete and evaluate the inspection of the Property, and to determine, if, in Buyer's sole discretion, the content of all Seller Disclosures (including the Property inspection) is acceptable.

8.2 If Buyer does not deliver written objection to Seller regarding Seller Disclosures within \_\_\_\_\_ calendar days after Acceptance, Buyer shall be deemed to have accepted the Seller Disclosures.

If Buyer objects, Buyer and Seller shall have seven calendar days after receipt of the objections to resolve Buyer's objections. Seller may, but shall not be required to, resolve Buyer's objections. If Buyer's objections are not resolved within the seven calendar days, Buyer may void this Contract by providing in writing to Seller within the same seven calendar days. The Brokerage, upon receipt of a copy of Buyer's written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization from Seller. If this Contract is not voided by Buyer, Buyer's objection is deemed to have been waived. However, this waiver does not affect those items warranted in Section 11.

Resolution of Buyer's objections under Section 8.3 shall be in writing and shall be specifically enforceable as covenants of this Contract.

SPECIAL CONTINGENCIES. This offer is made subject to: #7

Terms of attached Addendum # 1 are incorporated into this Contract by this reference.

SELLER'S LIMITED WARRANTIES. Seller's warranties to Buyer regarding the condition of the Property are limited to the following:

- 1 When seller delivers possession of the Property to Buyer, it will be broom-clean and free of debris and personal belongings;
- 2 Seller will deliver possession of the Property to Buyer with the plumbing, plumbed fixtures, heating, cooling, ventilating, electrical and sprinkler systems, appliances and fireplaces in working order;
- 3 Seller will deliver possession of the Property to Buyer with the roof and foundation free of leaks known to Seller;
- 4 Seller will deliver possession of the Property to Buyer with any private well or septic tank serving the Property in working order and in compliance with governmental regulations;
- 5 Seller will be responsible for repairing any of Seller's moving-related damage to the Property;
- 6 At Closing, Seller will bring current all financial obligations encumbering the Property which are assumed in writing by Buyer and will discharge all obligations which Buyer has not so assumed; and
- 7 As of Closing, Seller has no knowledge of any claim or notice of an environmental, building or zoning code violation regarding the Property which has not been resolved.

VERIFICATION OF WARRANTED AND INCLUDED ITEMS. Before Closing, Buyer may conduct a "walk-through" inspection of the Property to determine whether or not items warranted by Seller in Section 10.1, 10.2, 10.3 and 10.4 are in the warranted condition and to verify items included in Section 10 are presently on the Property. If any item is not in the warranted condition, Seller will correct, repair or replace it as necessary or, with the consent of Buyer, escrow an amount at Closing to provide for such repair or replacement. The Buyer's failure to conduct a "walk-through" inspection, or to claim during the "walk-through" inspection that the Property does not include all items referenced in Section 1.1, or is not in the condition warranted in Section 10, shall not constitute a waiver by Buyer of Buyer's rights under Section 1.1 or of the warranties contained in Section 10.

CHANGES DURING TRANSACTION. Seller agrees that no changes in any existing leases shall be made, no new leases entered into, and no substantial alterations or improvements to the Property shall be made or undertaken without the written consent of the Buyer.

AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer or Seller.

COMPLETE CONTRACT. This instrument together with its addenda, any attached exhibits, and Seller Disclosures constitute the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

DISPUTE RESOLUTION. The parties agree that any dispute or claim relating to this Contract, including but not limited to the disposition of the Earnest Money Deposit, the breach or termination of this Contract, or the services relating to this transaction, shall first be submitted to mediation in accordance with the Utah Real Estate Buyer/Seller Mediation Rules of the American Arbitration Association. Disputes shall include representations made by the parties, any Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract relates, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Each party agrees to bear its own costs of mediation. Any agreement signed by the parties pursuant to the mediation shall be binding. If mediation fails, the procedures applicable and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation. By checking this box ☐, and adding their initials, the Buyer ( ), and the Seller ( ), agree that mediation under this Section 15 is not mandatory, but is optional upon agreement of all parties.

DEFAULT. If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and sue Buyer to enforce Seller's rights. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller as liquidated damages, a sum equal to the Earnest Money Deposit, or to sue Seller for specific performance and/or damages. If Buyer elects to accept the liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. Where a Section of this Contract provides a specific remedy the parties intend that the remedy shall be exclusive regardless of rights which might otherwise be available under common law.

ATTORNEY'S FEES. In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees.

DISPOSITION OF EARNEST MONEY. The Earnest Money Deposit shall not be released unless it is authorized by: (a) Section 2, Section 8.3 or Section 8; (b) separate written agreement of the parties; or (c) court order.

TERMINATION. Except for express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

RISK OF LOSS. All risk of loss or damage to the Property shall be borne by Seller until Closing.

TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this transaction. Extensions must be agreed to in writing by all parties. Performance under each Section of this Contract which references a date shall be required absolutely by 5:00 PM Mountain Time on the stated date.

FACSIMILE (FAX) DOCUMENTS. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. If the transaction involves multiple Buyers or Sellers, facsimile transmissions may be executed in counterparts.

ACCEPTANCE. Acceptance occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counter where noted; (b) communicates to the other party or the other party's agent that the offer or counteroffer has been signed as required.

OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by 2:00 AM 8 PM Mountain Time 2-7-94 1994, this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

Buyer's Signature)

(Offer Date)

(Buyer's Signature)

(Offer Date)

The above date shall be the Offer Reference Date.

Notice Address)

(Phone)

(Notice Address)

(Phone)

#### ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE:

Acceptance of Offer to Purchase: Seller Accepts the foregoing offer on the terms and conditions specified above, and the addendum

Buyer's Signature) Angela Coons (Date) 2-7-94 (Time) 4:30 P.M. Seller's Signature) Debra L. Crowley (Date) 2-7-94 (Time) 5:10 P.M.

Notice Address) 73 W. 2300 N. W. St. Int 84087 (Notice Address)

Rejection: Seller Rejects the foregoing offer. (Seller's Initials) (Date) (Time)

Counter Offer: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached Counter Offer #

3 Feb. 1997

Addendum to Real Estate  
Purchase Agreement

The Seller cannot give a definite date of closing until the Buyer gives to the Seller a list in writing of all his selections. i.e.: Cabinets, hardwood flooring, brick, floor coverings, paint colors, etc. At that time the Seller will schedule all the work for completion and may have to give the Buyer a new date for completion, without penalty.

Plumbing Fixtures

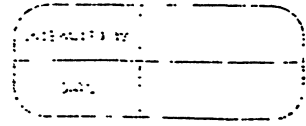
a. Bath sinks - Briggs 6510 - 20x17 oval,  
faucet Moen Chateau 4621

b. Kitchen sink - Kohler efficiency, white  
33x22 Delta faucet

c. Master bedroom bath - Faucet sinks,  
Moen 4621, tub faucet T973W  
Moen  
1-50 gal. water heater

2-7-97 Debra S. Crowley  
2-9-97 Douglas B. Coons





## Air Conditioning

Unit I upstairs 3 ton central air  
Unit II basement 3 ton central air

## Paint

One color throughout house

## Rain gutters

Across front and back of house.

## Bedroom Closets

To be finished by buyer

## ~~Garage~~

## Garage Door Opener's

Builder will provide only two (2)  
② automatic door opener's

## Intercom

2-7-94 Debra S Browley

Alarm System, Home Entertainment,  
Central Vac., Soft Water and Steamer.

These items are roughed in by the Seller. The Buyer will choose which make of system and which accessories, and pay the cost for their completion either through the Seller, or by himself at another date.

### Allowances

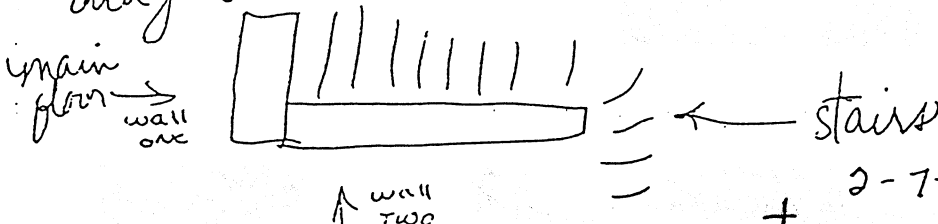
From seller to buyer:

a. Cabinet bid	D.M.C.	
b. light fixtures	\$	
c. floor coverings (all)	\$20,400.00/	
d. stair railing	D.M.C.	
e. appliances:	\$ - 2,000.00/	5,000.00
	D.M.C.	
	\$ - 7,100.00/	12,100.00
	- 1,600.00/	
	D.M.C.	
	\$ - 3,000.00/	

1. free standing or  
~~2~~ drop-in stove
2. dishwasher
3. hood.

Seller shall also open the two walls  
on the main level leading to the basement.

diagram:



+ 2-7-94 Debra J Crowley

PREPARED BY	
DATE	

Electrical Cover Plates - white standard

Allowances

a. Mantel	\$475.00
b. Intercom	-650.00
c. Door handles:	
1) privacy each	-17.79
2) passage each	-16.01
3) keyed each	-22.75
4) dead bolt each	-17.55
handles are Weiser Corsair in bright brass	

Brick - 9 ft. x 10 in rear of house

Retaining Wall -

The rock retaining wall in front will be done as described by seller. ✓

Dirt -

The dirt removed from backyard will be done as described by seller.

2-9-94 Douglas B. Coors

Fireplace -

2-7-94 Debra J. Crowley

The sale of the home also includes one row of tile around fireplace to be paid.

PREPARED BY	
DATE	

Seller must also approve choices made by buyer of the following items?

- a. hand rail
- b. cabinets
- c. stucco color
- d. brick

If the Seller does not approve these choices made by the Buyer, then the Buyer at his option, can pay the total cost of each item in full in advance. The money would be non-refundable.

### Example

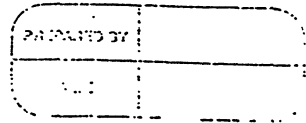
The Seller would most likely not allow:

- 1. fir handrail
- 2. plastic cabinets
- 3. stucco color (pink)
- 4. brick that's unpopular or unattractive in the seller's opinion

### Stucco

The brick and stucco color must be approved by the Architectural Committee.

2-9-94 Doyle B. Carr



### Finishing of home.

During the finishing of the home if any work is of poor quality, the Buyer must contact the Seller within 48 hrs. in writing after the completion of that particular item.

Before the Buyer takes possession of the home the Buyer must give a written list to the Seller of any item not approved by the Buyer.

All changes are to be in writing.

All extras are to be paid in advance or arrangements of payment agreed to by both parties in writing.

### Earnest money

At that point of construction that the buyer chooses cabinets, hand railings, etc., the earnest money is no longer refunded to the Buyer.

2-7-94 Debra S Crowley

EX-107

If there is an ambiguity between the Real Estate Purchase Contract and the Addendums (pgs 1-7), the Addendums will be controlling.

Tile

Tile under washer and dryer will be white.

Deck top and Splash in Masterbedrm. bathroom.  
Will be white marble.

Title Work

The title work is to be done by Black's Title of Bountiful, Utah.

2-7-94 Debra H Crowley  
2-9-94 Douglas B. Coons

Tab E

2-28-94

PREPARED BY

DATE

Doug Coors Const House at 35 S. vicineral Dr. St. Ut

Extra cost to be paid by the buyer  
(Debra G. Crowley)

Hall bath - Foremost bid 1485.  
w. water bid 441.  
\$ 1044.

Extra cost to buyer \$ 1044.

master bath - Foremost bid 7690.00  
w. water bid 2120.00  
\$ 5570

Extra cost to buyer \$ 5570

Floor covering - Foremost bid

Carpet 5109.79  
Hardwood floors 7536.  
oak vents 180.  
tile laundry 1298.  
\$ 14,123.79

allowence 12,100 tile pad 275 \$ 12,375.00  
\$ 1,748.79

Extra cost to buyer \$ 1,748.79

Debra G. Crowley 3/2/94



2-28-94

PREPARED BY

Doug Coors Const. Home at 35 S. Viewcraft Dr. St. Ut.

Real Estate purchase Contract

#7 seller Disclosures

To be done the week of 2-28-94 thru 3-5-94

Earnest money deposited the week of 2-28-94  
thru 3-5-94

Mike Crowley 3-2-94

2-28-94

Doug Coons Co. House at 35 S. Viewcrest Drive Bt. Ut.

Extra cost to be paid by the buyer  
(Debra G. Crowley)

Brick

total cost of

Extra brick on home - \$3135.20

Sellers brick allowance was based  
on standard ABS brick size and  
\$260/1000 standard brick cost.

Mike Crowley 3/2/94

Tab F

# CITATION

incident # 5945  
3491

Department of Commerce  
Division of Occupational & Professional Licensing  
Construction Compliance Section  
P.O. Box 45805  
East 300 South  
Salt Lake City, Utah 84145



ISSUED TO: DOUGLAS B. COONS CONSTRUCTION		DOPL #: 22-239603-5501
BUSINESS ADDRESS: 673 W. 2300 N. WOODSCROSS UT. 84087		
HOME ADDRESS: <del>673 W. 2300 N.</del> SAME		
BUSINESS PHONE#: 292-3871		HOME PHONE#: SAME
DOB: 6-11-51	SSN/EIN#: 529-78-3082	DL#: _____
LOCATION OF OFFENSE: 35 S. VIEWCREST DR. BOUNTIFUL / # 335000		
DATE OF OFFENSE: SEPT. 94		DATE ISSUED: 9-2-94
OFFENSE CODE	DESCRIPTION	
58-55-501(1)	ENGAGING IN A CONSTRUCTION TRADE w/o LICENSE (LICENSE EXPIRED)	
REMARKS: SUBJECTS LICENSE EXPIRED ON JULY 31, 1993. SUBJECT HAS BEEN ENGAGING IN CONSTRUCTION TRADE SINCE THEN.		
DATE SERVED: 9-2-94	PERSON SERVED: DOUGLAS COONS	SERVED BY: CB
<input checked="" type="checkbox"/> FINE (See schedule) \$ 200.00		<input checked="" type="checkbox"/> CEASE AND DESIST ORDER
I ACKNOWLEDGE RECEIPT OF THIS CITATION AND CERTIFY THAT I HAVE READ AND UNDERSTAND THE RIGHTS ADVISEMENT CONTAINED BELOW AND HAVE BEEN PROVIDED A NOTICE OF RESPONSE <u>Douglas Coons</u> 9-2-94 RECIPIENT'S SIGNATURE DATE		I CERTIFY THAT THE INFORMATION IN THIS CITATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. <u>Chantal Brown</u> INVESTIGATOR'S SIGNATURE

## READ CAREFULLY

This citation may be contested by notifying the Division in writing within 20 calendar days of the service of the citation that you wish to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. A citation which is not so contested becomes the final order of the Division and is not subject to further agency review. Any person who fails to comply with a citation after it becomes the final order of the Division is guilty of a Class A misdemeanor and the Division may refuse to issue or renew, may suspend, revoke, or place on probation a license you hold or apply for.

3491

## NOTICE OF RESPONSE

Department of Commerce  
Division of Occupational & Professional Licensing  
Instruction Compliance Section  
Box 45805  
East 300 South  
Salt Lake City, Utah 84145



CITATION # 3491 DATE OF CITATION: 9-2-94  
NAME: Douglas Coons PHONE NUMBER: 292-3871  
ADDRESS: 673 W. 2300 N. W. St. Ut. 84087

THE CITATION ISSUED TO YOU MAY BE CONTESTED BY NOTIFYING THE DIVISION IN WRITING WITHIN 20 CALENDAR DAYS OF THE SERVICE OF THE CITATION THAT YOU WISH TO CONTEST THE CITATION AT A HEARING CONDUCTED UNDER TITLE 63, CHAPTER 46b, ADMINISTRATIVE PROCEDURES ACT. A CITATION WHICH IS NOT CONTESTED BECOMES THE FINAL ORDER OF THE DIVISION AND IS NOT SUBJECT TO FURTHER REVIEW. ANY PERSON WHO FAILS TO COMPLY WITH A CITATION AFTER IT BECOMES THE FINAL ORDER OF THE DIVISION IS GUILTY OF A CLASS A MISDEMEANOR AND THE DIVISION MAY REFUSE TO ISSUE OR RENEW OR MAY SUSPEND, REVOKE, OR PLACE ON PROBATION A LICENSE YOU HOLD OR APPLY FOR.

PLEASE SELECT ONE OF THE FOLLOWING ALTERNATIVE RESPONSES IN RESPONDING TO THE CITATION ISSUED TO YOU:

- ☐ 1. I ADMIT COMMITTING THE OFFENSE DESCRIBED IN THE CITATION, CHOOSE NOT TO CONTEST THE CITATION AND TO COMPLY WITH ITS SANCTIONS, AND HEREBY SUBMIT THE FINE SHOWN ON THE DOPL CITATION FINE SCHEDULE ON THE REVERSE SIDE OF THE CITATION.
- ☒ 2. I ADMIT COMMITTING THE OFFENSE DESCRIBED IN THE CITATION BUT REQUEST A HEARING TO EXPLAIN THE CIRCUMSTANCES OF THE OFFENSE.
- ☐ 3. I DENY COMMITTING THE OFFENSE DESCRIBED IN THE CITATION AND REQUEST A HEARING TO CONTEST THE CITATION.

CERTIFY THAT I HAVE KNOWINGLY AND VOLUNTARILY MADE THE ABOVE ELECTION OF RIGHTS. I UNDERSTAND THAT IF I REQUEST A HEARING, THE DIVISION WILL NOTIFY ME IN WRITING OF THE HEARING DATE AND THAT IF I FAIL TO APPEAR AT THE HEARING, A DEFAULT JUDGEMENT WILL BE ENTERED AGAINST ME.

FURTHER UNDERSTAND THAT THE ISSUES TO BE DECIDED BY THE PRESIDING JUDGER AT A HEARING ARE FIRST, WHETHER THE CITED OFFENSE IS SUPPORTED BY COMPETENT EVIDENCE; SECOND, WHETHER THE CITATION SHOULD HAVE BEEN ISSUED; AND IF SO, THIRD, WHETHER THE SANCTION IMPOSED BY THE CITATION SHOULD BE AFFIRMED, REJECTED OR MODIFIED (DECREASED, INCREASED, SUSPENDED, REMITTED, OR VACATED).

NATURE: Douglas Coons DATE: 9-2-94

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

Hieber M. Wells Building  
160 East 300 South - P.O. Box 45805  
Salt Lake City, Utah 84145-0805  
Telephone : (801) 530-6623

IN THE MATTER OF THE CITATION NUMBER 03491  
ISSUED TO DOUGLAS B COONS (RESPONDENT)

ORDER

THE ABOVE MATTER CAME ON FOR HEARING ON THE 17 DAY OF OCTOBER 19 94.  
BEFORE DAN J. JONES, PRESIDING OFFICER.

APPEARING FOR THE DIVISION: Chantal E. Brown

APPEARING FOR THE RESPONDENT: Douglas B Coons

☒ RESPONDENT ACKNOWLEDGES AND UNDERSTANDS THE INFORMAL CITATION HEARING INSTRUCTION FORM.

FINDINGS: (CHECK ITEMS THAT APPLY)

- ☒ THE CITATION IS SUPPORTED BY COMPETENT EVIDENCE.  
☒ THE CITATION SHOULD HAVE BEEN ISSUED.  
☒ AN ADMINISTRATIVE SANCTION IS APPROPRIATE.

DECISION: (CHECK ITEMS THAT APPLY)

- ☐ THE CITATION IS DISMISSED.  
☐ THE CITATION IS MODIFIED AS FOLLOWS: \_\_\_\_\_

☒ THE CITATION IS AFFIRMED.

REASON(S) FOR DECISION:

- ☒ RESPONDENT ADMITTED COMMITTING THE OFFENSE.  
☐ RESPONDENT DENIED COMMITTING THE OFFENSE BUT THE DIVISION ESTABLISHED A PRIMA FACIE CASE.  
EXPLANATION: \_\_\_\_\_

ORDER: (CHECK ITEMS THAT APPLY)

- ☒ THE RESPONDENT IS ORDERED TO PAY A FINE IN THE AMOUNT OF \$ 200.00  
☒ \$ 150.00 OF THE ABOVE FINE IS SUSPENDED CONDITIONED UPON THE TIMELY PAYMENT OF THE AMOUNT DUE AS ORDERED.

THE AMOUNT DUE IS PAYABLE AS FOLLOWS: 50.00 10-17-94

IF ANY AMOUNT IS NOT PAID WHEN DUE, ANY REMAINING BALANCE OR SUSPENDED AMOUNT BECOMES DUE AND PAYABLE IMMEDIATELY.

- ☐ THE RESPONDENT IS ORDERED TO CEASE AND DESIST FROM:
- ☐ ENGAGING IN OR REPRESENTING HIMSELF TO BE ENGAGED IN A CONSTRUCTION TRADE OR ACTING OR REPRESENTING HIMSELF TO BE ACTING AS A CONTRACTOR WHILE NOT LICENSED OR EXCEPTED FROM LICENSURE.
  - ☐ ACTING IN A CONSTRUCTION TRADE BEYOND THE SCOPE OF THE LICENSE HELD.
  - ☐ HIRING UNLICENSED CONTRACTORS OR PERSONS WHO ARE REQUIRED TO BE LICENSED.
  - ☐ OTHER: \_\_\_\_\_

REASON(S) FOR ORDER:

- ☒ THERE WAS (SUFFICIENT) (INSUFFICIENT) EVIDENCE PRESENTED OF MITIGATING OR AGGRAVATING CIRCUMSTANCES OR OTHER GOOD CAUSE TO MODIFY THE STANDARE FINE.  
☐ A CEASE AND DESIST ORDER IS WARRANTED TO PREVENT CONTINUED UNLAWFUL CONDUCT.

EXPLANATION: HAD made out check to renew license but  
was not make pay representative, previous request  
advice from the Division, license reinstatement  
was not completed until 11 months after  
fee paid

THIS IS A FINAL ORDER ON THE MATTER. ANY PERSON WHO FAILS TO COMPLY WITH A FINAL ORDER OF THE DIVISION MAY BE FOUND GUILTY OF A CLASS A MISDEMEANOR AND THE DIVISION MAY REFUSE TO ISSUE OR RENEW OR MAY SUSPEND, REVOKE, OR PLACE ON PROBATION A LICENSE YOU HOLD OR APPLY FOR.

ADMINISTRATIVE REVIEW OF THIS ORDER MAY BE OBTAINED BY FILING A REQUEST FOR AGENCY REVIEW WITH CONSTANCE B. WHITE, EXECUTIVE DIRECTOR, DEPARTMENT OF COMMERCE, WITHIN 30 DAYS AFTER THE DATE OF THIS ORDER. THE LAWS AND RULES GOVERNING AGENCY REVIEW ARE FOUND IN SECTION 63-46-12 OF THE UTAH CODE AND SECTION R151-46-13 OF THE UTAH ADMINISTRATIVE CODE.

DATED THIS 17<sup>th</sup> DAY OF Oct, 19 94.

[Signature]  
PRESIDING OFFICER

7  
P.T.

IN THE SECOND JUDICIAL DISTRICT COURT  
FOR DAVIS COUNTY, STATE OF UTAH

\* \* \*

GOLDEN MEADOWS, INC., a )  
Utah corporation, )

Plaintiff, )

vs. )

DOUGLAS B. COONS and )  
LAURA COONS, )

Defendants and )  
Third-Party Plaintiffs, )

vs. )

DEBRA G. CROWLEY and )  
MICHAEL E. CROWLEY, )

Third-Party Defendants. )

Civil No. 940700327

Deposition of:

GEORGE WEILER

\* \* \*

The deposition of GEORGE WEILER was taken at the instance and request of the Third-Party Defendants at the offices of Bowen & Whyte, 265 East 100 South, Suite 300, Salt lake City, Utah, on the 19th day of December 1994 at the hour of 2:32 p.m., before Susette M. Snider, a Certified Shorthand Reporter, Utah License No. 196, Registered Professional Reporter and Notary Public in and for the State of Utah.



5 DAY DELIVERY  
(801) 322-3742

185 South State Street #380 • Salt Lake City, Utah 84111

MERIT REPORTERS

P R O C E E D I N G S

GEORGE WEILER,

called as a witness for and on behalf of the Third-Party Defendants, being first duly sworn, was deposed and testified as follows:

EXAMINATION

BY MR. WHYTE:

Q Mr. Weiler, we appreciate your being here today. We know it's by virtue of a subpoena that you received.

The subpoena, Mr. Weiler, directed you to -- first of all, if we could have you state your name and your professional address.

A Okay. George Weiler, 160 East 300 South, Salt Lake City, Utah.

Q Thank you. Mr. Weiler, are you employed by the State of Utah?

A I am.

Q And could you tell us your title and job description?

A I'm with the Division of Occupational and Professional Licensing, Department of Commerce. I am bureau manager of the Construction Trades Licensing Bureau.

Q What would your duties entail based upon the



description you've just given us?

A I have access to all of the records concerning the licensing of contractors, plumbers, electricians and building inspectors.

Q Would you be a custodian of those records, then?

A I am.

Q How do those records come to be in your office, Mr. Weiler?

A Statutorily our division is given the responsibility of licensing contractors in the State of Utah.

Q Have you ever appeared before or had your deposition taken before?

A Yes.

Q So you're familiar with the deposition process?

A Yes.

Q Did you bring with you any documents today from your office?

A I did.

Q And could you briefly describe how you assembled the documents to bring with you today?

A I have, first of all, the licensing screens as they deal with the licensing of Douglas B. Coons

Construction which shows not only the current licensing history but past history. I have a copy of the original application for contractor's license by Douglas B. Coons, and I have from our Compliance Division copies of a recent citation hearing that was held.

Q Would these documents you've just described be the complete file on record for Mr. Coons or his construction company with your office?

A They are.

Q If we could, maybe we could just have you identify the documents one at a time, Mr. Weiler. The first document we're looking at is entitled what?

A This is a display on the automated licensing system of the division concerning the licensing of Douglas B. Coons Construction. The first screen indicates that -- who the license is issued to. Also -- also known as indicates that it's a sole proprietorship. The second portion is the second screen and shows the current status of that license. The third one is --

Q Now you've turned to the next page; is that right?

A The next page which is the third and fourth screen. The third screen shows the classification of

ahead.

A Repeat the question again.

Q I said do you have an opinion whether or not one engaged in the construction trades may do so with an expired license?

A It is my opinion that it is unlawful to engage in the construction business without a current license.

Q Okay. In the situation at hand with Mr. Coons, in your opinion was he allowed to engage in the construction trade after July 31, 1993?

A Not until September 16, 1994, when his license was reinstated.

Q Directing your attention to Exhibit 3, it's the decision of the hearing officer, I believe it's the third page from the last.

A Yes.

Q If we could just go through that document --

A Okay.

Q -- I note that approximately a third of the way down there's a check in a box by the notation "The Citation is Affirmed," underneath that a check in the box "Respondent Admitted Committing the Offense"; is that correct?

the fine had been, indeed, paid, but we had no record of it and had to search back and find that record. So it was actually sent out in error.

Q Thank you. From a review of the documents that you brought with you today, could you tell me if there's ever a time that Mr. Coons' construction license expired?

A Yes.

Q And what was the date it expired?

A It expired July 31st of 1993 and was not reinstated until September 16th of 1994.

Q In your position with the State of Utah, Mr. Weiler, do you ever have reason or cause to deal with issues in which contractors' licenses have been expired for a period of time?

A Yes.

Q In your experience and in your capacity as an official of the State of Utah, Mr. Weiler, do you have an opinion as to whether or not one may engage in the construction trade in Utah with an expired license?

MR. CRAWLEY: I'll object that it calls for a legal conclusion.

Go ahead.

Q To the extent you feel you can answer, go

Tab G

Douglas B. Coons Construction  
673 W. 2300 North  
West Bountiful, Utah 84087  
801-292-3871

July 22, 1994

Debra Crowley  
1983 Ridgewood Way  
Bountiful, Utah

Debra Crowley  
c/o Embassy Suites  
6th South, West Temple  
Salt Lake City, Utah

RE: Home being constructed at 35 South Viewcrest Drive, Bountiful

Dear Debra:

This letter is to confirm that your husband, Mike, informed me on Wednesday July 20, 1994, that you no longer want to buy the home that I am building for you and that you would not pay for some of the extras in the home. Since almost all of my dealings during construction have been with your husband I believe he is authorized to speak on your behalf. I consider each of those statements to be a breach and default of the Real Estate Purchase Contract that you entered into with me. As you can imagine I was surprised to be told that. I have tried hard to accommodate both you and your husband in customizing this home.

I now need to get on with resolving the problem that has been forced upon me. Beginning Tuesday July 26, 1994, I will mitigate my damages by continuing with work towards completion of the home as I see fit (which will not necessarily be according to the finishes that you had requested). I will also put the home on the market to sell it as soon as practicable in order to pay off the construction loan and other construction bills that I have incurred. According to the terms of our contract (and the addendum), I will retain the Earnest Money Deposit as liquidated damages due to your defaults.

If you want to remedy the breaches and defaults of the agreement that have occurred please contact me by noon on Tuesday, July 26, 1994, and be prepared to demonstrate your ability to pay for the extras now and also pay for the home at a closing in the immediate future. I hope that you will honor the contract we entered into and save yourself the financial impacts of breaching the contract. If I do not hear from you by that time I will proceed as outlined above.

Sincerely yours,

Douglas B. Coons

cc: Bill Coons, Bill Co.

ROBERT F. BABCOCK, P.C.  
ERIN B. SCOTT  
ARRIEL J. BOSTWICK  
KEVEN D. CRAWLEY  
MARK L. POULSEN  
RYAN R. PRICE  
J. J. BABCOCK  
ANTHIA B. NEUENSCHWANDER  
WILLIAM J. WALSTAD, P.C.

DAVID T. BERRY — OF COUNSEL

LSO ADMITTED IN ILLINOIS  
LSO ADMITTED IN PENNSYLVANIA  
LSO ADMITTED IN CALIFORNIA

## WALSTAD & BABCOCK

A PARTNERSHIP OF  
PROFESSIONAL CORPORATIONS  
ATTORNEYS & COUNSELORS AT LAW  
TEMPLE VIEW CENTRE  
57 WEST SOUTH TEMPLE, 8TH FLOOR  
SALT LAKE CITY, UTAH 84101  
(801) 531-7000  
FAX: (801) 531-7060

### PROVO OFFICE

COTTONTREE SQUARE SUITE 15  
2255 NORTH UNIVERSITY PARKWAY  
PROVO, UTAH 84604

VIA HAND DELIVERY

July 28, 1994

Debra Crowley  
c/o Embassy Suites  
6th South, West Temple  
Salt Lake City, Utah

RE: Home being constructed by Doug Coons Construction

Dear Mrs. Crowley:

Please be advised that this office represents Doug Coons Construction in relation to the agreement to build a home for you in Bountiful. This letter also confirms that both you and your husband, Mike, informed Doug Coons on Friday, July 22, 1994, that you no longer want to buy the home that he has been constructing for you. Your stated reason is that the home was costing too much. Your refusal to consummate the purchase is a breach and default of the Real Estate Purchase Contract that you entered into with Doug Coons Construction.

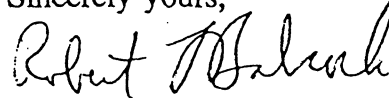
In order to mitigate his damages, Doug Coons Construction will now proceed to list the property for sale to others and will continue with work towards completion of the home as I see fit (which will not necessarily be according to the finishes that you had requested). According to the terms of the Real Estate Purchase Contract (and the addendum), Doug Coons Construction will retain the Earnest Money Deposit as liquidated damages due to your defaults.

Doug Coons Construction will give you one last opportunity to remedy the breaches and defaults of the Real Estate Purchase Contract that have occurred thereby potentially salvaging some of the investment that you have made. Please contact me by

Mrs. Debra Crowley  
July 28, 1994  
Page 2, 1994

the close of business on Friday, July 29, 1994, and be prepared to demonstrate your ability to pay for the extras now that have been performed on your behalf and also pay for the home at a closing in the immediate future. If I do not hear from you we will assume that you have no further interest in the home. Please govern yourself accordingly.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert F. Babcock".

Robert F. Babcock

cc: Doug Coons Construction  
Mike Crowley- Kelly Company (VIA HAND DELIVERY)



Tab H

## EARNEST MONEY RECEIPT

The Buyer John T. & Sherlene T. Clark offers to purchase the Property described below and delivers to Brokerage, as Earnest Money Deposit \$ 500.00 in the form of Check to be deposited within three business days after Acceptance of this offer to purchase by all parties. To be deposited with associated Title

Received by \_\_\_\_\_ on \_\_\_\_\_ (Date)  
Brokerage \_\_\_\_\_ Phone Number \_\_\_\_\_

## OFFER TO PURCHASE

## 1. PROPERTY:

City Bountiful Country DAVIS, Utah.

1.1 Included Items. Unless excluded herein, this sale shall include all fixtures presently attached to the Property: plumbing, heating, air-conditioning and venting fixtures and equipment, water heater, built-in appliances, light fixtures and bulbs, bathroom fixtures, curtains and draperies and rods, window and door screens, storm doors, window blinds, awnings, installed television antenna, satellite dishes and system, wall-to-wall carpets, automatic garage door opener and transmitter(s), fencing, trees and shrubs. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: \_\_\_\_\_

1.2 Excluded Items. The following items are excluded from this sale: \_\_\_\_\_

## 2. PURCHASE PRICE AND FINANCING Buyer agrees to pay for the Property as follows.

\$ 500.00 Earnest Money Deposit

\$ \_\_\_\_\_ Existing Loan: Buyer agrees to assume and pay an existing loan in this approximate amount presently payable at \$ \_\_\_\_\_ per month including principal, interest (presently at \_\_\_\_\_ % per annum), ☐ real estate taxes, ☐ property insurance premium and ☐ mortgage insurance premium. Buyer agrees to pay any transfer and assumption fees. Seller ☐ shall ☐ shall not be released from liability on said loan. Any net differences between the approximate balance of the loan shown above and the actual balance at Closing shall be adjusted in ☐ Cash ☐ Other \_\_\_\_\_.

\$ \_\_\_\_\_ Proceeds from New Loan: Buyer reserves the right to apply for any of the following loans under the terms described below  
☐ Conventional ☐ FHA ☐ VA ☐ Other \_\_\_\_\_ Seller agrees to pay \$ \_\_\_\_\_ toward Discount Points and Buyer's other loan and closing costs, to be allocated at Buyer's discretion.

☐ For a fixed rate loan: Amortized and payable over \_\_\_\_\_ years, interest shall not exceed \_\_\_\_\_ % per annum; monthly principal and interest payment shall not exceed \$ \_\_\_\_\_, or  
☐ For an Adjustable Rate Mortgage (ARM): Amortized and payable over \_\_\_\_\_ years; initial interest rate shall not exceed \_\_\_\_\_ % per annum; initial monthly principal and interest payments shall not exceed \$ \_\_\_\_\_. Maximum Life Time interest rate shall not exceed \_\_\_\_\_ % per annum

\$ \_\_\_\_\_ Seller Financing: (See attached Seller Financing Addendum)

\$ \_\_\_\_\_ Other: \_\_\_\_\_

\$ 341,500 Balance of Purchase Price in Cash at Closing

\$ 341,000 Total Purchase Price

2.1 Existing/New Loan Application. Buyer agrees to make application for a loan specified above within \_\_\_\_\_ calendar days (Application Date) after Acceptance. Buyer will have made Loan Application only when Buyer has: (a) completed, signed, and delivered to the Lender the initial loan application and documentation required by the Lender; and (b) paid all loan application fees as required by the Lender. Buyer will continue to provide the Lender with any additional documentation as required by the Lender. If, within seven calendar days after receipt of written request from Seller, Buyer fails to provide to Seller written evidence that Buyer has made Loan Application by the Application Date, then Seller may, prior to the Qualification Date below, cancel this Contract by providing written notice to Buyer. The Brokerage, upon receipt of a copy of such written notice, shall release to Seller, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit without the requirement of any further written authorization from Buyer.

2.2 Qualification. Buyer and the Property must qualify for a loan for which application has been made under section 2.1 within \_\_\_\_\_ calendar days (Qualification Date) after Acceptance. The Property is deemed qualified if, on or before the Qualification Date, the Property, in its current condition and for the Buyer's intended use, has appraised at a value not less than the Total Purchase Price. Buyer is deemed qualified if, on or before the Qualification Date, the Lender verifies in writing that Buyer has been approved as of the verification date.

2.3 Qualification Contingency. If Seller has not previously voided this Contract as provided in Section 2.1, and either the Property or Buyer has failed to qualify on or before the Qualification Date, either party may cancel this Contract by providing written notice to the other party within three calendar days after the Qualification Date; otherwise Buyer and the Property are deemed qualified. The Brokerage, upon receipt of a copy of such written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization of Seller.

3. CLOSING. This transaction shall be closed on or before September 30, 19 94. Closing shall occur when: (a) Buyer and Seller have signed and delivered to each other (or to the escrow/title company), all documents required by this Contract, by the Lender, by written escrow instructions and by applicable law; and (b) the monies required to be paid under these documents, have been delivered to the escrow/title company in the form of cashier's check, collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the escrow Closing fee, unless otherwise agreed by the parties in writing. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated as set forth in this Section. Unearned deposits on tenancies shall be transferred to Buyer at Closing. Prorations set forth in this Section, shall be made as of ☒ date of Closing ☐ date of possession ☐ other \_\_\_\_\_.

4. POSSESSION. Unless otherwise agreed in writing by the parties, Seller shall deliver possession to Buyer within at close hours after Closing.

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this Contract the listing agent \_\_\_\_\_ represents

☐ Seller ☐ Buyer, and the selling agent \_\_\_\_\_ represents ☐ Seller ☐ Buyer. Buyer and Seller confirm that prior to signing this Contract written disclosure of the agency relationship(s) was provided to him/her ( ) Buyer's Initials ( ) Seller's Initials.

6. TITLE TO PROPERTY AND TITLE INSURANCE. (a) Seller has, or shall have at Closing, fee title to the Property and agrees to convey such title to Buyer by general warranty deed, free of financial encumbrances as warranted under Section 10.6; (b) Seller agrees to pay for and furnish Buyer at Closing with a current standard form owner's policy of title insurance in the amount of the Total Purchase Price; (c) the title policy shall conform with Seller's obligations under subsections (a) and (b) above. Unless otherwise agreed under subsection 8.4, the commitment shall conform with the title insurance commitment provided under Section 7.1.

7. SELLER DISCLOSURES. No later than 3 calendar days after Acceptance, Seller will deliver to Buyer the following Seller Disclosures: (a) a Seller property condition disclosure for the Property, signed and dated by Seller; (b) a commitment for the policy of title insurance required under Section 6, to be issued by the title insurance company chosen by Seller, including copies of all documents listed as Exceptions on the Commitment; (c) a copy of all loan documents relating to any loan now existing which will encumber the Property after Closing; and (d) a copy of all leases affecting the Property not expiring prior to Closing. Seller agrees to pay any title commitment cancellation charge under subsection (b).

8. GENERAL CONTINGENCIES. In addition to Qualification under Section 2.2 this offer is: (a) subject to Buyer's approval of the content of each of the items referenced in Section 7 above; and (b) ☒ is ☐ is not subject to Buyer's approval of an inspection of the Property. The inspection shall be paid for by Buyer and shall be conducted by an individual/company of Buyer's choice. Seller agrees to fully cooperate with such inspection and a walk-through inspection under Section 11 and to make the Property available for the same.

8.1 Buyer shall have 2 calendar days after Acceptance in which to review the content of Seller Disclosures, and, if the inspection contingency applies, to complete and evaluate the inspection of the Property, and to determine, if, in Buyer's sole discretion, the content of all Seller Disclosures (including the Property Inspection) is acceptable.

8.2 If Buyer does not deliver a written objection to Seller regarding a Seller Disclosure or the Property Inspection within the time provided in subsection 8.1 above, that document or inspection will be deemed approved or waived by Buyer.

Page 3 of 2 pages Seller's Initials ( ) Date \_\_\_\_\_ Buyer's Initials HC Date 8-19-94

8.3 If Buyer objects, Buyer and Seller shall have seven calendar days after receipt of the objections to resolve Buyer's objections. Seller may, but shall not be required to resolve Buyer's objections. If Buyer's objections are not resolved within the seven calendar days, Buyer may void this Contract by providing written notice to Seller within the same seven calendar days. The Brokerage, upon receipt of a copy of Buyer's written notice, shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization from Seller. If this Contract is not voided by Buyer, Buyer's objection is deemed to have been waived. However, this waiver does not affect those items warranted in Section 11.

8.4 Resolution of Buyer's objections under Section 8.3 shall be in writing and shall be specifically enforceable as covenants of this Contract.

9. SPECIAL CONTINGENCIES. This offer is made subject to: all contingencies and completion per Addendum  
The terms of attached Addendum # 1 are incorporated into this Contract by this reference.

10. SELLER'S LIMITED WARRANTIES. Seller's warranties to Buyer regarding the condition of the Property are limited to the following:

10.1 When seller delivers possession of the Property to Buyer, it will be broom-clean and free of debris and personal belongings;

10.2 Seller will deliver possession of the Property to Buyer with the plumbing, plumbed fixtures, heating, cooling, ventilating, electrical and sprinkler systems, appliances and fireplaces in working order;

10.3 Seller will deliver possession of the Property to Buyer with the roof and foundation free of leaks known to Seller;

10.4 Seller will deliver possession of the Property to Buyer with any private well or septic tank serving the Property in working order and in compliance with governmental regulations;

10.5 Seller will be responsible for repairing any of Seller's moving-related damage to the Property;

10.6 At Closing, Seller will bring current all financial obligations encumbering the Property which are assumed in writing by Buyer and will discharge all such obligations which Buyer has not so assumed; and

10.7 As of Closing, Seller has no knowledge of any claim or notice of an environmental, building or zoning code violation regarding the Property which has not been resolved.

11. VERIFICATION OF WARRANTED AND INCLUDED ITEMS. Before Closing Buyer may conduct a "walk-through" inspection of the Property to determine whether or not items warranted by Seller in Section 10.1, 10.2, 10.3 and 10.4 are in the warranted condition and to verify items included in Section 11 are presently on the Property. If any item is not in the warranted condition, Seller will correct, repair or replace it as necessary or, with the consent of Buyer, escrow an amount at Closing to provide for such repair or replacement. The Buyer's failure to conduct a "walk-through" inspection, or to claim during the "walk-through" inspection that the Property does not include all items referenced in Section 11, or is not in the condition warranted in Section 10, shall not constitute a waiver by Buyer of Buyer's rights under Section 11 or of the warranties contained in Section 10.

12. CHANGES DURING TRANSACTION. Seller agrees that no changes in any existing leases shall be made, no new leases entered into, and no substantial alterations or improvements to the Property shall be made or undertaken without the written consent of the Buyer.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer or Seller.

14. COMPLETE CONTRACT. This instrument together with its addenda, any attached exhibits, and Seller Disclosures constitute the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute or claim relating to this Contract, including but not limited to the disposition of the Earnest Money Deposit, the breach or termination of this Contract, or the services relating to this transaction, shall first be submitted to mediation in accordance with the Utah Real Estate Buyer/Seller Mediation Rules of the American Arbitration Association. Disputes shall include representations made by the parties, any Broker or other person or entity in connection with the sale, purchase, financing condition or other aspect of the Property to which this Contract pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Each party agrees to bear its own costs of mediation. Any agreement signed by the parties pursuant to the mediation shall be binding. If mediation fails, the procedures applicable and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation. By marking this box ☒, and adding their initials, the Buyer (John F. Clark), and the Seller (8-19-94), agree that mediation under this Section 15 is not mandatory, but is optional upon agreement of all parties.

16. DEFAULT. If Buyer defaults, Seller may elect to either retain the Earnest Money Deposit as liquidated damages or to return the Earnest Money Deposit and sue Buyer to enforce Seller's rights. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect to either accept from Seller as liquidated damages, a sum equal to the Earnest Money Deposit, or to sue Seller for specific performance and/or damages. If Buyer elects to accept the liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand. Where a Section of this Contract provides a specific remedy the parties intend that the remedy shall be exclusive regardless of rights which might otherwise be available under common law.

17. ATTORNEY'S FEES. In any action arising out of this Contract, the prevailing party shall be entitled to costs and reasonable attorney's fees.

18. DISPOSITION OF EARNEST MONEY. The Earnest Money Deposit shall not be released unless it is authorized by (a) Section 2, Section 8.3 or Section 15, (b) separate written agreement of the parties; or (c) court order.

19. ABROGATION. Except for express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. RISK OF LOSS. All risk of loss or damage to the Property shall be borne by Seller until Closing.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this transaction. Extensions must be agreed to in writing by all parties. Performance under each Section of this Contract which references a date shall be required absolutely by 5:00 PM Mountain Time on the stated date.

22. FACSIMILE (FAX) DOCUMENTS. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. If the transaction involves multiple Buyers or Sellers, facsimile transmissions may be executed in counterparts.

23. ACCEPTANCE. Acceptance occurs when Seller or Buyer responding to an offer or counteroffer of the other (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or the other party's agent that the offer or counteroffer has been signed as required.

24. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by 5:00 PM Mountain Time August 23, 1994, this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

John F. Clark (Buyer's Signature) 8-19-94 (Offer Date) \_\_\_\_\_ (Buyer's Signature) \_\_\_\_\_ (Offer Date)  
The above date shall be the Offer Reference Date.

\_\_\_\_\_  
(Notice Address) (Phone) (Notice Address) (Phone)

#### ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE:

☒ Acceptance of Offer to Purchase; Seller Accepts the foregoing offer on the terms and conditions specified above.

Douglas B. Coons (Seller's Signature) 8-29-94 (Date) \_\_\_\_\_ (Seller's Signature) \_\_\_\_\_ (Date) \_\_\_\_\_ (Time)

\_\_\_\_\_  
(Notice Address) (Notice Address)

☐ Rejection. Seller Rejects the foregoing offer \_\_\_\_\_ (Seller's Initials) \_\_\_\_\_ (Date) \_\_\_\_\_ (Time)

☐ Counter Offer. Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached Counter Offer # \_\_\_\_\_.

Tab I

THIS AGREEMENT between Douglas B. Coons, Trustor, and ZIONS FIRST NATIONAL BANK, a National Association, Trustee and Beneficiary, hereinafter called "Bank".

WITNESSETH:

The trustors heretofore executed their promissory note in favor of Zions First National Bank, dated June 26, 19 92 for the principal sum of \$ 179,000 and interest at BASE + 2 percent per annum, payable monthly on the 1ST day of each month until maturity, March 26, 19 93, when the entire unpaid balance shall become due and payable. To secure said note, the Trustors also executed and delivered to the Bank their Trust Deed dated June 26, 19 92, recorded July 1, 19 92 in Book No. 1510, Page No. 400, Entry No. 980299 in the office of the County Recorder of Davis County, Utah, on and covering Real Estate and premises therein described and situated in Davis County, Utah to wit:

Lot 12 Granada Hills Subdivision No. 7 a subdivision of Part of Section 21, Township 2 North, Range 1 East, Salt Lake Base and Meridian, according to the official plat thereof, on file and of record in the Davis County recorders office.

The trustors now request payment of said note be modified and extended as hereinafter provided and the Bank is willing to so agree.

NOW, THEREFORE, in consideration of the premises and of ONE (\$1.00) DOLLAR and other valuable consideration, receipt of which is hereby acknowledged by each and all of the parties hereto, it is hereby agreed:

1. There is now owing and unpaid on said note the sum of One hundred seventy nine thousand and no/100 (\$ 179,000) with interest from and after the 26 day of May, 19 93.
2. That the payment of said note be and is hereby modified and extended as follows:
  - A) Interest on the unpaid principal balance will continue to be due monthly.
  - B) The maturity on the note will be extended from April 26, 19 93, to October 26, 19 93.
  - C) An Extension Fee of \$ 0 is hereby assessed.
  - D) Other: \_\_\_\_\_
3. If default be made in the payment of any installment of principal or interest, or any part thereof, when due, said note shall become due and payable in full at the option of the holder thereof. This provision is cumulative in addition to any other right of remedy provided in said note and trust deed or by law.
4. Except as herein specifically modified, said note and mortgage remain unchanged and in full force and unaffected hereby.

WITNESS the names and signatures of the Parties this 5th day of May, 19 93.

TRUSTORS

Douglas B. Coons  
Douglas B. Coons

ZIONS FIRST NATIONAL BANK

By: Paul G. Williams  
Paul G. Williams  
Vice President

STATE OF UTAH }  
COUNTY OF Salt Lake }

On this 5th day of May, 19 93, personally appeared before me Paul G. Williams the signer(s) of the foregoing instrument, who being by me duly sworn acknowledged to me that he/she/they, Trustor(s), executed same.

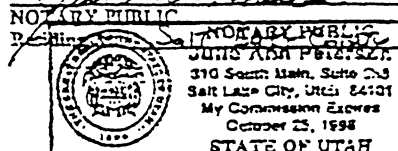
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

STATE OF UTAH }  
COUNTY OF Salt Lake }

On this 5th day of May, 19 93, personally appeared before me Paul G. Williams who being by me duly sworn on oath did say that he is the Paul G. Williams of Zions First National Bank, a National Banking Association and that this instrument was signed in behalf of said corporation by authority of its By-Laws and Paul G. Williams acknowledged to me that said corporation executed the same.

My Commission Expires: 10-25-96



STATE OF UTAH }  
COUNTY OF \_\_\_\_\_ }

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me \_\_\_\_\_ who being by me duly sworn on oath did say that they are the \_\_\_\_\_ of \_\_\_\_\_ and that the above instrument was signed in behalf of said corporation, by authority of a resolution of its Board of Directors, and said \_\_\_\_\_ acknowledged to me that said corporation executed the same.

My Commission Expires: \_\_\_\_\_  
244 REV. 7/92

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

THIS AGREEMENT between Douglas B. Coons, Trustees, and ZIONS FIRST NATIONAL BANK, a Association, Trustee and Beneficiary, hereinafter called "Bank".

WITNESSETH:

The Trustees heretofore executed their promissory note in favor of Zions First National Bank dated June 26, 19 92, for the principal sum of 000 and interest at 8 1/2 percent per annum, payable monthly on the 1st day of each month until maturity, March 26 when the entire unpaid balance shall become due and payable. To secure said note, the Trustees also executed and delivered to the Bank their Trust deed June 26, 19 92, recorded June 26, 19 92, in Book No. 1510, Page No. 400, Entry No. 980299, in the office County Recorder of Davis County, Utah, on and covering Real Estate and premises therein described and situated in Lavis Utah to wit:

Lot 12 Granada Hills Subdivision No. 7, a subdivision of part of Section 21, Township 2 North, Range 1 East, Salt Lake Base and Meridian, according to the official plat thereof, on file and of record in the Davis County recorder's office.

The Trustees now request payment of said note be modified and/or extended as hereinafter provided and the Bank is willing to so agree.

NOW, THEREFORE, in consideration of the premises and of ONE DOLLAR (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged by each and all of the parties hereto, it is hereby agreed:

1. There is now owing and unpaid on said note the sum of One hundred seventy nine thousand (\$179,000.00) with interest from and to 1st day of October, 19 93.
2. That the payment of said note be and is hereby modified and extended as follows:
  - A) Interest on the unpaid principal balance will continue to be due monthly.
  - B) The maturity on the note will be extended from October 26, 19 93, to February 25, 19 93.
  - C) An Extension Fee of \$ 895.00 is hereby assessed.
  - D) Other: \_\_\_\_\_

3. If default be made in the payment of any installment of principal or interest, or any part thereof, when due, said note shall become due and payable the option of the holder thereof. This provision is cumulative in addition to any other right of remedy provided in said note and trust deed or by law.

4. Except as herein specifically modified, said note and mortgage remain unchanged and in full force and unaffected hereby.

WITNESS the names and signatures of the Parties this 29th day of October, 19 93.

IRS

ZIONS FIRST NATIONAL BANK

Douglas B. Coons  
Douglas B. Coons

By: [Signature]  
Its: \_\_\_\_\_

OF UTAH }  
: ss.

Y OF \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the foregoing  
it, who being by me duly sworn acknowledged to me that he/she/they, Trustor(s), executed same.

mission Expires: \_\_\_\_\_

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

OF UTAH }  
: ss.

Y OF \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn  
did say that he is \_\_\_\_\_ the of Zions First National Bank, a National Banking Association and that this instrument was  
behalf of said corporation by authority of its By-Laws and acknowledged to me that said corporation executed the same.

mission Expires: \_\_\_\_\_

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

OF UTAH }  
: ss.

Y OF \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn  
did say that they are the \_\_\_\_\_ of \_\_\_\_\_ and that the above  
it was signed in behalf of said corporation, by authority of a resolution of its Board of Directors, and said  
edged to me that said corporation executed the same.

mission Expires: \_\_\_\_\_

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

WITNESSETH:

The Trustors heretofore executed their promissory note in favor of Zions First National Bank dated June 26, 1992, for the principal sum of 179,000 and interest at 8 1/2 percent per annum, payable monthly on the 1st day of each month until maturity, March 26, when the entire unpaid balance shall become due and payable. To secure said note, the Trustors also executed and delivered to the Bank their Trust Deed dated June 26, 1992, recorded June 26, 1992, in Book No. 1510, Page No. 400, Entry No. 980299, in the office of the County Recorder of Davis County, Utah, on and covering Real Estate and premises therein described and situated in Davis County, Utah to wit:

Lot 12 Granada Hills Subdivision No. 7, a subdivision of part of Section 21, Township 2 North, Range 1 East, Salt Lake Base and Meridian, according to the official plat thereof, on file and of record in the Davis County recorder's office.

The Trustors now request payment of said note be modified and/or extended as hereinafter provided and the Bank is willing to so agree.

NOW, THEREFORE, in consideration of the premises and of ONE DOLLAR (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged by each and all of the parties hereto, it is hereby agreed:

1. There is now owing and unpaid on said note the sum of One hundred seventy nine thousand 179,000.00 with interest from and to 1st day of February, 19 94.
2. That the payment of said note be and is hereby modified and extended as follows:
  - A) Interest on the unpaid principal balance will continue to be due monthly.
  - B) The maturity on the note will be extended from February 25, 19 94, to May 25, 19 94.
  - C) An Extension Fee of \$ 447.50 is hereby assessed.
  - D) Other: \_\_\_\_\_
3. If default be made in the payment of any installment of principal or interest, or any part thereof, when due, said note shall become due and payable at the option of the holder thereof. This provision is cumulative in addition to any other right of remedy provided in said note and trust deed or by law.
4. Except as herein specifically modified, said note and mortgage remain unchanged and in full force and unaffected hereby.

WITNESS the names and signatures of the Parties this 25th day of February, 19 94.

IRS

Lawrence B. Coons  
Lawrence B. Coons

ZIONS FIRST NATIONAL BANK

By: [Signature]  
Name: James Ward  
Its: Construction Loan Manager

OF UTAH }  
: ss.

I OF \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the foregoing \_\_\_\_\_ who being by me duly sworn acknowledged to me that he/she/they, Trustor(s), executed same.

Commission Expires: \_\_\_\_\_

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

OF UTAH }  
: ss.

I OF \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn did say that he is \_\_\_\_\_ the of Zions First National Bank, a National Banking Association and that this instrument was in behalf of said corporation by authority of its By-Laws and acknowledged to me that said corporation executed the same.

Commission Expires: \_\_\_\_\_

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

OF UTAH }  
: ss.

I OF \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn did say that they are the \_\_\_\_\_ of \_\_\_\_\_ and that the above \_\_\_\_\_ it was signed in behalf of said corporation, by authority of a resolution of its Board of Directors, and said \_\_\_\_\_ acknowledged to me that said corporation executed the same.

Commission Expires: \_\_\_\_\_

NOTARY PUBLIC  
Residing At: \_\_\_\_\_

EXTENSION AND MODIFICATION AGREEMENT  
CONSTRUCTION LOANS (interest only until maturity)

EXHIBIT C

Loan Number: 2419009-4001

THIS AGREEMENT between Douglas B. Coons, Trustors, and ZIONS MORTGAGE COMPANY, a Utah Corporation, as Beneficiary, hereinafter called "Lender" and ZIONS FIRST NATIONAL BANK, a National Association, Trustee,

WITNESSETH:

The trustors heretofore executed their Promissory note in favor of Zions Mortgage Company, dated June 26, 1992, principal sum of \$179,000 and interest at Base + 2.0 percent per annum, payable monthly on the 1st day of each month until maturity, March 26, 1993, when the entire unpaid balance shall become due and payable. To secure said note, the Trustors also executed and delivered to the Lender their Trust Deed dated June 26, 1992, recorded July 1, 1992, in Book 10, 1510, Page No. 400, Entry No. 980299, in the office of the County Recorder of Davis County, Utah, and covering Real Estate and premises there in described and situated in Davis County, Utah to wit:

Lot 21, Granada Hills Subdivision No. 7 a subdivision of part of Section 21, Township 2 North, Range 1 East, Salt Lake Base and Meridian, according to the official plat thereof, on file and of record in the Davis County recorders office.

The trustors now request payment of said note be modified and extended as hereinafter provided and the Lender is willing to so agree.

NOW, THEREFORE, in consideration of the premises and of ONE (\$1.00) DOLLAR and other valuable consideration, receipt of which is hereby acknowledged by each and all of the parties hereto, it is hereby agreed:

1. There is now owing and unpaid on said note the sum of One hundred seventy nine thousand and no/100 (\$179,000.00) with interest from and after the 1st day of July, 1994.
2. That the payment of said note be and is hereby modified and extended as follows:
  - A) Interest on the unpaid principal balance will continue to be due monthly.
  - B) The maturity on the note will be extended from July 1, 1994, to August 15, 1994.
  - C) An Extension Fee of \$ 0 is hereby assessed.
  - D) Other:
3. If default be made in the payment of any installment of principal or interest, or any part thereof, when due, said note shall become due and payable in full at the option of the holder thereof. This provision is cumulative in addition to any other right of remedy provided in said note and trust deed or by law.
4. Except as herein specifically modified, said note and mortgage remain unchanged and in full force and unaffected hereby.

WITNESS the names and signatures of the Parties this 18th day of July, 1994.

TRUSTORS

Douglas B. Coons  
Douglas B. Coons

ZIONS MORTGAGE COMPANY

By: [Signature]



Tab J

**First Security Bank**

Salt Lake City, Utah

**Official Check**

Office No.

054

Date

618368664

AUGUST 24 1994.

\*\*\* ZIONS MORTGAGE \*\*\*

\*177,916.62\*

THE 30177 6205

Purchaser

Receipt

Not Negotiable

GOLDEN MEADOWS

5160

GOLDEN MEADOWS, INC. 3-93  
55 WEST 900 SOUTH 365-4486  
SALT LAKE CITY, UT 84119

Aug - 24 1994

31-1/1240

Y THE DER OF

First Security Bank

\$ 177,916.62

One Hundred Seventy Seven Thousand Nine Hundred Sixteen dollars and 62/100 DOLLARS

**First Security Bank**

First Security Bank of Utah  
405 South Main  
Salt Lake City, Utah 84111

Zions Mortgage

Michael E. Browder

⑈005160⑈ ⑈124000012⑈061 00103 65⑈

⑈0017791662⑈

WHEN RECORDED RETURN TO:

ASSIGNMENT OF DEED OF TRUST

For Valuable Consideration, the receipt of which is hereby acknowledged, Zions Mortgage Company does hereby assign, transfer and convey, without recourse, to Golden Meadows<sup>LLC</sup> Inc., all of its right, title and interest as beneficiary in and to that certain Deed of Trust executed by Douglas B. Coons, dated June 26, 1992 and recorded July 1, 1992, as Instrument No. 980299, in Book 1510, at Page 400, of the Davis County Recorder's Office and encumbers real property located in Davis County, Utah, further described as follows:

Lot 12 Granada Hills Subdivision No. 7. A Subdivision of Part of Section 21, Township 2 North, Range 1 East, Salt Lake Base and Meridian, according to the official plat thereof on file and recorded in the Davis County Recorder's Office.

IN WITNESS WHEREOF, Zions Mortgage Company has executed this Assignment of Trust Deed this 15th day of August, 1994.

ZIONS MORTGAGE COMPANY

By: Sharlet B. Malinsky  
Title: Operations Manager

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

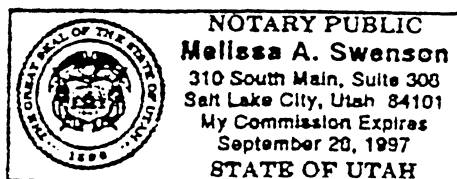
The foregoing instrument was acknowledged before me this 15th day of August, 1994, by Sharlet B. Malinsky the Operations Manager of ZIONS MORTGAGE COMPANY.

Melissa A. Swenson  
NOTARY PUBLIC

My Commission Expires:  
9-28-97

Residing at:  
Salt Lake City, Utah

Q30



## ASSIGNMENT

\* GOLDEN MEADOWS, INC.  
2.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, ZIONS MORTGAGE COMPANY hereby sells, assigns, transfers and conveys<sup>\*</sup> all of its right, title and interest in and to the Construction Loan, in the amount of One Hundred Seventy Nine Thousand Dollars (\$179,000), dated June 26, 1992, with DOUGLAS B. COONS. The principal amount outstanding, as of the date of this Assignment, is One Hundred Seventy Six Thousand Nine Hundred Sixteen and 64/100 Dollars (\$176,916.64), plus interest to August 15, 1994, of Six Hundred Forty One and 34/100 Dollars (\$641.34), plus a per diem interest accumulation of \$44.84 after August 15, 1994.

1. This Assignment is without recourse or warranties of any kind whatsoever.
2. This Assignment includes all of Zions Mortgage Company's right, title and interest in and to the Construction Loan Agreement
3. That certain policy of title insurance evidenced by Policy #M89-931105, dated July 7, 1992, and issued by TRW Title Insurance Company
4. Any interest in that certain hazard insurance policy issued by Farmers Insurance Group and bearing Policy #F90927 60 20
5. That certain trust deed note, dated June 26, 1992, in the original principal amount of One Hundred Seventy Nine Thousand Dollars (\$179,000)
6. That certain deed of trust, dated June 26, 1992, and recorded July 1, 1992, in the Davis County Recorder's Office, as instrument no. 980229

IN WITNESS WHEREOF, ZIONS MORTGAGE COMPANY has executed this Assignment as of the 15<sup>th</sup> day of August, 1994.

ZIONS MORTGAGE COMPANY

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

Title: \_\_\_\_\_

Shirley B. Malinsky  
Operations Manager

Tab K

---

In the Matter of the Arbitration Between:

GOLDEN MEADOWS, INC.

vs.

DOUGLAS G. COONS and LAURIE COONS

vs.

DEBRA G. CROWLEY and MICHAEL E. CROWLEY

---

ARBITRATION AWARD

---

The Real Estate Purchase Contract dated February 1, 1994, together with the addenda thereto bearing dates of February 3, 1994, and February 28, 1994, remain in full force and effect and binding upon the parties. The failure to close the sale on April 15, 1994, did not constitute a breach of the contract since such was not a firm date as is evidenced by the February 3, 1994, addendum. In addition, the parties reached a subsequent agreement which permitted the Buyer to contract with others, at her expense, to customize the house and to upgrade the finish work to satisfy her personal tastes. The Buyer was also authorized to contract independently for the work necessary to finish the basement level which was not otherwise provided for by the contract of sale. The performance of this work carried on long after the designated closing date of April 15, 1994, and remains uncompleted today.

From and since the designated closing date of April 15, 1994, there has been a general escalation of property values in the area, and the subject property thus has significant more value at present as is reflected in the appraisals submitted by the parties.

The various stages of construction were duly inspected and approved by Bountiful City, the inspection authority, and no departures from the provisions of the Uniform Building Code were noted.

At a time pertinent to the contractual relationship of the parties, Seller was without a valid contractor's license due to inadvertence in the non-payment of a renewal fee. However, Seller did not act as a contractor for Buyer in the construction of the house. Rather, he was the owner and built the house on speculation or for his own occupancy. He is, therefore, not precluded from enforcing the terms of the contract of sale.

X Golden Meadows, Inc., is the successor-in-interest in and to the Construction Loan, Trust Deed, and Deed of Trust, having acquired the same on August 15, 1994, by assignment from Zions Mortgage Company for the recited consideration of \$176,916.64.

Each of the parties have expressed their desire and have specifically requested that equity be done between them, and indeed the circumstances of this case lend themselves well to equitable remedies. As a consequence, the parties shall proceed forthwith to complete the construction of the house so as to

obtain final inspection and approval and the certificate of occupancy necessary to close the sale. Specifically, the Buyer shall complete the work undertaken to customize the house and bear the expense thereof. Seller in turn, at his expense, shall perform in a good workmanlike manner, in accordance with the Uniform Building Code and the inspection and approval authority of Bountiful City, all of the remaining work necessary to complete the house.

✓ The parties shall fully cooperate in scheduling, coordinating, and performing the work necessary to complete the construction of the house, all of which shall be accomplished within the next 30 days. Inasmuch as the finish of the basement is being done by Buyer under a separate building permit, completion of that project need not delay the closing of the sale.

Any mechanics' liens outstanding against the property shall be promptly satisfied by the party obligated therefor so as not to delay closing of the sale.

The purchase price of \$335,000.00, less the earnest money deposit of \$5,000.00, shall be adjusted in accord with the allowances and extras set forth in the sales contract addenda.

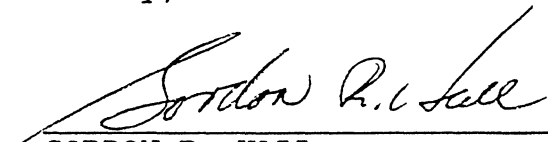
At the time of closing, Seller shall pay to Golden Meadows, Inc., the sum paid in consideration of the assignment of the construction loan instruments from Zions Mortgage Company. Buyer shall forego the payment of any late charges, interest that may



have accrued, or any other sums deemed to have accrued in connection with the construction loan. Such shall be done for the purpose of sharing with the Seller some measure of the appreciated value of the property occasioned by the escalation of values generally in the area during the time this matter has been in dispute as is reflected by the respective appraisals submitted by the parties.

Each of the parties shall assume and pay their own costs and attorney fees.

DATED this 24th day of February, 1995.

  
\_\_\_\_\_  
GORDON R. HALL  
Arbitrator

---

In the Matter of the Arbitration Between:

GOLDEN MEADOWS, INC.

vs.

DOUGLAS G. COONS and LAURIE COONS

vs.

DEBRA G. CROWLEY and MICHAEL E. CROWLEY

---

SUPPLEMENT TO ARBITRATION AWARD

---

The parties have expressed their inability to agree upon the adjustments to be made in the purchase price for the allowances and extras provided for in the sales contract and the addenda thereto. The parties also recite instances wherein they each departed from the contract provisions which required changes in the work to be reduced to writing. In regard thereto, there is considerable dispute in the testimony offered in support of the respective positions of the parties. As a consequence, and at the mutual instance and request of the parties that equity be done, the adjustments to be made at closing are submitted for determination by the arbitrator.

NOW, THEREFORE, the credits due at closing are determined to be as follows:

ALLOWANCES

Cabinets  
Light fixtures  
Floor coverings  
Stair railing  
Fireplace  
Appliances  
Hall bath, tile  
Master bath  
Soil removal, rear yard

TOTAL

CREDITS TO BUYER

\$ 20,400.00  
3,100.00  
12,375.00  
1,600.00  
200.00  
3,000.00  
441.00  
2,120.00  
2,500.00

\$ 45,736.00

EXTRAS

Brick \$ 3,135.00  
Less stucco cost 1,500.00

Chimney (brick) 1,188.00  
Less stucco cost 388.00

Floor coverings

Paint 15,500.00  
Less original bid 5,661.00  
Less advance of Buyer

TOTAL

CREDITS TO SELLER

\$ 1,635.00

800.00

1,748.79

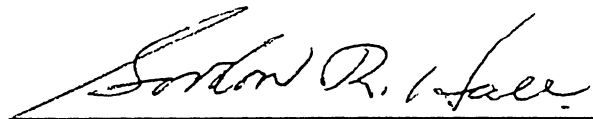
9,839.00  
6,500.00

3,339.00

\$ 7,522.79

In all other respects, the Award bearing date of February 24, 1995, remains the same.

DATED this 1st day of May, 1995.

  
\_\_\_\_\_  
GORDON R. HALL  
Arbitrator

Tab L

Steven D. Crawley (0750)  
WALSTAD & BABCOCK  
Attorneys for Defendants and  
Third-Party Plaintiffs  
57 West South Temple, Suite 800  
Salt Lake City, Utah 84101  
Telephone: 531-7000

FILED IN CLERK'S OFFICE  
DAVIS COUNTY, UTAH

AUG 16 10 07 AM '95

CLERK, 2ND DIST. COURT

BY \_\_\_\_\_  
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
STATE OF UTAH

GOLDEN MEADOWS, INC., a Utah  
corporation,

Plaintiff,

vs.

DOUGLAS B. COONS and LAURA  
COONS,

Defendants and  
Third-Party  
Plaintiffs,

vs.

DEBRA G. CROWLEY and MICHAEL E.  
CROWLEY,

Third-Party  
Defendants.

ORDER DENYING MOTION TO  
VACATE OR MODIFY AND  
ORDER CONFIRMING  
ARBITRATION AWARD

Civil No.: 940700327~~7~~  
Judge Memmott

Plaintiff's and Third-Party Defendants' Motion to Set Aside Arbitration Agreement or in the alternative Motion to Vacate and/or Modify Arbitration Award came on for hearing before the above entitled Court on July 14, 1995. Larry L. Whyte appeared for Plaintiff and Third-Party Defendants and Steven D. Crawley appeared for Defendants.

During argument, a motion was made by Defendants in open court to confirm the arbitration award.

JUDGMENT ENTERED

20

00320998

The Court, having reviewed the pleadings, the Arbitration Award of Gordon R. Hall, Arbitrator, dated February 24, 1995 and the Supplement to Arbitration Award, dated May 1, 1995 and considered the arguments of counsel, makes the following findings:

1. The argument put forward by Plaintiff and Third-Party Defendants is that the arbitrator exceeded his powers and that the arbitrator manifestly disregarded the law on some issues presented to the arbitrator.

2. The Arbitration Award and Supplement to Arbitration Award are within the legal parameters that the parties plead because the enforcement of the contract was one of the legal options available to the arbitrator.

3. As a matter of law, the Arbitration Award and the Supplement to Arbitration Award do not exceed the powers of the arbitrator.

4. The clear intent of the Utah Supreme Court is that the Utah Arbitration Act be narrowly construed. The role of this Court is to strictly construe the Act and the Court is bound to give legislative intent to the Act. The Court does not feel that it is appropriate to create an additional standard for the modification or vacation of an arbitration award as suggested by the moving parties.

5. A number of issues presented to the arbitrator required discretion and judgment on the part of the arbitrator in order that they may be resolved. Further, those issues are factually sensitive and as a matter of law the court can not find that there

has been a miscalculation rather there was judgment as to which credits should be given.

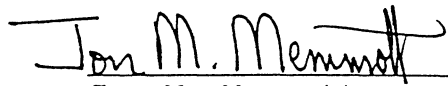
Therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of Plaintiff and Third-Party Defendants to Set Aside Arbitration Agreement or in the alternative Motion to Vacate and/or Modify Arbitration Award is denied;

IT IS FURTHER ORDERED that the Arbitration Award of Gordon R. Hall, Arbitrator, dated February 24, 1995 and the Supplement to Arbitration Award, dated May 1, 1995 are hereby confirmed and entered as a judgment of this Court as provided by §78-31a-16, Utah Code Ann.

DATED this 11<sup>th</sup> day of Aug., 1995.

BY THE COURT:

  
\_\_\_\_\_  
Jon M. Memmott  
District Court Judge

00321000

CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of July,  
1995, I mailed a copy of the foregoing, ORDER DENYING MOTION TO  
VACATE OR MODIFY AND ORDER CONFIRMING AWARD, postage prepaid, to  
the following:

Larry Whyte  
265 East 100 South, Suite 300  
Salt Lake City, Utah 84111

David H. Day  
Mark T. Ethington  
DAY & BARNEY  
45 East Vine Street  
Murray, Utah 84107

LeDeesa Wade