

2003

State of Utah v. Lamar Jensen : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Karen A. Klucznik; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Eric Lind; Kane County Attorney; Attorneys for Appellee.

William B. Parsons III; Attorney for Appellant.

Recommended Citation

Brief of Appellee, *State of Utah v. Lamar Jensen*, No. 20030453 (Utah Court of Appeals, 2003).
https://digitalcommons.law.byu.edu/byu_ca2/4362

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 : Case No. 20030453-CA
 v. :
 :
 LAMAR JENSEN, :
 :
 Defendant/Appellant. :

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR FORGERY, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-501 (1999), AND FRAUDULENT HANDLING OF RECORDABLE WRITINGS, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-503 (1999), IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR KANE COUNTY, STATE OF UTAH, THE HONORABLE K. L. MCIFF, PRESIDING

KAREN A. KLUCZNIK (7912)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

WILLIAM B. PARSONS III
440 East 3300 South
Salt Lake City, Utah 84115

ERIC LIND
Kane County Attorney

ATTORNEY FOR APPELLANT

ATTORNEYS FOR APPELLEE
UTAH APPELLATE COURTS

MAR 15 2004

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 : Case No. 20030453-CA
 v. :
 :
 LAMAR JENSEN, :
 :
 Defendant/Appellant. :

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR FORGERY, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-501 (1999), AND FRAUDULENT HANDLING OF RECORDABLE WRITINGS, A THIRD DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-503 (1999), IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR KANE COUNTY, STATE OF UTAH, THE HONORABLE K. L. MCIFF, PRESIDING

KAREN A. KLUCZNIK (7912)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180

WILLIAM B. PARSONS III
440 East 3300 South
Salt Lake City, Utah 84115

ERIC LIND
Kane County Attorney

ATTORNEY FOR APPELLANT

ATTORNEYS FOR APPELLEE

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
JURISDICTION AND NATURE OF PROCEEDINGS	1
ISSUES ON APPEAL AND STANDARD OF REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	2
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
SUMMARY OF THE ARGUMENT	8
ARGUMENT	
I. THE TRIAL COURT PROPERLY DENIED DEFENDANT’S MOTION TO DISMISS THE FORGERY CHARGE WHERE THE JURY COULD HAVE REASONABLY FOUND THAT DEFENDANT SIGNED THE TRUST DEED PURPORTING TO ACT FOR BACA ENTERPRISES WITH THE INTENT TO DEFRAUD EITHER BACA ENTERPRISES, THE TITLE INSURANCE COMPANY, OR THE LENDER	10
A. Evidence that defendant signed the deed on the line reserved for Baca Enterprises in a manner suggesting he had authority to do when he did not was sufficient to prove intent to defraud.	11

B.	Defendant’s claim that forgery requires, as a matter of law, that the accused sign someone else’s name fails as inadequately briefed.	16
II.	DEFENDANT’S UNPRESERVED CLAIM THAT TED BACA’S SUBSEQUENT SIGNING OF THE DEED “PURGED” HIS ACTIONS OF FRAUD FAILS WHERE DEFENDANT DOES NOT CITE TO ANY AUTHORITATIVE CRIMINAL LAW ON POINT	18
III.	THE TRIAL COURT PROPERLY DENIED DEFENDANT’S SHONDEL REQUEST TO BE CHARGED WITH ONE OF TWO LESSER CRIMES WHERE THE CRIME OF FRAUDULENT HANDLING OF RECORDABLE WRITINGS REQUIRES PROOF OF ELEMENTS NOT REQUIRED FOR THE LESSER CRIMES AND MORE SPECIFICALLY ADDRESSES DEFENDANT’S CONDUCT	21
CONCLUSION		24

ADDENDA

Addendum A - Statutes

Addendum B - Lease Agreement

Addendum C - Trust Deed

TABLE OF AUTHORITIES

STATE CASES

<i>Beehive Medical Electrics, Inc. V. Square D. Co.</i> , 699 P.2d 859 (Utah 1983)	19
<i>Helmuth v. Morris</i> , 598 P.2d 333 (Utah 1979)	22
<i>Hull v. Flinders</i> , 83 Utah 158, 27 P.2d 56 (1933)	20
<i>Payson Building & Loan Society v. Taylor</i> , 87 Utah 302, 48 P.2d 894 (1935)	20
<i>People v. Lucero</i> , 623 P.2d 424 (Colo. App. 1980)	20
<i>State v. Blubaugh</i> , 904 P.2d 688 (Utah App. 1995), <i>cert. denied</i> , 913 P.2d 749 (Utah 1996)	16
<i>State v. Bluff</i> , 2002 UT 66, 52 P.3d 1210, <i>cert. denied</i> , 123 S. Ct. 999 (2003)	21, 24
<i>State v. Clark</i> , 2001 UT 9, 20 P.3d 300	12
<i>State v. Collins</i> , 597 P.2d 1317 (Utah 1979)	17
<i>State v. Dunn</i> , 850 P.2d 1201 (Utah 1993)	2, 19
<i>State ex rel. P.S.</i> , 2001 UT App 305, 38 P.3d 303	10, 12
<i>State v. Frausto</i> , 2002 UT App 259, 53 P.3d 486, <i>cert. denied</i> , 63 P.3d 104 (Utah 2002)	20
<i>State v. Garcia</i> , 2001 UT App 19, 18 P.3d 1123	20
<i>State v. Gonzalez</i> , 822 P.2d 1214 (Utah App. 1999)	12, 13, 15, 17
<i>State v. Green</i> , 2000 UT App 33, 995 P.2d 1250	2, 22
<i>State v. Hamilton</i> , 2003 UT 22, 70 P.3d 111	1
<i>State v. Hardy</i> , 2002 UT App 244, 54 P.3d 645	16

<i>State v. Hernandez</i> , 2003 UT App 276, 76 P.3d 198	22, 24
<i>State v. Hill</i> , 688 P.2d 450 (Utah 1984)	22, 24
<i>State v. Holgate</i> , 2000 UT 74, 10 P.3d 346	18, 19
<i>State v. Honie</i> , 2002 UT 4, 57 P.3d 977, <i>cert. denied</i> , 123 S. Ct. 257	17
<i>State v. Johnson</i> , 774 P.2d 1141 (Utah 1989)	18, 19
<i>State v. Kelly</i> , 396 S.E.2d 471 (W. Va. 1990)	21
<i>State v. Kihlstrom</i> , 1999 UT App 289, 988 P.2d 949	10, 11, 12, 15
<i>State v. Kruger</i> , 2000 UT 60, 6 P.3d 1116	4
<i>State v. Pledger</i> , 896 P.2d 1226 (Utah 1995)	19
<i>State v. Ross</i> , 951 P.2d 236 (Utah App. 1997)	20
<i>State v. Shondel</i> , 22 Utah 2d 343, 453 P.2d 146 (1969)	2, 3, 9, 21, 22, 24
<i>State v. Thomas</i> , 961 P.2d 299 (Utah 1998)	17
<i>State v. Warner</i> , 564 N.E.2d 18 (Ohio 1990)	21
<i>State v. Winward</i> , 909 P.2d 909 (Utah App. 1995)	17
<i>Tolman v. Winchester Hills Water Co., Inc.</i> , 912 P.2d 457 (Utah App. 1996)	18, 19

STATE STATUTES

Utah Code Ann. § 76-6-501 (1999)	2, 11, 12, 17, 20
Utah Code Ann. § 76-6-503 (1999)	2, 20, 22, 23, 24
Utah Code Ann. § 76-6-504 (1999)	23
Utah Code Ann. § 76-8- 504 (1999)	2, 22, 23

Utah Code Ann. § 76-8-511 (1999) 2, 23
Utah Code Ann. § 78-2a-3 (Supp. 2002) 1
Utah R. App. P. 24 17

OTHER WORK CITED

37 C.J.S. Forgery § 86 (2003) 20

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 : Case No. 20030453-CA
 v. :
 :
 LAMAR JENSEN, :
 :
 Defendant/Appellant. :

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from convictions for forgery and fraudulent handling of recordable writings, both third degree felonies. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(e) (Supp. 2002).

ISSUES ON APPEAL AND STANDARD OF REVIEW

- I. Did the trial court properly deny defendant’s motion to dismiss the forgery charge where the jury could have reasonably found that defendant signed the trust deed purporting to act for Baca Enterprises with the intent to defraud either Baca Enterprises, the title insurance company, or the lender?**

“The grant or denial ‘of a motion to dismiss is a question of law [that this Court] review[s] for correctness, giving no deference to the decision of the trial court.’” *State v. Hamilton*, 2003 UT 22, ¶ 17, 70 P.3d 111 (citation omitted).

II. Does defendant’s unpreserved claim that Ted Baca’s subsequent signing of the deed “purged” his actions of fraud fail where defendant does not cite any authoritative criminal law on point?

Because defendant did not raise this claim below, it is reviewed, if at all, only for plain error. To establish plain error, defendant must show that (1) an error occurred; (2) the error should have been obvious to the trial court; and (3) the error was prejudicial.

State v. Dunn, 850 P.2d 1201, 1208-09 (Utah 1993).

III. Did the trial court properly deny defendant’s *Shondel* request to be charged with one of two lesser crimes where the crime of fraudulent handling of recordable writings requires proof of elements not required for the lesser crimes and more specifically addresses defendant’s criminal conduct?

A trial court’s application of the *Shondel* doctrine is reviewed “‘under a correction-of-error standard, according no particular deference to the trial court’s ruling.’” *State v. Green*, 2000 UT App 33, ¶ 5, 995 P.2d 1250 (quoting *State v. Kent*, 945 P.2d 145, 146 (Utah App. 1997)).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statutes, relevant to this appeal, are attached at Addendum A:

- Utah Code Ann. § 76-6-501 (1999) (Forgery);
- Utah Code Ann. § 76-6-503 (1999) (Fraudulent handling of recordable writings);
- Utah Code Ann. § 76-8-504 (1999) (Written false statements);
- Utah Code Ann. § 76-8-511 (1999) (Falsification or alternation of government record).

STATEMENT OF THE CASE

Defendant was originally charged by information with one count each of forgery and fraudulent handling of a recordable writing, both third degree felonies, and one count each of writing a false statement and falsification of government records, both class B misdemeanors (R. 1-3). After a preliminary hearing, defendant was bound over on all charges (R. 39-41).

On October 25, 2002, the information was amended to charge only forgery and fraudulent handling of records (R. 51-52, 95-96).

Before trial, defendant moved to dismiss each of the remaining counts (R. 56-59, 66-69, 69-72). After the State's case-in-chief at trial, defendant argued his motions and the trial court denied them (R. 143:307-329). Defendant also moved to substitute lesser offenses for the fraudulent handling charge under *Shondel* (R. 66-69; R. 143:319). The court deferred ruling on that motion until the parties discussed jury instructions (R. 143:319). At the close of evidence at trial, defendant renewed his *Shondel* motion (R. 143:485). After noting that the motion had been discussed in great length in chambers, the trial court denied it (R. 143:486). The jury then convicted defendant as charged (R. 97, 112; R. 144:543). Defendant's subsequent motion to set aside the verdicts was denied (R. 144:549).

Defendant was sentenced to zero-to-five years in prison and fined \$9,250 on each count (R. 122-27). The court suspended defendant's prison terms and placed him on eighteen months probation (R. 122-27).

Defendant timely appealed (R. 128-31). The record does not indicate the results of the State's subsequent motion for restitution (R. 134-38, 139-40).

STATEMENT OF FACTS¹

On July 2, 2001, Baca Enterprises, as Lessor, entered into a lease agreement (the "lease" or "lease agreement") with Pacific Nakon International, Inc. ("Pacific Nakon")² as Lessee. The lease agreement allowed Pacific Nakon to develop certain Baca Enterprises property adjacent to Zion National Park in southern Utah (R. 142:108, 117; R. 143:243, 342-44; Exh. 1 (attached at Addendum B)). Ted Baca signed three copies of the lease as president of Baca Enterprises (R. 142:107, 117; R. 143:244; Exh. 1). Defendant signed the copies both individually and as president, CEO, and majority shareholder of Pacific Nakon (R. 142:107, 117; R. 143:333; Exh. 1). Defendant retained two copies of the lease (R. 143:404). Ted Baca retained one copy (R. 143:404). None of the copies was notarized (R. 142:106; R. 143:243, 350).

Paragraph 16 of the lease addressed Pacific Nakon's ability to secure debt against the leased property (Exh. 1). That paragraph provided:

Subordination. Upon request by Lessee, Lessor shall subordinate its interest in and to the Property to such construction and development loans, mortgages, promissory notes, and deeds of trust arising from, or related to, Lessee's development of the Property, and shall

¹ The facts are recited in the light most favorable to the jury's verdict. *See State v. Kruger*, 2000 UT 60, ¶ 2, 6 P.3d 1116.

² Although this entity is identified as Pacific Nacon in the record transcripts, defendant's brief identifies the company as Pacific Nakon International, Inc. *See* Aplt. Br. at 7. The State refers to the company as it has been identified by defendant.

execute all documents required by such lenders or financial institutions, subject, however, to a maximum combined limit of no more than \$500,000.00 and to a limitation of no more than 12 months from the date hereof (or until July 1, 2002) that Lessor's position will be so subordinated.

(Exh. 1).

Before the lease was executed, defendant had already negotiated the terms of a promissory note in the amount of approximately \$235,000.00 against the lease property (R. 142:120; Exh. 2 (attached at Addendum C)). The promissory note was to be secured by a trust deed executed by defendant and Baca Enterprises (Exh. 2).

Shortly after the lease was executed, defendant realized that the signatures on the lease had to be notarized before the lease could be recorded with the county recorder's office (R. 143:351, 402). Defendant called Ted Baca and his wife Cecilia to arrange for the lease to be re-signed and notarized (R. 143:352, 403). A meeting for that purpose was arranged for July 5, 2001, with John Reese, a notary at a local bank (R. 143:186-87, 243, 353-54).

At the July 5 meeting, defendant provided the notary page for John Reese to use in notarizing the leases (R. 143:353-54, 416). Reese made copies of the notary page and then completed a notary page for each of the three original leases (R. 143:192-93). Defendant then retained his two copies of the lease (R. 143:404).

The notary page defendant provided Mr. Reese on July 5 was actually the notary page prepared for the trust deed (R. 142:74; R. 143:202, 416). However, defendant

neither informed the Bacas of the trust deed, nor did he ask Ted Baca to sign the trust deed on Baca Enterprises' behalf (R. 143:245, 406).

Rather, after he received the notary pages for his two copies of the lease, defendant executed the trust deed three times: once individually, once on behalf of Pacific Nakon, and once on behalf of Baca Enterprises (R. 143:366-67; Exh. 2). Next to his signature on behalf of Baca Enterprises, defendant wrote, "See lease" (R. 143:367; Exh. 2). Defendant then recorded a copy of the notarized lease and a copy of the trust deed (R. 143:305-07, 359). The documents were recorded within one and a half hours of the meeting with Mr. Reese on July 5 (R. 142:106, 125; R. 143:415). The last page of the trust deed consisted of one of the notary pages John Reese had completed for the lease (R. 142:73; R. 143:195, 246; Exh. 2).

Once the documents were recorded, defendant delivered them to Brad Adair at Southern Utah Title Company, who had been contacted by the attorney for the lenders under the promissory note to issue title insurance to protect the note (R. 143:208-09, 210-11, 384). Adair then contacted the lenders' attorney and informed him that everything was in order to fund the loan against the Baca Enterprises property (R. 143:211; Exh. 5). Adair would not have issued the insurance policy without first having received the recorded trust deed (R. 143:214).

Shortly after Adair called the attorney, the lenders forwarded the loan money to defendant (R. 142:75; R. 143:429-31). Defendant could not recall whether the loan money was deposited into Pacific Nakon's or his personal bank account (R. 143:430).

A few days later, Adair realized that the notary page on the trust deed did not match the signature page (R. 143:215-16). He thus called Ted and Cecilia Baca and requested a meeting with them (R. 143:217, 247, 293). At that meeting, Adair asked Ted Baca to sign the trust deed (R. 143:218, 247-48). After either Adair or Ted Baca, or both, spoke with Baca's attorney John Miles, Ted Baca signed the trust deed (R. 142:121-23; R. 143:218-19, 249, 266, 295). According to defendant, he was not informed about the Bacas' meeting with Adair or about Ted Baca's decision to sign the trust deed (R. 143:395). An affidavit signed by Adair explaining Ted Baca's execution of the trust deed was then recorded at the county recorder's office (R. 143:214, 220; Exh. 3).

At trial, defendant claimed he believed he had authority to execute the trust deed on Baca Enterprises' behalf under ¶¶ 6 and 16 of the lease (R. 143:368, 381, 386, 408, 431). He claimed he did not know that the notary page from the lease was attached to the trust deed when he recorded it (R. 143:360, 365, 386, 425, 434). He testified that the notary page must have been attached to the deed by mistake either by one of the female employees in Adair's office, where he had stopped to sign the deed before recording it, or by the female who recorded the documents at the county recorder's office (R. 143:356-57, 360, 363, 365, 425, 428).

Concerning defendant's first claim, Ted Baca testified in the State's case-in-chief that he never authorized defendant to sign a trust deed for Baca Enterprises (R. 143:245, 251). In addition, the Bacas' attorney, John Miles, testified in the State's case-in-chief that ¶ 6 of the lease agreement was never intended to grant defendant a power of attorney

for Baca Enterprises concerning the lease property (R. 142:136). In fact, ¶¶ 12 and 16 of the agreement specifically required the Lessee to obtain the Lessor's signature for any development applications or loans (R. 142:137-38, 153-54). Finally, Miles testified that he expressly told defendant before the lease was executed: "If you go borrow money against their property, you're going to have to get them to sign whatever it is" (R. 142:150).

Concerning defendant's second claim, two female employees in Brad Adair's office and the female who recorded the documents in the county recorder's office all testified in rebuttal that a mistake as defendant described was highly unlikely (R. 143:442, 447-48, 451, 455-56, 466).

SUMMARY OF THE ARGUMENT

Issue I. Defendant claims that the trial court erred in denying his motion to dismiss the forgery count at the end of the State's case-in-chief. Defendant argues first that the State failed to prove that he acted with the intent to defraud. He argues second that, as a matter of law, a person does not commit forgery if he signs his own name.

In the State's case-in-chief, the State presented evidence that defendant did not have authority to sign a trust deed for Baca Enterprises and that he nonetheless did so and presented the deed to a title insurance company and a lender to secure a \$235,000 loan without Baca Enterprises' knowledge. This evidence was sufficient to survive a motion to dismiss concerning defendant's intent to defraud. Thus, defendant's first argument fails.

Because defendant cites no legal authority for his second argument, it fails as inadequately briefed.

Issue II. Defendant claims that the charges against him should have been dismissed because Ted Baca's subsequent ratification of the trust deed "purged" defendant of his fraudulent conduct. Because defendant did not preserve this claim below and does not argue plain error on appeal, this Court should not reach this claim. In any case, where defendant cites to neither the statutes under which he was convicted nor to any authoritative appellate decision in a criminal case to support his claim, he has not demonstrated error, let alone obvious error.

Issue III. Defendant claims that the trial court erred in denying his motion to reduce the fraudulent handling of recordable writings charge under *State v. Shondel*. However, the *Shondel* doctrine only applies if the statute with the lesser penalty requires proof of the same elements as the greater charge. Here, fraudulent handling of recordable writings requires proof of two elements—that defendant acted with the intent to defraud and that the writing at issue is one for which the law provides public recording—not required under the two statutes cited by defendant. Thus, defendant's *Shondel* claim fails.

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO DISMISS THE FORGERY CHARGE WHERE THE JURY COULD HAVE REASONABLY FOUND THAT DEFENDANT SIGNED THE TRUST DEED PURPORTING TO ACT FOR BACA ENTERPRISES WITH THE INTENT TO DEFRAUD EITHER BACA ENTERPRISES, THE TITLE INSURANCE COMPANY, OR THE LENDER

Defendant claims that “[t]he trial court erred in failing to grant a directed verdict at the end of the presentation of evidence” because “the State failed to present a prima facie case for each element of the crime of forgery.” Aplt. Br. at 11 (capitalization and bolding omitted). Defendant contends first that the State failed to prove that, in signing the trust deed on the line reserved for Baca Enterprises, defendant “acted with the requisite intent to defraud.” Aplt. Br. at 11. Defendant contends second that the State failed to prove that his signature on that line “purport[ed] to be the act of another.” Aplt. Br. at 16.

Defendant’s first contention fails because evidence of defendant’s fraudulent intent was sufficient to let the issue go to the jury. Defendant’s second contention fails as inadequately briefed where defendant provides no legal authority to support it.

A trial court’s ruling on a motion for directed verdict presents a question of law reviewed for correctness. *State v. Kihlstrom*, 1999 UT App 289, ¶ 8, 988 P.2d 949. A trial court’s interpretation of a statute also presents a question of law reviewed for correctness. *State ex rel. P.S.*, 2001 UT App 305, ¶ 10, 38 P.3d 303.

Utah's forgery statute provides:

- (1) A person is guilty of forgery if, with purpose to defraud anyone, . . . he:
 - (a) alters any writing of another without his authority or utters any such altered writing; or
 - (b) makes, completes, executes, authenticates, issues, transfers, publishes or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another

Utah Code Ann. 76-6-501 (1999).

A. Evidence that defendant signed the deed on the line reserved for Baca Enterprises in a manner suggesting he had authority to do when he did not was sufficient to prove intent to defraud.

Defendant claims that the trial court should have granted his directed verdict motion because “[t]he State has presented no evidence that [defendant] acted with any knowledge or intent to deceive or defraud any person or any entity whatsoever.” Aplt. Br. at 15. Defendant’s claim lacks merit.

Defendant moved both for a directed verdict at the close of the State’s case-in-chief and to set aside the verdicts after defendant was found guilty (R. 143:307-29; R. 144:549). To the extent defendant challenges the trial court’s mid-trial ruling, the only relevant evidence is that presented in the State’s case-in-chief. *See State v. Kihlstrom*, 1999 UT App 289, ¶ 9, 988 P.2d 949. To the extent defendant challenges the trial court’s post-trial ruling, all evidence may be considered. *See id.*

In either case, “[t]his court will uphold a trial court’s denial of [defendant’s] motion . . . if, ‘upon reviewing the evidence and all inferences that can be reasonably drawn from it, . . . some evidence exists from which a reasonable jury could find that the elements of the crime had been proven beyond a reasonable doubt.’” *Kihlstrom*, 1999 UT App 289, ¶ 8 (quoting *State v. Dibello*, 780 P.2d 1221, 1225 (Utah 1989)); *see also State v. Clark*, 2001 UT 9, ¶ 13 n.2, 20 P.3d 300 (noting same standard of review applies to both motions).

To convict a person of forgery, the State must prove that the person acted “with purpose to defraud” someone. Utah Code Ann. § 76-6-501. “‘Fraud’ has been defined by the Utah Supreme Court as an intentional misrepresentation offered for the purpose of inducing reliance upon it to gain some advantage.” *State ex rel. P.S.*, 2001 UT App 305, ¶ 17, 38 P.3d 303. Thus, one acts with an “‘intent to defraud’” when he acts with “‘a purpose to use a false writing as if it were genuine in order to gain some advantage.’” *State v. Gonzalez*, 822 P.2d 1214, 1216 (Utah App. 1991) (quoting *State v. May*, 461 P.2d 126, 128 (Idaho 1969)).

“[I]ntent is a state of mind generally to be inferred from the person’s conduct viewed in light of all the accompanying circumstances.” *Kihlstrom*, 1999 UT App 289, ¶ 10. Moreover, “[b]ecause of the difficulty of proving . . . intent in a prosecution for forgery, the quantum of evidence the State must produce before an inference of . . . intent will arise should not be unrealistically burdensome.” *Id.* Lastly, “‘a false writing has such an obvious tendency to accomplish fraud that the jury is warranted in inferring such

an intent from the mere creation of an instrument that is false.” *Gonzalez*, 822 P.2d at 1216 (quoting *May*, 461 P.2d at 128). This is especially so where the person creating the falsity served to benefit from the act had it not been found out. *Cf. Gonzalez*, 822 P.2d at 1216.

Here, the State presented the following evidence of defendant’s intent to defraud in its case-in-chief:

1. On July 2, 2001, Baca Enterprises, as Lessor, entered into a lease agreement with Pacific Nakon, as Lessee, which allowed Pacific Nakon to develop certain Baca Enterprises property (R. 142:108, 117; R. 143:243; Exh. 1). Ted Baca signed the lease as president of Baca Enterprises; defendant signed the lease both individually and as defendant and president and CEO of Pacific Nakon (R. 142:107, 117; R. 143:244, 333; Exh. 1).
2. Paragraph 16 of the lease provided: “*Upon request by Lessee, Lessor shall subordinate its interest in and to the Property to such construction and development loans, mortgages, promissory notes, and deeds of trust arising from, or related to, Lessee’s development of the Property, and shall execute all documents required by such lenders or financial institutions . . .*” (Exh. 1) (emphasis added).³
3. Although the notary page subsequently provided by defendant to notarize the lease came from the trust deed, defendant neither informed the Bacas of the trust deed, nor asked Ted Baca to sign the deed on Baca Enterprises’ behalf (R. 142:74; R. 143:202, 245).

³Although defendant claims that “the State’s own witnesses established that” ¶ 6 of the lease “contained an assignment of all the Bacas’ interest in the leasehold estate,” Aplt. Br. at 12-13, in fact John Miles, the Bacas’ attorney, specifically testified that ¶ 6 did not contain such an assignment (R. 142:136).

4. Defendant signed the trust deed in three places, including on the line reserved for Baca Enterprises (Exh. 2).
5. Next to his signature on the Baca Enterprises line, defendant wrote, "See lease," (Exh. 2).
6. Ted Baca testified that he never authorized defendant to sign a trust deed on Baca Enterprises' behalf (R. 143:245).
7. Baca's attorney, John Miles, testified that he expressly told defendant before the lease was executed: "If you go borrow money against their property, you're going to have to get them to sign whatever it is" (R. 142:150).
8. After defendant executed the trust deed on the line reserved for Baca Enterprises, defendant recorded the trust deed with one of the notary pages that was completed for the lease (R. 142:73; R. 143:195, 246; Exh. 2).
9. Defendant then presented the recorded trust deed and lease to the lenders' title company so that the company could issue a title insurance policy, as required by the lenders before they would release any funds (R. 143:208-09, 210-11).
10. Based on receipt of these recorded documents, the title company informed the lenders' attorney that everything was in order to fund the loan against the Baca Enterprises property (R. 143:211; Exh. 5).
11. Shortly thereafter, the lenders forwarded the loan money to defendant (R. 142:75).
12. The title company would not have issued its policy without first having received the recorded deed (R. 143:214).

From this evidence, the jury could reasonably find that defendant knew he lacked authority to sign any deed of trust on Baca Enterprises' behalf. The jury could also reasonably infer that, by signing the deed on the line reserved for Baca Enterprises, and

then writing next to his signature, “See lease,” defendant intended to defraud both the title company and the lenders by implying that the lease gave him authority to sign for Baca Enterprises. The title company would not have issued the title insurance policy and, hence, the lenders would not have given defendant the loan, if they had realized Baca had not signed the deed. This is supported by the fact that Adair subsequently arranged for Baca to sign the trust deed. Finally, the jury could reasonably infer that, by not telling the Bacas of the trust deed, defendant intended to keep knowledge of it from them, and potentially use the loan proceeds for a purpose “to which he [was] not otherwise entitled,” Aplt. Br. at 15, or at least without the Bacas’ oversight.

This evidence is sufficient to prove that defendant signed the trust deed on the line reserved for Baca Enterprises with “a purpose to use a false writing as if it were genuine in order to gain some advantage.” *Gonzalez*, 822 P.2d at 1216 (citation and internal quotation marks omitted). Thus, this evidence was sufficient to defeat defendant’s motion to dismiss at the close of the State’s case-in-chief, and the trial court properly denied the motion. *See Kihlstrom*, 1999 UT App 289, ¶ 8.

Furthermore, nothing in defendant’s testimony or the State’s rebuttal undermined the trial court’s ruling. First, defendant admitted that he had the trust deed with him when he met with the Bacas on July 5 and yet never presented it to Ted Baca for his signature (R. 143:404, 406, 408). Second, although defendant testified that he believed he had authority to sign the deed for Baca Enterprises, *see* Aplt. Br. at 14-15, that testimony did not mandate a dismissal; rather, it merely created a disputed issue for the jury to decide.

See State v. Hardy, 2002 UT App 244, ¶ 11, 54 P.3d 645 (“It is within the exclusive province of the jury to judge the credibility of the witness and the weight of the evidence.”) (quoting *State v. Howell*, 649 P.2d 91, 97 (Utah 1982)).⁴ Thus, the trial court did not err in denying defendant’s motion to set aside the verdict at the end of trial.

Finally, defendant argues that, to survive his motions, the State’s evidence had to “admit of no other reasonable hypothesis than of guilt.” Aplt. Br. at 12 (quoting *State v. Castonguay*, 663 P.2d 1323, 1326 (Utah 1983)). However, “the Utah Supreme Court has ruled that despite the existence of theoretically ‘reasonable’ hypotheses, it is within the province of the jury to judge the credibility of the testimony, assign weight to the evidence, and reject these alternative hypotheses.” *State v. Blubaugh*, 904 P.2d 688, 694-95 (Utah App. 1995), *cert. denied*, 913 P.2d 749 (Utah 1996).

Consequently, defendant’s claim fails.

B. Defendant’s claim that forgery requires, as a matter of law, that the accused sign someone else’s name fails as inadequately briefed.

Defendant claims that the trial court erred in denying his directed verdict motion because “[w]ith or without authority, the signing of his signature by Lamar Jensen could not purport to have been the act of a third person, the act of another, the act of Baca

⁴Defendant’s credibility was challenged not only by Ted Baca and John Miles’ testimony concerning defendant’s authority to sign for Baca Enterprises under the lease, but also by the State’s rebuttal witnesses who severely undermined defendant’s claim of innocence concerning how the trust deed was recorded with the improper notary page (R. 142:150; R. 143:245, 251, 442, 447-48, 451, 455-56, 466). Against these witnesses’ testimony, the jury could have reasonably rejected defendant’s testimony concerning his lack of criminal intent. *See Hardy*, 2002 UT App 244, ¶ 11.

Enterprises, under any circumstance.” Apl’t. Br. at 16. This Court should reject defendant’s claim as inadequately briefed.

Rule 24(a)(9), Utah Rules of Appellate Procedure, provides that a defendant’s brief “shall contain . . . citations to the authorities, statutes, and parts of the record relied on.” Utah R. App. P. 24(a)(9). “Implicitly,” this rule “requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority.” *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998). This Court “is not simply a depository in which the appealing party may dump the burden of argument and research.” *State v. Honie*, 2002 UT 4, ¶ 67, 57 P.3d 977, *cert. denied*, 123 S. Ct. 257.

Here, defendant provides no legal support for his claim. *See* Apl’t. Br. at 16. Moreover, nothing in the plain language of the forgery statute requires that one must sign the name of another before he can be found guilty, nor has any Utah appellate court so held. *See* Utah Code Ann. § 76-6-501 (providing person guilty of forgery if he “makes, completes, executes . . . any writing so that the writing or the making, completion, execution . . . purports to be the act of another”); *State v. Collins*, 597 P.2d 1317, 1317 (Utah 1979) (holding only that “[o]rdinarily, in proving the crime of forgery the state must show that the defendant not only used the name of another, but . . . that he did so without any authority so to do”) (emphasis added); *see also State v. Winward*, 909 P.2d 909, 912 (Utah App. 1995) (in case involving accused’s signing another’s name, citing *Collins* without noting its qualified reach); *State v. Gonzalez*, 822 P.2d 1214, 1216 (Utah App. 1991) (in case involving accused’s signing another’s name, quoting *Collins* without

noting its qualified reach). As noted previously, the jury could have reasonably concluded that, by signing his name on the line reserved for Baca Enterprises, and then adding, “See lease,” defendant was purporting to act for Baca Enterprises. *See* pp. 14-15 *supra*. In other words, even though defendant signed his own name, he did so under circumstances that suggested he was acting for another and that he had authority to do so, even though he did not. Thus, defendant’s signature did purport to be the act of another.

Because defendant has failed to adequately brief this claim, this Court should reject it.

II. DEFENDANT’S UNPRESERVED CLAIM THAT TED BACA’S SUBSEQUENT SIGNING OF THE DEED “PURGED” HIS ACTIONS OF FRAUD FAILS WHERE DEFENDANT DOES NOT CITE TO ANY AUTHORITATIVE CRIMINAL LAW ON POINT

Defendant claims that both his convictions must be reversed because Ted Baca’s “subsequent signing of the deed purged [his] action of fraud.” *Aplt. Br.* at 17. Defendant’s unpreserved claim fails because he has not argued or established plain error.

The general rule in criminal cases is that “a contemporaneous objection or some form of *specific* preservation of claims of error must be made a part of the trial court record before an appellate court will review such claims.” *State v. Johnson*, 774 P.2d 1141, 1144 (Utah 1989) (quoting *State v. Tillman*, 750 P.2d 546, 551 (Utah 1987)); *see also State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 346. The objection at trial must “be specific enough to give the trial court notice of the very error . . . complained of,” *Tolman v. Winchester Hills Water Co., Inc.*, 912 P.2d 457, 460 (Utah App. 1996) (quoting

Beehive Medical Elecs., Inc. V. Square D. Co., 699 P.2d 859, 860 (Utah 1983)), so that the court “‘might have an opportunity to correct [it] if [the court] deems it proper,’” *id.*, (quoting *Redevelopment Agency of Salt Lake City v. Barrutia*, 526 P.2d 47, 51 (Utah 1974)) (second bracket in original). This preservation rule “applies to every claim . . . unless a defendant can demonstrate that ‘exceptional circumstances’ exist or ‘plain error’ occurred.” *Holgate*, 2000 UT 74, ¶ 11.

Here, defendant raised his ratification defense only in closing argument to the jury (R. 144:535). Defendant never presented this claim as a basis for the trial court to grant his motion to dismiss or his motion to set aside the verdict (R. 56-57, 58-59, 69-72; R. 143:307-29; R. 144:549). Thus, this claim was not preserved below. *See Holgate*, 2000 UT 74, ¶ 11; *Johnson*, 774 P.2d at 1144; *Tolman*, 912 P.2d at 460. Because defendant does not argue that plain error or exceptional circumstances justify review of this claim, this Court should not review it. *See State v. Pledger*, 896 P.2d 1226, 1229 n.5 (Utah 1995) (“Because Pledger does not argue that ‘exceptional circumstances’ or ‘plain error’ justifies a review of the issue, we decline to consider it on appeal.”); *see also Holgate*, 2000 UT 74, ¶ 11.

Even if this Court were to review this unpreserved claim, defendant cannot demonstrate plain error. To show plain error, defendant must show that (1) an error occurred; (2) the error should have been obvious to the trial court; and (3) the error was prejudicial to defendant. *State v. Dunn*, 850 P.2d 1201, 1208-09 (Utah 1993). As this Court has repeatedly held, “[t]o show obviousness of the error, [defendant] must show

that the law was clear at the time of trial.” *State v. Garcia*, 2001 UT App 19, ¶ 6, 18 P.3d 1123; *see also State v. Frausto*, 2002 UT App 259, ¶ 22, 53 P.3d 486, *cert. denied*, 63 P.3d 104 (Utah 2002); *State v. Ross*, 951 P.2d 236, 239 (Utah App. 1997).

Defendant cites only to two old civil cases recognizing that when a wronged person ratifies another’s fraudulent execution of a contract, the contract becomes enforceable against the initially wronged person. *See* Aplt. Br. at 17-18; *Payson Bldg. & Loan Soc’y v. Taylor*, 87 Utah 302, 48 P.2d 894 (1935); *Hull v. Flinders*, 83 Utah 158, 27 P.2d 56 (1933).

Defendant does not cite to either of the statutes under which he was convicted as requiring application of the common law civil rule he advocates to these crimes. *See* Aplt. Br. at 17-18. In fact, neither the forgery statute nor the fraudulent handling statute recognizes ratification as a defense. *See* Utah Code Ann. § 76-6-501 (defining forgery); *Id.* § 76-6-503 (1999) (defining fraudulent handling of recordable writings).

Moreover, defendant cites to no case, let alone a Utah case, applying the civil rule in a criminal context. *See* Aplt. Br. at 17-18. Nor has the State found one. *See* 37 C.J.S. Forgery § 86 (2003) (“Evidence of condonation or ratification *is not* admissible *unless* it tends to show a *preexisting* authority.”) (emphasis added) (and cases cited therein); *People v. Lucero*, 623 P.2d 424, 427 (Colo. App. 1980) (noting “the general rule is that subsequent ratification constitutes no defense to crime”; rule’s “basis lies in the understanding that crime affects the overall security of the citizenry, not merely the interests of the immediate parties” and “[s]atisfaction of the latter does not imply

preservation of the former”); *State v. Warner*, 564 N.E.2d 18, 50 (Ohio 1990) (“The overwhelming weight of federal and state authority has rejected the defense of subsequent ratification, whether express or implied, where criminal acts have been alleged”; *see also* cases cited therein); *State v. Kelly*, 396 S.E.2d 471, 474 (W.Va. 1990) (same) (and cases cited therein).

In short, defendant has not shown that the trial court erred, let alone obviously erred, in not dismissing the charges against him despite evidence that Ted Baca subsequently ratified the deed.

III. THE TRIAL COURT PROPERLY DENIED DEFENDANT’S *SHONDEL* REQUEST TO BE CHARGED WITH ONE OF TWO LESSER CRIMES WHERE THE CRIME OF FRAUDULENT HANDLING OF RECORDABLE WRITINGS REQUIRES PROOF OF ELEMENTS NOT REQUIRED FOR THE LESSER CRIMES AND MORE SPECIFICALLY ADDRESSES DEFENDANT’S CONDUCT

Defendant claims that the trial court improperly denied his motion to reduce the fraudulent handling of records charge under the *Shondel* doctrine. Aplt. Br. at 19-21. Specifically, defendant argues that he should have been charged under one of two other statutes which, he claims, criminalize the same conduct as misdemeanors. Aplt. Br. at 19-21. Defendant’s claim lacks merit.

Under *State v. Shondel*, 22 Utah 2d 343, 453 P.2d 146 (1969), and its progeny, Utah’s courts “have held that where two statutes define exactly the same penal offense, a defendant can be sentenced only under the statute requiring the lesser penalty.” *State v. Bluff*, 2002 UT 66, ¶ 33, 52 P.3d 1210, *cert. denied*, 123 S. Ct. 999 (2003).

Thus, the *Shondel* doctrine “applies only when the two statutes address ‘exactly the same conduct.’” *Id.* (quoting *State v. Gomez*, 722 P.2d 747, 749 (Utah 1986)). In other words, the doctrine only applies if the two statutes “have identical elements and prohibit exactly the same conduct.” *Id.* “[I]f the elements of the crime[s] are not identical and the relevant statutes require proof of some fact or element not required to establish the other, the statutes do not proscribe the same conduct and . . . [a defendant] may be charged with the crime carrying the more severe sentence.” *Hernandez*, 2003 UT App 276, ¶ 8 (quoting *State v. Green*, 2000 UT App 33, ¶ 6, 995 P.2d 1250) (brackets in original).

Moreover, the *Shondel* doctrine does not alter the general rule that, “when an individual’s conduct can be construed to be a violation of two overlapping statutes, the more specific statute governs.” *State v. Hill*, 688 P.2d 450, 451 (Utah 1984) (citing *Helmuth v. Morris*, 598 P.2d 333 (Utah 1979), and *Shondel*, 453 P.2d 146).

Whether the *Shondel* doctrine applies to reduce charges is a question of law reviewed for correctness. *State v. Hernandez*, 2003 UT App 276, ¶ 6, 76 P.3d 198.

In this case, defendant was charged with fraudulent handling of recordable writings, a third degree felony, under Utah Code Ann. § 76-6-503 (1999) (R. 1-3). Defendant claims that this charge should have been reduced under *Shondel* to either making a written false statement, a class B misdemeanor under Utah Code Ann. § 76-8-

504(1) (1999), or falsification of a government record, a class B misdemeanor under Utah Code Ann. § 76-8-511 (1999). Aplt. Br. at 19-21.⁵

A person commits fraudulent handling of recordable writings under section 76-6-503 (the “fraudulent handling statute”) if, “*with intent to deceive or injury anyone* [he] falsifies . . . any . . . deed . . . or other writing *for which the law provides public recording.*” Utah Code Ann. § 76-6-503(1) (emphasis added).

A person is guilty of a written false statement under subsection (1) of section 76-8-504 if “[h]e makes a written false statement which he does not believe to be true on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable.” *Id.* § 76-8-504(1).

Finally, a person is guilty of falsification of government records under subsections (1) or (2) of section 76-8-511 if he either

- (1) knowingly makes a false entry in or false alteration of anything belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; [or]
- (2) presents or uses anything knowing it to be false and with a purpose that it be taken as a genuine part of information or records referred to in subsection (1).

Id. § 76-8-511.

⁵Although defendant suggests “that the elements of § 76-6-504, ‘tampering with records,’ . . . could also be applicable under the fact scenario of the present case,” Aplt. Br. at 20 n.3, section 76-6-504 expressly excludes “the writings enumerated in Section 76-6-503,” Utah Code Ann. § 76-6-504(1) (1999). Thus, the State does not address defendant’s footnote further.

A simple comparison of the statutes makes clear that fraudulent handling statute contains two elements not required under the other two. First, unlike for the other two crimes, the State must prove that the defendant acted “with intent to deceive or injure” someone. Utah Code Ann. § 76-6-503. Second, unlike for the other two crimes, the State must prove that the document at issue is one “for which the law provides public recording.” *Id.*

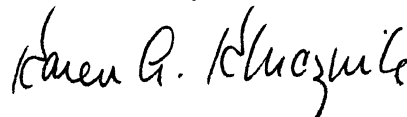
Thus, the fraudulent handling statute *does not* contain exactly the same elements as the two other statutes. Moreover, because it *only* covers writings “for which the law provides public recording,” *see* Utah Code Ann. § 76-6-503, the fraudulent handling statute clearly criminalizes more specific conduct than that covered by the other two statutes. For both these reasons, defendant’s *Shondel* claim fails. *See Bluff*, 2002 UT 66, ¶ 33; *Hernandez*, 2003 UT App 276, ¶ 8; *Hill*, 688 P.2d at 451.

CONCLUSION

Based on the foregoing, the State asks this Court to affirm defendant’s convictions.

RESPECTFULLY SUBMITTED 15 March 2004.

MARK L. SHURTLEFF
Utah Attorney General



KAREN A. KLUCZNIK
Assistant Attorney General

CERTIFICATE OF MAILING

I certify that on 5 March 2004, I caused to be mailed, by U.S. Mail, postage prepaid, two accurate copies of this *BRIEF OF APPELLEE* to William B. Parson, III, 440 East 3300 South, Salt Lake City, Utah 84115, Attorney for Appellant.

Karen A. Shoznik

Addendum A

76-6-501. Forgery — “Writing” defined.

(1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:

(a) alters any writing of another without his authority or utters any such altered writing; or

(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication or utterance purports to be the act of another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

(2) As used in this section, “writing” includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:

(a) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;

(b) a security, revenue stamp, or any other instrument or writing issued

(c) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(3) Forgery is a felony of the third degree.

76-6-503. Fraudulent handling of recordable writings.

(1) Any person who with intent to deceive or injure anyone falsifies, destroys, removes, or conceals any will, deed, mortgage, security instrument, or other writing for which the law provides public recording is guilty of fraudulent handling of recordable writings.

(2) Fraudulent handling of recordable writings is a felony of the third degree.

76-8-504. Written false statement.

A person is guilty of a class B misdemeanor if:

(1) He makes a written false statement which he does not believe to be true on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

(2) With intent to deceive a public servant in the performance of his official function, he:

(a) Makes any written false statement which he does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(3) No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

76-8-511. Falsification or alteration of government record.

A person is guilty of a class B misdemeanor if he:

(1) Knowingly makes a false entry in or false alteration of anything belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government; or

(2) Presents or uses anything knowing it to be false and with a purpose that it be taken as a genuine part of information or records referred to in (1); or

(3) Intentionally and unlawfully destroys, conceals, or otherwise impairs the verity or availability of any such thing.

Addendum B

LEASE AGREEMENT

[Handwritten signature]

THIS LEASE AGREEMENT is made and entered into as of the 2nd day of July, 2001, between BACA ENTERPRISES, INC. a Utah corporation ("Lessor"), and PACIFIC NAKON INTERNATIONAL, INC., a Nevada corporation ("Lessee").

RECITALS:

- A. Lessor is the owner of 62.4 acres (61.4 acres is stated on the Kane County property tax notices) of undeveloped land or partially developed land (area South of highway, including campground), as described in Exhibit "B"; and 6.6 acres (6.65 acres is stated on the Kane County property tax notices) of developed land on North side of highway, with any and all appurtenances thereunto pertaining, as described in Exhibit "A"; and which Exhibits are attached hereto and made a part hereof by reference. Also included are 24.9338 acre feet of water and water rights, as more particularly described in Exhibit "C", attached hereto and made a part hereof by reference. These three Exhibits comprise, collectively, the "Property".
- B. Lessor desires to lease to Lessee and Lessee desires to lease from Lessor the Property on the terms and conditions in this Lease.
- C. Lessor desires to assign to Lessee, and Lessee desires to use, all real property, water rights, buildings, business activities, vendor agreements, campground, curio store inventory, business goodwill, and all other personal and intellectual property relating to the Property, including, without limitation, the right to develop such Property, on the terms and conditions in this Lease.

AGREEMENT

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

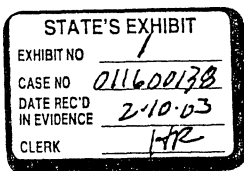
- 1. Lease. Lessor leases to Lessee and Lessee leases from Lessor the Property for the term, at the rental, and upon all other terms, covenants, and conditions in this Lease. Lessor does hereby grant, demise and let, and Lessee does hereby agree to take the property and water rights described in Exhibits "A", "B", and "C", with any and all appurtenances thereunto appertaining.
- 2. Initial Term. The initial term of this Lease shall be for 50 years ("Initial Term") commencing on July 1, 2001 ("Commencement Date"), and ending on June 30, 2051, unless sooner terminated pursuant to the terms of this Lease ("Termination Date").

ENTRY NO. 106486 RECORDED AT REQUEST OF PACIFIC NAKON FEE \$ 47.00
 DATE JULY 5 2001 AT 11:45 AM KANE COUNTY RECORDS
 BY CLERK JIN PAGE 427-439

W6-724

0209-427

[Handwritten signature]



STATE OF UTAH)
 COUNTY OF KANE) SS
 I Herby Certify That The Foregoing Is A Just, True And Correct
 Copy Of The Original Instrument Filed For Record The 5th
 Day Of July A.D. 2001.
 In Book 0209 Page 427-439
 KANE COUNTY RECORDS. W6-724736
 Witness My Hand And Seal

3. Option to Extend. Lessee shall have the option to extend the term of this Lease for 50 years following the expiration of the Initial Term on all the terms and conditions in this Lease. To exercise this option, Lessee must give Lessor written notice of exercise of the option ("Option Notice") no earlier than 24 months and no later than 6 months prior to the expiration of the Initial Term.

4. Base Rent. The base rent shall be \$250,000 per year payable in equal monthly installments of \$20,833.34, with the first month's rent being due upon the execution of this LEASE AGREEMENT, and continuing thereafter on the first day of each month until the end of the term of this Lease. In addition to said base rent, Lessee shall pay Lessor an additional payment of \$250,000 on or before August 1, 2001, which payment shall be deemed the rent for the last year of this initial term (or rent for the period July 1, 2050 to June 30, 2051). The base rent shall be adjusted upward every 5 years to keep pace with inflation in the national economy, with the first such adjustment to be made on July 1, 2006 in this manner: With the United States Consumer Price Index (USCPI) at July 1, 2001, or the nearest date thereto, as the denominator and the USCPI as of July 1, 2006 as the nominator, the quotient (to four decimal places) of that division shall be multiplied by \$20,833.34 (the monthly base rent for the previous five years), and the product shall be the new monthly base rent for the next five years. A similar adjustment shall be made in the same manner every five years thereafter for as long as this Lease is in force, with the denominator on each such adjustment being the USCPI at the start of the prior five years and with the numerator being the current USCPI, or the end of the five year period just concluded. In the event the denominator is larger than the numerator, no adjustment shall be made, and the base rent for the prior five years shall continue as the base rent for an additional five years. In other words, no such adjustment shall ever result in a decrease in the base rent.

5. Percentage Rent. In addition to the base rent agreed to be paid by Lessee pursuant to Section 4 above, Lessee shall pay to Lessor an additional rental in an amount equal to two (2%) percent of Lessee's gross revenues, and all Sub-Lessee's gross revenues, generated from the Property, or any part thereof, whether said gross revenues come from the operation of the business and/or businesses now existing or the business and/or businesses yet to be started and carried out on the property in the future. This two percent shall apply to all kinds of gross revenue, including the sale of timeshares or the like in the hotel that is planned for the Property. This percentage rent shall be deferred until January 1, 2004, and shall not be payable or commence accruing until January 1, 2004. This deferral has been agreed to in order to allow Lessee two and one-half years to become fully operational before the percentage rent begins. In this regard, Lessee represents that they shall proceed with due diligence with their plans, and represent that, unless there are intervening causes and unavoidable delays, that the existing properties will be remodeled by the end of 2002 and that by the end of 2003, the campground will be improved and fully operational and that the planned motel, with approximately 100 rooms, will be in full operation.

In the event water from the assigned water rights and wells (which could exceed 500 gallons per minute) are diverted and used by Lessee in other areas of Lessee's anticipated future developments not leased from Lessor, then Lessee shall pay a similar percentage of the

gross revenues of Lessee (or Sub-Lessees from Lessee) from these other operations where such water is used.

6. Assignment of Other Property. For the purpose of allowing Lessee to continue and carry on the existing businesses and to enable Lessee to maximize their gross revenues from the Property under this lease, Lessor hereby assigns to Lessee all of Lessor's interest in real property, water rights, buildings, business activities, vendor agreements, campground, curio store inventory, business goodwill, and all other personal and intellectual property relating or appertaining to the Property, including, without limitation, the right to develop such Property in any manner acceptable to Lessee, so long as there is no uncured default under the terms of this Lease.

7. Books and Records. Lessee shall keep and maintain on the Property, or at Lessee's headquarters elsewhere in the State of Utah, full, complete, and appropriate books and records of sales and revenues from the Property and other developments of Lessee relating to Section 5, above, in accordance with standard accounting practice. These books and records shall at all reasonable times and upon reasonable notice be open for inspection and copying by Lessor, Lessor's auditors, or any other authorized representatives of Lessor.

8. Use. Lessee, and any subsidiaries, affiliated entities, or concessionaires as Lessee may desire, will occupy and use the Property for any business purpose and all operations incident to the conduct of such business, with all such operations subject to the percentage rent stated in paragraph 5. Lessee may erect and maintain on the Property and the buildings and improvements any signs advertising Lessee's business as Lessee may desire. Lessee shall not commit any waste or any public or private nuisance upon the Property, and Lessee shall comply with all laws, rules, and orders of all federal, state, and municipal governments or agencies that may be applicable to use of the Property. Lessee may only develop the Property in ways that are commensurate and compatible with the scenic nature of the Property.

9. Utilities. Beginning on the Commencement Date and throughout the term of this Lease, Lessee shall pay, before delinquency, all charges or assessments for telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Property.

10. Taxes. Lessee shall pay to the public authorities charged with the collection on or before the last day on which payment may be made without penalty or interest, as additional rent, all property taxes, other taxes, permits, fees, inspection costs, and license fees, and other public charges of whatever nature that are assessed against the Property or arise because of the occupancy, use, or possession of the Property (including, but not limited to, taxes on, or which shall be measured by, any sales of goods, or rents or rental income, and taxes on personal property, and water rights, whether of Lessor or Lessee), subsequent to the Commencement Date, and all installments of assessments that are due during the term of this Lease. Lessor shall give appropriate written instructions to public authorities for taxes, assessments, and public

charges payable by Lessee to ensure that statements and billings will be mailed directly by public authorities to Lessee at an address designated by Lessee.

11. Repairs and Maintenance. Lessee shall, at Lessee's own expense, keep the Property (including, without limitation, water lines, water pumps, and all water works) in good condition and repair, reasonable wear and tear and use and loss by fire or other casualty or by earthquake or other act of God excepted. In the event of any loss covered by the insurance required by paragraph 13, Lessee shall use all such insurance proceeds that may be payable to Lessee to restore or rebuild the damage generating the insurance proceeds, unless the Lessors agree in writing to some other disposition of the insurance proceeds.

12. Alterations. Lessee shall have the right to make alterations to any buildings and improvements on the Property. All improvements, additions, alterations, and major repairs shall be in accordance with applicable laws and at the Lessee's own expense. Lessee shall indemnify and defend Lessor for all liens, claims, or damages caused by remodeling, improvements, additions, alterations, and major repairs. Lessor shall, when requested by lessee, execute and deliver any applications, consents, or other instruments required to permit Lessee to develop the Property, perform such work, or to obtain permits for such work. Lessee will not at any time permit any mechanics', laborers', or materialmens' liens to stand against the Property for any labor or material furnished to Lessee or claimed to have been furnished to Lessee or Lessee's agents, contractors, or subtenants and sub-lessees, in connection with work of any character performed or claimed to have been performed on the Property by or at the direction or sufferance of Lessee; provided, however, that Lessee shall have the right to contest the validity or amount of any lien or claimed lien, upon giving Lessor a letter executed by Lessee assuring that the lien or claimed lien will be paid, when and to the extent that the lien is finally determined to be valid and owing. Lessee's right, however, to contest these liens shall not extend beyond the point where Lessor's title to the Property could be lost. On final determination of the lien or claim of lien, Lessee shall immediately pay any final judgment rendered against Lessee, with all proper costs and charges, and shall have the lien released or judgment satisfied at Lessee's own expense.

All such new construction, improvements, additions, alterations, and repairs, or improvements of any kind, shall be deemed part of the real property, and at the termination of this lease, or in the event of any default on this Lease, all such items shall remain and stay on the property. In addition, all furniture, fixtures, equipment, and other personal property used to carry on the businesses on the Property, shall, at the termination of this lease or upon default, remain with the property and inure to the benefit of Lessors in the event they must terminate the Lease, take possession of the Property, and resume business in their own right.

13. Insurance. Lessee shall, at all times during the term of this Lease, and during any extension, maintain in force, at Lessee's sole cost and expense, insurance on the buildings and improvements now existing or that may be built or placed on the Property, against the hazard of fire, with standard extended coverage, including vandalism and malicious mischief, in an amount equal to their full insurable value, with a replacement cost endorsement, excluding the cost of excavation and of foundation below the level of the lowest basement floor, or if there is no basement, below the level of the ground. Lessee shall also procure and maintain public liability

insurance, including products and completed operations insurance, from a responsible insurance company authorized to do business in the State of Utah, with a combined single limit of not less than \$1,000,000 for injury or death to any person or damage to property and \$5,000,000 excess umbrella coverage for injury or death or property damage, for any claims, demands, or causes of action of any person arising out of accidents occurring on the Property during the term of the Lease or arising out of Lessee's use of the Property.

14. Default Remedies. In the event Lessee materially defaults under this Lease, Lessor's sole and exclusive remedy is to terminate this Lease and all rights of Lessee under this Lease by giving Lessee written notice that this Lease is terminated, in which case Lessor may recover from Lessee the full value of a \$5,000,000.00 bond Lessee owns on certain oil wells and natural gas deposits and which matures May 5, 2003. The bond will be held by John L. Miles, Lessor's attorney. Said bond is more fully identified in paragraph 16 of this Lease. Lessee shall, upon any uncured default and upon Lessor's request, endorse and otherwise cooperate with Lessor in selling or cashing said bond. In the event Lessor finds that the bond cannot be sold or liquidated for cash (for example, the terms stated on said bond say that the bond may be honored with oil and gas reserves), or if Lessor for any other reason finds recourse against the bond unavailable or unsatisfactory, then Lessee agrees that Lessor may pursue the Lessee (Pacific Nakon) directly for any and all of their damages caused by any default under this Lease, subject however, to a cap or a limit of five million dollars. The figure for this limitation comes from the fact that Lessee, in prior negotiations, once offered as much as five million for the outright purchase of Lessor's property included in this Lease. The parties recognize the possibility that if Lessee defaults at a time when the SBA loan is still unpaid and at a time when the subordination (under paragraph 16) may be in effect up to \$500,000.00, that the property could be lost through foreclosure because the Lessor lacks the financial resources to assume or discharge loans of that size, and Lessor could thereby suffer damages equal to the total value of the property. In this regard, for as long as any subordination referred to in paragraph 16 is in effect, LaMar Jensen, the principal stockholder of Lessee, agrees to be personally liable under this Lease for any and all damages Lessor may sustain, likewise capped or limited, however, to said five million dollars. Notwithstanding anything to the contrary herein, in the event Lessee breaches any term or condition of this Lease, Lessee shall have 15 days to cure, and Lessor shall be entitled to a default payment equal to ten (10%) percent of any amount outstanding and unpaid, together with their attorney's fees and costs to the time of cure.

15. Employment of Children and Transitional Period. Lessee shall employ the children and spouses of Ted and Cecelia Baca (namely, Frank Baca, Ernie Baca, and Josie Tait) to perform work for the Lessee on the Property, either full time or part time, as said persons may desire, and at a salary or hourly wage in management positions suitable for their experience and abilities, with compensation equal to or greater than similar employees of Lessee. Such work shall commence as soon as operations make it possible. During the transitional period, Ted Baca and Cecelia Baca agree to assist Lessee with their expertise, knowledge, and experience to help Lessee make a smooth transition and to maximize revenues during such period. In return, Lessee agrees that Ted Baca and Cecelia Baca may continue to reside on the property until such time that they find suitable housing elsewhere. It is anticipated that this transitional period will be about three months, but could extend for as many as six months.



16. Subordination. Upon request by Lessee, Lessor shall subordinate its interest in and to the Property to such construction and development loans, mortgages, promissory notes, and deeds of trust arising from, or related to, Lessee's development of the Property, and shall execute all documents required by such lenders or financial institutions, subject, however, to a maximum combined limit of no more than \$500,000.00 and to a limitation of no more than 12 months from the date hereof (or until July 1, 2002) that Lessor's position will be so subordinated. Thus, there may be more than one loan, but the combined total of all loans shall never exceed \$500,000.00. All such subordinated interests will be paid in full and released of record no later than July 1, 2002. A violation of this paragraph shall result in an immediate termination of this Lease, and entitle Lessor to cash and retain the full value of the \$5,000,000.00 bond held by John L. Miles, identified as ISIN: US747958AA48, CUSIP NUMBER: 747958 AA4. The proceeds from all such loans shall be used to improve the Property and increase Lessee's equity interest in the Property. Lessee shall submit to Lessor documentation showing the use of all such loans and proving that said loan proceeds were used to increase the value of the Property. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Lessee shall attend to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, this Lease shall not be barred, terminated, cut off, or foreclosed. Neither shall the rights and possession of Lessee under this Lease be disturbed, if Lessee is not then in default in the payment of rental and other sums due under this Lease or otherwise in default under the terms of this Lease.

17. Mediation and Arbitration (Dispute Resolution).

17.1. Any claim, dispute, or controversy arising out of or in connection with or relating to the validity, interpretation, performance, or termination of this Lease or the breach or alleged breach thereof (collectively, "Claims") that the parties cannot resolve amicably within a reasonable time, shall be submitted by either party to mediation in the City of Saint George, State of Utah, according to the Mediation and Arbitration Rules of the American Arbitration Association ("Rules"), and if the parties cannot resolve such Claims through good faith mediation, then any unresolved Claims shall be submitted by the parties to binding arbitration in Saint George, Utah, according to the Rules of the American Arbitration Association ("AAA") in effect on the date of this Lease. In the event of any conflict between the Rules and this Section 17, the provisions of this Section 17 shall govern.

17.2. Mediation, and, if such mediation is unsuccessful in the resolution of any Claims, then arbitration hereunder, shall be the parties' exclusive remedy and no party to any arbitration shall be required to exhaust any local, administrative, or judicial remedy.

17.3. If mediation fails to resolve any such Claims, then either party may request arbitration within a reasonable time thereafter, and shall give written notice of such to the other party and a brief description of the dispute or disputes which such party desires to be arbitrated. Within six (6) weeks after notification to do so by the AAA, each party shall appoint one arbitrator, who shall be a person with substantial experience and competence with respect to the subject matter of the dispute, and have no relationship with the parties or any of their affiliated companies. The two (2) arbitrators appointed by the parties shall, within 30 days after their appointment, appoint a third, presiding arbitrator. If either party fails to nominate an arbitrator,

or the two arbitrators appointed by the parties are unable to appoint a presiding arbitrator within the stated periods, such arbitrator(s), meeting the aforementioned qualifications, shall be appointed by the AAA according to the Rules and the arbitration shall proceed in Saint George, Utah.

17.4. The arbitrators shall, by majority vote, render a written decision stating reasons therefor within six (6) months after the completion of the arbitration hearing. Any award granted shall be rendered in such form that judgment may be entered thereon in any court having jurisdiction thereof.

17.5. The parties hereto further agree that both mediation and arbitration proceedings shall be instituted within one year after the asserted Claims occurred, and that failure to institute mediation and arbitration proceedings within such period shall constitute an absolute bar to the institution of any proceeding and a waiver of such condition.

17.6. This Section 17 shall survive any termination of this Lease.

18.0. Miscellaneous.

18.1. This Lease supersedes all prior or contemporaneous oral or written agreements, representations, warranties and understandings and contains the entire agreement between the parties hereto. No amendment, modification, termination, or waiver of any provision of this Lease or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by duly authorized representatives of each party hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to, or demand on, either party in any case shall entitle it to any other or further notice or demand in similar or other circumstances. No failure or delay on the part of either party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

18.2. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee shall have no right to assign or otherwise transfer all or a major portion of its rights hereunder or major interest in this Lease without the prior written consent of Lessor, which consent Lessor will not unreasonably withhold if the assignee is as equally sound financially and has the ability and business experience to carry out this lease without default. Any assignment in violation of this paragraph 18.2 shall be void.

18.3. All notices, requests, demands, directions and other communications provided for hereunder shall be in writing and shall be served either personally or delivered by first class or express U.S. mail with postage prepaid, return receipt requested pursuant to registered or certified mail, or by a nationally recognized overnight commercial courier service with charges prepaid, to the applicable party at the address of such party as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this paragraph 18.3. Notices may also effectively be given by transmittal over electronic transmitting devices if the party to whom the notice is being sent has a receiving device in its office, and provided a complete copy of the notice shall also be served either personally or in the same manner as required for a mailed notice. Notices shall be deemed received at the earlier of actual receipt or

five days following deposit in the U.S. mail with postage prepaid or two days following deposit with a nationally recognized overnight commercial courier service with charges prepaid.

18.4. No party hereto shall be deemed the drafter of this Lease and in the event this Lease is ever construed by a court of law, such court shall not construe this Lease or any provision of this Lease against any party as the drafter of this Lease.

18.5. Headings in this Lease are included herein for convenience of reference only and shall not constitute a part of this Lease for any other purpose.

18.6. Whenever the context of this Lease requires, words used in the singular shall be construed to include the plural and vice versa; and pronouns of whatsoever gender shall be deemed to include and designate the masculine, feminine or neuter gender.

18.7. Should any party to this Lease reasonably retain legal counsel for the purpose of instituting any action or proceeding before the AAA, to enforce or to prevent the breach of any provision of this Lease, for damages by reason of any alleged breach, for a declaration of such party's rights or obligations under this Lease, for injunctive relief, or for any other arbitrated remedy, then the prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees for the services rendered to the prevailing party.

18.8. Lessor shall indemnify and hold Lessee harmless from and against any and all claims, damages and liabilities whatsoever, asserted by any person or entity, resulting directly or indirectly from, related to, or accruing under, any breach of this Lease or violation of any environmental and/or hazardous waste rules, regulations, or laws, by Lessor or any of its employees and/or agents; and Lessee shall indemnify and hold Lessor harmless from and against any and all claims, damages and liabilities whatsoever, asserted by any person or entity, resulting directly or indirectly from, related to, or accruing under, any breach of this Lease or violation of any environmental and/or hazardous waste rules, regulations, or laws, by Lessee or any of its employees and/or agents. Such indemnification shall include the payment of all reasonable attorneys' fees and other costs incurred by the other party in defending any such claims.

18.9. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, excluding its conflict of laws rules. Any provision of this Lease that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and the remainder of this Lease shall be valid and binding as though such unenforceable or prohibited provisions were not included herein; provided, however, that the parties shall negotiate in good faith with respect to an equitable modification of the provisions held to be invalid, if any, so as to replace such provisions as nearly as may be possible with valid provisions having the same commercial or practical effect. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument binding on all the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

18.10. Lessee has been made aware that Frank Baca is the owner of certain items on the Property, including 3 cabins, a hogan, and a teepee for which he desires separate payment of \$6,000.00 and also certain vending equipment for which he desires separate payment of \$2,000.00, and Lessee will deal with Frank on such items. In addition, Lessor has prepaid certain business obligations which may possibly add up to a total of \$17,000.00. To avoid the inconvenience of settling these items separately, the parties agree that Lessee will pay an additional \$25,000.00 on August 1, 2001 as full payment for Frank Baca's personal property and all of the prepaid items, and regardless of whether these items are greater or lesser than this estimate, the \$17,000.00 is a set figure which need not be adjusted.

18.11. Lessee shall have the right to assume the existing SBA loan against the property. Lessors existing debts that affect the property are approximately \$213,000.00 owed to the SBA; two loans owed to State Bank of Southern Utah, one with a balance due of approximately \$98,000.00 and one with a balance of approximately \$35,000.00; and \$21,000.00 owed to Rex Jackson on water rights. When Lessee makes the \$250,000.00 payment due August 1, 2001, Lessor agree to use that payment to pay in full three of these obligations: (1) the \$98,000.00 loan owed to State Bank of Southern Utah; (2) the \$35,000.00 loan owed to State Bank of Southern Utah; and (3) the \$21,000.00 loan owed to Rex Jackson. Lessee has made arrangements to assume the \$213,000.00 loan owed to the SBA, which assumption will release Lessor and the Bacas completely from all legal obligations related to the SBA loan. Lessor agrees to reimburse Lessee for monthly payments made on this SBA loan. Lessee intends to pay this SBA loan in full, perhaps within 12 months, and in that event, Lessee agrees to allow Lessor to continue with payments at the same SBA interest rate and Lessor agrees to fully reimburse Lessee, with said interest, when they receive a balloon payment on another contract which is scheduled to be paid on August 4, 2006.

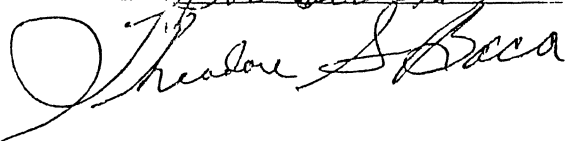
IN WITNESS WHEREOF, the authorized representatives of the parties hereto have duly executed this Agreement as of the day and year hereinabove first written.

LESSOR:

Baca Enterprises, Inc.

By: 

Title: President



LESSEE:

Pacific Naxon International, Inc.

By: 

Title: President



LaMar Jensen, individually

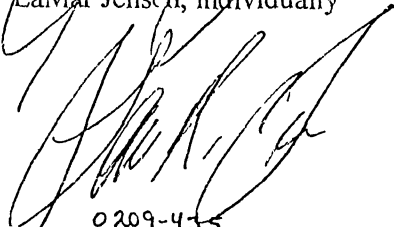




Exhibit "A"

The following described tract of land in Kane County, State of Utah:

BEGINNING at the North 1/4 corner of Section 21, Township 41 South Range 9 West, Salt Lake Base and Meridian; and running thence West along the Section line 551.24 feet; thence South 348.07 feet to the North boundary of State Highway 9; thence North 77°37'48" East 1,377.62 feet along said North boundary to a point of tangency with a 6089.74 foot radius curve to the right; thence Northeasterly 289.63 feet along the arc of said curve to its intersection with the section line; thence West 1,067.96 feet to the point of beginning. Containing 6.65 acres, more or less

Exhibit "B"

The following described real property situated in Kane County, State of Utah:

BEGINNING at a point from which the Northwest Corner of Section 21, Township 41 South, Range 9 West, Salt Lake Base and Meridian bears North 0°03' West 937.5 feet, said point of beginning being on the Southerly right of way boundary of State Highway U-15, running thence along said right of way North 77°22'30" East 3545.7 feet, thence South 1163.5 feet, thence North 89°54' West 3469.6 feet; and thence North 0°03' West 382.5 feet to beginning. Together with any and all appurtenances thereunto appertaining.

w6-733

0209-436

Exhibit "C"

Water Right 81-394

Flow: 1.5-acre feet
Source: Unnamed Spring
Common Description: East of East Zion Entrance
Point of Diversion: Surface
Owner: Theodore and Cecilia Baca
Priority: 07/06/1959
Time of use: Year round
Purpose: Stockwatering: 3 cattle
Domestic: 1 Family
Other: 3 Double Cabins, café, and 1 service station

Water Right 81-3811

Flow: 10-acre feet
Source: Big Creek (Kolob Creek)
Common Description:
Point of Diversion: Surface changed to underground water and application is valid until 11/30/2002 for two wells. As of 2/16/2001 one well had been drilled.
Owner: Theodore and Cecilia Baca
Priority: 10/26/1926
Time of use: Year round
Purpose: Irrigation: 3.33 acres
Domestic Use: one well for 60-room motel and 125-seat restaurant

Water Right 81-101

Flow: 1138-acre feet
Source: Clear Creek
Common Description: East of East Zion National Park
Point of Diversion: Surface
Owner: Theodore and Cecilia Baca
Priority: 03/05/1924
Time of use: Year round
Purpose: Irrigation

Water Right 81-1601

Flow: 1.32-acre feet
Source: Underground water well
Common Description:
Point of Diversion: Underground
Owner: Theodore and Cecilia Baca
Priority: 08/23/1961
Time of use: Year round
Purpose: Other: water used in operation of café and service station.

Water Right 81-3960

Flow: 2-acre feet
Source: Underground Water Well
Common Description:
Point of Diversion: Underground
Owner: Theodore and Cecilia Baca
Priority: 08/23/1961
Time of use: Year round
Purpose: Stockwatering: 71 cattle

Water Right 81-3868

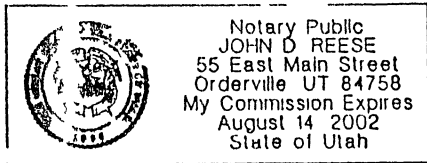
Flow: 10-acre feet
Source: Big Creek (Kolob Creek)
Common Description:
Point of Diversion: Surface the water has an application for change from surface water to underground due date 11/30/2002 and further change has been applied for domestic use.
Owner: Theodore and Cecilia Baca
Priority: 10/26/1926
Time of use: Year round
Purpose: Irrigation 3.3 acres

Summary

Water Right #	Acre Feet	Point of Diversion
81-394	1.5	Surface
81-101	0.1138	Surface
81-3811	10.0	Underground
81-1601	1.32	Underground
81-3960	2.00	Underground
81-3868	10.00	Underground

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

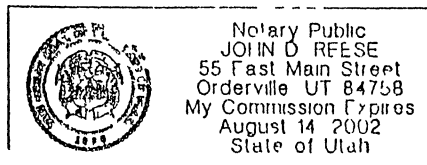
On the 5th day of July, 2001, personally appeared before me Lamar Jensen
who being by me duly sworn did say that he is the President
of DeNakon International, Inc., a Nevada corporation and that the within and the forgoing instrument
was signed on behalf of said corporation by its authority of a resolution of its board of directors and said
Lamar Jensen duly acknowledged to me that said corporation executed the
same.



John D Reese
Notary Public
Residing at: mt. Carmel Utah
My Commission Expires: 8/14/2002

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

On the 5th day of July, 2001, personally appeared before me Theodore S Baca
who being by me duly sworn did say that he is the President of
Baca Enterprises, Inc., a Utah corporation and that the within and the forgoing instrument was signed on
behalf of said corporation by its authority of a resolution of its board of directors and said
Theodore S. Baca duly acknowledged to me that said corporation executed the same.



John D Reese
Notary Public
Residing at: mt. Carmel Utah
My Commission Expires: 8/14/2002

A:\pacifistd.wpd

Addendum C

R. Kip Paul and Terri J. Paul, Ltd.
 175 East 400 South, Ste. 700
 Salt Lake City, Utah 84111

Space above for Recorder's use

TRUST DEED
With Assignment of Rents

THIS TRUST DEED is made effective this 25 day of June, 2001, between as Pacific Naxon International, Inc., Theodore W. Baca, Cecilia S. Baca, and Baca Enterprises, Inc., c/o 14019 117th Place N.E., Kirkland, WA 98034, and LaMar Jensen, as TRUSTORS, Keith W. Meade, attorney at law, whose address is 525 East 100 South, Fifth Floor, Salt Lake City, Utah 84102 as TRUSTEE, and R. Kip Paul and Terri J. Paul, Ltd., 175 East 400 South, Ste. 700, Salt Lake City, UT 84111, as BENEFICIARY.

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

Water Right # 81-394	1.5 acre feet	surface
Water Right # 81-101	.1138 acre feet	surface
Water Right #81-3811	10.0 acre feet	underground
Water Right #81-1601	1.32 acre feet	underground
Water Right #81-3960	2.00 acre feet	underground
Water Right #81-3868	10.0 acre feet	underground

Together with certain real property located in Kane County, Utah described as follows:

Parcel 1: Beginning at the North 1/4 corner of Section 21, Township 41 South, Range 9 West, SLB&M; and running thence West along the section line 551.24 feet, thence South 348.07 feet to the North boundary of State Hwy. 9; thence North 77 degrees 37 minutes 48 seconds East 1377.62 feet along said north boundary to a point of tangency with a 6089.74 foot radius curve to the right; thence Northeasterly 289.63 feet along the arc of said curve to its intersection with the section line; thence West 1067.96 feet to the point of beginning. Containing 6.65 acres, more or less.

Parcel 2: Beginning at a point from which the Northwest Corner of Section 21, Township 41 South, Range 9 West, SLB&M bears North 0 degrees 3 minutes West 937.5 feet, said point of beginning being on the Southerly right of way boundary of State Hwy. 11-15, running thence along said right of way North 77 degrees 22 minutes 30 seconds East 3545.7 feet, thence South 1163.5 feet, thence North 89 degrees 54 minutes West 3469.6 feet; and thence North 0 degrees 03 minutes West 382.5 feet to the beginning.

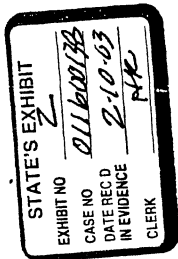
Together with any and all appurtenances there unto pertaining.

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

RECORDER'S MEMO

Legibility of writing, typing or printing unsatisfactory in this Document when received.

1140



STATE OF UTAH)
 COUNTY OF KANE) SS
 I Hereby Certify That The Foregoing Is A Just, True And Correct Copy Of The Original Instrument Filed For Record The 5th Day Of July A.D. 2001.
 In Book 0209 Page 440-446
 KANE COUNTY RECORDS.
 Witness My Hand And Seal
 This 1st Day Of February 2003
 By Georgia Baca, Deputy
 Kane County Recorder

30

ENTRY NO 106187 RECORDED AT REQUEST OF PACIFIC NAXON FEE: 30.00
 DATE JULY 5 2001 AT 11:45 AM KANE COUNTY RECORDER
 BY DEPUTY JN BOOK 0209 PAGE 440-446

(This will be a second trust deed on Parcels 1 and 2, subject to a first Trust Deed of not more than \$254,000.00 owed to the SBA. Trustor represents that the Trust Deed dated November 7, 1985 in favor of State Bank of Southern Utah, recorded as Entry No. 56503 has been paid and that the balance owed the State Bank of Southern Utah pursuant to the Trust Deed dated October 20, 1993, recorded as Entry No. 77583 is \$96,000.00, and will be paid in full before July 15, 2001.)

Together with all of the Trustors right, title and interest in and to that certain lease agreement with Theodore S. Baca, Cecilia S. Baca, and Baca Enterprises, Inc. dated April 27, 2001, as it may be amended.

Together with all buildings, fixtures and improvements thereon and all water rights, rights-of-way, subdivided lots, and improvements constructed therefor, 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 Beneficiaries to collect and apply such rents, issues, and profits.

FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by promissory note of even date herewith, in the principal sum of \$235,125.00, made by Trustors, payable to the order of the named Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

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, damaged, or destroyed 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, to protect the water rights and the lines, pumps and other equipment related thereto that are used in connection therewith in good condition and repair.

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. 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 reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

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 attorneys' 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, to file all necessary documents with the State of Utah or elsewhere, to diligently use the water interests where required; 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, or as required by the Note which this Trust Deed secures, 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 of power 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 counsel's reasonable fees.

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

IT IS MUTUALLY AGREED THAT:

8. Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of 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, damage, and rights of action and proceeds as Beneficiary or Trustee may require.

9. 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) 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 truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

10. As additional security, Trustor hereby assigns 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 related thereto. 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 of 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.

11. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

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

13. 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.

14. 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 or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

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

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

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

18. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder

are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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

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

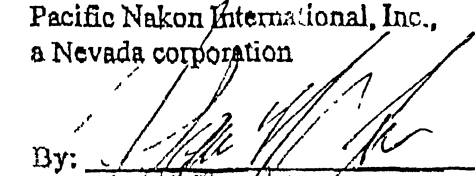
21. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to them at the address hereinbefore set forth.

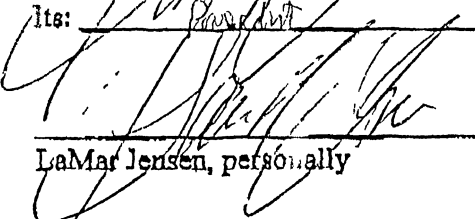
22. The above named Beneficiary requests that notice of any default in connection with any or all of the above described parcels be sent to them at the address set forth above.

23. It is expressly agreed that any default on any senior or junior encumbrance secured on any or all of the property described herein is an event of default under this Trust Deed and the Trust Deed Note which it secures. The repayment of the Trust Deed Note for which this Trust Deed is given as security is subject to a minimum interest payment as set forth in the Trust Deed Note. This Trust Deed and the Note which it secures are due on the sale of any or all of the property described hereinabove.

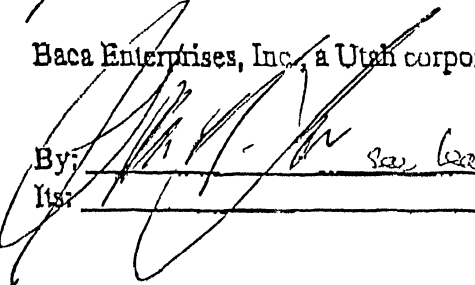
Signature of Trustors:

Pacific Naxon International, Inc.,
a Nevada corporation

By: 
Its: President

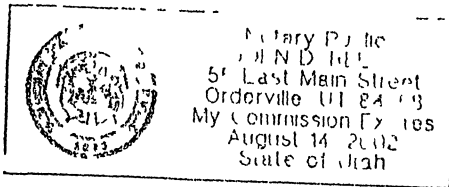

Lamar Jensen, personally

Baca Enterprises, Inc., a Utah corporation

By: 
Its: See above

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

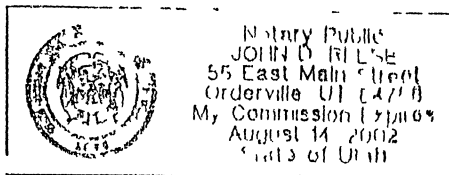
On the 5th day of June, 2001, personally appeared before me Lamar Jensen
who being by me duly sworn did say that he is the President
of Pacific Naxon International, Inc., a Nevada corporation and that the within and the foregoing instrument
was signed on behalf of said corporation by its authority of a resolution of its board of directors and said
Lamar Jensen duly acknowledged to me that said corporation executed the
same.



John D. Reese
Notary Public
Residing at: mt. Carmel, Utah
My Commission Expires: 8/14/2002

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

On the 5th day of June, 2001, personally appeared before me Theodore S Baca
who being by me duly sworn did say that he is the President of
Baca Enterprises, Inc., a Utah corporation and that the within and the foregoing instrument was signed on
behalf of said corporation by its authority of a resolution of its board of directors and said
Theodore S. Baca duly acknowledged to me that said corporation executed the same.



John D. Reese
Notary Public
Residing at: mt. Carmel, Utah
My Commission Expires: 8/14/2002

A:\pacifictd.wpd