

1997

# Mahlon Peck & Family v. Lloyd R. Brooks, et al. : Brief of Appellant

Utah Court of Appeals

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Gordon W. Duval; Duval Hansen Witt & Morley; Attorney for Plaintiff.

Unknown.

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**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO. 970588-CA

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**THE UTAH COURT OF APPEALS**

450 South State Street, Salt Lake City, Utah 84114

MAHLON PECK & FAMILY, INC.,  
Plaintiff and Appellant,

v.

LLOYD R. BROOKS, et. al.,  
Defendants and Appellees.

ADDENDUM TO APPELLANT'S  
BRIEF - SECTION ONE

Appellate Ct No. 970588-CA

1. Seller's Verified Complaint and Demand for Jury Trial (without exhibits).
2. Agent's Pre-hearing Submission (without exhibits).
3. Seller's Pre-arbitration Brief (without exhibits).
4. Seller's Arbitration Exhibits 1-36.
5. Seller's copies of two cases (Smith and Reese).
6. Seller's Closing Argument and Request for Oral Argument (with Exhibits A and B, Affidavit of Charles LeBaron, and January 23, 1997, letter with map).
7. Defendants' [Agent's] Objection to Additional Argument or Submissions, and Closing Argument.
8. Seller's Summary of Closing Argument.
9. Deposition of Lloyd R. Brooks (without exhibits).

**FILED**

**MAR 20 1998**

**COURT OF APPEALS**

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COPY

MAHLON PECK & FAMILY, INC.,

Plaintiff,

vs.

LLOYD R. BROOKS et al.,

Defendants.

**PRE-ARBITRATION BRIEF**

CASE NO. 940400145

Arbitrator Stephen Nebeker

Plaintiff Mahlon Peck & Family respectfully submits the following Pre-Arbitration Brief.

This case is an example of what happens when a person tries to serve two masters. Defendant, a real estate agent, and Carl Mellor, a business acquaintance and friend, decided to have defendant approach plaintiff, an elderly farmer, about purchasing plaintiff's land. Defendant never disclosed that he and Mellor had previously discussed purchasing the property, nor did he disclose that Mellor had set a predetermined price for the land. As a result, defendant profited by earning two commissions in quick succession on the property. In addition, defendant listed the property for Mellor and sold the property six months later

doubling Mellor's money, all at the expense of the plaintiff who relied on his real estate agent to represent the plaintiff's best interest in the sale. Because of the issues involved in this litigation, the Fourth District Court had originally scheduled a three day trial. While it will be extremely difficult to fully detail the events leading up to this arbitration in the two hours scheduled, it is plaintiff's intent to present the pertinent facts and issues in this Pre-Arbitration Brief.

#### **STATEMENT OF MATERIAL FACTS**

Plaintiff asserts the facts of the case as follows:

1. Defendant Lloyd Brooks, a realtor, had an ongoing relationship with Carl Mellor, having known him for twenty-five to thirty years. They attended the same church. Brooks deposition at 14. Additionally, defendant had represented Mr. Mellor in several real estate matters. Mellor deposition at 13-14; Brooks deposition at 15.

2. During September or October of 1990, Mellor approached defendant several times and requested defendant's assistance in obtaining some commercial land on which to relocate Mellor's business. Brooks deposition at 16, 19. The men looked through defendant's current listings and found nothing of interest. Id. at 16.

3. Mellor had established an amount of \$15,000 per acre as the maximum amount he was willing to pay for the property. Mellor deposition at 17. This amount was based on the amount



Mellor could afford to pay and not on any estimate of the property's value. Id. at 46.

4. Mellor specifically asked defendant to approach Mahlon Peck to determine if his family corporation's property was for sale, and defendant did so. Mellor deposition at 14-16.

5. Mahlon Peck indicated a willingness to sell the property, but not for the \$14,000.00 per acre price indicated by the defendant. Defendant informed plaintiff that, dependent upon the annexation of the property into the City of Lehi and rezoning it as commercial, \$16,000 per acre would be the top selling price for the property. Plaintiff relied on defendant's expertise as a realtor in determining that \$16,000 per acre was a fair price for his property. Brooks deposition at 25-26; Peck deposition at 32.

6. Plaintiff and defendant entered into a Sales Agency Contract on October 25, 1990. The contract was to expire on May 31, 1991. Exhibit "A."

7. Paragraph 10 of the Sales Agency Contract entitled "Agency Disclosure," which was filled out by defendant, indicates that defendant represented only the seller and that written disclosure of the agency relationship was provided to Mahlon Peck as the seller. Exhibit "A."

8. At all times prior to and including the closing of the sale from plaintiff to Mellor, defendant represented himself as plaintiff's exclusive agent. Complaint and Answer, ¶ 25.

9. Defendant did not disclose to plaintiff that Mellor had previously asked the defendant to determine whether

plaintiff's land was for sale nor did he disclose that Mr. Mellor had already set a maximum price of \$15,000.00 per acre.

10. Following verbal communications between defendant and Mellor, an Earnest Money Sales Agreement was entered into between plaintiff and Mellor, with the price established at \$16,000 per acre. The Earnest Money Sales Agreement set a closing date of May 31, 1991. Exhibit "B"; Complaint and Answer, ¶ 6.

11. Two extensions were granted, extending the closing date through March 1992. Exhibits "C" and "D." The closing occurred in March 1992, almost a year and a half after the original Earnest Money Sales Agreement was signed.

12. At the time the Earnest Money Sales Agreement was signed, commercial and residential real estate values were increasing significantly throughout Utah County. By the date of the second contract extension in September 1991, land values had increased by 11%.

13. Between the time the earnest money contract was signed and the date of closing, plaintiff's property was annexed into the City of Lehi, rezoned as commercial, and the new Lehi Interchange was constructed, increasing the value of the property. Complaint and Answer, ¶ 17; Exhibit "E" and Exhibit "I".

14. The rezone was granted by Lehi City at plaintiff's request at the urging of the defendant because commercial zoning, according to the defendant, was the "highest value of the

property" and defendant "thought we could get [plaintiff] pretty good money out of the property by annexing into the city and zoning it commercial." Defendant stated that the sale was not contingent upon the rezoning and annexation. Brooks deposition at 42-44.

15. Plaintiff had the right to change the conditions of the sale, including the price of the property, at either time he signed an extension on the sale, and he had no obligation to relist the property with defendant. Brooks deposition at 39. However, defendant failed to explain these options to plaintiff.

16. Despite the fact that property values had increased dramatically and that rezoning the property had further increased its value, defendant did not recall doing any research to determine if the property had gone up in value at the time of the signing of the last extension. Brooks deposition at 46.

17. In the Sales Agency Contract entered into between defendant and plaintiff, defendant agreed to use reasonable efforts to sell the land. Exhibit "A." Reasonable efforts typically include placing a "for sale" sign on the property, among other things. Brooks deposition at 13-14. These things were not done. Additionally, despite having some inquiries about the property, defendant did not make an attempt to procure a "backup offer" as is typically done in case the original sale falls through. Id. at 36-37.

18. Only six months after closing plaintiff's sale of the property to Mellor, defendant again listed the property for

sale, this time for Mellor. The property was listed at \$32,000 per acre, double the amount that defendant had sold the property for only six months earlier. Brooks deposition at 63.

19. Mellor received several offers for the property, showing that the higher asking price was reasonable for the land. Mellor deposition at 40-45; Exhibits "F", "G", and "H". A sale closed in November 1994 for almost \$38,000 per acre. Mellor deposition at 45.

20. Defendant received a commission for the subject property in both the sale for plaintiff and the sale for Mellor. Exhibit "A"; deposition of Carl Mellor at 37-38.

#### **ISSUES PRESENTED**

I. Did Defendant owe Plaintiff a fiduciary duty of loyalty as his real estate agent to disclose his prior contacts with Mellor regarding the sale of the plaintiff's property, to make reasonable efforts to seek out other potential buyers, and a duty to make reasonable efforts to ascertain the true fair market value of the property?

II. Did defendant's conduct in affirmatively concealing his prior contacts with Mellor regarding the purchase of the plaintiff's property, failing to seek out other potential buyers for the property, and failing to make reasonable efforts to ascertain the true value of the plaintiff's property constitute a breach of his fiduciary duty to plaintiff?

## ARGUMENT

### I. DEFENDANT OWED PLAINTIFF GENERAL FIDUCIARY DUTIES.

A fiduciary relationship exists between a realtor and his client. Reese v. Harper, 329 P.2d 410 (Utah 1950). A breach of this duty constitutes a violation of Utah Code Ann. § 61-2-11(16). The Division of Real Estate may impose penalties on a real estate broker found guilty of "breaching a fiduciary duty owed by a licensee to his principal in a real estate transaction." Utah Code Ann. § 61-2-11(16). These penalties may include suspension or revocation of the broker's license or probation. Violation of this section of the Utah Code is a Class A misdemeanor. Furthermore, any individual injured by a realtor's breach of his fiduciary duty may sue for up to triple his damages. Utah Code Ann. § 61-2-17(4). These penalties indicate the serious nature of misconduct on the part of a realtor when the realtor breaches his fiduciary duty to his client. Such penalties evidence the great importance Utah places on the fiduciary duties running from a realtor to his client.

In addition to the statutes governing breach of fiduciary duty by a realtor there are several Utah cases which also address the issue. Reese v. Harper discusses the fiduciary duty between a broker and his principal. A realtor must use his skill exclusively to advance the interests of his principal, for "it is incumbent upon [the agent] to apply his abilities and knowledge

to the advantage of the man he serves; and to make full disclosure of all facts which his principal should know in transacting the business." Reese, 329 P.2d at 412. The Reese court quoted with approval a Virginia case that stated "It [is the agent's] duty to inform his principal of all facts which might influence his principal in accepting or rejecting the offer." Id. at 413 (quoting Duncan v. Barbour, 49 S.E.2d 260, 265).

The unique fiduciary duty owed by a real estate agent to his client was stressed by the court in Reese because an agent licensed by the state is permitted "to hold himself out to the public as qualified by training and experience to render a specialized service in the field of real estate transactions." Id. at 412. The court went on to state:

There rests upon him the responsibility of honestly and fairly representing the interests of those who engage his services . . . [and] persons who entrust their business to such agents are entitled to repose some degree of confidence that they will be loyal to such trust and that they will, with reasonable diligence and in good faith, represent the interests of their clients. Unless the law demands this standard, instead of being the badge of competence and integrity it is supposed to be, the license would serve only as a foil to lure the unsuspecting public in to be duped by people more skilled and experienced in such affairs than are they.

Both Utah statutes and case law recognize the existence and significance of a realtor's fiduciary duty to his client.

While it is clear that such a duty is breached when a realtor withholds or fails to fully disclose information

pertinent to the sale, this is not the only conduct which can result in a breach of fiduciary duty. In Smith v. Carroll Realty Co., 335 P.2d 67 (Utah 1959), the Utah Supreme Court specifically outlined a realtor's duties to his principal. The court in Smith found that a realtor has a duty to "determine the reasonable value of the property." Id. The court made it clear that the realtor's failure to do so would not be justified even if he had merely neglected to obtain the reasonable market value of the property. Id. at 69. Defendant in the case at hand, as a realtor, had a duty to the plaintiff to take significant steps to ascertain the reasonable fair market value of the property in question. According to the Utah Supreme Court in Smith, the plaintiff in the case at hand was justified in relying on the price provided by the defendant, a realtor "more skilled and experienced in such affairs" than he and his wife. In Reich v. Christopulous the Utah Supreme Court stated the real estate agent "had a duty to represent [the seller's] interest in good faith, to discharge it with reasonable skill and diligence and to disclose to them all pertinent facts which would have materially affected their interest." Reich v. Christopulous, 256 P.2d 238 (Utah 1953); see also Smith, 335 P.2d at 68.

Defendant clearly committed a breach of his fiduciary duty by failing to determine a reasonable value for the plaintiff's property. The failure to do so not only netted the defendant two commissions on the same property within a matter of months, but also netted his long-time client and friend, Mellor, a handsome

profit. Defendant also failed to disclose to the plaintiff that plaintiff was not obligated to go through with the sale and had the option to renegotiate each time the earnest money sales agreement expired and was extended. He failed to inform plaintiff that he could easily get more than \$16,000 per acre for his land, which defendant himself must have believed, as evidenced by his listing the very same property for almost twice the selling price only six months after the sale to Mellor was finalized.

Plaintiff's reliance on defendant's misrepresentations concerning facts material to the transaction caused the plaintiff to sell his land at a price that was far less than the true fair market value.

**II. DEFENDANT'S CONDUCT CONSTITUTED A BREACH OF HIS FIDUCIARY DUTY TO PLAINTIFF.**

At the time the original Earnest Money Sales Agreement was signed, commercial and residential real estate values were increasing throughout Utah County. Northern Utah County, where the plaintiff's land is located, experienced the greatest increase in value due to its proximity to Salt Lake Valley. When the first contract extension was signed in May 1991, land values in northern Utah County had significantly increased from only months before. By September 1991, when the second contract extension was signed, land values had increased even more. In addition to this general increase in land values, during this same period plaintiff, at the urging of the defendant, had



accomplished the annexation of the land into the City of Lehi, the property was rezoned as commercial, and the new Lehi freeway interchange was being constructed. These factors had the effect of further increasing the value of the land.

During the year and a half that it took defendant to finally complete the sale of the property to Mellor, defendant never informed plaintiff that real estate values in the area had drastically increased. Neither had defendant disclosed to plaintiff that his land had gone up in value because it had been annexed into the City of Lehi, rezoned as commercial, and the proximity of the property to the new freeway interchange. Defendant had an affirmative duty to make those disclosures to plaintiff, yet he failed to do so. His silence breached his duty to plaintiff. Defendant, as a realtor by profession, obviously was aware of the value of real estate and the upward trend of the marketplace for land in northern Utah County. He understood that the value of land in the area was going up for a number of reasons, including the construction of a new freeway interchange nearby, the rezoning of the property, and the general increase in property value in the area. If, for some reason, defendant was unaware of the true value of the land, or how the rezoning and freeway interchange would affect the value of the land, he had a duty to make all reasonable efforts to ascertain the increasing reasonable value of the land. Defendant, however, could not recall doing any research that would have helped determine whether plaintiff's property had increased in value during the

period of time following the signing of the original Earnest Money Sales Agreement. Brooks deposition at 46. According to the Utah Supreme Court in Smith, defendant had a duty to determine the increasing value of plaintiff's property and to disclose this information to plaintiff, his client. Defendant failed to do so and thereby breached his fiduciary duty to plaintiff.

Defendant further breached his fiduciary duty to plaintiff by failing to disclose a conflict of interest which existed by reason of (a) defendant's personal relationship with Mellor, the buyer; (b) defendant's real estate and business dealings with Mellor prior to this transaction; and (c) that Mellor had previously contacted defendant, requesting that defendant look for land suitable for Mellor's needs at a predetermined price, specifically requesting that the defendant inquire about plaintiff's property, prior to the defendant's contacting plaintiff and listing the plaintiff's property.

Defendant had listed property for Mellor prior to searching for land for Mellor's business needs. Brooks deposition at 14. They had known each other for twenty-five to thirty years socially and through church activities. Id. After the sale of plaintiff's land to Mellor, defendant continued to represent Mellor, albeit no longer indirectly, in the resale of plaintiff's property and four or five other real estate transactions. Id. at 15. Mellor approached defendant at his office and told defendant he was looking for property on which to

locate his business. Id. The two men searched a listing of properties defendant had for sale, but found nothing of interest to Mellor. Id. at 16. Mellor then asked defendant to determine whether several pieces of land, including plaintiff's property, were for sale. Mellor deposition at 14-15. Mellor set the price he was willing to pay for the property. Only after Mellor requested that defendant inquire about plaintiff's property did defendant approach plaintiff about selling his property. As an agent for the buyer, defendant should have disclosed his conflict of interest to plaintiff, yet he not only failed to do so, he affirmatively misrepresented his agency by his own hand on paragraph 10 of the Earnest Money Sales Agreement. Exhibit "B." This failure constituted yet another breach of defendant's fiduciary duty to plaintiff.

Furthermore, defendant breached his fiduciary duty to plaintiff by failing to inform plaintiff that he was under no obligation to go through with the sale under the terms of the original Earnest Money Sales Agreement once that agreement had expired. In his deposition, defendant acknowledged that plaintiff was under no such obligation. Brooks deposition at 39. Upon the expiration of the original Earnest Money Sales Agreement, plaintiff could have renegotiated the price of the land, declined to sell at all, or changed realtors. Defendant failed to disclose these options to plaintiff and plaintiff agreed to extensions on the sale without seeking any other changes in terms. Plaintiff signed the extensions without

knowing that it would be in his best interest to let the contracts expire and place the land on the market at a price more in line with the true market value.

Plaintiff rightfully relied on his realtor to have the knowledge and expertise to determine the fair market value of the land, or to conduct a proper inquiry to determine the fair market value of plaintiff's land. Plaintiff relied on defendant as his agent to aggressively represent the interests of the plaintiff, not to mislead him in order to help the subsequent buyer get a bargain price on the land. Plaintiff was led to believe by the statements and actions of the defendant that the defendant was working for him and him alone. Utah law holds these assumptions and beliefs on the part of the plaintiff to be reasonable and valid by reason of the fiduciary duty owed by defendant to plaintiff. Defendant's conduct clearly constituted a breach of fiduciary duty.

Defendant's breach of fiduciary duty cost Plaintiff \$74,991.06, the difference between the price Mr. Peck received for his land and the appraisal price on the date of the last extension. In addition, plaintiff is entitled to interest on this amount from the date of the sale of the property to Mellor. Furthermore, under Utah Code Ann. § 61-2-17(4) plaintiff is entitled to three times the commission received by the defendant from the two sales as treble damages because defendant profited from the breach of his fiduciary duty and his duty of loyalty to the plaintiff. The language of this section clearly manifests

the intent of the Utah legislature to allow individuals to sue personally and recover treble damages in such cases. Plaintiff also seeks interest on the commissions from the date they were received by the defendant as well as reasonable attorneys fees and costs.

#### **CONCLUSION**

When the evidence is thoroughly examined the issues are clear: The defendant did owe a fiduciary duty to the plaintiff as his real estate agent to disclose his prior contacts with Mellor regarding the sale of the plaintiff's property, to make reasonable efforts to seek out other potential buyers, and to make reasonable efforts to ascertain the true fair market value of the property. The facts show that the defendant's conduct in affirmatively concealing his prior contacts with Mellor regarding the possible purchase of the plaintiff's property, failing to seek out other potential buyers for the property, and failing to make reasonable efforts to ascertain the true value of the plaintiff's property constituted a breach of his fiduciary duty to plaintiff. Accordingly, plaintiff is entitled to a judgment awarding him damages in the amount of the difference between the sale price received by the plaintiff and the fair market value of the land, three times the commissions received by the defendant as a result of his breach as provided for in the Utah Code, interest on these amounts, and reasonable attorneys fees and costs.



## NOTICE TO PROSPECTIVE REAL ESTATE PURCHASERS AND AGENCY DISCLOSURE



As a prospective purchaser you should know that:

- Generally, the listing and cooperating ("selling") brokers are the agents of the seller
- Their fiduciary duties of loyalty and faithfulness are owed to their client (the seller)
- While neither broker is your agent, they are able to provide you with a variety of valuable market information and assistance in your decision-making process.

For example, a real estate broker representing the seller can:

- Provide you with information about available properties and sources of financing
- Show you available properties and describe their attributes and amenities.
- Assist you in submitting an offer to purchase.

Both the listing broker and the cooperating broker are obligated by law to treat you honestly and fairly. They must:

- Present all offers to the seller promptly.
  - Respond honestly and accurately to questions concerning the property.
  - Disclose material facts the broker knows or reasonably should know about the property.
  - Offer the property without regard to race, creed, sex, religion or national origin.
- You can if you feel it necessary, obtain agency representation of a lawyer or a real estate broker, or both.

If you choose to have a real estate broker represent you as your agent, you should:

- Enter into a written contract that clearly establishes the obligations of both parties.
- Specify how your agent will be compensated.

If you have any questions regarding the roles and responsibilities of real estate brokers, please do not hesitate to ask.

AGENCY DISCLOSURE: I understand the sales agent listed below represents the  
☒ Seller ( ) Buyer.

I have received, read and understand the information in this "Notice to Prospective Real Estate Purchasers and Agency Disclosure" form.

CARL J. MELLOR  
Print Name of Prospective Purchaser  
Carl J. Mellor  
Signature  
895 N. 940 E. Lehi Utah  
Address City  
768-4578 768-8665 24 Oct 1990  
Telephone Date

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

I certify that I have provided the Prospective Purchaser named above with a completed copy of this "Notice to Prospective Purchasers and Agency Disclosure" form.

C-21 Robinson & Wilson STAN ROBINSON  
Real Estate Company Print or Type Name of Broker  
Lloyd R. Brooks Lloyd R. Brooks  
Print Agent Name Signed by agent (X) broker ( )  
24 Oct 1990  
Date

end Yes(X) No(U)

DATE 24 OCTOBER 1990

I, undersigned Buyer CARL MELLOR hereby deposits with Brokerage  
EARNEST MONEY, the amount of FIVE THOUSAND AND NO/100 Dollars (\$ 500.00),  
in the form of A CHECK - TO BE DEPOSITED UPON ACCEPTANCE OF SELLER  
which shall be deposited in accordance with applicable State Law  
by 21 ROBINSON & WILSON 756-3591 Received by Alfred R. Smith  
Brokerage Phone Number

### OFFER TO PURCHASE

**PROPERTY DESCRIPTION** The above stated EARNEST MONEY is given to secure and apply on the purchase of the property situated at APPROX  
10 NORTH 1200 EAST in the City of LEHI County of LUTAH, Utah  
subject to any restrictive covenants, zoning regulations, utility or other easements or rights of way government patents or state deeds of record approved by Buyer in  
accordance with Section G Said property is owned by ISSAC MAHLON DECK FAMILY INC. as sellers, and is more particularly described  
APPROX 8 1/2 ACRES OF PROPERTY TAX ID # 13-002-0002 & 13-002-0003 (PARTION IN ALIEN)  
HECK APPLICABLE BOXES

☒ UNIMPROVED REAL PROPERTY ☐ Vacant Lot ☒ Vacant Acreage ☐ Other \_\_\_\_\_  
☐ IMPROVED REAL PROPERTY ☐ Commercial ☐ Residential ☐ Condo ☐ Other \_\_\_\_\_

(a) Included Items. Unless excluded below, this sale shall include all fixtures and any of the items shown in Section A if presently attached to the property

The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title 6 SHARES  
MITCHELL HOLLOW AND 6 SHARES AMERICAN FARM IRRIGATION

(b) Excluded Items. The following items are specifically excluded from this sale NONE

(c) CONNECTIONS, UTILITIES AND OTHER RIGHTS Seller represents that the property includes the following improvements in the purchase price

<input checked="" type="checkbox"/> public sewer <input checked="" type="checkbox"/> connected	<input type="checkbox"/> well <input type="checkbox"/> connected <input type="checkbox"/> Other	<input checked="" type="checkbox"/> electricity <input type="checkbox"/> connected
<input checked="" type="checkbox"/> septic tank <input checked="" type="checkbox"/> connected	<input checked="" type="checkbox"/> irrigation water / secondary system	<input type="checkbox"/> ingress & egress by private easement
<input type="checkbox"/> other sanitary system _____	# of shares <u>6 + 6</u> Company <u>MITCHELL HOLLOW AM FARM</u>	<input checked="" type="checkbox"/> dedicated road <input checked="" type="checkbox"/> paved
<input type="checkbox"/> public water <input type="checkbox"/> connected	<input type="checkbox"/> TV antenna <input type="checkbox"/> master antenna <input type="checkbox"/> prewired	<input type="checkbox"/> curb and gutter
<input checked="" type="checkbox"/> private water <input checked="" type="checkbox"/> connected	<input checked="" type="checkbox"/> natural gas <input type="checkbox"/> connected	<input type="checkbox"/> Other rights _____

, Survey. A certified survey ☒ shall be furnished at the expense of SELLER prior to closing, ☐ shall not be furnished

(e) Buyer Inspection Buyer has made a visual inspection of the property and subject to Section 1 (c) above and 6 below, accepts it in its present physical  
condition, except NO EXCEPTIONS - SELLER MAY FARM AREA NOT BEING USED BY BUYER,  
YEARLY RENT TO BE ONE (1) TON OF BALD HAY PER ACRE.

**2 PURCHASE PRICE AND FINANCING** The total purchase price for the property is APPROX ONE HUNDRED THIRTY SIX  
THOUSAND & NO/100 Dollars (\$ 136,000) which shall be paid as follows

500 which represents the aforescribed EARNEST MONEY DEPOSIT  
135,500 representing the approximate balance of CASH DOWN PAYMENT at closing  
representing the approximate balance of an existing mortgage trust deed note, real estate contract or other encumbrance to be assumed by buyer  
which obligation bears interest at \_\_\_\_\_ % per annum with monthly payments of \$ \_\_\_\_\_  
which include ☐ principal, ☐ interest, ☐ taxes, ☐ insurance, ☐ condo fees, ☐ other \_\_\_\_\_  
representing the approximate balance of an additional existing mortgage trust deed note, real estate contract or other encumbrances to  
assumed by Buyer, which obligation bears interest at \_\_\_\_\_ % per annum with monthly payments of \$ \_\_\_\_\_  
which include ☐ principal, ☐ interest, ☐ taxes, ☐ insurance ☐ condo fees, ☐ other \_\_\_\_\_  
representing balance, if any, including proceeds from a new mortgage loan, or seller financing, to be paid as follows \_\_\_\_\_

Other \_\_\_\_\_

136,000

TOTAL PURCHASE PRICE - THE TOTAL SALES PRICE WILL BE DETERMINED AT \$16,000 PER ACRE, BASED ON NET ACRES IN SURVEY.

If Buyer is required to assume an underlying obligation (in which case Section F shall also apply) and/or obtain outside financing, Buyer agrees to use best effort  
to assume and/or procure same and this offer is made subject to Buyer qualifying for and lending institution granting said assumption and/or financing Buyer agrees  
to apply application within NA days after Seller's acceptance of this Agreement to assume the underlying obligation and/or obtain the new financing  
interest rate not to exceed NA % If Buyer does not qualify for the assumption and/or financing within NA days after Seller's acceptance  
of this Agreement, this Agreement shall be voidable at the option of the Seller upon written notice Seller agrees to pay up to NA mortgage loan discounts,  
not to exceed \$ NA In addition, seller agrees to pay \$ NA to be used for Buyer's other loan costs

Contract Transfer of Seller's ownership to the

memoranda and exceptions noted herein, except by ☒ a current policy of title insurance in the amount of purchase price ☐ an abstract of title brought current, attorney's opinion (See Section H)

INSPECTION OF TITLE. In accordance with Section G, Buyer shall have the opportunity to inspect the title to the subject property prior to closing. Buyer shall take title to any existing restrictive covenants, including condominium restrictions (CC & R's). Buyer ☐ has ☒ has not reviewed any condominium CC & R's prior to signing this Agreement. VESTING OF TITLE. Title shall vest in Buyer as follows AS DIRECTED AT TIME OF CLOSING

SELLERS WARRANTIES. In addition to warranties contained in Section C, the following items are also warranted NO ADDITIONS

Exceptions to the above and Section C shall be limited to the following NO EXCEPTIONS

SPECIAL CONSIDERATIONS AND CONTINGENCIES. This offer is made subject to the following special conditions and/or contingencies which must be satisfied at closing BUYER TO TAKE THIS PROPERTY AS A TAX DEFERRED EXCHANGE - THIS CLOSING IS SUBJECT TO THE CLOSING ON PROPERTY NUMBERS: 13-012-0030 AND 13-015-0025

CLOSING OF SALE. This Agreement shall be closed on or before MAY 31, 19 91 at a reasonable location to be designated by subject to Section Q. Upon demand, Buyer shall deposit with the escrow closing office all documents necessary to complete the purchase in accordance with agreement. Prorations set forth in Section R shall be made as of ☐ date of possession ☒ date of closing ☐ other \_\_\_\_\_

POSSESSION. Seller shall deliver possession to Buyer on CLOSING unless extended by written agreement of parties

AGENCY DISCLOSURE. At the signing of this Agreement the listing agent LLOYD BROOKS represents ☒ Seller ☐ Buyer, the selling agent LLOYD BROOKS represents ☒ Seller ☐ Buyer. Buyer and Seller confirm that prior to signing this Agreement disclosure of the agency relationship(s) was provided to him/her (GAI) Buyer's initials (M) (M) Seller's initials \_\_\_\_\_

GENERAL PROVISIONS. UNLESS OTHERWISE INDICATED ABOVE, THE GENERAL PROVISION SECTIONS ON THE REVERSE SIDE HEREOF HAVE BEEN ACCEPTED BY THE BUYER AND SELLER AND ARE INCORPORATED INTO THIS AGREEMENT BY REFERENCE

AGREEMENT TO PURCHASE AND TIME LIMIT FOR ACCEPTANCE. Buyer offers to purchase the property on the above terms and conditions. Seller shall accept until 10:00 (AM/PM) 31 OCT, 19 90, to accept this offer. Unless accepted, this offer shall lapse and the Agent shall return the EARNEST MONEY to the Buyer.

Carl J. Mellon 24 Oct 1990 895 N. 940E, Lodi 768-8665 528-26-5500  
Buyer's Signature (Date) (Address) (Phone) (SSN/TAX ID)

\_\_\_\_\_  
Seller's Signature (Date) (Address) (Phone) (SSN/TAX ID)

ONE

ACCEPTANCE OF OFFER TO PURCHASE. Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above.

REJECTION. Seller hereby REJECTS the foregoing offer \_\_\_\_\_ (Seller's initials)

COUNTER OFFER. Seller hereby ACCEPTS the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum, and presents said COUNTER OFFER for Buyer's acceptance. Buyer shall have until 10:00 (AM/PM) 30 OCTOBER, 19 90 to accept the terms specified below.

5 ITEM 10 - YEARLY RENT TO BE \$50.00 PER ACRE.

Marie M. Peck 10/25/90 8:00 PM 6800W 10171N Highland 768-9891 529-48-0511  
Seller's Signature (Date) (Time) (Address) (Phone) (SSN/TAX ID)

Marie M. Peck " " " " " 528-84-4211  
Seller's Signature (Date) (Time) (Address) (Phone) (SSN/TAX ID)

OK ONE

ACCEPTANCE OF COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER.

REJECTION. Buyer hereby REJECTS the COUNTER OFFER \_\_\_\_\_ (Buyer's Initials)

COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER with modifications on attached Addendum.

Carl J. Mellon 27 Oct 1990 11:30 AM \_\_\_\_\_  
Buyer's Signature (Date) (Time) (Buyer's Signature) (Date) (Time)

#### DOCUMENT RECEIPT

State Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures. (One of the following alternatives must therefore be completed)

☒ I acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures.

SIGNATURE OF SELLER

Marie M. Peck 12/1/90 \_\_\_\_\_  
Date Date

SIGNATURE OF BUYER

Carl J. Mellon 27 Oct 1990 \_\_\_\_\_  
Date Date

☐ I personally caused a final copy of the foregoing Agreement bearing all signatures to be mailed on \_\_\_\_\_, 19 \_\_\_\_\_ by \_\_\_\_\_  
Certified Mail and return receipt attached hereto to the ☐ Seller ☐ Buyer. Sent by \_\_\_\_\_

Page three of a four page form



(Exclusive Right to Sell)

This is a

legally binding agreement. Read it carefully. If not understood,

other advice.

Member of Multiple Listing Service of the Utah County Board of REALTORS®

IN CONSIDERATION of your agreement to list the property described hereinbelow and to use reasonable efforts to find a purchaser, optionor or tenant therefor, I hereby grant to you for the period stated hereinbelow, from date hereof, the exclusive right to sell, lease, option or exchange the described property or any part thereof, at the price and terms stated hereinabove, or at such other price or terms to which I may agree in writing.

During the term of this contract, if you find a party who is ready, willing and able to buy, lease, option or exchange the described property or any part thereof, at said price or terms, or any other price or terms to which I may agree in writing, even if I refuse to consummate the sale, lease, option or exchange, or if the described property or any part thereof is sold, leased, optioned or exchanged during said term by myself or any other party, I agree to pay the broker listed below \$ 1000 or 1% of the price stated herein or such other price as I may have agreed to in writing.

A party who is ready, willing and able to buy, lease, option or exchange is one who executes an agreement, in writing, to buy, lease, option or exchange.

Unless otherwise agreed to in writing, the fee to the broker as stated above shall be due and payable, in the event a sale is contemplated, on the date set for closing; in the event a lease is contemplated, on the date which is the first day of the lease term; in the event an option is contemplated, on the date the option is to be exercised; and in the event an exchange is contemplated, on the date set for closing. I hereby authorize the closing agent to disburse to the brokerage the brokerage fee as stated above.

The fee to the broker shall be due and payable at such time as stated hereinabove or, if the described property is sold, leased, optioned, exchanged or otherwise transferred or conveyed within 10 days after the expiration date of this contract, or any extension thereof (hereinafter "protection period"), to any party to whom the property was offered or shown by me, or you, or any other party during the term of this contract or any extension period thereof. However, I shall not be obligated to pay such broker's fee if a valid listing agreement is entered into during the term of said protection period with another licensed real estate broker and a sale, lease, option or exchange of the property is made during the term of said protection period.

I understand that the buyer may be represented by another broker who acts as an agent for the buyer. In order to avoid the payment of a separate commission to you and to the other broker, and for purposes of convenience, I hereby authorize that you may divide your compensation with the buyer's broker. This is done with the express understanding that the division of compensation or payment does not result in or cause the buyer's broker to become my agent nor your agent in any way.

You are hereby authorized to accept a deposit as earnest money from any potential buyer on the above-described property. Said deposit is to be held in the brokerage trust account.

I hereby warrant the information on the "Computer Listing Input Form" to be true and correct and that I have marketable title or an otherwise established right to sell, lease, option or exchange the described property, except as stated. I agree to execute the necessary documents of contract, option, conveyance, exchange or lease and to prorate general taxes, insurance, rents, interest and other expenses affecting the described property to the agreed date of possession and to furnish a good and marketable title with abstract to date or, at my option, a policy of title insurance in the amount of the purchase price and in the name of the purchaser in the event of sale, lease, option or exchange of other than real property. I agree to provide proper conveyance and acceptable evidence of title or right to sell, lease, option or exchange.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration according to the rules of an arbitration association mutually agreeable to you and me. If an arbitration association cannot be mutually agreed upon, then arbitration shall be done according to the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any such award may include costs, interest, and reasonable attorney's fees as may be directed by the arbitrator(s).

You are hereby authorized to obtain financial information from any mortgage or other party holding a lien or interest on the described property and I agree to execute any additional documents that may be necessary for you to obtain the financial information. You are hereby authorized and instructed to offer this property through the Multiple Listing Service of the Board of Realtors to which you belong.

You are hereby authorized to place an appropriate sign on the described property.

You are hereby authorized and instructed to have a key box installed on the described property. I accept the full responsibility for any loss or damage that might result from the use of the key box, from any source whatsoever. I agree to hold you and the Board of Realtors to which you belong and its Multiple Listing Service harmless from any loss or damage that might result from the use of the key box, from any source whatsoever.

The commissions payable for the sale, lease, option, exchange, or management of property are not set by any board of REALTORS® or Multiple Listing Service or in any manner other than between the broker and me.

You are hereby authorized to use any information relative to the sale, lease, option or exchange of the described property in any data compiled by the Board of Realtors or Multiple Listing Service.

You are hereby authorized and instructed to provide timely notice of status changes to that Multiple Listing Service, including sales information upon sale of the property, including the selling price; lease information upon lease of the property, including the lease price; option information upon option of the property, including the option price; and, exchange information upon exchange of the property, including a description of all property exchanged.

You are hereby authorized to permit Multiple Listing Service to disseminate sales, lease, exchange or option information upon closing a sales, lease, exchange or option transaction.

Successors and Assigns. All covenants and agreements contained herein shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be assigned by either party hereto without the prior written consent of the nonassigning party.

Modification, Amendment, Waiver. No modification, amendment or waiver of this Agreement shall be effective unless approved in writing by both parties hereto.

Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if such provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such provision will be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of this Agreement or any provision hereof.

Entire Agreement. This Agreement embodies the complete agreement and understanding of the parties hereto with respect to the subject matter hereof and supercedes and preempts any prior understandings, agreements or representations by or between the parties, written or oral, that may have related to the subject matter hereof in any way.

Governing Law. This Agreement shall be construed both as to validity and performance and enforced in accordance with the laws of the State of Utah.

LISTED PROPERTY Apex 3.5 AC 300 NORTH 1200 EAST

LEH UTAH

ICM SLM

LISTED PRICE 136,000 — \$16,000 PER ACRE

This contract is entered into this 25<sup>th</sup> day of October 19 90

This contract expires on the 31<sup>st</sup> day of May 19 91

C-21 ROBINSON & WICKSON Marie M. Peck

STAN ROBINSON Marie M. Peck

John C. Brock

BY John C. Brock

I hereby acknowledge receipt of completed copies of this document (Form A) and the computer listing input form.

Marie M. Peck Marie M. Peck

Marie M. Peck Marie M. Peck

Marie M. Peck Marie M. Peck

Marie M. Peck Marie M. Peck

Marie M. Peck Marie M. Peck

Marie M. Peck Marie M. Peck

Marie M. Peck Marie M. Peck

Marie M. Peck Marie M. Peck

\*I.O.C. 1/15/88-02/17/90

<h1 style="margin:0;">LND</h1>		<b>FARMS/ RANCHES/ LOTS/ ACREAGES</b>		<b>UTAH CO. BOARD OF REALTORS</b> <b>Computer Listing Input Form</b> <small>* = Optional Input for Non-Applicable Information Only</small>				<b>MLS # (For Board Use Only)</b> PREVIOUS MLS # _____		<b>RELIST</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
<b>PROPERTY TYPE (X only 1)</b> LT <input type="checkbox"/> Lots AC <input checked="" type="checkbox"/> Acreages FR <input type="checkbox"/> Farm/Ranch		<b>AREA (X only 1)</b> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 21 <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/>				<b>LIST PRICE</b> \$ 113,600.00 <b>LIST DATE (01-JAN-87)</b> 01-01-87 <b>EXP. DATE (01-JAN-87)</b> 01-01-87					
<b>ADDRESS #</b> 300 <b>AD DIR</b> W <b>*SUBDIVISION/LOT #</b> <b>ELEM NAME</b> SEKID 141C <small>*ELEM TRANS (X only 1)</small> B <input checked="" type="checkbox"/> Bus W <input type="checkbox"/> Walk		<b>STREET NAME/NUMBER (Do Not Abbreviate)</b> 1200 EAST <b>CITY</b> LEAN <b>JRHS NAME</b> LEAN <small>*JRHS TRANS (X only 1)</small> B <input checked="" type="checkbox"/> Bus W <input type="checkbox"/> Walk				<b>*CROSS ST. # (Apt.)</b> <b>ZONING</b> A-1 <b>BRHS NAME</b> LEAN <small>*BRHS TRANS (X only 1)</small> B <input checked="" type="checkbox"/> Bus W <input type="checkbox"/> Walk		<b>QUADRANT</b> (X only 1) N <input checked="" type="checkbox"/> NORTH E <input type="checkbox"/> EAST S <input type="checkbox"/> SOUTH W <input type="checkbox"/> WEST <b>N/S RANGE</b> 300 <b>E/W RANGE</b> 1200			
<b>OWNERSHIP</b> <b>OWNER NAME</b> MAHLOW PECK <b>*OCCUPANT/APPOINTMENT</b> VACANT KLAND		<b>OWNER PHONE</b> 756-0000 <b>*OCC/APT PHONE</b> 756-3591		<b>POSSESSION (X only 1)</b> IM <input type="checkbox"/> Immediate 30 <input type="checkbox"/> 30 Days NG <input type="checkbox"/> Call LO/Negotiate UC <input checked="" type="checkbox"/> Upon Closing		<b>OCCUPANCY (X up to 2)</b> ON <input type="checkbox"/> Owner RN <input type="checkbox"/> Renter VA <input type="checkbox"/> Vacant MG <input type="checkbox"/> Management Co. (Mgmt. Co.)		<b>APPOINTMENT (X up to 4)</b> ON <input type="checkbox"/> Call Owner LO <input type="checkbox"/> Call LO OC <input type="checkbox"/> Call Occupant RL <input type="checkbox"/> Key at LO RS <input type="checkbox"/> Use Keybox NA <input type="checkbox"/> No Appt. Necessary MG <input type="checkbox"/> Management Co.			
<b>FINANCIAL</b> <b>TAX ID#</b> 13-0001-0002 <b>*1 BAL (Enter Dollar Amount)</b> \$ 113,600.00 <b>*1 INTEREST</b> % 10.00 <b>*1 PAYMENT (Enter Dollar Amount)</b> \$ 1,136.00 <b>*1 PMT TYPE (X only 1)</b> F <input type="checkbox"/> Fixed A <input type="checkbox"/> Adjustable <b>*1 PMT INC (Circle As Applies)</b> P I T I M (MMI) <b>*1# OF PAYMENTS per year</b> Loan 1 12		<b>TAXES</b> <b>*2 BAL (Enter Dollar Amount)</b> \$ 113,600.00 <b>*2 INTEREST</b> % 10.00 <b>*2 PAYMENT (Enter Dollar Amount)</b> \$ 1,136.00 <b>*2 PMT TYPE (X only 1)</b> F <input type="checkbox"/> Fixed A <input type="checkbox"/> Adjustable <b>*2 PMT INC (Circle As Applies)</b> P I T I M (MMI) <b>*2# OF PAYMENTS per year</b> Loan 2 12		<b>*MORTGAGEE(S)</b> <b>*ADDITIONAL ENCUMBRANCES</b> <b>*ADDITIONAL PMT</b> <b>ASSUME EXISTING LOAN (X up to 2)</b> C <input type="checkbox"/> Yes, at current rate I <input type="checkbox"/> Yes, with int. increase Q <input type="checkbox"/> Yes, buyer to qualify N <input checked="" type="checkbox"/> No L <input type="checkbox"/> Call L.A. <b>*DOWN PAYMENT (Enter \$ amount other than refinance)</b> \$ 0.00		<b>LOAN TYPE (X 1st and 2nd)</b> FM <input type="checkbox"/> Farm Home FL <input type="checkbox"/> Federal Land Bank CT <input type="checkbox"/> Contract CV <input type="checkbox"/> Conventional WR <input type="checkbox"/> Wrap OT <input checked="" type="checkbox"/> Other <b>*FEES/ASSESSMENTS (X only 1)</b> GA <input type="checkbox"/> Grazing LE <input type="checkbox"/> Lease OT <input type="checkbox"/> Other <b>*PRICE PER ACRE</b> \$ 0.00 <b>ASSESSMENTS (X only 1)</b> P <input type="checkbox"/> Paid N <input type="checkbox"/> Not Paid None <input checked="" type="checkbox"/>		<b>TERMS (X up to 3)</b> CS <input type="checkbox"/> Cash SF <input type="checkbox"/> Seller Finance AS <input type="checkbox"/> Assume EX <input type="checkbox"/> Exchange SB <input type="checkbox"/> Subordination WR <input type="checkbox"/> Wrap RT <input type="checkbox"/> Will Rent LO <input type="checkbox"/> Lease Option LE <input type="checkbox"/> Lease Only OT <input type="checkbox"/> Other			
<b>DESCRIPTION</b> <b>HOME</b> Y <input checked="" type="checkbox"/> Yes No <input type="checkbox"/> <b>*TOTAL SQ FT</b> _____ <b>*TOTAL BEDROOMS</b> _____ <b>*TOTAL BATHROOMS</b> _____ <b>*YEAR BUILT</b> _____ <b>*NEW CONSTRUCTION</b> U <input type="checkbox"/> Under Construction T <input type="checkbox"/> To Be Built											
<b>TERRAIN (X only 1)</b> FL <input type="checkbox"/> Flat GR <input checked="" type="checkbox"/> Gradual Slope SS <input type="checkbox"/> Steep Slope HL <input type="checkbox"/> Hilly MT <input type="checkbox"/> Mountain O <input type="checkbox"/> Other		<b>SOIL TYPE (X only 1)</b> LO <input checked="" type="checkbox"/> Loam SD <input type="checkbox"/> Sandy CL <input type="checkbox"/> Clay RK <input type="checkbox"/> Rocky GR <input type="checkbox"/> Gravel MS <input type="checkbox"/> Marsh AL <input type="checkbox"/> Alkaline <input type="checkbox"/> Unknown		<b>*WATER SHARES (X up to 2)</b> OW <input checked="" type="checkbox"/> Owned RT <input type="checkbox"/> Rented WL <input type="checkbox"/> Well SP <input type="checkbox"/> Springs CR <input type="checkbox"/> Creeks		<b>*ACREAGE LEASED (X only 1)</b> BL <input type="checkbox"/> BLM FR <input type="checkbox"/> Forest ST <input type="checkbox"/> State OT <input type="checkbox"/> Other					
<b>*IMPROVEMENTS (X up to 10)</b> (Appurtenant Structures/Improvements) FE <input checked="" type="checkbox"/> Fence PART BA <input type="checkbox"/> Barn SH <input type="checkbox"/> Sheds CR <input type="checkbox"/> Corral BH <input type="checkbox"/> Bunkhouse WH <input type="checkbox"/> Warehouse CS <input type="checkbox"/> Cold Storage CD <input type="checkbox"/> Cement Ditches MF <input type="checkbox"/> Maintenance Facilities PV <input type="checkbox"/> Paved Road UP <input type="checkbox"/> Unpaved Road CG <input type="checkbox"/> Curb & Gutter BP <input type="checkbox"/> Building Permit Available SW <input type="checkbox"/> Sidewalk		<b>*EQUIPMENT (X as applies)</b> ME <input type="checkbox"/> Mowing Equipment FE <input type="checkbox"/> Farm Equipment FI <input type="checkbox"/> Farm Implements GE <input type="checkbox"/> Green System SI <input type="checkbox"/> Silos		<b>*VEGETATION (X up to 3)</b> OB <input type="checkbox"/> Oak Brush TR <input type="checkbox"/> Trees WD <input type="checkbox"/> Weeds NG <input type="checkbox"/> Natural Grass PR <input type="checkbox"/> Pines AS <input type="checkbox"/> Aspen SB <input type="checkbox"/> Sagebrush OT <input checked="" type="checkbox"/> Other		<b>*CROPS (X up to 3)</b> AL <input checked="" type="checkbox"/> Alfalfa GR <input type="checkbox"/> Grain PT <input type="checkbox"/> Potatoes AP <input type="checkbox"/> Apples PR <input type="checkbox"/> Peas AS <input type="checkbox"/> Apricots PE <input type="checkbox"/> Peaches CH <input type="checkbox"/> Cherries TC <input type="checkbox"/> Truck Crops SL <input type="checkbox"/> Silage PS <input type="checkbox"/> Pasture OT <input type="checkbox"/> Other		<b>*UTILITIES (X up to 5)</b> EL <input checked="" type="checkbox"/> Electricity NG <input checked="" type="checkbox"/> Natural Gas GW <input checked="" type="checkbox"/> City Water IR <input type="checkbox"/> Irrigation SW <input type="checkbox"/> Sewer AS <input type="checkbox"/> Approved for Septic Tank ST <input type="checkbox"/> Septic Tank WL <input type="checkbox"/> Well WP <input type="checkbox"/> Well Permit PR <input type="checkbox"/> Propane CL <input type="checkbox"/> Coal OL <input type="checkbox"/> Oil			
<b>*SOURCE WATER SHARES</b> 16 MOUNTAIN HOLLOW 16 AMERICAN FORD		<b>*TOTAL ACRES</b> 18.5 <b>*CULTIVATED ACRES</b> 18.5 <b>*IRRIGATED ACRES</b> 18.5		<b>*RANGE</b> _____ <b>*PASTURE</b> _____ <b>*ORCHARD</b> _____		<b>*DRY</b> _____ <b>*DEEDED</b> _____ <b>*LEASED</b> _____					
<b>*MACHINERY</b> _____ <b>*LIVESTOCK</b> _____											
<b>*REMARKS (For New Construction Or Conversion, List Type, Thickness, And R-Value Of Insulation In All Areas Of The Property)</b> INCLUDES 16 IMPROVEMENTS BY TAX ID# 13-0002-0003										Compensate Buyers Broker yes <input checked="" type="checkbox"/> no <input type="checkbox"/> Amount \$ 0.00	
<b>FIRM NAME</b> ROBINSON WILSON <b>LIST AGENT NAME</b> LINDA BROOKS		<b>FIRM PH</b> 756-3591 <b>LIST AGENT PH</b> 756-3591		<b>CODE FIRM</b> 1158 <b>LIST AGENT CODE</b> 48		Dual-Variable rate commission Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> = DV SUB AGT COMM Commission [3]		<b>LISTING TYPE (X only 1)</b> EAL <input type="checkbox"/> ERS <input checked="" type="checkbox"/>			
<b>RECEIVED (Date Form Was Received)</b> I hereby authorize and instruct the listing broker to submit the above data to the MLS, along with timely changes to this listing, including selling information. The MLS may disseminate this information to its participants. I acknowledge receiving a copy of this agreement, and warrant the information contained hereon to be correct.											
<b>Sellers Signature</b> x J. Mahlow Peck										<b>Date</b> 01-25-1990	

# COMMERCIAL

AREAS  
1 THRU 23  
FOR  
SALE

PHOTO NOT AVAILABLE  
AT THIS TIME

#33,111/ACR

# 1939 101 W MAIN ST CO N C-3  
\$25,000 LEHT YRBLT C01  
OWN CONFIDENTIAL PH 225-3910 POSS UC OCCP RN  
OCM M D PENNYS PH 768-9214 APPT LO, OC  
LLP  
SL L IN LS LEAS PER  
1BAL 0 2BAL 0 ADDE 0  
1INT .000 # 0 2INT .000 # 0 APMT 0  
1PMT 0 2PMT 0 DNPMT \$  
INC 1PTY INC 2PTY ASMTS P TX 206  
TID 01-028-0017 MT GSI \$  
TY TM CV, CS L # VACS  
TSO 1,568 LOT 20 X 81.5 TOE \$  
OSO BLD TYP CH, RO, MO NOI \$  
BUS OPEN ACR PK CAPRTX  
VT PS AP SD CH AC HEAT GS  
INC HV, PV RFAS  
UT/MT CC, SH, NG, EL, GC, EC CST BR, CB  
PRICED TO SELL FAST! GREAT COMMERCIAL SITE ON  
MAIN ST. MANY COMMERCIAL USES.  
FIRM ERA HT LAND PH 785-5013 ID 00140 LST ERS  
LAGT DALE C JOHNSON PH 225-3910 BKR COM 3

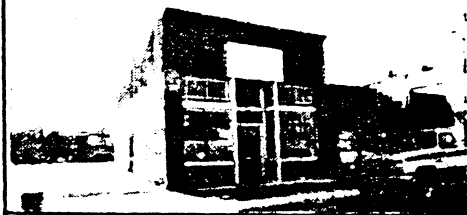


# 497 225 S 850 E C G-C1  
\$112,000 LEHT YRBLT C01  
OWN KENNETH WEBB PH 000-0000 POSS UC OCCP VA  
OCM VACANT LAND PH 756-3591 APPT LO, NA  
LLP  
SL L IN LS LEAS PER  
1BAL 0 2BAL 0 ADDE 0  
1INT 0 2INT 0 APMT 0  
1PMT 0 2PMT 0 DNPMT \$  
INC 1PTY INC 2PTY ASMTS TX 55  
TID 13-015-0027 MT GSI \$  
TY TM CV, CS L # VACS  
TSO 0 LOT TOE \$  
OSO BLD TYP NOI \$  
BUS ACR 1.86 PK CAPRTX  
VT 440 PS 3 AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL, IR CST OT  
I-15 HIGH VISIBILITY, NEXT TO NEW INTERCHANGE,  
NEAR SMALL LAKE CO-AGENT SUE 756-7574 \*BB 4x  
FIRM ROBINSON WILSON PH 756-3591 ID 00158 LST ERS  
LAGT LLOYD BROOKS PH 768-3547 BKR COM 5

PHOTO NOT AVAILABLE  
AT THIS TIME

#50,000/ACR

# 99263 975 W STATE ST C10 N G-C1  
\$14,900 LEHT YRBLT C01  
OWN R. GARRICK PH 225-1500 POSS UC OCCP VA  
OCM VACANT PH 225-1500 APPT NA  
LLP  
SL L IN LS LEAS PER  
1BAL 0 2BAL 0 ADDE 0  
1INT 0 2INT 0 APMT 0  
1PMT 0 2PMT 0 DNPMT \$  
INC 1PTY INC 2PTY ASMTS TX 95  
TID 12-018-0017 MT GSI \$  
TY TM CS L # VACS  
TSO 18,908 LOT 58 X 326 TOE \$  
OSO BLD TYP NOI \$  
BUS ACR .45 PK CAPRTX  
VT PS AP SD CH AC HEAT OT  
INC RFOT  
UT/MT CC, SH, NG, EL CST OT  
ACREAGE IS APPROX BACKS IN TO I-15 GOOD FREE-  
WAY EXPOSURE.  
FIRM MANSELL & ASSOC PH 225-1500 ID 00137 LST ERS  
LAGT BILL BROWN PH 489-4980 BKR COM 4



# 1249 46 W MAIN C C-0  
\$29,500 LEHT YRBLT C01  
OWN CO-OP ASSOC PH 756-2287 POSS UC OCCP RN  
OCM PINE VALLEY PH 756-3581 APPT ON, LO  
LLP  
SL B, L IN LS LEAS PER  
1BAL 13.500 # 12 2BAL 0 ADDE 0  
1INT 301 2INT 0 APMT 0  
1PMT 301 2PMT 0 DNPMT \$  
INC PI 1PTY I INC 2PTY ASMTS TX 263  
TID 01-036-0012 MT GSI \$  
TY TYCV TM CV L # VACS  
TSO 0 LOT 80X40 TOE \$  
OSO BLD TYP CH NOI \$  
BUS REAL ESTATE ACR PK CAPRTX  
VT 120 PS 1 AP SD CH ACEV HEAT GS  
INC RS RF SH  
UT/MT CC, SH, NG, EL CST BR  
HIGH VISIBILITY CENTER OF BUSINESS DISTRICT  
RESTORED EARLY ARCHITECTURE  
FIRM PINE VALLEY PH 756-3581 ID 00150 LST ERS  
LAGT RON JONES PH 756-4340 BKR COM 3

PHOTO NOT AVAILABLE  
AT THIS TIME

#25,180/ACR

# 495 425 S 850 E C G-C1  
\$250,000 LEHT YRBLT C01  
OWN KENNETH WEBB PH 000-0000 POSS UC OCCP VA  
OCM VACANT LAND PH 756-3591 APPT LO, NA  
LLP  
SL L IN LS LEAS PER  
1BAL 0 2BAL 0 ADDE 0  
1INT 0 2INT 0 APMT 0  
1PMT 0 2PMT 0 DNPMT \$  
INC 1PTY INC 2PTY ASMTS TX 157  
TID 13-016-0025 MT GSI \$  
TY TM CV, CS L # VACS  
TSO 0 LOT 503 X 435 TOE \$  
OSO BLD TYP NOI \$  
BUS ACR 5.00 PK CAPRTX  
VT 440 PS 3 AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL, IR CST OT  
I-15 HIGH VISIBILITY, NEXT TO NEW INTERCHANGE,  
NEAR SMALL LAKE CO-AGENT SUE 756-7574 \*BB 4x  
FIRM ROBINSON WILSON PH 756-3591 ID 00158 LST ERS  
LAGT LLOYD BROOKS PH 768-3547 BKR COM 5

PHOTO NOT AVAILABLE  
AT THIS TIME

#84,270/ACR

# 1940 169 W MAIN ST CO N C-3  
\$20,000 LEHT YRBLT C01  
OWN CONFIDENTIAL PH 225-3910 POSS UC OCCP RN  
OCM CLOGGERS PH 225-3910 APPT LO, OC, KL  
LLP  
SL B, L IN LS LEAS PER  
1BAL 0 2BAL 0 ADDE 0  
1INT .000 # 0 2INT .000 # 0 APMT 0  
1PMT 0 2PMT 0 DNPMT \$  
INC 1PTY INC 2PTY ASMTS P TX 251  
TID 01-028-0010 MT GSI \$  
TY TM CV, CS L # VACS  
TSO 1,146 LOT 23 X 90.75 TOE \$  
OSO BLD TYP CH, RO, MO NOI \$  
BUS OPEN ACR .05 PK CAPRTX  
VT 220 PS 2 AP SD CH ACEV HEAT GS  
INC HV, PV RFAS  
UT/MT CC, SH, NG, EL CST RK  
PRICED TO SELL FAST! GREAT COMMERCIAL BLDG ON  
MAIN ST. GREAT FOR SALES, OFFICE OR GENERAL U  
FIRM ERA HT LAND PH 785-5013 ID 00140 LST ERS  
LAGT DALE C JOHNSON PH 225-3910 BKR COM 3

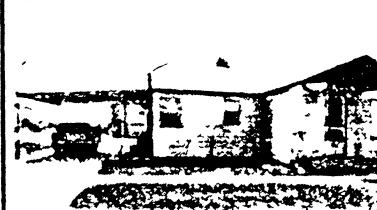
# 499 955 E MILL POND DR C G-C1  
\$35,000 LEHT YRBLT C01  
OWN KENNETH WEBB PH 000-0000 POSS UC OCCP VA  
OCM VACANT LAND PH 756-3591 APPT LO, NA  
LLP  
SL L IN LS LEAS PER  
1BAL 0 2BAL 0 ADDE 0  
1INT 0 2INT 0 APMT 0  
1PMT 0 2PMT 0 DNPMT \$  
INC 1PTY INC 2PTY ASMTS TX 44  
TID 13-016-0026 MT GSI \$  
TY TM CV, CS L # VACS  
TSO 0 LOT TOE \$  
OSO BLD TYP NOI \$  
BUS ACR 1.39 PK CAPRTX  
VT 440 PS 3 AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL, IR CST OT  
I-15 HIGH VISIBILITY COMMERCIAL LAND LOCATED  
NEAR SMALL LAKE CO-AGENT SUE 756-7574 \*BB 4x  
FIRM ROBINSON WILSON PH 756-3591 ID 00158 LST ERS  
LAGT LLOYD BROOKS PH 768-3547 BKR COM 5

# 1883 480 E STATE ST C200 S G-C1  
\$75,000 AM FORK YRBLT C03  
OWN VALLEY B&T PH 224-6171 POSS UC OCCP VA  
OCM VACANT PH 224-1234 APPT NA  
LLP  
SL L IN LS LEAS PER  
1BAL 0 2BAL 0 ADDE 0  
1INT 0 2INT 0 APMT 0  
1PMT 0 2PMT 0 DNPMT \$  
INC 1PTY INC 2PTY ASMTS TX 280  
TID 13-057-0038 MT GSI \$  
TY TM CV, CS L # VACS  
TSO 0 LOT .89 TOE \$  
OSO BLD TYP NOI \$  
BUS ACR .89 PK CAPRTX  
VT PS AP SD CH AC HEAT  
INC HV RFOT  
UT/MT CC, SH, NG, EL CST OT  
EXCELLENT EAST STATE STREET LOCATION  
FIRM C21 BSHNL-CRTSY PH 224-1234 ID 00116 LST ERS  
LAGT MIKE BUSHWELL PH 224-6171 BKR COM 3



PHOTO NOT AVAILABLE  
AT THIS TIME

#41,667/ACR



# 372 95 W MAIN C C-1  
\$110,000 AM FORK YRBLT 1950 C03  
OWN BOB ANDERSON PH 756-7807 POSS NG OCCP ON  
OCM OWNER/ORAGENT PH 785-5013 APPT LO  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS TX 1263  
TID 02-023-0013 MT  
TYCV, MR TM CV, MR, CS, LO L# VACS  
TSO2, 470 LOT TOE\$  
OSO BLD TYP CH NOI\$  
BUS SERVICE STATI ACR PK 20 CAPRTX  
VT220 PS 3 AP SD 4 CH 16 AC HEAT GS, FA  
INC CP, FD, FT, HY, OD, PV, RE, RS RFAS  
UT/MT CC, SH, NG, EL CSTCR

# 905 595 W STATE ST C C-4  
\$70,000 PL GROVE YRBLT  
OWN FOUR SEAS INV PH 373-8300 POSS IM OCCP VA  
OCM VACANT PH 373-8300 APPT NA  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS TX 553  
TID 14-025-0039 MT  
TY TM CS, OT L# VACS  
TSO0 LOT TOE\$  
OSO BLD TYP CH NOI\$  
BUS ACR 1.68 PK CAPRTX  
VT PS AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL CSTOT

# 99305 75 W 40 S C  
\$50,000 LINDON YRBLT  
OWN RYAL J. SMITH PH 785-3655 POSS UC OC  
OCM OWNER PH 785-3655 APPT ON  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS  
TID 14-069-0064 MT  
TY TM CS, EX L# VACS  
TSO0 LOT TOE\$  
OSO BLD TYP IN NOI\$  
BUS ACR .50 PK CAPRT  
VT PS AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL CSTOT

EXCELLENT STATE ST PROPERTY. GREAT INVESTMENT!  
PRESENT ALL OFFERS!  
FIRM MOUNTAIN LAND PH 785-5013 ID 00140 LST ERS  
LAGT JOHN HARR SR PH 756-5033 BKR COM 3

FIRM REALTY WORLD CR PH 373-8300 ID 00155 LST ERS  
LAGT PATT GOURDIN PH 225-4501 BKR COM 3

HAS SMALL HOME AND OUT BUILDINGS VALUE  
THE LAND MUST BE SOLD WITH 46 S. STATE  
FIRM HANSELL & ASSOC PH 225-1500 ID 00137  
LAGT BILL BROWN PH 489-4980 BKR COM 4

PHOTO NOT AVAILABLE  
AT THIS TIME

#45,238/ACR



PHOTO NOT AVAILABLE  
AT THIS TIME

#55,000/ACR

# 1441 125 N WEST STATE RD C S-C1  
\$475,000 AM FORK YRBLT C03  
OWN NASH PH 785-5013 POSS UC OCCP VA  
OCM VACANT PH 785-5013 APPT LO  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS TX 36  
TID 13-004-0011 MT  
TY TM CS L# VACS  
TSO0 LOT TOE\$  
OSO BLD TYP CH NOI\$  
BUS ACR 10.50 PK CAPRTX  
VT PS AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL CSTOT

# 1225 26 E STATE CGENEVA C-1  
\$115,000 PL GROVE YRBLT C04  
OWN VONDA JONES PH 224-0260 POSS UC OCCP ON  
OCM OWNER PH 785-6524 APPT LO  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 10,000 2BAL  
1INT 9,000 2INT  
1PMT 1,000 2PMT  
INC 1PTY INC 2PTY ASMTS TX 869  
TID 03-007-0008 MT  
TYOT TM CS L# VACS  
TSO864 LOT TOE\$  
OSO BLD TYP CH, RO NOI\$  
BUS FAST FOOD ACR .21 PK CAPRTX  
VT220 PS AP SD CH AC EV HEAT GS  
INC DN, FD, HY, KA, PV, RE RFBT, TG  
UT/MT CC, SH, NG, EL CSTBR, CB

# 1715 360 N STATE C290 W  
\$55,000 LINDON YRBLT  
OWN WALKER IVAN PH 785-3571 POSS IM OC  
OCM DELL COX PH 377-2600 APPT LO  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS 1  
TID 14-068-0106 MT  
TY TM CV, CS, OT L# VACS  
TSO0 LOT TOE\$  
OSO BLD TYP CH NOI\$  
BUS LAND ONLY ACR 1.00 PK CAPRT  
VT PS AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL CSTOT

PG BUSY CORNER LOTS OF TRAFFIC GOOD FOOD FAST  
SERVICE OWNER WANTS TO RETIRE  
FIRM ERA MTN LAND PH 785-5013 ID 00140 LST ERS  
LAGT VERL HEBERTSON PH 756-4448 BKR COM 3

FIRM REALTY WORLD CE PH 373-8300 ID 00155 LST ERS  
LAGT CHAS FILLMORE PH 373-1807 BKR COM 3

THIS IS LAND ONLY WITH 135 FT FRONTAGE  
SELLER MAY FINANCE  
FIRM ASSOCIATED BROK PH 377-2600 ID 00265  
LAGT B DELL COX PH 225-9337 BKR COM 3

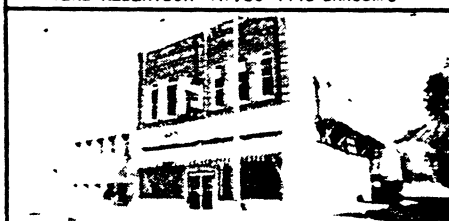


PHOTO NOT AVAILABLE  
AT THIS TIME

#33,333/ACR

PHOTO NOT AVAILABLE  
AT THIS TIME

#71,951/ACR

# 968 43 S MAIN C CIB  
\$37,500 PL GROVE YRBLT 1896 C04  
OWN GARY HENDRY PH 226-0782 POSS IM OCCP VA  
OCM MARLIN HALL PH 785-3626 APPT LO  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS TX 383  
TID 03-037-0008 MT  
TYCV, OT TM CS, LO, LE, OT L# VACS  
TSO4,900 LOT 61.7X112 IRREG TOE\$  
OSO BLD TYP CH NOI\$  
BUS ACR PK CAPRTX  
VT PS 3 AP SD CH AC EV HEAT GS, EL  
INC RFAS  
UT/MT CC, NG, EL CSTRK

# 1853 150 W 200 S C100 W C-S&G  
\$300,000 PL GROVE YRBLT C04  
OWN CONFIDENTIAL PH 785-5013 POSS UC OCCP VA  
OCM VACANT PH 785-5013 APPT NA  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS P TX 1200  
TID 14-025-0029 MT  
TY TM CV, CS, EX L# VACS  
TSO0 LOT IRREGULAR TOE\$  
OSO BLD TYP CH NOI\$  
BUS C-S & C-G ACR 9.00 PK CAPRTX  
VT PS AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, NG, EL CSTOT

# 99616 620 N STATE ST C  
\$59,000 LINDON YRBLT  
OWN UTAH WEST INC PH 000-0000 POSS UC OC  
OCM VACANT LAND PH 756-3591 APPT LO, NA  
LLP  
SL B, L, S IN LS LEA\$ PER  
1BAL 2BAL ADDE  
1INT 2INT APMT  
1PMT 2PMT DNPMT\$  
INC 1PTY INC 2PTY ASMTS 1  
TID 14-046-0075 MT  
TY TM CS L# VACS  
TSO0 LOT 252X281X157X139 TOE\$  
OSO BLD TYP CH NOI\$  
BUS ACR .82 PK CAPRT  
VT480 PS 3 AP SD CH AC HEAT  
INC RFOT  
UT/MT CC, SH, NG, EL CSTOT

OLDER BUILDING GOOD LOCATION  
FIRM GUMP & AYERS PH 377-0500 ID 00253 LST ERS  
LAGT MARLIN HALL PH 785-3626 BKR COM 3

PRIDE DEVELOPMENT GROUND NEXT TO POST OFFICE  
MUST BE SOLD AS ONE PIECE-CALL LA FOR D+BB 2  
FIRM ERA MTN LAND RE PH 785-5013 ID 00140 LST ERS  
LAGT DEBBIE RAGAN PH 756-7356 BKR COM 3

STATE STREET & 600 NORTH FRONTAGE, UTIL  
IN STREET AGENT IS A PRINCIPAL  
FIRM ROBINSON HILLSON PH 756-3591 ID 00158  
LAGT LLOYD BROOKS PH 768-3547 BKR COM 3

**ADDENDUM/COUNTER OFFER  
TO EARNEST MONEY SALES AGREEMENT**

This ADDENDUM/COUNTER OFFER constitutes: ( ) a COUNTER OFFER (X) an ADDENDUM to that EARNEST MONEY SALES AGREEMENT (THE AGREEMENT) dated the 24<sup>th</sup> day of OCTOBER, 1991, between CARL MELLOR as buyer(s), and J. MALLON & MARIE M. PECK as seller(s).

covering real property described as follows:

APPROX 8 1/2 ACRES OF UNIMPROVED LAND (THE PORTION PRESENTLY IN ALFAFA) PROPERTY TAX ID# 13-002-0002 & 13-002-0003

The following terms are hereby incorporated as part of THE AGREEMENT:

MODIFY ITEM # 8 OF EARNEST MONEY SALES AGREEMENT -  
CHANGE CLOSING OF SALE TO READ:

THIS AGREEMENT SHALL BE CLOSED ON OR BEFORE  
SEPTEMBER 30, 1991.

*Don't  
forget*

BUYER TO DEPOSIT \$2,000 WITH SELLER AS DOWN PAYMENT.

All other terms of THE AGREEMENT shall remain the same. (X) Seller ( ) Buyer shall have until 10:00 (A.M. (P.M.)) 29 MAY 1991 to accept the terms specified above. Unless so accepted this Addendum shall lapse.

Date X 17 May 1991  
Time X 9:00 (A.M. (P.M.))

Signature of ( ) Seller (X) Buyer

X Carl J. Mellor

**ACCEPTANCE/COUNTER OFFER/REJECTION**

Check One

(X) I hereby ACCEPT the foregoing on the terms specified above.

( ) I hereby ACCEPT the foregoing SUBJECT TO the exceptions shown on the attached Addendum.

X J. Mallon Peck X Marie M. Peck 29 May 91 5:00 p.m.  
Signature Signature Date Time

( ) I hereby reject the foregoing (Initials) Peck

**DOCUMENT RECEIPT**

(X) I acknowledge receipt of a final copy of the foregoing bearing all signatures.

Carl J. Mellor 29 May 1991 X J. Mallon Peck X 5/29/91  
Signature of Buyer(s) Date Signature of Seller(s) Date

( ) I personally caused a final copy of the foregoing bearing appropriate signatures to be mailed on \_\_\_\_\_

19\_\_\_\_, by Certified Mail and return receipt attached hereto to the ( ) Seller ( ) Buyer.

Sent by \_\_\_\_\_

This form has been Approved by the Utah Real Estate Commission.

**changes MUST be reported to the Multiple Listing Service within 2 working days or 48 hours by listing office.  
MLS CANNOT ACCEPT CHANGES OR SOLD INFORMATION ON EXPIRED LISTINGS.**

S 11398 Property Address 300 N. 1200 E. LEHI, UT Area 011  
Owner's Name MATTHEW PECK Date Reported 26 MAY 91  
Listing Company C-21 ROBINSON & WILSON REALTY Company Code No. 00158  
Reported by Thad R. Brooks

APPROVED FORM - UTAH COUNTY BOARD OF REALTORS

**DENDUM/COUNTER OFFER..  
TO EARNEST MONEY SALES AGREEMENT**

This ADDENDUM/COUNTER OFFER constitutes. ( ) a COUNTER OFFER (X) an ADDENDUM to that EARNEST MONEY SALES AGREEMENT (THE AGREEMENT) dated the 24<sup>th</sup> day of OCTOBER, 1990, between CARL J. MELLOR as buyer(s), and E. MALLON & MARIE M. PECK as seller(s), covering real property described as follows.

APPROX 8 1/2 ACRES OF UNIMPROVED LAND (THE PORTION PRESENTLY IN ALFALFA)  
PROPERTY TAX ID # 13-002-0002 & 13-002-0003

The following terms are hereby incorporated as part of THE AGREEMENT:

- ① EXTEND CLOSING FOR UP TO SIX MONTHS ALLOWING SELLER TIME TO MAKE MODIFICATIONS IN TITLE - (FAMILY CORPORATION ETC.) AS DEEMED NECESSARY BY SELLER. ALSO ALLOWING SELLER TIME TO WORK OUT TAX IMPLICATIONS WHICH MAY BE CREATED THRU THIS SALE.
- ② REFERENCE ITEM 1c AND COUNTER OFFER OF ORIGINAL E.M. OFFER - BUYER TO SHARE WITH SELLER PLANS FOR DEVELOPMENT AND WORK WITH SELLER ON SAID DEVELOPMENT PLANS - ALLOWING SELLER THE MOST ADVANTAGEOUS USE IN FARMING THAT AREA WHICH IS NOT YET DEVELOPED.
- ③ SELLER RESERVES THE RIGHT TO HAVE A PORTION OF HIS FUNDS PLACED IN ESCROW WITH TIME PAYMENTS IF DESIRED A TAX BENEFIT BY SELLER.
- ④ BUYER TO PLACE AN ADDITIONAL \$500 DOWN PAYMENT WITH SELLER - THESE FUNDS WILL BE DEDUCTED FROM TOTAL PURCHASE PRICE AT TIME OF CLOSING.

All other terms of THE AGREEMENT shall remain the same ( ) Seller (X) Buyer shall have until 10:00 (A M) (P M) 27 Sept 1991 to accept the terms specified above. Unless so accepted this Addendum shall lapse.

Date 27 Sept 1991  
Time 6:30 (A M) (P M)

Signature of (X) Seller ( ) Buyer  
E. Mallon Peck  
Marie M. Peck

**ACCEPTANCE/COUNTER OFFER/REJECTION**

Check One

- (X) I hereby ACCEPT the foregoing on the terms specified above  
( ) I hereby ACCEPT the foregoing SUBJECT TO the exceptions shown on the attached Addendum.

X Carl J. Mellor  
Signature

Signature

X 27 Sept 1991 7:10 pm  
Date Time

( ) I hereby reject the foregoing (Initials)

**DOCUMENT RECEIPT**

(X) I acknowledge receipt of a final copy of the foregoing bearing all signatures.

X Carl J. Mellor

X 27 Sept 1991

E. Mallon Peck

9/27/91

Signature of Buyer(s)

Date

Marie M. Peck

Signature of Seller(s)

9/27/91

( ) I personally caused a final copy of the foregoing bearing appropriate signatures to be mailed on \_\_\_\_\_

19\_\_\_\_, by Certified Mail and return receipt attached hereto to the ( ) Seller ( ) Buyer.

Sent by \_\_\_\_\_

This form has been approved by the Utah Real Estate Commission.



All changes MUST be reported to Multiple Listing Service within 2 working days or 48 hours by listing office. THE MLS CANNOT ACCEPT CHANGES OR SOLD INFORMATION ON EXPIRED LISTINGS.

Nº 4984

MLS 11318 Property Address 300 NORTH 1200 EAST LEHI Area 01  
Owner's Name MAHLON PECK Date Reported 9/22/91  
Listing Company C-21 ROBINSON & WILSON Company Code No. 20151  
Reported by Thy R. Burke

Complete Applicable Sections Only

Status: (Check One Box Only)

(01 JAN 91)

☒ S Sold and Closed

Complete all Information

Selling Price 134880

Terms/Loan Type CLS

Closing Date 30 - MAR - 92

Selling Office Code 158

Selling Agent Code LB

☐ U Under Contract Date      -      -     

☐ C Under Contract with Contingencies Date      -      -     

☐ A Contract Failed Reinstated Date      -      -     

Miscellaneous Changes

Feature Item	Old	New
Age	from	to
Age	from	to
Age	from	to

Remarks R1

Remarks R2

THESE CHANGES REQUIRE SELLER'S SIGNATURE

(01 JAN 90)

Listing Date Change from      -      -      to      -      -     

Expiration Date Change from 30 - SEP - 91 to 30 - MAR - 92

Price Change From      to     

Seller's Signature A. Mahlon Peck x Marie M. Peck Date Sept 22, 1991

PROPERTY WITHDRAWAL

change requires a copy of the withdrawal agreement attached to this form.

- ☐ CW Conditional Withdrawal  
☐ UW Unconditional Withdrawal

Use Only:

Rec'd \_\_\_\_\_ Computer entry \_\_\_\_\_

APPROVED FORM - UTAH COUNTY BOARD OF REALTORS




CARL OR DIMPLE MELLOR 1-78  
 U.C. C191934 U.C. 7463136A  
 895 NORTH 940 EAST PH. 788-8885  
 LEHI, UTAH 84043

3850

27 Sept 1991 87-7776/8243

PAY TO THE ORDER OF Mahlon Peck \$ 500.00

Five Hundred and <sup>no</sup> /100 DOLLARS

 **ALPINE CREDIT UNION**  
 1810 North State  
 Lehi, Utah 84043

MEMO earnest money on property Carl O Mellor

432437776510 -000020731 3850

Received the above check this 27 day of September 1991. Said money is down payment toward the purchase of approx 8.5 acres at 1200 East State Street, Lehi, Utah. These funds will be deducted from the total purchase price at time of closing.

x A. Mahlon Peck  
 x Maize M. Peck

Minutes of the Lehi City Planning and Zoning Meeting held January 9, 1992, at 7:00 p.m. in the City Council Chambers.

Members Present: Bob Park, Ron Smith, Brent Loveridge, Mont Peterson, Marlin Peterson

Members Absent: Ted Rampton

Others Present: Bob Kunz, Don Pinkham, Dianna Webb, Craig Gibbs, Shawn Anderson, Robert M. Anderson, Elaine B. Talley, David W. Talley, Reed Sunderland, Wayne Carlton, Howard H. Johnson, Deane Lindstrom, Larry Lindstrom, LaVar Bateman, Tamra Jones, Dale C. Jones, Margaret Russon, Brad Sunderland, Jim Yates, Morray Yates, Lester Barber Sr., Mayor Guy Cash, Bruce Chesnut, Doug Hall, Johnny Barnes

A motion was made by Brent Loveridge to approve the minutes of the December 26, 1991, Planning and Zoning Meeting as recorded; seconded by Ron Smith. Voting was unanimous in the affirmative.

#### Jim Yates - Preliminary approval for a Commercial Subdivision

Jim Yates and Morray Yates were present to request preliminary approval for a commercial subdivision of approximately 15 acres at about 1500 North Trinnaman Lane in an existing GC-1 zone. (It was noted that under changes in the master plan soon to be implemented, the GC-1 zoning would be reclassified as GC-2.)

Bob Kunz explained that under state law, up to 10 lots on this commercial property could be sold by metes and bounds as long as preliminary subdivision approval had been given by the planning commission and the city council.

Morray Yates stated that lots 1, 2, 3, & 4 as shown on the preliminary plat had been sold to Lester Barber. This included approximately 3.5 acres. One additional lot had been sold to Johnson Medical by the previous owner of the property, Mr. Mulcock. The remaining unplatted property has drainage problems that need to be worked out and would not be developed at the present time. Approximately 23 feet of property along 1500 North would have to be deeded to the city to widen the street to required specifications. An 80 foot access was also necessary to square up the junction of 1500 North and State Street. The developers agreed to deed this property to the city for the streets. City services were available to the property.

Several citizens were present to express concerns about allowable uses in the GC-2 zone, increased traffic problems, and protecting the integrity of their neighborhood.

Bob Kunz explained that because lot #1 is adjacent to residential zoning, this lot would have to meet residential setback requirements as well as fencing and screening requirements. A 6

foot light-obscuring fence would be required along the property line separating it from the Evans property. All lots would be subject to site plan review and city ordinance requirements, including curb, gutter and sidewalk.

Bob Park called for a motion to approve or disapprove the request. He cautioned the commission that no action constitutes approval in 30 days.

A motion was made by Brent Loveridge to give preliminary approval for a commercial subdivision of approximately 15 acres at about 1500 North Trinnaman Lane in an existing GC-1 zone with the stipulations that there would be no development on the unplatted lands until drainage problems were solved and that the property necessary for widening the roads as discussed be deeded to the city; seconded by Mont Peterson with the comment that uses on the property should be screened carefully by the site plan committee. Voting was as follows: Brent Loveridge - yes, Mont Peterson - yes, Ron Smith - yes, Marlin Peterson - no.

#### **V. Bullock - Annexation**

Bruce Chesnut was representing Vera Bullock in requesting annexation of approximately 5.36 acres to RA-1 at about 2305 North 600 West. This property had been part of the John Roberts Annexation that was considered at the previous planning commission meeting. John Roberts and Elden Osborne had withdrawn their petitions for annexation, leaving Mrs. Bullock as the only applicant. The property was contiguous to an R-1 zone. Plans for the property included a subdivision of approximately twelve 15,000 square foot lots. Sewer was at 2100 North 600 West. The developer would be required to extend the sewer to the development. Other services were available. The impact statement was read by Bob Park. The developer understood that although an RA-1 zoning had been requested, no animal rights would be included because of the planned 15,000 square foot lot sizes.

A motion was made by Ron Smith to approve the V. Bullock Annexation of approximately 5.36 acres to RA-1 at about 2305 North 600 West with the stipulation that the required water shares be dedicated to the city; seconded by Marlin Peterson. Voting was unanimous in the affirmative.

#### **Dean A. Mackintosh - Annexation**

Bruce Chesnut was representing property owners Dean Mackintosh, Jane Hadfield and John Hadfield in requesting annexation of approximately 29 acres to A-1 at about 1050 East on 3100 North. Approximately 3 acres of city owned property was also included in this request. There was presently no sewer available to the property. Any development would have to be done on septic tanks.

Present city ordinances regulating the minimum lot size allowed for septic tanks was discussed. There was some confusion as to whether

or not the grace period for allowing septic tanks on lots of less than 3 acres extended by the city council to existing properties would also cover new annexations. Mayor Cash suggested that Ron Smith talk with city attorney, Ken Rushton, for clarification on the matter.

The planning commission felt that this question needed to be answered before approval could be given for the annexation. A motion was made by Marlin Peterson to table the Mackintosh Annexation request until the next meeting; seconded by Ron Smith. Voting was unanimous in the affirmative.

#### I. Mahlon and Marie M. Peck - Annexation

Bruce Chesnut was representing I. Mahlon and Marie M. Peck in requesting annexation of approximately 9 acres as GC-2 at about 300 North on 1200 East. Mr. Chesnut stated that by including the railroad tracks and State Street to make the Peck property contiguous with the city boundary to the south, the annexation would total approximately 11 acres. GC-2 zoning had been requested to allow for commercial development along State Street with the possibility of fourplexes on the north end of the property next to the current residential area. The plan was not for a development of fourplexes, but rather one or two constructed as a buffer between the commercial and residential zones.

Bob Kunz explained that any fourplex built in a GC-2 zone would have to be approved by the planning commission and the city council as a buffer between zones.

All city services were available across State Street to the south of the proposed annexation. It would be possible to extend some services from the north of the property if desired by the developer.

A motion was made by Marlin Peterson to approve the Peck Annexation of approximately 11 acres to GC-2 at about 300 North on 1200 East; seconded by Ron Smith. Voting was unanimous in the affirmative.

Bob Park suggested that the developer consider putting a road on the north side of the tracks for access to the property rather than crossing the tracks for access.

#### Sunny Wen - Annexation

Craig Gibbs was representing Sunny Wen in requesting annexation of approximately 1 acre to RA-1 at about 1250 East on 900 North.

Bob Park explained that this annexation request had been considered by both the planning commission and the city council. By failing to take action on the request, the planning commission had, in fact, approved the annexation and passed it on to the city council. The city council had voted to deny the request. Mr. Park asked Mr. Gibbs to explain any changes or new information that had caused Mr.

# TRUST DEED NOTE

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

\$ 88,880.00  
46,000.00 Down payment  
\$ 134,880.00

PROVO, UTAH

MARCH 30th, 1992

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the order of  
MAHLON PECK & FAMILY, INC.

EIGHTY-EIGHT THOUSAND EIGHT HUNDRED EIGHTY & NO/100----- DOLLARS (\$ 88,880.00 ),

together with interest from date at the rate of EIGHT per cent ( 8 %) per annum on the unpaid principal, said principal and interest payable as follows:

TERMS AND CONDITIONS OF THIS NOTE ARE CONTAINED  
UPON ATTACHED EXHIBIT A.

Each payment shall be applied first to accrued interest and the balance to the reduction of principal. Any such installment not paid when due shall bear interest thereafter at the rate of \_\_\_\_\_ per cent ( \_\_\_\_\_ %) per annum until paid.

If default occurs in the payment of said installments of principal and interest or any part thereof, or in the performance of any agreement contained in the Trust Deed securing this note, the holder hereof, at its option and without notice or demand, may declare the entire principal balance and accrued interest due and payable.

If this note is collected by an attorney after default in the payment of principal or interest, either with or without suit, the undersigned, jointly and severally, agree to pay all costs and expenses of collection including a reasonable attorney's fee.

The makers, sureties, guarantors and endorsers hereof severally waive presentment for payment, demand and notice of dishonor and nonpayment of this note, and consent to any and all extensions of time, renewals, waivers or modifications that may be granted by the holder hereof with respect to the payment or other provisions of this note, and to the release of any security, or any part thereof, with or without substitution.

This note is secured by a Trust Deed of even date herewith.

Carl J. Mellow  
Dorothy A. Mellow



SELLERS COPY

FILE NO 18447  
ESCROW NO 18447  
DATED 03/30/92  
PRORATED TO 03/30/92

BUYER: CARL J. MELLOR AND DIMPLE A. MELLOR  
SELLER: MAHLON PECK & FAMILY, INC.  
BROKER: C-21 ROBINSON/WILSON REALTY  
PROPERTY ADDRESS: VACANT LAND - STATE ROAD, LEHI, UT 84043  
SELLERS MAILING ADDRESS: 10171 NORTH 6800 WEST, HIGHLAND, UT 84003  
TYPE OF TRANSACTION:

PURCHASE PRICE.....	\$	134,880.0
INSURANCE: BUYER TO PROVIDE OWN FIRE INSURANCE COVERAGE.....	\$	
TOTAL PURCHASE PRICE AND CREDITS DUE SELLER.....	\$	134,880.0

LESS CREDITS TO BUYER

LOAN ASSUMED/CONTRACT TO SELLER AS OF .....	\$	88,880.00	
DEPOSIT WITH SELLER.....	\$	2,500.00	
TOTAL CREDITS TO BUYERS.....	\$		91,380.0

NET EQUITY BEFORE EXPENSES.....	\$	43,500.0
---------------------------------	----	----------

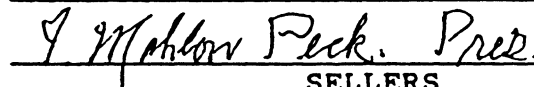
EXPENSES OF THE SELLER

PAYOFF TAXES ROLLBACK TAXES.....	\$	4,560.72	
COMMISSION TO C-21 ROBINSON/WILSON REALTY.....	\$	8,092.80	
TITLE INSURANCE TO PROVO ABSTRACT COMPANY, INC.....	\$	677.50	
CLOSING FEE TO PROVO ABSTRACT COMPANY, INC.....	\$	75.00	
CROW FEE TO WASATCH BANK.....	\$	37.50	
TOTAL EXPENSES FOR SELLER.....	\$		13,443.5

NET DUE TO SELLER.....	\$	30,056.4
------------------------	----	----------

THE UNDERSIGNED, BY THE SIGNING OF THIS DOCUMENT, HEREBY ACKNOWLEDGE RECEIPT  
OF A COPY OF THE SAME AND AGREE TO GENERAL INSTRUCTIONS SET FORTH ON THE REVERSE  
SIDE AND INCORPORATED HEREIN. THIS COVERS MONEY SETTLEMENT ONLY. ANY PAPERS TO  
WHICH YOU ARE ENTITLED WILL FOLLOW.

  
CLOSING OFFICER

MAHLON PECK & FAMILY INC.  
  
SELLERS

RECORDATION REQUESTED BY:

WHEN RECORDED MAIL TO:

Wasatch Bank  
820 East Main  
P.O. Box 97  
Lehi, UT 84043

SEND TAX NOTICES TO:

Carl J. Mellor and Dimple A. Mellor  
895 North 940 East  
Lehi, UT 84043

ENT 15134 BK 2913 PG 270  
MINA B REID UTAH CO RECORDER BY AC  
1992 APR 1 12:26 PM FEE 12.50  
RECORDED FOR PROVO ABSTRACT COMPANY

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

## DEED OF TRUST

THIS DEED OF TRUST IS DATED MARCH 31, 1992, among Carl J. Mellor and Dimple A. Mellor, whose address is 895 North 940 East, Lehi, UT 84043 (referred to below as "Trustor"); Wasatch Bank, whose address is 820 East Main, P.O. Box 97, Lehi, UT 84043 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Wasatch Bank, Lehi Office, whose address is 820 East Main, Lehi, UT 84043 (referred to below as "Trustee").

**CONVEYANCE AND GRANT.** For valuable consideration, Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, located in Utah County, State of Utah (the "Real Property"):

See Attached Exhibits.

The Real Property or its address is commonly known as 850 East Main Street, Lehi, UT 84043. ✓

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants Lender a Uniform Commercial Code security interest in the Rents and the Personal Property defined below.

**DEFINITIONS.** The following words shall have the following meanings when used in this Deed of Trust. Terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

**Beneficiary.** The word "Beneficiary" means Wasatch Bank, its successors and assigns. Wasatch Bank also is referred to as "Lender" in this Deed of Trust.

**Deed of Trust.** The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

**Guarantor.** The word "Guarantor" means and includes without limitation, any and all guarantors, sureties, and accommodation parties in connection with the indebtedness.

**Improvements.** The word "Improvements" means and includes without limitation all existing and future improvements, fixtures, buildings, structures, mobile homes affixed on the Real Property, facilities, additions and other construction on the Real Property.

**Indebtedness.** The word "Indebtedness" means all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Trustor or expenses incurred by Trustee or Lender to enforce obligations of Trustor under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

**Lender.** The word "Lender" means Wasatch Bank, its successors and assigns.

**Note.** The word "Note" means the Note dated March 31, 1992, in the principal amount of \$44,535.50 from Trustor to Lender, together with all renewals, extensions, modifications, refinancings, and substitutions for the Note. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessories, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

**Property.** The word "Property" means collectively the Real Property and the Personal Property.

**Real Property.** The words "Real Property" mean the property, interests and rights described above in the "Conveyance and Grant" section.

**Related Documents.** The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, loan agreements, guarantees, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

**Rents.** The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

**Trustee.** The word "Trustee" means Wasatch Bank, Lehi Office and any substitute or successor trustee.

**Trustor.** The word "Trustor" means any and all persons and entities executing this Deed of Trust, including without limitation all Trustors named above.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE: (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF TRUSTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

**PAYMENT AND PERFORMANCE.** Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

**POSSESSION AND MAINTENANCE OF THE PROPERTY.** Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

**Possession and Use.** Until the occurrence of an Event of Default, Trustor may (a) remain in possession and control of the Property, (b) use, operate or manage the Property, and (c) collect any Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. This instrument is a Trust Deed executed in conformity with the Utah Trust Deed Act, UCA 67-1-10, et seq.

**Duty to Maintain.** Trustor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

**Hazardous Substances.** The terms "hazardous waste," "hazardous substance," "disposal," "release," and "threatened release," as used in this Deed of Trust, shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-469 ("SARA"), the Hazardous Materials Transportation Act 49 U.S.C. Section 1601, et seq., the Resource Conservation and Recovery Act of 1976 ("RCRA"), and any other applicable federal, state, or local laws, regulations, and orders.

UTAH DEPARTMENT OF TRANSPORTATION  
ROADWAY DESIGN  
FOURTH FLOOR  
4501 SOUTH 2700 WEST  
SALT LAKE CITY, UTAH 84119-5998

## Warranty Deed

(CONTROLLED ACCESS)

Utah County

Parcel No. 15-6:10:A  
Project No. IR-15-6(107)282

CARL J. MELLOR AND DIMPLE A. MELLOR, GrantorS,  
of LEHI, County of UTAH, State of UTAH,  
hereby CONVEYS AND WARRANTS to the UTAH DEPARTMENT OF TRANSPORTATION, at  
4501 South 2700 West, Salt Lake City, Utah 84119, Grantee, for the sum  
of Ten and no/100-----Dollars,  
and other good and valuable considerations, the following described parcel of land  
in Utah County, State of Utah, to-wit:

A parcel of land in fee for the modification of a freeway interchange known  
as Project No. 15-6, being part of an entire tract of property, situate in the NE $\frac{1}{4}$   
of Section 16, T. 5 S., R. 1 E., S.L.B. & M. The boundaries of said parcel of land  
are described as follows:

Beginning in the northerly boundary line of said entire tract, being the  
southerly right of way and no-access line of the existing highway State Route 73  
at a point 1304.82 ft. south and 1194.25 ft. east from the North Quarter corner of  
said Section 16; and running thence N. 88°13'59" E. 200.08 ft., more or less, along  
said southerly right of way and no-access line to the westerly right of way and no-  
access line of the existing freeway I-15 being one-foot westerly from the existing  
no-access fence line; thence S. 31°33'37" E. 29.38 ft. along said westerly right  
way and no-access line parallel to said fence line; thence N. 83°42'04" W. 98.46  
ft.; thence N. 89°10'24" W. 133.12 ft. to the westerly boundary line of said entire  
tract at a point 54.91 ft. perpendicularly distant southerly from the center line  
of said existing highway; thence Northeasterly 17.09 ft. along said westerly  
boundary line along the arc of a 25.00-foot radius curve to the right (Note: Chord  
to said curve bears N. 68°38'59" E. for a distance of 16.76 ft.) to the point of  
beginning as shown on the official map of said project on file in the office of the  
Utah Department of Transportation. The above described parcel of land contains  
0.064 acre, more or less.

(Note: All bearings in the above description are based upon the Utah State  
Plane Coordinate System modified.)

To enable the Utah Department of Transportation to construct and maintain  
public highways as a freeway and connecting crossroad, as contemplated by Title 27,  
Chapter 12, Section 96, Utah Code Annotated, 1953, as amended, the Owners of said  
entire tract of property hereby release and relinquish to said Utah Department of  
Transportation any and all rights or easements appurtenant to the remaining property  
of said Owners by reason of the location thereof with reference to said highways,  
including, without limiting the foregoing, all rights of ingress to or egress from  
said Owner's remaining property contiguous to the lands conveyed, to or from said  
highway State Route 73 and Freeway I-15.

Continued on Page 2

ENT 55696 BK 3021 PG 384  
NINA B REID UTAH CO RECORDER BY MB  
1992 OCT 19 1:35 PM FEE .00  
RECORDED FOR UTAH DEPT OF TRANSPORTATION



Parcel No. 15-6:10:A  
Project No. IR-15-6(107)282

WITNESS, the hand\_ of said Grantorg, this 17th day  
August, A.D. 1992

igned in the presence of:

STATE OF Utah )

x Carl J. Mellor

) ss.

COUNTY OF Salt Lake )

x Dimple Mellor

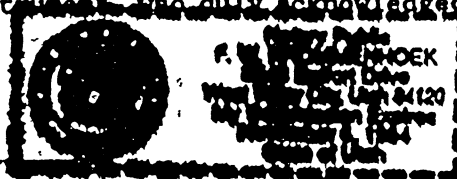
On the date first above written personally appeared before me,

Carl J. Mellor and Dimple A. Mellor

the signer\_ of the within and foregoing instrument, who duly acknowledged to me that  
they executed the same

[Signature]

Notary Public



A-1137.10

UTAH DEPARTMENT OF TRANSPORTATION  
STATEMENT OF JUST COMPENSATION

GRANTOR: Carl J. Mellor and  
Dimple A. Mellor

PROJECT: IR-15-6(107)282

PARCEL(S) NO. 15-6:10:A,10:E,10:2E

The following information is the basis for the amount estimated by the Utah Department of Transportation to be Just compensation.

(a) Identification of the real property to be acquired: (location, etc.)  
A parcel of land located at the southeast corner of Main Street and 850 East, Lehi, Utah to be acquired for construction of the Interstate Highway I-15 Lehi Interchange southbound on-ramp.

Ownership Size: 1.664 Acres

<u>TYPE OF INTEREST ACQUIRED</u>	<u>PARCEL NO.</u>	<u>SIZE OF ACQUISITION</u> <u>SQ.FT/ACRE</u>	<u>REMAINDER</u> <u>LT/RT</u>
<u>Fee Simple</u>	<u>10:A</u>	<u>2,770 Sq.Ft.</u>	<u>1.6004 Acre</u>
<u>Easement</u>	<u>10:E</u>	<u>3,615 Sq.Ft.</u>	
<u>Easement</u>	<u>10:2E</u>	<u>5,537 Sq.Ft.</u>	

(b) Identification of improvements including fixtures which are to be acquired.

BUILDINGS: None

LANDSCAPING/YARD: None

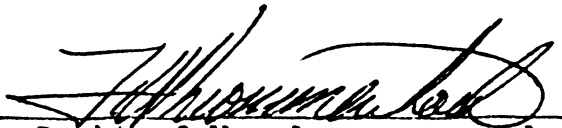
(c) Impr. taken that will be replaced/or constructed as part of project.  
None

(d) Summary of fair market value:

1. Land, 2,770 sq.ft.@ \$ 3.50.....	\$ 9,695.00
2. Easement, 1,400 sq.ft.@ \$ 3.50.....	\$ 4,900.00
3. Easement, 2,215 sq.ft.@ \$ 3.50 x 50%.....	\$ 3,876.00
4. Easement, 3,641 sq.ft.@ \$ 3.50.....	\$ 12,743.00
5. Easement, 1,896 sq.ft.@ \$ 3.50 x 50%.....	\$ 3,318.00
Rounded TOTAL =	\$ 34,550.00

(e) The Utah Department of Transportation declares that this offer is the amount that has been established by the Department as just compensation and is in accordance with applicable State laws and requirements. Just compensation is defined as the fair market value of the property taken, plus damages, if any, to the remaining property, less any benefit which may accrue to said property by reason of the construction of the highway.

DATE: 8/18/92  
R-62/Rev 4/90

  
Right-of-Way Acquisition Agent

CIB COMMERCIAL INDUSTRIAL BUSINESS OPPORTUNITY		UTAH CO. BOARD OF REALTORS Computer Listing Input Form * = Optional Input for Non-Applicable Information Only		MLS # (For <del>Previous</del> <b>RELIST</b> ) <b>100-1518-12231</b> PREVIOUS MLS # <b>100-1518-12231</b>	
<b>PROPERTY TYPE</b> (X only 3) CO <input checked="" type="checkbox"/> Commercial IN <input type="checkbox"/> Industrial BO <input type="checkbox"/> Business Opportunity		<b>AREA</b> (X only 1) 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 21 <input type="checkbox"/> 22 <input type="checkbox"/> 23		<b>LIST PRICE</b> \$ <b>425,000</b> <b>LIST DATE</b> (01-JAN-87) <b>03-10-87</b> <b>EXP DATE</b> (01-JAN-87) <b>03-10-87</b>	
<b>ADDRESS #</b> <b>1700</b> <b>CITY</b> <b>LAZAR</b> <b>YEAR BUILT</b> <b>1900</b>		<b>AD DIR</b> <b>E</b> <b>STREET NAME/NUMBER</b> (Do Not Abbreviate) <b>5174712</b> <b>ZONING</b> <b>G-121</b> <b>*NEW CONSTRUCTION</b> (X only 1) U <input type="checkbox"/> Under Construction T <input type="checkbox"/> To Be Built		<b>*CROSS ST #</b> (Appl.) <b>QUADRANT</b> (X only 1) N <input checked="" type="checkbox"/> NORTH S <input type="checkbox"/> SOUTH N/S RANGE <b>1100</b> (X only 1) E <input type="checkbox"/> EAST W <input type="checkbox"/> WEST E/W RANGE <b>1100</b>	
<b>OWNERSHIP</b> <b>OWNER NAME</b> <b>MAILLOR, J</b> <b>OWNER PHONE</b> <b>000-0000</b> <b>OCCUPANT/APPOINTMENT</b> <b>LAZAR, BROOKS</b> <b>OCC/APT PHONE</b> <b>256-3591</b>		<b>POSSESSION</b> (X only 1) IM <input type="checkbox"/> Immediate 30 <input type="checkbox"/> 30 Days NG <input type="checkbox"/> Call LO/Negotiate UC <input checked="" type="checkbox"/> Upon Closing		<b>OCCUPANCY</b> (X up to 2) ON <input type="checkbox"/> Owner RN <input type="checkbox"/> Renter VA <input checked="" type="checkbox"/> Vacant MG <input type="checkbox"/> Management Co. (Mgmt. Co.)	
<b>*FOR SALE</b> (X up to 3) S <input type="checkbox"/> Building L <input checked="" type="checkbox"/> Land B <input type="checkbox"/> Business		<b>*INCLUDED IN SALE</b> (X up to 3) S <input type="checkbox"/> Building Lease L <input type="checkbox"/> Land Lease B <input type="checkbox"/> Business Lease		<b>*FOR LEASE</b> (X up to 3) S <input type="checkbox"/> Building L <input type="checkbox"/> Land B <input type="checkbox"/> Business <b>*LEASES</b> \$ <b>1000</b>	
<b>*LEASE PER</b> (X only 1) M <input type="checkbox"/> Month Y <input type="checkbox"/> Year S <input type="checkbox"/> Square Foot O <input type="checkbox"/> Other		<b>*LANDLORD PAID</b> (X up to 14) HT <input type="checkbox"/> Heat PW <input type="checkbox"/> Power WT <input type="checkbox"/> Water SW <input type="checkbox"/> Sewer GS <input type="checkbox"/> Gas FI <input type="checkbox"/> Fire Insurance JT <input type="checkbox"/> Janitorial Service		<b>APPOINTMENT</b> (X up to 4) ON <input type="checkbox"/> Call Owner LO <input type="checkbox"/> Call LO OC <input type="checkbox"/> Call Occupant KL <input type="checkbox"/> Key at LO KB <input type="checkbox"/> Use Keybox NA <input checked="" type="checkbox"/> No Appt. Necessary MG <input type="checkbox"/> Management Co.	
<b>FINANCIAL</b>					
<b>TAX ID#</b> <b>13-002-0058</b> <b>*1 BAL</b> (Enter Dollar Amount) \$ <b>1000</b> <b>*1 INTEREST</b> % <b>10</b> <b>*1 PAYMENT</b> (Enter Dollar Amount) \$ <b>1000</b> <b>*1 PMT TYPE</b> (X only 1) F <input type="checkbox"/> Fixed A <input type="checkbox"/> Adjustable <b>*1 PMT INC</b> (Circle As Applies) P <input type="checkbox"/> M (MMI) <b>*1# OF PAYMENTS</b> per year Loan 1 <b>1</b>		<b>TAXES</b> \$ <b>1000</b> <b>*2 BAL</b> (Enter Dollar Amount) \$ <b>1000</b> <b>*2 INTEREST</b> % <b>10</b> <b>*2 PAYMENT</b> (Enter Dollar Amount) \$ <b>1000</b> <b>*2 PMT TYPE</b> (X only 1) F <input type="checkbox"/> Fixed A <input type="checkbox"/> Adjustable <b>*2 PMT INC</b> (Circle As Applies) P <input type="checkbox"/> M (MMI) <b>*2# OF PAYMENTS</b> per year Loan 2 <b>1</b>		<b>*ADDITIONAL ENCUMBRANCES</b> \$ <b>1000</b> <b>*ADDITIONAL PMT</b> \$ <b>1000</b> <b>*MORTGAGEE(S)</b> <b>*LOANS</b> (s of) <b>*DOWN PAYMENT</b> (Enter \$ amount other than refinance) \$ <b>1000</b> <b>ASSESSMENTS</b> (X only 1) P <input type="checkbox"/> Paid N <input checked="" type="checkbox"/> Not Paid None <input checked="" type="checkbox"/>	
<b>*BUSINESS USE</b> CM <input type="checkbox"/> Commercial IN <input type="checkbox"/> Industrial RO <input type="checkbox"/> Retail Opportunity WO <input type="checkbox"/> Wholesale Opportunity MN <input type="checkbox"/> Manufacturing OF <input type="checkbox"/> Office SH <input type="checkbox"/> Shop SR <input type="checkbox"/> Showroom WH <input type="checkbox"/> Warehouse		<b>*BUILDING TYPE</b> (X up to 4) CM <input type="checkbox"/> Commercial IN <input type="checkbox"/> Industrial RO <input type="checkbox"/> Retail Opportunity WO <input type="checkbox"/> Wholesale Opportunity MN <input type="checkbox"/> Manufacturing OF <input type="checkbox"/> Office SH <input type="checkbox"/> Shop SR <input type="checkbox"/> Showroom WH <input type="checkbox"/> Warehouse		<b>TOTAL SQ. FT.</b> (Estimated) <b>1000</b> <b>*OFFICE SQ. FT.</b> <b>1000</b> <b>*# OF BUILDINGS</b> <b>1</b>	
<b>UTILITIES/METERS</b> (X up to 3) CC <input type="checkbox"/> Cullinary Wt. City CW <input type="checkbox"/> Cullinary Wt. Well ST <input type="checkbox"/> Sewer SG <input type="checkbox"/> Septic Tank NG <input type="checkbox"/> Natural Gas EL <input type="checkbox"/> Electricity PP <input type="checkbox"/> Propane IR <input type="checkbox"/> Irrigation OL <input type="checkbox"/> Oil OC <input type="checkbox"/> Gas Combined GS <input type="checkbox"/> Gas Separator EC <input type="checkbox"/> Electric Combined ES <input type="checkbox"/> Electric Separator HW <input type="checkbox"/> Hot Water Heat OT <input type="checkbox"/> Other		<b>HEAT</b> (X up to 2) GS <input type="checkbox"/> Gas EL <input type="checkbox"/> Electric OL <input type="checkbox"/> Oil NW <input type="checkbox"/> Hot Water PP <input type="checkbox"/> Propane FA <input type="checkbox"/> Forced Air ES <input type="checkbox"/> Baseboard HP <input type="checkbox"/> Heat Pump SH <input type="checkbox"/> Space Heat WO <input type="checkbox"/> Wood/Coal OT <input type="checkbox"/> Other None <input type="checkbox"/>		<b>*AIR COND</b> (X up to 2) GS <input type="checkbox"/> Gas EL <input type="checkbox"/> Electric EV <input type="checkbox"/> Evaporative HP <input type="checkbox"/> Heat Pump CA <input type="checkbox"/> Central Air WW <input type="checkbox"/> Window Unit <b>ROOF</b> (X up to 3) AS <input type="checkbox"/> Asphalt BT <input type="checkbox"/> Built SH <input type="checkbox"/> Shingle TO <input type="checkbox"/> Tar & Gravel AL <input type="checkbox"/> Aluminum SK <input type="checkbox"/> Shakes MT <input type="checkbox"/> Metal WD <input type="checkbox"/> Wood AS <input type="checkbox"/> Asbestos OT <input type="checkbox"/> Other	
<b>*CONSTRUCTION</b> (X up to 2) FR <input type="checkbox"/> Frame BR <input type="checkbox"/> Brick RK <input type="checkbox"/> Rock AL <input type="checkbox"/> Aluminum CB <input type="checkbox"/> Cinder Block CC <input type="checkbox"/> Concrete SS <input type="checkbox"/> Steel Siding OT <input type="checkbox"/> Other		<b>*VOLTAGE</b> (s of highest) <b>240</b> <b>*PHASE</b> (X one, s of highest) 1 <input type="checkbox"/> Single 2 <input type="checkbox"/> Double 3 <input checked="" type="checkbox"/> Triple <b>*AMPS</b> (main disconnect) <b>100</b>		<b>*SHIPPING DOORS</b> (s of) <b>1</b> <b>*CEILING HEIGHT</b> (Round to nearest foot) <b>10</b> <b>*PARKING SPACES</b> <b>1</b>	
<b>*INCLUSIONS</b> (X up to 11) AA <input type="checkbox"/> Appraisal Available CP <input type="checkbox"/> Covered Parking CR <input type="checkbox"/> Crane DK <input type="checkbox"/> Docks DW <input type="checkbox"/> Drive Up Window FA <input type="checkbox"/> Fire Alarm FD <input type="checkbox"/> Floor Drain FE <input type="checkbox"/> Freight Elevator FS <input type="checkbox"/> Fire Sprinklers FT <input type="checkbox"/> Fuel Tanks/Pumps HC <input type="checkbox"/> Handicap Access HV <input type="checkbox"/> High Visibility KA <input type="checkbox"/> Kitchen Area LA <input type="checkbox"/> Living Area MS <input type="checkbox"/> Multi-story Building OD <input type="checkbox"/> Overhead Doors OS <input type="checkbox"/> Outside Storage PV <input type="checkbox"/> Paved RE <input type="checkbox"/> Reinforced Flooring RF <input type="checkbox"/> Refrigerated Space RR <input type="checkbox"/> Railroad RS <input type="checkbox"/> Restrooms SS <input type="checkbox"/> Security Systems TI <input type="checkbox"/> Tenant Improvements Allowed					
<b>*REMARKS</b> (For New Construction Or Conversion, List Type, Thickness, And R-Value Of Insulation In All Areas Of The Property) <b>EXI FOR 1611 MAC WALKER, 15011 1611 1518-12231</b> <b>REI 1518-12231 1518-12231 1518-12231 1518-12231</b>					
<b>FIRM NAME</b> <b>LAZAR, BROOKS</b> <b>LIST AGENT NAME</b> <b>LAZAR, BROOKS</b>		<b>FIRM PHONE</b> <b>256-3591</b> <b>LIST AGENT PHONE</b> <b>256-3591</b>		<b>CODE FIRM</b> <b>001/1518</b> <b>LIST AGENT CODE</b> <b>11/121</b>	
<b>*REASON PHOTO</b> P <input type="checkbox"/> Photo Not Available U <input type="checkbox"/> Under Construction O <input type="checkbox"/> Outside Photo Taking Boundaries		<b>RECEIVED</b> (Date Form Was Received) <b>10/10/87</b>		<b>I hereby authorize and instruct the listing broker to submit the above data to the MLS, along with timely changes to this listing, including selling information. The MLS may disseminate this information to its participants. I acknowledge receiving a copy of this agreement and warrant the information contained herein to be correct.</b>	
<b>Sellers Signature</b> <b>LAZAR, BROOKS</b>		<b>Date</b> <b>10/10/87</b>		<b>LISTING TYPE</b> (X only 1) SAL <input checked="" type="checkbox"/> For Sale	

Nov 10 - 1114

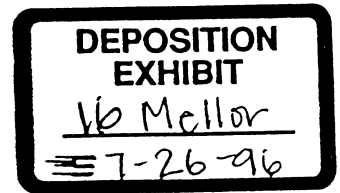
#	10053	412 S MAIN		C01 W	C-B
\$	244,900	ALPINE	YRBLT	1990	C02
OWN	DICK ARNOLD	PH 756-3250	POSS UC OCCP	ON, RN	
OCCM	DICK / JOAN	PH 756-3355	APPT	ON, LO	
LOC	WT, SW, RF, OM, BT, LT				
SL	B, L	IN	LS	LEA \$	PER
19AL	96, 48	28AL		ADDE	
11NT	12 000 #	21NT	#	APMT	
1PMT	1,101	2PMT		DNPMT \$	
INC	1PTY	INC	2PTY	ASMTS	TX 2170
TD 11-023-0040	WT			GS1	\$32,640
TY CV	TV CW, AS, WR, CS, OT	L #		VAC	\$
TD 4,680	LOT IRREG			TOE	\$4,180
OSQ	BIDTYP	CM, RO, OF, SR		MOI	\$28,640
BUS VIDEO/PIZZA/ + ACR		.53 PK		CAPT	\$11.62
VT	PS	AP	SD	CH	AC CA
HV	PV, PZ				HEAT GS, FA
UTMT	CC, SW, NG, EL				RFSK, WD
					GSTRB
SELLER WILL FINANCE! NEW COMM. BLDG WITH 3 RE					
NTALS IN ALPINE 1 IS VACANT. CHECK OUR *BB NEG					
FIRM	DANSELL & ASSOC	PH 223-1500	LO 00137	LS	ERS
LAG	MARVEL / NILE	PH 756-7505	SKRCOM	3	

# 11659	51 W 400 S	C 400 S	I-1
\$ 60,500	AM FORK	YPR	C03
JOHN HUGHTON PAUL	PH 225-4954	POSS UC	OCOP ON
OCM OWNER	PH 225-4954	APPT LO	
1/LF			
SAL	IN	LS	PER
29AL		29AL	
11NT	#	2NT	#
1PMT		2PMT	DNPMT \$
INC	1PTY	INC	2PTY
TID 13-050-0017	MT		ASMTS P TX
TY OT	TM CV,CS	L #	GSI \$
TSQ 900	LOT		VAC \$
OSO	BLDTPY IN		TOE \$
FUS	ACR	3.10 PK	MOI \$
PT	PS AP	100 SC	CAPRT %
HC AA,CR,FD,HV,OD,OS,RE		CH	AC
UTMT	CR,SW,EL		HEAT EL
			RFMT
			GSTSS
NEW APPRAISAL PERFECT FOR WELDING SHOP OR PRE			
FAB SHOP HIGH VISIBILITY. *BB NEG			
FAM MANSELL	PH 225-1500	10 00137	LST ERS
LGJ SHERRIE RHOADES	PH 225-4954	BKRCOM	3

COM

# 12231	820 E STATE ST	C	C-
\$89,000	AM FORK	YRBLT 1912	CC3
CWN VALVE IN LAND PH 000-0000	POSS UC OCCP RM		
CCM CALL L/A	PH 000-0000	APPT KL	
LLP			
SL B,L	IN	LS	LEA \$
			PER
1BAL	2BAL	ADCE	
1INT	2INT	APMT	
1PMT	2PMT	DNPMT \$	
INC	1PTY	INC	2PTY
			ASMTS TX 0
TID 13-058-0013 MT			QSI \$
TY CV	TM CS		VAC \$
TSD 1,164	LOT 130 X 670 APPX		TOE \$
QSO	BLDTYP		NOI \$
BUS COMMERCIAL	AGR 2.00 PM	CAPRT %	
VT PS AP	SD CH AC		HEAT GS
MC			RFAS
UNIT EL			CSFR
VALUE IN LAND. SUBJECT TO LAND SPLIT OK, PART			
OF 8 ACRES 4 AC AVAILABLE @ \$156,000. **BB 3X			
FM MANSELL & ASSOC PH 225-1500	10 00137	LST ERS	
LAST ELDWIN K LANE PH 785-6030	BKPMO 3		

8.43 acres Commercial  
State Street Frontage  
Zoned - GC2



Price: \$425,000

Location - Centrally located between Salt Lake City and Provo, in the growing community of Lehi. Approximately 30 mins to SLC, 20 Mins to Provo.

Ideal access - Adjacent to 4 lane State highway and 1200 East. Less than 3 blks from new I-15 Interchange.

Improvements - All utilities will be avail; sewer, primary & secondary water will be stubbed, with curb/gutter and road widening on 1200 East.

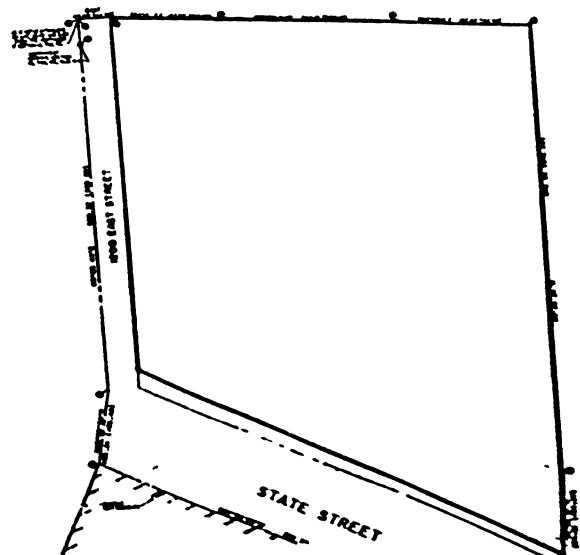
The property is located on the easterly outskirts of town, has good drainage and requires little or no fill unless specific base material is desired for building construction. The area offers a panoramic view of the low hills to the north and Wasatch Range Mountains to the east.

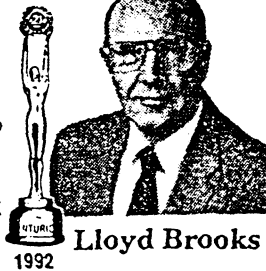
The population of Lehi is around 11,000 and presently in a growth pattern. The education system is within the Alpine School District. There are 3 Elementary schools, 1 Jr High and 1 High school.

**CENTURY 21**

Robinson & Wilson Realty  
405 East State Road  
P.O. Box 351  
American Fork, Utah

Listing Agent  
**Lloyd Brooks, Realtor**  
801-756-3591 or 768-3547





All Pros Realty  
405 E. State, American Fork  
756-3591 or 768-3547

Lloyd Brooks

1992  
HOMES

GREAT RURAL SETTING, 4 bdrm 3 bath, 2nd kitchen makes for in-law apartment. 2 family rms, 1.3 ac. pressure irrigation, put your green thumb to work or use for animals. \$145,000.

SHARP AMERICAN FORK 6 bdrm 3 bath, 2 family rooms, super deck, 2-car garage, outside basement entry, nearly an acre lot, lg garden area and great neighborhood. \$139,900.

LOTS AND ACREAGE

Building lots starting at ..... \$15,500  
1/3 and 1/2 acre lots starting at ..... \$24,000  
3 acres zoned for animals ..... \$45,000  
7 1/4 acres with flowing well, good rural setting ... \$103,500  
17.25 ac and 76 acre, good bench location ... call for details

COMMERCIAL

ALL PREMIUM LOCATIONS, located along Interstate 15, State Street or major traveled roads.

Am. Fork:

2.68 acre ..... \$147,000  
10.58 acre ..... \$476,000

Lehi:

8.43 acre ..... \$276,600

New I-15 interchange, several sizes: 1 acre to 35 acres. Call for details, Lloyd Brooks, 756-3591 or 768-3547.

# EARNEST MONEY SALES AGREEMENT

## EARNEST MONEY RECEIPT

**CONFIDENTIAL**

and Yes(X) No(O)

DATE 19 Aug. 93

undersigned Buyer Roger Young hereby deposits with Brokerage  
 EARNEST MONEY, the amount of Five Hundred Dollars (\$ 500 ),  
 in the form of check to be held until offer is accepted  
 which shall be deposited in accordance with applicable State Law  
One Source REA 785-7788 Received by \_\_\_\_\_  
 erage Phone Number

### OFFER TO PURCHASE

**PROPERTY DESCRIPTION** The above stated EARNEST MONEY is given to secure and apply on the purchase of the property situated at 1206 E  
ate Rd in the City of Lehi County of Utah,  
 ect to any restrictive covenants, zoning regulations, utility or other easements or rights of way, government patents or state deeds of record approved by Buyer in  
 rdance with Section G. Said property is owned by Carl Mellor as sellers, and is more particularly described  
13.00V'0058

#### CHECK APPLICABLE BOXES.

☒ UNIMPROVED REAL PROPERTY ☒ Vacant Lot ☒ Vacant Acreage ☐ Other \_\_\_\_\_  
☒ IMPROVED REAL PROPERTY ☒ Commercial ☐ Residential ☐ Condo ☐ Other \_\_\_\_\_

(a) Included Items. Unless excluded below, this sale shall include all fixtures and any of the items shown in Section A if presently attached to the property.  
 The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title None  
All Water there included w/ Land

(b) Excluded Items. The following items are specifically excluded from this sale: None

#### (c) CONNECTIONS, UTILITIES AND OTHER RIGHTS. Seller represents that the property includes the following improvements in the purchase price:

☒ public sewer ☐ connected ☐ well ☐ connected ☐ other \_\_\_\_\_ ☒ electricity ☐ connected  
☐ septic tank ☐ connected ☒ irrigation water ☐ secondary system \_\_\_\_\_ ☐ ingress & egress by private easement  
☐ other sanitary system \_\_\_\_\_ # of shares \_\_\_\_\_ Company \_\_\_\_\_ ☒ dedicated road ☒ paved  
☐ public water ☐ connected ☐ TV antenna ☐ master antenna ☐ prewired ☐ curb and gutter  
☒ private water ☐ connected ☒ natural gas ☐ connected ☐ other rights \_\_\_\_\_

(d) Survey. A certified survey ☒ shall be furnished at the expense of seller prior to closing, ☐ shall not be furnished

(e) Buyer Inspection. Buyer has made a visual inspection of the property and subject to Section 1 (c) above and 6 below, accepts it in its present physical  
 condition, except: none

(Price is sub to final survey, @ 32.625 Acres)  
**PURCHASE PRICE AND FINANCING.** The total purchase price for the property is Two Hundred Twenty Five Thousand  
275,000.00 Dollars (\$ 275,000.00 ) which shall be paid as follows

275,000.00 which represents the aforementioned EARNEST MONEY DEPOSIT: Non-refundable  
175,750.00 representing the approximate balance of CASH DOWN PAYMENT at closing. Buyer to perform, or if Buyer  
0 representing the approximate balance of an existing mortgage, trust deed note, real estate contract or other encumbrance to be assumed by buyer  
 which obligation bears interest at \_\_\_\_\_ % per annum with monthly payments of \$ \_\_\_\_\_  
 which include: ☐ principal; ☐ interest; ☐ taxes; ☐ insurance; ☐ condo fees; ☐ other \_\_\_\_\_  
0 representing the approximate balance of an additional existing mortgage, trust deed note, real estate contract or other encumbrances to be  
 assumed by Buyer, which obligation bears interest at \_\_\_\_\_ % per annum with monthly payments of \$ \_\_\_\_\_  
 which include: ☐ principal; ☐ interest; ☐ taxes; ☐ insurance; ☐ condo fees; ☐ other \_\_\_\_\_  
0 representing balance, if any, including proceeds from a new mortgage loan, or seller financing, to be paid as follows: 0

0 Other \_\_\_\_\_

175,000.00 TOTAL PURCHASE PRICE

r is required to assume an underlying obligation (in which case Section F shall also apply) and/or obtain outside financing, Buyer agrees to use best effort  
 assume and/or procure same and this offer is made subject to Buyer qualifying for and lending institution granting said assumption and/or financing Buyer agree  
 make application within NA days after Seller's acceptance of this Agreement to assume the underlying obligation and/or obtain the new financing  
 interest rate not to exceed NA %. If Buyer does not qualify for the assumption and/or financing within NA days after Seller's acceptanc  
 this Agreement this Agreement shall be voidable at the option of the Seller upon written notice Seller agrees to pay up to NA mortgage loan discou

CONDITION AND CONVEYANCE OF TITLE. Seller represents that Seller ☒ holds title to the property in fee simple ☐ as purchaser of the property under a real contract. Transfer of Seller's ownership interest shall be made as set forth in Section S. Seller agrees to furnish good and marketable title to the property, subject to any encumbrances and exceptions noted herein, evidenced by ☒ a current policy of title insurance in the amount of purchase price ☐ an abstract of title brought current, attorney's opinion (See Section H).

CONFIDENTIAL

INSPECTION OF TITLE. In accordance with Section G, Buyer shall have the opportunity to inspect the title to the subject property prior to closing. Buyer shall take title subject to any existing restrictive covenants, including condominium restrictions (CC & R's). Buyer ☒ has ☐ has not reviewed any condominium CC & R's prior to signing this Agreement.

VESTING OF TITLE. Title shall vest in Buyer as follows. DETERMINE AT CLOSING

SELLERS WARRANTIES. In addition to warranties contained in Section C, the following items are also warranted N/A

Limitations to the above and Section C shall be limited to the following: N/A

SPECIAL CONSIDERATIONS AND CONTINGENCIES. This offer is made subject to the following special conditions and/or contingencies which must be satisfied at closing: 1) Architectural site evaluation approval 2) Approval of project by City 3) approval from U.P. R.R.

CLOSING OF SALE. This Agreement shall be closed on or before Oct 20, 19 93 at a reasonable location to be designated by subject to Section Q. Upon demand, Buyer shall deposit with the escrow closing office all documents necessary to complete the purchase in accordance with agreement. Prorations set forth in Section R shall be made as of ☐ date of possession ☒ date of closing ☐ other \_\_\_\_\_

POSSESSION. Seller shall deliver possession to Buyer on AT CLOSING, unless extended by written agreement of parties.

AGENCY DISCLOSURE. At the signing of this Agreement the listing agent Lloyd Brooks represents ☒ Seller ☐ Buyer, the selling agent Bert Carl represents ☐ Seller ☒ Buyer. Buyer and Seller confirm that prior to signing this Agreement a disclosure of the agency relationship(s) was provided to him/her. ☒ ( ) Buyer's initials ( ) ( ) Seller's initials.

GENERAL PROVISIONS. UNLESS OTHERWISE INDICATED ABOVE, THE GENERAL PROVISION SECTIONS ON THE REVERSE SIDE HEREOF HAVE BEEN ACCEPTED BY THE BUYER AND SELLER AND ARE INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

AGREEMENT TO PURCHASE AND TIME LIMIT FOR ACCEPTANCE. Buyer offers to purchase the property on the above terms and conditions. Seller shall accept until 6 (AM/PM) 8-20, 19 93 to accept this offer. Unless accepted, this offer shall lapse and the Agent shall return the EARNEST MONEY to the Buyer.

Lloyd Brooks Aug 19 1993 24405. 32704. 5LC 974-0994  
(Signature) (Date) (Address) (Phone) (SSN/TAX ID)

\_\_\_\_\_  
(Signature) (Date) (Address) (Phone) (SSN/TAX ID)

CK ONE:

ACCEPTANCE OF OFFER TO PURCHASE. Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above.

REJECTION. Seller hereby REJECTS the foregoing offer. \_\_\_\_\_ (Seller's initials)

COUNTER OFFER. Seller hereby ACCEPTS the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum, and sends said COUNTER OFFER for Buyer's acceptance. Buyer shall have until \_\_\_\_\_ (AM/PM) \_\_\_\_\_, 19 \_\_\_\_\_ to accept the terms specified below.

\_\_\_\_\_  
(Signature) (Date) (Time) (Address) (Phone) (SSN/TAX ID)

\_\_\_\_\_  
(Signature) (Date) (Time) (Address) (Phone) (SSN/TAX ID)

CK ONE:

ACCEPTANCE OF COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER

REJECTION. Buyer hereby REJECTS the COUNTER OFFER. \_\_\_\_\_ (Buyer's Initials)

COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER with modifications on attached Addendum.

\_\_\_\_\_  
(Signature) (Date) (Time) (Buyer's Signature) (Date) (Time)

#### DOCUMENT RECEIPT

Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures. (One of the following alternatives must therefore be completed).

I acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures:

\_\_\_\_\_  
OF SELLER

\_\_\_\_\_  
SIGNATURE OF BUYER

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



DATE August 23, 1993~~CONFIDENTIAL~~undersigned Buyer The Citadel Group, LLC

hereby deposits with Broker

EARNEST MONEY, the amount of Two thousand five hundred----- Dollars (\$ 2,500.00)form of check to be a non-refundable earnest money deposit  
shall be deposited in accordance with applicable State Law.AMOREAUX REALTY 756-6054  
Phone Number

Received by

Ray W. Lamoreaux  
Broker

## OFFER TO PURCHASE

PROPERTY DESCRIPTION The above stated EARNEST MONEY is given to secure and apply on the purchase of the property situated at approx.  
0 E. State Street in the City of Lehi County of Utah.  
 subject to any restrictive covenants, zoning regulations, utility or other easements or rights of way, government patents or state deeds of record approved by Buyer  
 in accordance with Section G. Said property is owned by Carl J. Mellor & Dimple A. Mellor as sellers, and is more particularly described  
 Tax number: 13-002-0058

## CHECK APPLICABLE BOXES.

UNIMPROVED REAL PROPERTY ☐ Vacant Lot ☒ Vacant Acreage ☐ Other \_\_\_\_\_IMPROVED REAL PROPERTY ☐ Commercial ☐ Residential ☐ Condo ☐ Other \_\_\_\_\_

a) Included Items. Unless excluded below, this sale shall include all fixtures and any of the items shown in Section A if presently attached to the property.  
 The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: any and  
all water rights

b) Excluded Items. The following items are specifically excluded from this sale None.

c) CONNECTIONS, UTILITIES AND OTHER RIGHTS. Seller represents that the property includes the following improvements in the purchase price:

<input type="checkbox"/> public sewer <input type="checkbox"/> connected	<input type="checkbox"/> well <input type="checkbox"/> connected <input type="checkbox"/> other	<input type="checkbox"/> electricity <input type="checkbox"/> connected
<input type="checkbox"/> septic tank <input type="checkbox"/> connected	<input type="checkbox"/> irrigation water / secondary system	<input type="checkbox"/> ingress & egress by private easement
<input type="checkbox"/> other sanitary system _____	# of shares _____ Company _____	<input checked="" type="checkbox"/> Dedicated road <input type="checkbox"/> paved
<input type="checkbox"/> public water <input type="checkbox"/> connected	<input type="checkbox"/> TV antenna <input type="checkbox"/> master antenna <input type="checkbox"/> prewired	<input type="checkbox"/> curb and gutter
<input type="checkbox"/> private water <input type="checkbox"/> connected	<input type="checkbox"/> natural gas <input type="checkbox"/> connected	<input type="checkbox"/> other rights _____

d) Survey. A certified survey ☒ shall be furnished at the expense of existing survey "Seller" prior to closing. ☐ shall not be furnished.

Buyer Inspection. Buyer has made a visual inspection of the property and subject to Section 1 (c) above and 6 below, accepts it in its present physical condition, except: No exceptions.

PURCHASE PRICE AND FINANCING. The total purchase price for the property is Two hundred and sixty thousand and no/100-  
----- Dollars (\$ 260,000.00) which shall be paid as follows:

<u>2,500.00</u>	which represents the aforescribed EARNEST MONEY DEPOSIT:
<u>250,000.00</u>	representing the approximate balance of CASH DOWN PAYMENT at closing
<u>-0-</u>	representing the approximate balance of an existing mortgage, trust deed note, real estate contract or other encumbrance to be assumed by buyer which obligation bears interest at _____ % per annum with monthly payments of \$ _____ which include: <input type="checkbox"/> principal; <input type="checkbox"/> interest; <input type="checkbox"/> taxes; <input type="checkbox"/> insurance; <input type="checkbox"/> condo fees; <input type="checkbox"/> other _____.
<u>-0-</u>	representing the approximate balance of an additional existing mortgage, trust deed note, real estate contract or other encumbrances to be assumed by Buyer, which obligation bears interest at _____ % per annum with monthly payments of \$ _____ which include: <input type="checkbox"/> principal; <input type="checkbox"/> interest; <input type="checkbox"/> taxes; <input type="checkbox"/> insurance; <input type="checkbox"/> condo fees; <input type="checkbox"/> other _____.
<u>-0-</u>	representing balance, if any, including proceeds from a new mortgage loan, or seller financing, to be paid as follows: _____

7,500.00 Other Upon acceptance by Lehi City of the proposed P.U.D.

260,000.00 TOTAL PURCHASE PRICE

If Buyer is required to assume an underlying obligation (in which case Section F shall also apply) and/or obtain outside financing, Buyer agrees to use best effort to assume and/or procure same and this offer is made subject to Buyer qualifying for and lending institution granting said assumption and/or financing. Buyer agrees to make application within N/A days after Seller's acceptance of this Agreement to assume the underlying obligation and/or obtain the new financing. Interest rate not to exceed N/A % If Buyer does not qualify for the assumption and/or financing within N/A days after Seller's acceptance of this Agreement, this Agreement shall be voidable at the option of the Seller upon written notice. Seller agrees to pay up to N/A mortgage loan disbursements, not to exceed \$ N/A. In addition, seller agrees to pay \$ N/A to be used for Buyer's other loan costs.

encumbrances and exceptions noted herein, evidenced by ☒ a current policy of title insurance in the amount of purchase price ☐ an abstract of title brought current by an attorney's opinion (See Section H).

4. INSPECTION OF TITLE. In accordance with Section G, Buyer shall have the opportunity to inspect the title to the subject property prior to closing. Buyer shall take effect to any existing restrictive covenants, including condominium restrictions (CC & R's). Buyer ☐ has ☒ has not reviewed any condominium CC & R's prior to signing this Agreement.

5. VESTING OF TITLE. Title shall vest in Buyer as follows: As directed at time of closing.

SELLERS WARRANTIES. In addition to warranties contained in Section C, the following items are also warranted: None.

options to the above and Section C shall be limited to the following: Not applicable.

7. SPECIAL CONSIDERATIONS AND CONTINGENCIES. This offer is made subject to the following special conditions and/or contingencies which must be satisfied prior to closing: See attached Addendum.

8. CLOSING OF SALE. This Agreement shall be closed on or before See Addendum, 19\_\_ at a reasonable location to be designated by Seller, subject to Section Q. Upon demand, Buyer shall deposit with the escrow closing office all documents necessary to complete the purchase in accordance with this Agreement. Prorations set forth in Section R shall be made as of ☒ date of possession ☐ date of closing ☐ other \_\_\_\_\_.

9. POSSESSION. Seller shall deliver possession to Buyer on \_\_\_\_\_ unless extended by written agreement of parties.

10. AGENCY DISCLOSURE. At the signing of this Agreement the listing agent Lloyd Brooks represents ☒ Seller ☐ Buyer. The selling agent Arden Spencer represents ☐ Seller ☒ Buyer. Buyer, Buyer and Seller confirm that prior to signing this Agreement a disclosure of the agency relationship(s) was provided to him/her. ( MS Buyer's initials AS Seller's initials.

11. GENERAL PROVISIONS. UNLESS OTHERWISE INDICATED ABOVE, THE GENERAL PROVISION SECTIONS ON THE REVERSE SIDE HEREOF HAVE BEEN INCORPORATED BY THE BUYER AND SELLER AND ARE INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

12. AGREEMENT TO PURCHASE AND TIME LIMIT FOR ACCEPTANCE. Buyer offers to purchase the property on the above terms and conditions. Seller's offer is valid until 5:00 (AM/PM) August 23, 19 93 to accept this offer. Unless accepted, this offer shall lapse and the Agent shall return the EARNEST MONEY to the Buyer.

<u>Citadel Group, LLC</u>	<u>Aug. 23, 1993</u>	<u>(801)277-5548</u>	<u>87-0504417</u>
Seller's Signature	(Date)	(Address)	(Phone) (SSN/TAX)
<u>MS</u>	<u>PARTNER</u>		
Seller's Signature	(Date)	(Address)	(Phone) (SSN/TAX)

ONE

13. ACCEPTANCE OF OFFER TO PURCHASE: Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above.

14. REJECTION. Seller hereby REJECTS the foregoing offer. \_\_\_\_\_ (Seller's initials)

15. COUNTER OFFER. Seller hereby ACCEPTS the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum. Seller presents said COUNTER OFFER for Buyer's acceptance. Buyer shall have until 6:00 (AM/PM) August 24, 19 93 to accept the terms specified below.

<u>Carl J. Mellor</u>	<u>24 Aug 93</u>	<u>12:15 pm</u>	<u>895 N. 940 E.</u>	<u>768-8665</u>	<u>528-2</u>
Seller's Signature	(Date)	(Time)	(Address)	(Phone)	(SSN/TAX)
<u>Simple C. Mellor</u>	<u>24 Aug 93</u>	<u>12:30 pm</u>	<u>895 N. 940 E.</u>	<u>768-8665</u>	<u>238-4</u>
Seller's Signature	(Date)	(Time)	(Address)	(Phone)	(SSN/TAX)

CHECK ONE:

[X] ACCEPTANCE OF COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER

[ ] REJECTION. Buyer hereby REJECTS the COUNTER OFFER. \_\_\_\_\_ (Buyer's Initials)

[ ] COUNTER OFFER. Buyer hereby ACCEPTS the COUNTER OFFER with modifications on attached Addendum.

<u>THE CITADEL GROUP, LLC</u>	<u>24 Aug. '93</u>	<u>1:15 P.M.</u>		
Buyer's Signature	(Date)	(Time)	(Buyer's Signature)	(Date) (Time)

#### DOCUMENT RECEIPT

State Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures. (One of the following alternatives must therefore be completed.)

A. ☒ I acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures:

SIGNATURE OF SELLER

SIGNATURE OF BUYER

<u>Carl J. Mellor</u>	<u>31 Aug 1993</u>	<u>THE CITADEL GROUP, LLC</u>	<u>AX 2493</u>
<u>Simple C. Mellor</u>	<u>31 Aug 1993</u>	<u>MS</u>	<u>AX 2493</u>
	Date	Date	Date

B. ☐ I personally caused a final copy of the foregoing Agreement bearing all signatures to be mailed on \_\_\_\_\_, 19\_\_

certified Mail and return receipt attached hereto to the ☐ Seller ☐ Buyer. Sent by \_\_\_\_\_

ADDENDUM #2  
TO EARNEST MONEY SALES AGREEMENT

CONFIDENTIAL

This document constitutes a COUNTER OFFER to that EARNEST MONEY SALES AGREEMENT dated August 23, 1993, between

CITADEL GROUP, LLC as buyer, and  
CARL J. MELLOR and DIMPLE A. MELLOR as seller(s),

covering real property described as follows: 8.43 acres zoned GC2, located at 1200 East and State Street, Lehi, Utah.

The following terms are hereby incorporated as part of the AGREEMENT:

1. Offer accepted with a sales price of - \$269,800.00
2. All water rights were turned over to Lehi City for annexation.

3. BUYER WILL COOPERATE WITH SELLER ON A 1031 EXCHANGE.

*CM*

Buyer has until 6:00 PM, August 24, 1993, to accept this Counter Offer.

Carl J. Mellor  
Seller, CARL J. MELLOR

24 Aug 1993  
DATE

Dimple Mellor  
Seller, DIMPLE MELLOR

24 Aug 1993  
DATE

Mr. B. H. Parsons  
Buyer, CITADEL GROUP, LLC, by

24 Aug. 1993 1:15 P.M.  
DATE



## LAND DATA FORM

Listing No. \_\_\_\_\_

To enter this property into the computer from your office select INPUT - Optional fields are shaded.

(Computer will Assign)

(Circle One Only)

(2) TYPE  
1. RES Residential  
2. AG Agricultural  
3. REC Recreational  
4. COM Commercial  
5. OTH Other

(3) AREA: 1 (see maps for boundaries)  
(4) PRICE: 269,800  
(5) ADDRESS: 1200 E STATE STREET  
(6) CITY: LEHI (6A) ZIP CODE: 84043

(Circle one)  
(9) ACRES  
0. 0 - .5  
1. .51 - 1.0  
2. 1.1 - 2.0  
3. 2.1 - 5.0  
4. 5.1 - 10.0  
5. 10.1 - 20.0  
6. 20.1 +

(10) ANIMAL RIGHTS  
1. Yes  
2. No

(19) # of Acres: 8.43 (20) \$ Per Acre: \_\_\_\_\_ (22) List Agent: LLOYD BROOKS Office: C-21 ALL PROS  
(23) Buyer Broker (Y/N): Y Amount: 6% 3 Sub Agent (Y/N): N Amount: 6% 0 Dual Variable (Y/N): N  
Listing Type (ERS, EAL): ERS (24) Location Directions: \_\_\_\_\_ (25) Lot Dimensions: \_\_\_\_\_  
(26) List Date: 18 NOV 93 (27) Expiry Date: 8 MAR 94 (28) Lot #: \_\_\_\_\_ (29) Block or Plat \_\_\_\_\_  
(30) Subdivisions: \_\_\_\_\_ (31) Schools: Elem.: SEGO LILY Jr. High: LEHI  
Sr. High: LEHI (32) Cross Street: \_\_\_\_\_ (33) Owner Name: C. MELLOR  
Phone: NA (34) Appointment Name: LLOYD BROOKS Phone: 766-3591  
(35) Restrictive Covenants (Y/N): N (36) Seller Required to Build (Y/N): N Builder: \_\_\_\_\_  
(37) Water Shares: # 0 Company: \_\_\_\_\_ (38) Range Acres: \_\_\_\_\_ (39) Dry Acres: \_\_\_\_\_  
(40) Cultivated Acres: \_\_\_\_\_ (41) Pasture Acres: \_\_\_\_\_ (42) Irrigated Acres: 8.43 (43) Orchard Acres: \_\_\_\_\_  
(44) Frontage Feet: 470 + (45) Agent 2nd Phone: 768-3547 (47) Zoning: GC-2

(50) FEATURES: Under each category given, circle all numbers which apply.

A. VEGETATION	D. STUBBED UTILITIES	H. TERMS	J. SOIL TYPE	M. IMPROVEMENTS
1. OB Oak Brush 2. TR Trees 3. WD Weeds 4. NG Natural Grass 5. PN Pines 6. AS Aspen 7. BB Sagebrush 8. EI Embellishments Inc. 9. <u>OT</u> Other	1. EL Electric 2. NG Natural Gas 3. CW City Water 4. SW Sewer 5. <u>NO</u> None	1. <u>CS</u> Cash 2. SF Seller Finance 3. AS Assume 4. <u>EX</u> Exchange 5. SB Subordination 6. WR Wrap Around 7. RT Will Rent 8. LO Lease Option 9. LE Lease Only 10. WD Will Divide 11. LB Lease Back 12. OT Other	1. <u>LO</u> Loam 2. SA Sandy 3. CL Clay 4. RK Rocky 5. GR Gravel 6. MS Marsh - Wetlands 7. AL Alkaline 8. ST Soil Test Avail. 9. UK Unknown	1. <u>FE</u> Fence 2. BA Barn 3. SH Shade 4. CR Corral 5. GE Grain Elevator 6. SI Silo 7. CD Cement Ditches 8. MF Maintenance Facilities 9. <u>PV</u> Paved Road 10. UP Unpaved Road 11. CG Curb & Gutter 12. BP Building Permit Avail. 13. SW Sidewalk 14. OT Other 15. NO None
B. LOT INFORMATION	E. POSSESSION	I. TERRAIN	K. WATER SHARES TYPE	N. NAMES EXCLUDED
1. CS Cul-de-sac 2. <u>CR</u> Corner 3. IN Interior 4. OT Other	1. IM Immediate 2. 30 30 Days 3. NG Call LONNegot. 4. <u>UR</u> Upon Recording	1. <u>FL</u> Flat 2. GR Gradual Slopes 3. SS Steep Slope 4. HL Hilly 5. MT Mountain 6. OT Other	1. OW Owned 2. RT Rented 3. WL Well 4. SP Springs 5. CR Creeks 6. <u>NO</u> None	1. YS Yes 2. <u>NO</u> No
C. UTILITIES	F. LOAN TYPE	L. ACREAGE LEASED		
1. <u>EL</u> Electricity 2. NG Natural Gas 3. CW City Water 4. IR Irrigation - <u>PI</u> 5. <u>SW</u> Sewer 6. AS Aprvd for Septic Tank 7. ST Septic Tank 8. WL Well 9. WP Well Permit 10. SS Sprinkler System 11. OT Other	1. FL Federal Lands Bank 2. <u>CT</u> Contract 3. CV Conventional 4. WR Wrap Around 5. OT Other 6. <u>NO</u> None	1. BL BLM 2. FR Forest 3. ST State 4. OT Other 5. <u>NO</u> None		
G. FRONTAGE DIRECTIONS				
1. N North 2. S South 3. E East 4. <u>W</u> West 5. NE Northeast 6. SE Southeast 7. NW Northwest 8. SW Southwest				

(51) Assumable (Y/N): N (52) Escalate (Y/N): N (53) Quality (Y/N): \_\_\_\_\_ (54) Down Payment: \_\_\_\_\_ (55) Payment \$ \_\_\_\_\_  
(56) Payment Incl. (PITIM): \_\_\_\_\_ (57) Years Remaining: \_\_\_\_\_ (58) Property Taxes: 1,148 (59) Tax ID#: 13 - 002 - 0058  
(60) Association Dues (Y/N): N (61) Association Dues Amount: \_\_\_\_\_ (62) Remain From Bal: \_\_\_\_\_  
(63) Current Interest Rate: \_\_\_\_\_ (64) Additional Encumbrances: \$ \_\_\_\_\_ (65) Assessments Paid (Y/N): \_\_\_\_\_  
(66) Greenbelt (Y/N): N (71) Financing Remarks - 25 Characters Only: \_\_\_\_\_

REMARKS - 46 CHARACTERS PER LINE

(72) UTILITIES AT OR NEAR SITE, EASY ACCESS TO NEW  
15 INTERCHANGES



ADDENDUM/COUNTER OFFER  
NO. 4  
TO  
REAL ESTATE PURCHASE CONTRACT



THIS IS AN ☐ ADDENDUM ☐ COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of AUGUST 23, 1993, between THE CITICEL GROUP, LLC as Buyer, and CARL J. MELLOR AND Dimple A. Mellor as Seller. The following terms are hereby incorporated as part of the REPC, and to the extent that they modify or conflict with any provisions of the REPC, including all prior addenda and counter offers, these terms shall control. All other terms of the REPC, including all prior addenda and counter offers, not modified shall remain the same:

1. CLOSING:

CLOSING DATE SHALL BE EXTENDED TO WHICH EVER EXCURS FIRST OF THE TWO FOLLOWING CONDITIONS:

- A. TO CLOSE WITHIN 48 HOURS AFTER BUYER RECEIVES FINAL APPROVAL ON THEIR DEVELOPMENT FROM LEHI CITY. OR  
B. TO CLOSE NOT LATER THAN MARCH 23, 1994.

2. PRICE:

SALES PRICE SHALL BE ADJUSTED FROM \$269,800 TO \$311,000 (THREE HUNDRED ELEVEN THOUSAND DOLLARS).

09M ☒ Seller ☒ Buyer shall have until 5:00 ☐ A.M. ☒ P.M. Mountain Time 18 JANUARY, 1994, to accept the terms of this ADDENDUM/COUNTER OFFER in accordance with the provisions of Section 23 of THE REPC. Unless so accepted, the offer as set forth in this ADDENDUM/COUNTER OFFER shall lapse.

Carl J. Mellor 17 Jan 1994 11:00 AM  
☐ Buyer ☒ Seller Signature Date Time ☐ Buyer ☐ Seller Signature Date Time

ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE:

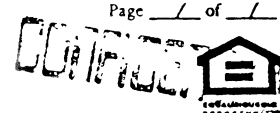
☒ ACCEPTANCE of ADDENDUM/COUNTER OFFER: ☐ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM/COUNTER OFFER.

THE CITICEL GROUP, LLC.  
M. J. B. B. B. JAN. 18 93 4:30 P.M.  
☒ Buyer ☐ Seller Signature Date Time ☐ Buyer ☐ Seller Signature Date Time

☐ REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM/COUNTER OFFER.  
\_\_\_\_ (Initials) \_\_\_\_\_ (Date) \_\_\_\_\_ (Time).



ADDENDUM/COUNTER OFFER  
NO. 5  
TO  
REAL ESTATE PURCHASE CONTRACT



THIS IS AN ☒ ADDENDUM ☐ COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of August 23, 1993, between THE CITADEL GROUP, LLC as Buyer, and CARL J. MELLOR AND DIMPLE A. MELLOR as Seller. The following terms are hereby incorporated as part of the REPC, and to the extent that they modify or conflict with any provisions of the REPC, including all prior addenda and counter offers, these terms shall control. All other terms of the REPC, including all prior addenda and counter offers, not modified shall remain the same:

1. Terms - \$128,500 at closing.  
\$180,000 balance shall be paid over one (1) year - two equal semi-annual payments together with interest at the rate of 10.5 percent.

There will be no penalty for early pay off.

2. Releases - Seller will give partial releases as follows:

a. Partial releases will be granted by the Seller upon the Buyers request, however, at no time will the Seller release more than eighty percent of the land which principle payment has been paid. (determined at \$36,892 per acre).

b. Partial releases shall consist of frontage along 1200 East in proportion to the amount of rear property. Releases shall start on the South end of the subject parcel and work North.

3. Closing - Closing date shall be extended to one of the two following conditions, which ever occurs first:

a. Within 3 days after receiving final approval from Lehi City on buyers project, or

b. Not later than July 27, 1994.

I acknowledge receipt of a copy of this document bearing all signatures. 3 June 1994 DM date

☒ Seller ☐ Buyer shall have until 6:00 ☐ A.M. ☒ P.M. Mountain Time 6 JUNE, 1994, to accept the terms of this ADDENDUM/COUNTER OFFER in accordance with the provisions of Section 23 of THE REPC. Unless so accepted, the offer as set forth in this ADDENDUM/COUNTER OFFER shall lapse.

THE CITADEL GROUP, L.C.

Michael J. Parsons JUNE 3 '94 2:35  
☒ Buyer ☐ Seller Signature Date Time ☐ Buyer ☐ Seller Signature Date Time

ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE:

☒ ACCEPTANCE of ADDENDUM/COUNTER OFFER: ☐ Seller ☐ Buyer hereby accepts the terms of this ADDENDUM/COUNTER OFFER.

Carl J. Mellor 3 June 1994 4:30 pm Dimple A. Mellor 3 June 1994 4:30  
☐ Buyer ☒ Seller Signature Date Time ☐ Buyer ☒ Seller Signature Date Time

☐ REJECTION: ☐ Seller ☐ Buyer rejects the foregoing ADDENDUM/COUNTER OFFER.

(Initials)

(Date)

(Time)



# REAL ESTATE PURCHASE CONTRACT

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



## EARNEST MONEY RECEIPT

The Buyer JOHN B. ALLRED offers to purchase the Property described below and delivers to Brokerage, as Earnest Money Deposit \$3,000 in the form of A CHECK to be deposited within three business days after Acceptance of this offer to purchase by all parties.

C-21 ALL PROS REALTY 756-3591 Received by Lloyd R. Brooks on 11-11-94 (Date)  
Brokerage Phone Number

## OFFER TO PURCHASE

1 PROPERTY 8.43 ACRES ZONED GCR, LOCATED AT 1200 EAST AND STATE STREET.  
City LEHI County UTAH, Utah

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

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

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

\$ 3,000 Earnest Money Deposit

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

\$ \_\_\_\_\_ Proceeds from New Loan. Buyer reserves the right to apply for any of the following loans under the terms described below ☐ Conventional ☐ FHA ☐ VA ☐ Other \_\_\_\_\_ Seller agrees to pay \$ \_\_\_\_\_ toward

Discount Points and Buyer's other loan and closing costs, to be allocated at Buyer's discretion

☐ For a fixed rate loan Amortized and payable over \_\_\_\_\_ years, interest shall not exceed \_\_\_\_\_% per annum, monthly principal and interest payment shall not exceed \$ \_\_\_\_\_, or

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

\$ 270,000 Seller Financing (See attached Seller Financing Addendum)

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

\$ 47,000 Balance of Purchase Price in Cash at Closing

\$ 320,000 Total Purchase Price

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

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

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

3. CLOSING. This transaction shall be closed on or before November 28, 1994. Closing shall occur when (a) Buyer and Seller have signed and delivered to each other (or to the escrow/title company), all documents required by this Contract, by the Lender, by written escrow instructions and by applicable law, and (b) the monies required to be paid under these documents, have been delivered to the escrow/title company in the form of cashier's check, collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the escrow Closing fee, unless otherwise agreed by the parties in writing. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated as set forth in this Section. Unearned deposits on tenancies shall be transferred to Buyer at Closing. Prorations set forth in this Section, shall be made as of ☒ date of Closing ☐ date of possession ☐ other \_\_\_\_\_

4 POSSESSION. Unless otherwise agreed in writing by the parties, Seller shall deliver possession to Buyer within 72 hours after Closing.

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

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

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

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

8.1 Buyer shall have 10 calendar days after Acceptance in which to review the content of Seller Disclosures, and, if the inspection contingency applies, to complete and evaluate the inspection of the Property, and to determine, if, in Buyer's sole discretion, the content of all Seller Disclosures (including the Property Inspection) is acceptable.

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

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

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

9. SPECIAL CONTINGENCIES. This offer is made subject to \_\_\_\_\_.

The terms of attached Addendum # \_\_\_\_\_ are incorporated into this Contract by this reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by 5:00 ☐ AM ☒ PM Mountain Time 12 Nov 1994, this offer shall lapse, and the Brokerage shall return the Earnest Money Deposit to Buyer.

x John B. Alfred 11/11/94  
(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)  
The above date shall be the Offer Reference Date.

348 N. Center 768-4630  
(Notice Address) (Phone) (Notice Address) (Phone)  
Lehi

#### ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE:

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

Carl J. Mellon 12 Nov 1994 4:30 Dimple A. Mellon 11/12 4:30  
(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

895 N. 940 E. Lehi Utah 84043  
(Notice Address) (Notice Address)

☐ Rejection: Seller Rejects the foregoing offer \_\_\_\_\_ (Seller's initials) \_\_\_\_\_ (Date) \_\_\_\_\_ (Time)

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

I acknowledge receipt of a copy of this document bearing all signatures. Date 12 Nov 1994



ROBERT C. KELLER (A4861)  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Defendants  
10 Exchange Place, Eleventh Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000

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

---

MAHLON PECK & FAMILY, INC.,

Plaintiff,

vs.

ANSWER

LLOYD R. BROOKS, STANLEY W.  
ROBINSON dba CENTURY 21  
ROBINSON & WILSON REALTY,  
DONNA ROBINSON dba CENTURY 21  
ROBINSON & WILSON REALTY, and  
DENICE A. WILSON JEPSEN dba  
CENTURY 21 ROBINSON & WILSON  
REALTY,

Civil No. 940400145

Judge Boyd Park

Defendants.

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Defendants Lloyd R. Brooks, and Stanley W. Robinson dba  
Century 21 Robinson & Wilson Realty; Donna Robinson dba Century  
21 Robinson & Wilson Realty; and Denice A. Wilson Jepsen dba  
Century 21 Robinson & Wilson Realty (collectively "defendants")  
answer plaintiffs' complaint as follows:

FIRST DEFENSE

Plaintiffs' complaint fails to state a claim against  
defendants and each of them upon which relief can be granted.

broker Stanley Robinson, who formerly did business as Century 21 Wilson & Robinson Realty; deny all other allegations of paragraph 3.

4. Admit Stanley Robinson and others formerly did business as Century 21 Wilson & Robinson Realty at the address in American Fork; deny all other allegations of paragraph 4.

5. Admit.

6-14. Admit plaintiff and other parties entered into a standard Earnest Money Sales Agreement ("Earnest Money"), which incorporated various counteroffers and addenda, and a standard Sales Agency Contract, and allege the agreements and addenda speak for themselves; deny all other allegations in paragraphs 6-14.

15-16. Deny, and allege that plaintiff expressly extended and itself requested extensions of closing dates and contract expirations up through and including March 30, 1992.

17. Admit.

18-19. Deny for lack of knowledge or information.

20-22. Admit.

23. Deny, and allege that plaintiff expressly extended and itself requested extensions of closing dates and contract expirations up through and including March 30, 1992.

24. Deny, and allege that the annexation, zoning, development and other factors were expressly factored into and

made part of the agreed upon purchase price of \$16,000.00 per acre.

25. Admit.

26. Deny, and allege that plaintiff expressly extended and itself requested extensions of closing dates and contract expirations up through and including March 30, 1992.

27. Deny the alleged non-disclosures are facts and that defendants had any duty to disclose such non-facts.

28. Admit.

29. Admit offer contingent on approval by Lehi City Council of offeror's use of property as a Planned Unit Development ("PUD"), which is not yet approved; deny all other allegations of paragraph 29.

30. Admit offer from an offeror contemplating an undesirable industrial use contingent on offeror's ability to build a railroad spur on property, which was impossible or impracticable; deny all other allegations of paragraph 29.

31. Deny.

32. Defendants incorporate by reference responses to allegations in paragraphs 1 through 32 above.

33 33-36. Deny.

37. Defendants incorporate by reference responses to allegations in paragraphs 1 through 36 above.

38-42. Deny.

Acreage				Single Family		
1989						
<u>Qtr.</u>	<u>Sales</u>	<u>Avg \$</u>	<u>Days</u>	<u>Sales</u>	<u>Avg\$</u>	<u>Days</u>
1	12	59,928	285	204	68,968	91
2	13	101,333	106	311	68,103	83
3	11	78,913	136	395	75,357	97
4	7	43,757	70	391	74,858	106

Acreage				Single Family		
1990						
<u>Qtr.</u>	<u>Sales</u>	<u>Avg \$</u>	<u>Days</u>	<u>Sales</u>	<u>Avg\$</u>	<u>Days</u>
1	7	148,314	75	269	74,818	88
2	14	58,522	120	345	73,366	83
3	10	34,555	205	411	80,730	93
4	9	76,058	202	391	77,669	93

Acreage				Single Family		
1991						
<u>Qtr.</u>	<u>Sales</u>	<u>Avg \$</u>	<u>Days</u>	<u>Sales</u>	<u>Avg\$</u>	<u>Days</u>
1	11	46,119	133	249	81,066	78
2	18	76,484	121	435	78,244	76
3	8	40,912	66	416	80,284	87
4	11	43,907	128	415	84,887	99

Acreage				Single Family		
1992						
<u>Qtr.</u>	<u>Sales</u>	<u>Avg \$</u>	<u>Days</u>	<u>Sales</u>	<u>Avg\$</u>	<u>Days</u>
1	17	69,289	94	309	89,032	88
2	28	65,641	83	504	85,039	70
3	12	118,991	153	442	93,076	74
4	16	90,115	104	475	93,687	87
				1730		

Acreage				Single Family		
1993						
<u>Qtr.</u>	<u>Sales</u>	<u>Avg \$</u>	<u>Days</u>	<u>Sales</u>	<u>Avg\$</u>	<u>Days</u>
1	11	162,104	75	318	98,659	76
2	23	79,206	69	479	103,748	72
3	21	81,903	75	544	107,127	63

Year to date average sales price:

1990 — \$76,967

1991 — \$85,842

1992 — \$90,180

1993 — \$105,671

<sup>id</sup>  
r 1994 — \$121,194

— I'm sorry this took so long. Hope this is what you needed.

Sherrri

TO: GORDON DAVUL FR. SHERRI NOV-

Assoc of Realtors

Year to date average sales price:

1990 — \$76,967

> 8,875 increase or 11.53% increase

1991 — \$85,842

> 4338 increase or 5.05% increase

1992 — \$90,180

> 15,491 increase or 17.18% increase

1993 — \$105,671

> 15,523 increase or 14.69% increase

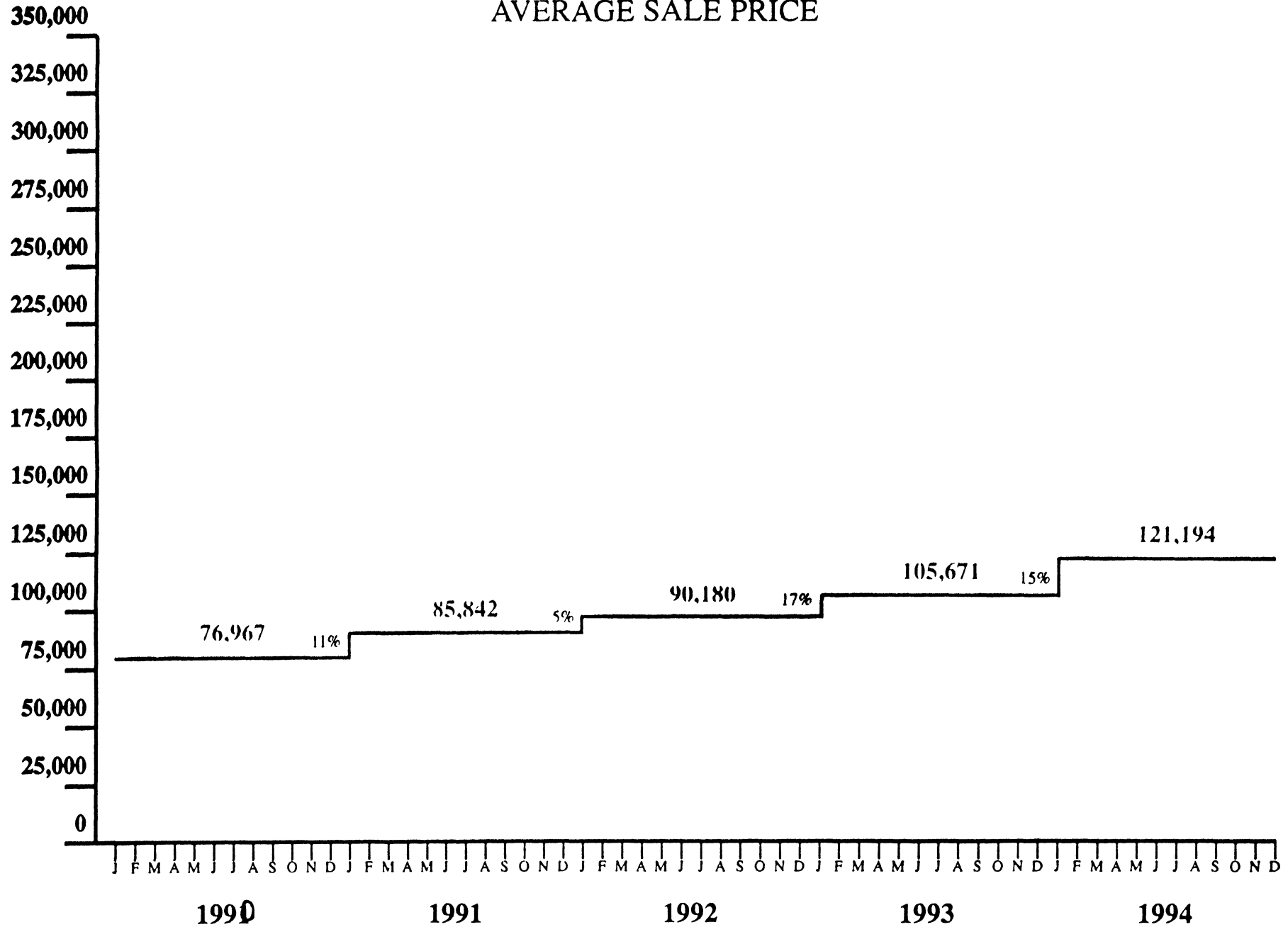
1994 — \$121,194

— I'm sorry this took so long. Hope this is what you needed.

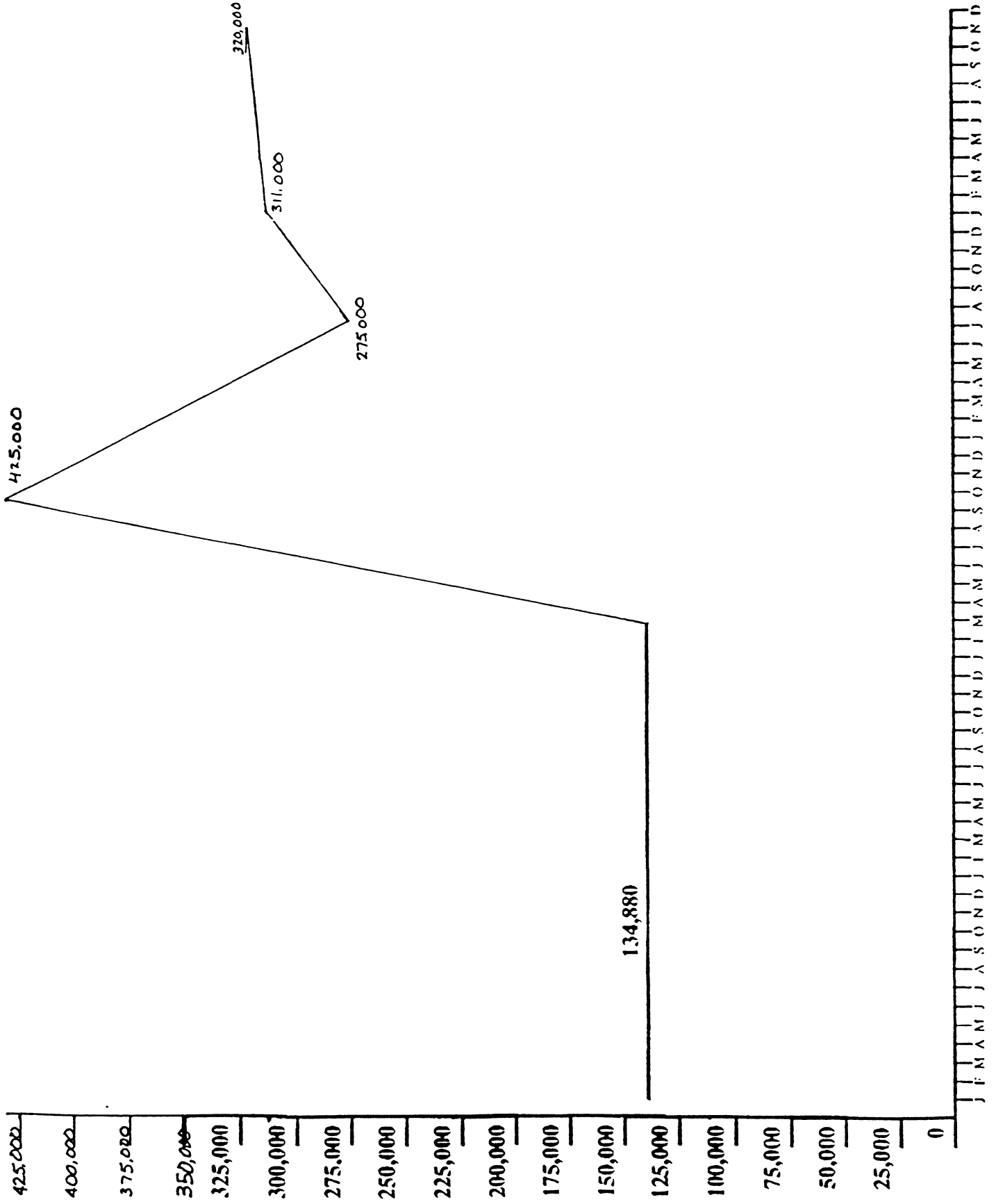
Sherrri

# VALUE OF PROPERTY

## AVERAGE SALE PRICE



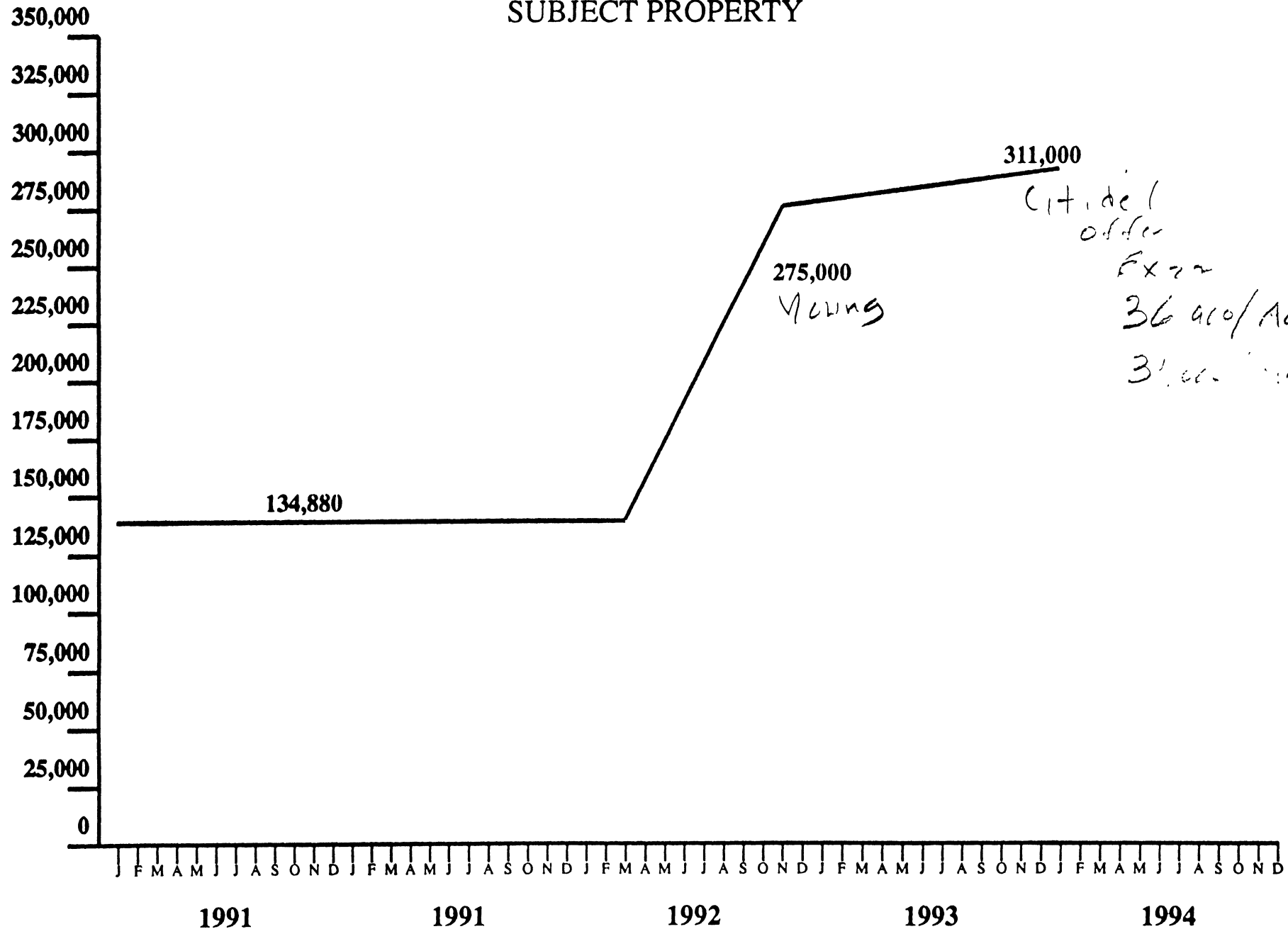
SUBJECT PROPERTY





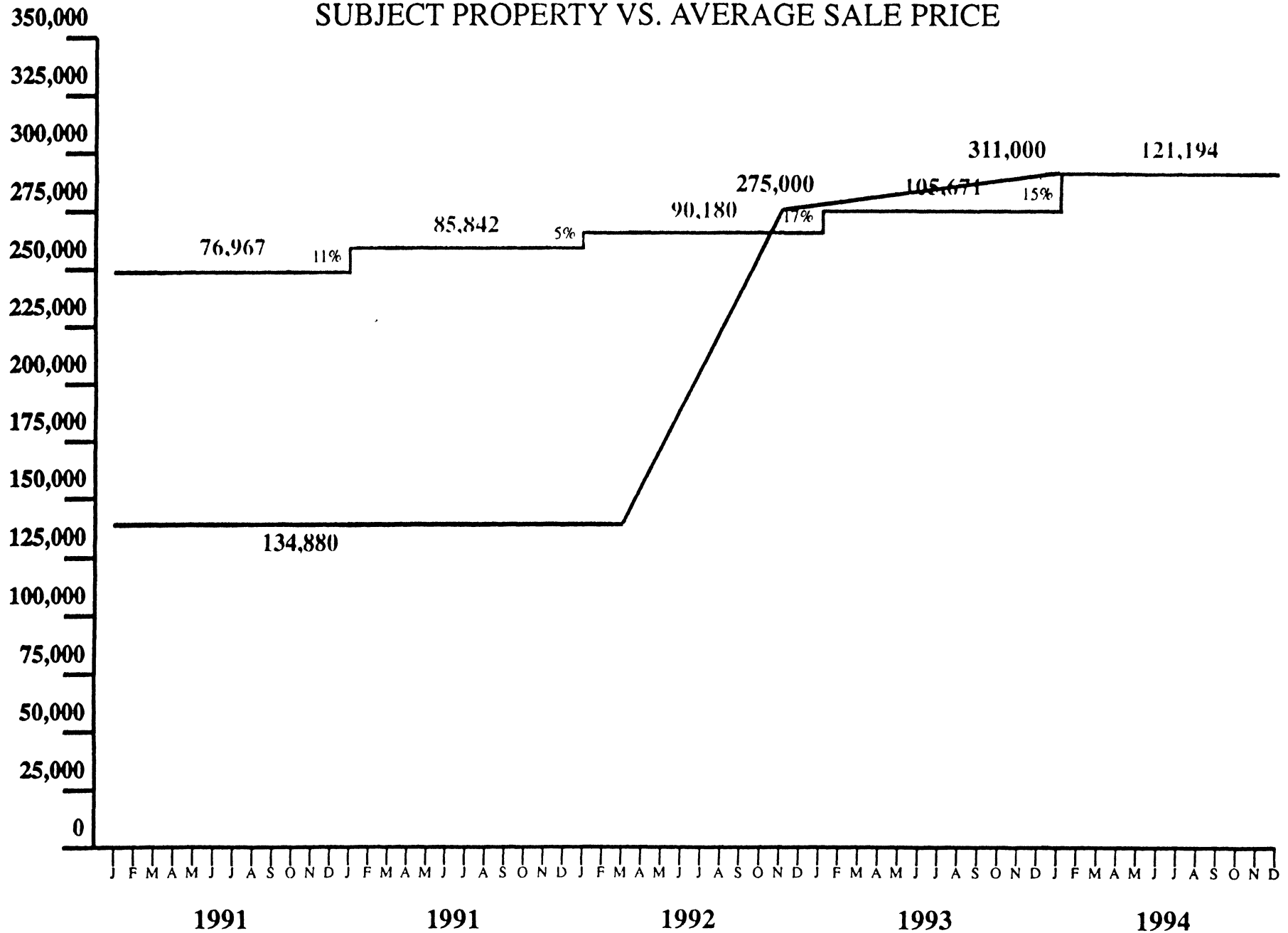
# VALUE OF PROPERTY

## SUBJECT PROPERTY



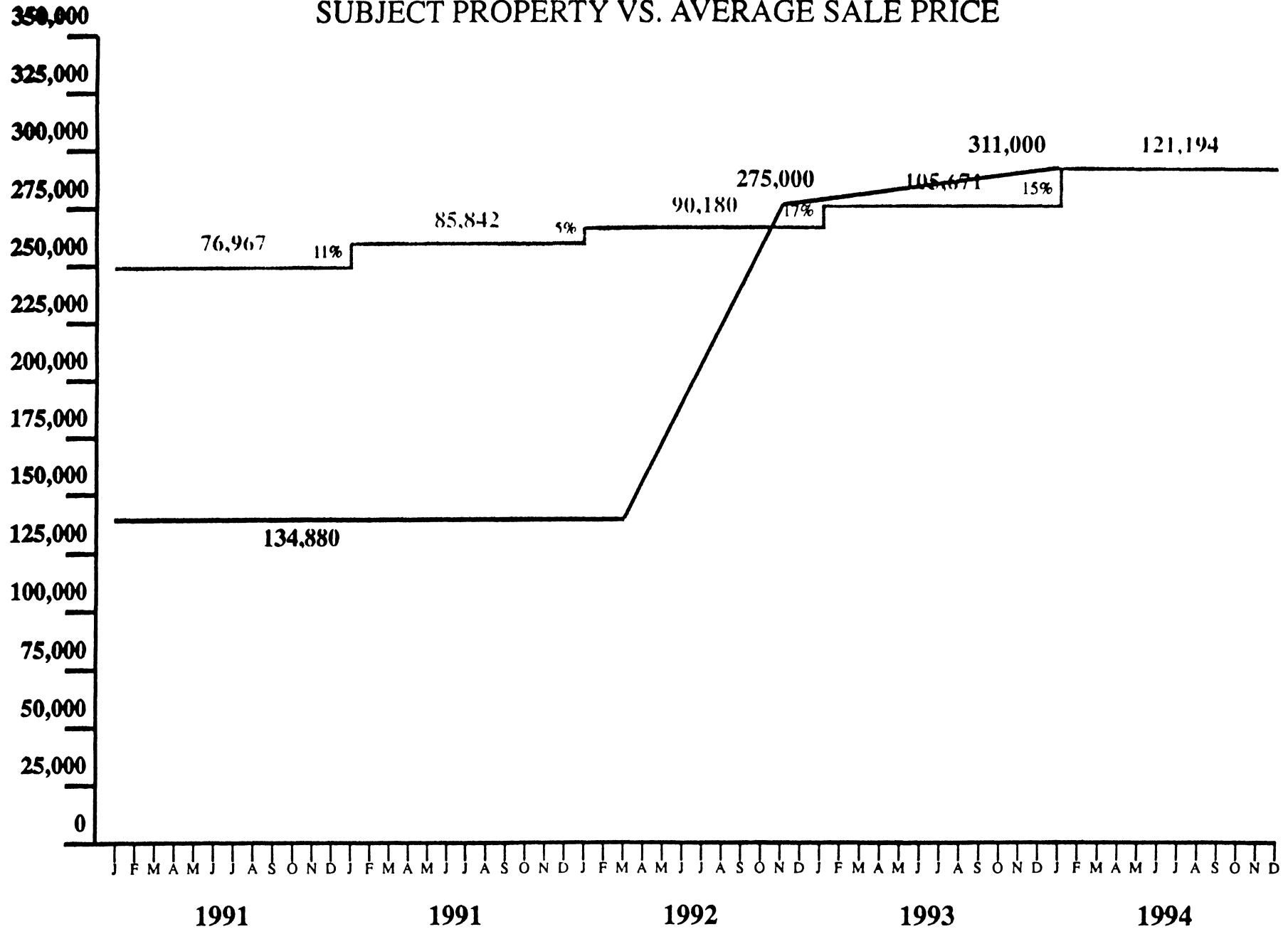
# VALUE OF PROPERTY

## SUBJECT PROPERTY VS. AVERAGE SALE PRICE

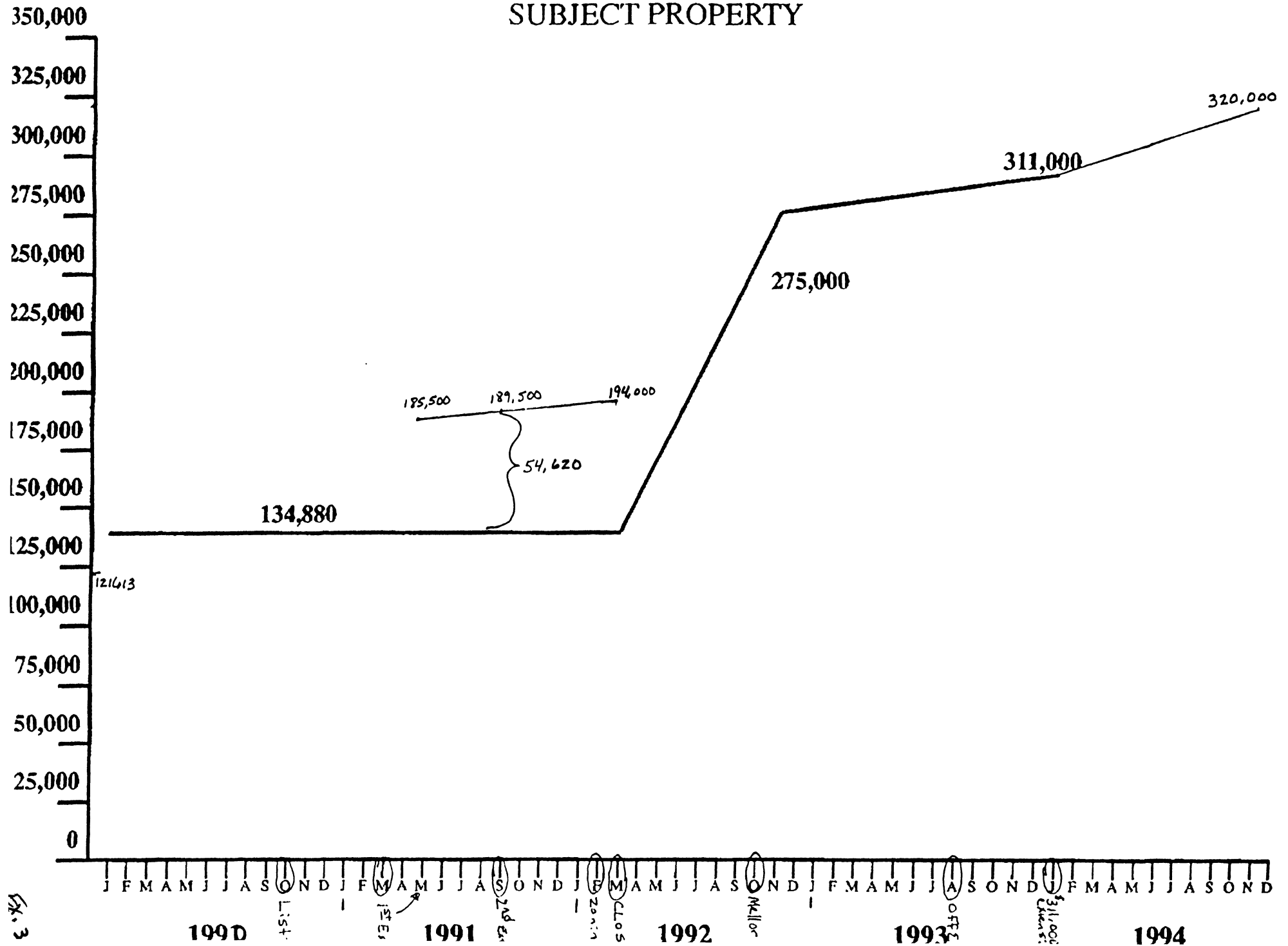


# VALUE OF PROPERTY

## SUBJECT PROPERTY VS. AVERAGE SALE PRICE



# VALUE OF PROPERTY SUBJECT PROPERTY



prepare legal papers, nevertheless, at the solicitation of Winters, defendant did assist in the preparation of requisite instruments to effect the adoption of a child; that Winters, when the papers were found defective, *again solicited defendant's assistance in redrafting said documents*; that Winters paid defendant \$10 for his services in preparation of the adoption papers; that defendant admitted to the Fremont County prosecuting attorney that he had prepared or helped to prepare the adoption papers and had charged \$10 therefor.

The referee then erroneously concluded that defendant's services in the preparation of the adoption papers could not be deemed unauthorized practice of law.

Here the question, concerning the inferences which may be drawn from the testimony, does not appear to be presented since the referee made his findings on the evidence and the inferences therefrom that defendant

aided in the preparation of legal instruments to effect an adoption and charged a fee therefor.

The preparation of instruments by which legal rights are secured constitutes the practice of law. In re Matthews, 57 Idaho 75, 62 P.2d 578, and citations set forth in the majority opinion.

I therefore dissent from the majority opinion insofar as the conclusions of the referee are held supported by his findings, since the referee clearly found in favor of the theory of unlawful practice of law; and such is the only logical conclusion to be drawn from those findings; further, such findings are supported by the evidence, with conflicts in the evidence resolved by the findings in favor of the theory of unlawful practice of law.

McQUADE, J., concurs in this dissent.

8 Utah 2d 350

William F. SMITH and Patsy Smith, his wife, Plaintiffs and Respondents,

v.

CARROLL REALTY COMPANY, a corporation, and Nathaniel A. Smith, Defendants and Appellants.

No. 8892.

Supreme Court of Utah.

Feb. 9, 1959.

Action by principals, who entered into agreement to exchange their home for real estate, against realty company and its agent for damages for failure to exercise reasonable skill and diligence in real estate profession and for refund of broker's commission. The District Court, Salt Lake County, Joseph G. Jeppson, J., gave judgment for principals and the company and agent appealed. The Supreme Court, Worthen, J., held that evidence sustained finding that real estate company and its agent failed to exercise reasonable skill and diligence to ascertain and inform principals of reasonable price of property for which they exchanged their home, and that commission principals paid the company and agent for making exchange of their home was recoverable.

Affirmed.

#### 1. Brokers ⇨38(4)

In action by principals, who entered into agreement to exchange their home for real estate, against realty company and its agents for damages for failure to exercise reasonable skill and diligence in real estate profession and for refund of broker's commission, evidence sustained finding that agent had duty to determine and inform principals of reasonable value of the real estate exchanged for the home, that agent failed to discharge the duty, and that failure to inform was proximate cause of the exchange by principals.<sup>1</sup>

#### 2. Trial ⇨252(7)

In action by principals, who entered into agreement to exchange their home for

Cite as 335 P.2d 67

Utah 67

real estate, against realty company and its agent for damages for failure to exercise reasonable skill and diligence in real estate profession and for refund of broker's commission, where principals were justified in relying solely on advice of realty company and its agent that price of the real estate appeared reasonable, and there was no evidence to support a finding that principals assumed risk or were contributorily negligent, requested instruction on contributory negligence or assumption of risk by principals was properly refused.

#### 3. Brokers ⇨19

Where realty company and agent undertook to determine and inform principals of reasonable value of real estate and later informed principals that price offer appeared reasonable, principals were justified in relying on the information without making independent investigation before entering into agreement to exchange their home for the real estate.

#### 4. Brokers ⇨75

Where real estate company and its agent breached employment agreement by failing to exercise reasonable skill and diligence in determining and reporting to principals reasonable price of real estate for which they exchanged their home, commission principals paid the company and agent for the exchange of their home was recoverable.

#### 5. New Trial ⇨99

In action by principals who entered into agreement to exchange their home for real estate, against realty company and its agent for damages for failure to exercise reasonable skill and diligence in real estate profession, refusing to grant new trial because of newly discovered evidence consisting of certain letters which would allegedly substantiate defendants' testimony and impeach testimony of plaintiffs was not improper, in view of defendants' failure to request a continuance, failure to show exercise of due diligence and fact that it could not be reasonably inferred

1. Reich v. Christopoulos, 123 Utah 137, 250 P.2d 238.

File in PCK

that result would have been different had the evidence been introduced.<sup>2</sup>

Richards & Bird, Salt Lake City, for appellants.

Rawlings, Wallace, Roberts & Black, Wayne L. Black, Richard C. Dibblee, Salt Lake City, for respondents.

WORTHEN, Justice.

Appeal from a special verdict of a jury awarding to plaintiffs damages in the sum of \$4,850 in connection with an exchange of property of plaintiffs in Salt Lake City, Utah, for property in Lava Hot Springs, Idaho.

Plaintiffs listed their Salt Lake City home with Carroll Realty Company. They selected that company because their friend, defendant Nathaniel A. Smith, was a real estate agent for Carroll Realty Company.

In the autumn of 1950, defendant Smith showed plaintiff a photograph of a home belonging to Nick Kladis, which he desired to exchange for Salt Lake City property. It was agreed that they should go to Lava Hot Springs and look over the property, which the owner valued at \$15,500. Plaintiff, William Smith, and defendant, Nathaniel A. Smith, made the trip to examine the Lava Hot Springs property. They spent about two to three hours looking over the property and returned to Salt Lake City the same evening.

On the return trip the defendant stated that he was not familiar with the market value of properties in the Lava Hot Springs area—but he agreed to investigate and determine the value of the Kladis property. The day following the return from Lava Hot Springs, defendant Smith telephoned to an L.D.S. bishop in Lava Hot Springs. Smith advised the operator that he wanted to talk with the ward bishop in Lava. He didn't know the name of the bishop but was connected with a Mr. Teeple who operated a cleaning establishment. De-

fendant Smith made no contact with anyone except Mr. Teeple. Before the exchange agreement was executed plaintiff asked defendant Smith what he had found out about the property in Idaho, and the defendant advised plaintiff that it looked like a good deal; that he had made investigation and from all he could learn it looked like it would be a reasonable price to allow for the property at Lava.

The record discloses that Mr. Teeple owned no real estate in Lava Hot Springs and had never owned any; that he had never been engaged in buying or selling real estate. Mr. Teeple testified that he had been in the home twice; that he had never inspected the property; that Nathaniel Smith asked him what he figured the property was worth and "I told him I didn't know, I wasn't in that kind of business, I wouldn't know what it would be worth." Mr. Teeple testified "And then when he quoted the price \$15,500.00 I told him it sounded high to me and then he asked why, and then I told him that the building was apparently very poorly built and no heating plant. \* \* \*

Defendant failed to advise plaintiff of the quoted statements made by Mr. Teeple. He did not tell plaintiff that Mr. Teeple had said he thought the price was too high and that it was poorly built and had no heating plant.

After defendant Smith advised plaintiff that it looked to him like \$15,500 would be a "reasonable price to allow for that property at Lava," the plaintiff said, "Nate, you know I rely on you—on your judgment—and if you say it is okay, it is okay by me."

In February, 1951, warranty deeds and mortgages were executed by the parties and each party took possession of his home. Six months later plaintiff listed the Idaho property for sale but was unable to find a buyer and the mortgage given Kladis on the Idaho house was foreclosed and the home sold at sheriff's sale.

In February, 1954, plaintiff went to Lava Hot Springs to investigate the transaction. He contracted residents of the community, including Mr. Teeple, and on completion of his investigation filed suit. Plaintiffs charged defendants with failure to exercise reasonable and customary skill and diligence in their profession. Plaintiffs also asked for refund of the real estate commission paid defendants for selling their home in Salt Lake City.

A real estate agent from Pocatello, who was familiar with the market values of property in Lava Hot Springs, testified that the reasonable value of the Kladis property as of February 1, 1951, was between \$7,000 and \$8,000. The trial court instructed the jury that the measure of damages was the difference between the fair market value of plaintiffs' equity in their Utah home and the fair market value of the Idaho property.

The jury returned a special verdict for \$3,700 as the amount of the difference.

The jury also awarded plaintiffs \$1,150, the amount of the real estate commission for selling plaintiffs' home under the court's direction. The court entered judgment for plaintiffs for the amount found by the jury.

Defendant assigns numerous errors which may be grouped under the following heads:

- (1) Defendants were not negligent in failing to ascertain the reasonable value of the property in Lava Hot Springs; and did not fail to discharge their duty as real estate agents with ordinary care and diligence.
- (2) Refusing an instruction on contributory negligence or assumption of risk.
- (3) In directing a verdict for the amount of the real estate commission paid defendants for sale of plaintiffs' home.
- (4) Denying appellants' motion for new trial.

[1] As to the first assignment of error, there is an abundance of evidence that the defendants had a duty to determine the reasonable value of the property in Idaho. Without ascertaining the reasonable market value of the property defendants would

have no gauge with which to consider what trade and what terms should be made. Defendant certainly was called on to put himself in an advantageous position to represent his client. Defendant Smith testified that he knew nothing about property in Lava Hot Springs, had no knowledge of market value of property there and that he so advised the plaintiff Smith. But he told plaintiff that he would ascertain the value of the Idaho property. It is strange that defendant made no inquiry when he and plaintiff Smith went to look at the property, unless he didn't want to make any investigation with plaintiff present. He testified that he was in Lava Hot Springs for three or four hours, yet he didn't even talk to a neighbor or a businessman. The next day when he talked with Mr. Teeple he knew that his client would be getting a raw deal. He knew the price was too high and that the house was poorly constructed and was without heat. Yet defendant Smith kept from plaintiff facts which he had a duty to disclose and represented that it was a fine deal and that the property in Idaho was worth what they were asking. If defendant had merely neglected to ascertain the reasonable market value of the Kladis property his conduct would not be justified, but to obtain the information and to withhold the same was reprehensible, particularly so when the withholding of the information probably was the cause of plaintiffs' loss. It is most unlikely that plaintiffs would have executed the exchange agreement had they been given the information which defendant obtained for plaintiffs but failed to disclose.

The trial court submitted to the jury the question as to whether or not the defendant Smith was obligated under the scope of the employment agreement to determine and report the reasonable value of the Kladis property. The jury answered that defendant was so obligated. The jury further found that defendant Smith breached his agreement by failing to use reasonable skill and diligence in determining and reporting the value. The jury also found that such breach was a prox-

2. Trimble v. Union Pacific Stages, 105 Utah 457, 142 P.2d 671; Klopenstine v. Hays, 20 Utah 45, 57 P. 712.

mate cause of plaintiffs' entering into the exchange agreement.

This court in the case of *Reich v. Christopoulos*<sup>1</sup> said:

"In undertaking the sale of the property for the Reichs, Hill had a duty to represent their interest in good faith, to discharge it with reasonable skill and diligence and to disclose to them all pertinent facts which would materially affect their interest."

[2] Nor do we see any merit to defendants' second assignment of error. Unless there was evidence which would support a finding that plaintiffs were contributorily negligent in the matter or that they assumed the risk of entering into the exchange agreement without reliance on the report given by defendants, there was no occasion for giving an instruction on either.

[3] In our opinion plaintiffs were not required to make an independent investigation of the value of the Idaho property. Defendants having undertaken to determine and report the reasonable value of the Kladis property justified plaintiffs in relying on defendants. Nor were plaintiffs required to question defendant Smith's report when he said, "It looked like a good deal; looks like the property is worth it." The report given plaintiffs by defendant Smith was such as to cause plaintiff to say, "Nate, you know I rely on you—on your judgment—and if you say it is okay, it is okay by me."

[4] As to the third assignment, we are of the opinion that the trial court properly directed the jury to include as damages the commission paid for the sale of their home if the jury found that defendants breached their employment agreement by failing to use reasonable skill and diligence in determining and reporting the value of the Kladis property.

We know of no rule which would hold defendants liable for damages in the deal

and at the same time entitle them to compensation for their breach of duty.

In the case of *Reich v. Christopoulos*, supra, this court quoted from *American Jurisprudence* as follows:

"The faithful discharge of his duties is a condition precedent to any recovery upon the part of a broker for the services he has rendered his principal. Thus, he is not entitled to compensation if he fails to disclose to his principal any personal knowledge which he possesses relative to matters which are or may be material to his employer's interests. \* \* \*

[5] Nor do we believe that the trial court erred in refusing to grant a new trial. The newly discovered evidence was certain letters and counteroffers in the custody of Fletcher-Lucas Investment Company. Defendants contended that the documents would have an effect upon the result in a retrial because they would tend to substantiate the testimony of defendants and to impeach the testimony of plaintiffs. The plaintiffs contended that the proposed documents are not newly discovered evidence and that they are merely cumulative and not persuasive.

Plaintiffs contend that the so-called newly discovered evidence was not in fact newly discovered; that defendants had known of their existence all the time. That immediately after the trial they made a further search which was fruitful. The showing made is not persuasive of the fact that defendants had used the due diligence required to satisfy the granting of a new trial.

Defendants failed to request a continuance to enable them to make a proper search which would have been consistent with their knowledge of the existence of the documents.

We are likewise of the opinion that the trial court was justified in his belief that the newly discovered evidence did not satisfy the conditions mentioned in *Trimble*

Cite as 335 P.2d 71

v. *Union Pacific Stages*<sup>2</sup> and particularly the fourth condition mentioned in the language quoted from *Kloppenstine v. Hays*,<sup>3</sup> to-wit:

"(4) It must be material to the issues, and so important as to satisfy the court, by reasonable inference, that the verdict or judgment would have been different had the newly-discovered evidence been introduced at the former trial."

Judgment affirmed. Costs to respondents.

CROCKETT, C. J., and WADE, HENRIOD and McDONOUGH, JJ., concur.



8 Utah 2d 302

D. L. ATHERLEY, Plaintiff and Appellant,  
v.

BULLION MONARCH URANIUM COMPANY, Inc., a Utah corporation,  
Defendant and Respondent.  
No. 8859.

Supreme Court of Utah.  
Feb. 8, 1950.

Action to quiet title to unpatented mining claim wherein the defendant filed a counterclaim to quiet its title to a claim. Summary judgment for the defendant in the Sixth District Court, Piute County, Joseph E. Nelson, J., and the plaintiff appealed. The Supreme Court, Cowley, District Judge, held that where defendant had complied with all requirements under the State and Federal Mining Laws except as to the state law provision requiring the recording of a copy of the location notice as it applied to the amended location notice and plaintiff had actual knowledge of the defendant's amended claim and exclusive possession at the time he filed his claim and

there were no intervening rights of third parties, defendant had the right to amend his claim so as to take in new territory not originally claimed and was entitled to priority of location area.

Judgment affirmed.

## 1. Mines and Minerals ⇨22

Under federal law, the only requirements imposed upon a locator of a mining claim is the discovery of mineral within the limits of the claim and the segregation of the claim from the public domain by distinctly marking the corners on the grounds so that its boundaries can readily be traced, and there is no requirement of recording a location notice. 30 U.S.C.A. § 22 et seq.

## 2. Mines and Minerals ⇨22, 25

Under the Utah law relating to the location of mining claims on public domain and providing that a copy of the location notice should be filed of record, such recording is not a requisite to the initiation of title under the mining laws, and the failure to record does not forfeit the title properly initiated; the locator's title to the claim under the mining laws being initiated by the discovery of mineral coupled with segregation of the claim from the public domain by the marking of the boundaries thereof. U.C.A.1953, 40-1-1 et seq., 40-1-4.

## 3. Mines and Minerals ⇨22, 25

Title to a mining claim is initiated by discovery and segregation, and the right to the mining claim is not forfeited by failure to record a notice of location in the absence of a state statute expressly providing for forfeiture on that ground. U. C.A.1953, 40-1-1 et seq., 40-1-4.

## 4. Mines and Minerals ⇨27(1)

In an action to quiet title to an unpatented mining claim, where the plaintiff had actual notice of the defendant's amended claim and exclusive possession at the time he located his claim, actual notice

1. 123 Utah 137, 256 P.2d 238, 240.

2. 105 Utah 457, 142 P.2d 674.

3. 20 Utah 45, 57 P. 712, 714.

In regard to (d), the fact is that the railroad had made its own determination as to the need, and had provided a flagman at the crossing. This is shown by Mr. Gregory's evidence that he had observed such flagman there "lots of times." This presumably was at any time he happened to cross. No effort was made to show otherwise. I deem that a sufficient showing from which reasonable minds could draw the inference that the flagman is both necessary and customary. This would establish a prima facie case for the plaintiff on that issue. To require her to go any further would cast an unreasonable burden upon her; whereas if there is any reason to justify not having the flagman there at the particular time, that could best, and should be shown by the railroad in whose hands the proof of facts ament rail and vehicular traffic and hazards at the crossing lies. It is not questioned that there is evidence that the watchman was not on duty. I agree with the rule that where a flagman is usually maintained, which fact is known to the traveler, in approaching the crossing he may take some assurance of safety from the fact that the flagman is not there.

I think that the plaintiff made a sufficient showing to go to the jury as to the negligence of the railroad on the two grounds just mentioned.

However, on the issue as to Mr. Gregory's negligence being the sole proximate cause of the collision: it is to be kept in mind that the assurance which he could have taken from the absence of a flagman is only that which could be taken by a reasonable and prudent person under the circumstances. He was not thereby bereft of his reason and senses and permitted to go headlong onto the railroad tracks without using due care to observe for and take heed of this train which was in plain sight and too close to stop and avoid striking him, whether the train crew saw him or not. He obviously failed to observe the barest modicum of care in that regard. Therefore his negligence must be deemed to be the sole proximate cause of the collision

and the trial court properly directed the verdict against the plaintiff.

WADE, Justice (concurring).

I concur with the result because I think the failure of the driver of the automobile to look to see if a train was coming was the sole proximate cause of the accident. I agree with the rule that where a flagman is usually maintained, which fact is known to the driver of the crossing automobile, in approaching the crossing he may take some assurance of safety from the fact that the flagman is not there. I also agree with Mr. Justice Crockett that Mr. Gregory's testimony that he had observed the flagman "lots of times" is sufficient to make a prima facie showing that a flagman was customarily there.



8 Utah 2d 110

A. L. REESE, Plaintiff and Appellant,  
v.  
Thomas R. HARPER, Defendant and Respondent.  
No. 8830.

Supreme Court of Utah.  
Sept. 6, 1958.

Action to recover broker's commission. The First District Court, Box Elder County, Lewis Jones, J., rendered judgment for defendant and plaintiff appealed. The Supreme Court, Crockett, J., held that evidence would sustain finding that plaintiff had not sufficiently informed or made clear to defendant who was to pay mortgage and other encumbrances and that he had not fairly disclosed to defendant all of material facts which he knew concerning transaction.

Affirmed.

Cite as 329 P.2d 410

# 1. Brokers ⇨19

There rests upon broker responsibility of honestly and fairly representing interests of those who engage his services, and persons who entrust their business to broker are entitled to repose some degree of confidence that broker will be loyal to trust and will, with reasonable diligence and good faith, represent interests of his clients. U.C.A.1953, 61-2-11.

# 2. Brokers ⇨19

There is fiduciary relationship between broker and client, and it is incumbent upon broker to apply his abilities and knowledge to advantage of client he serves.

# 3. Brokers ⇨19

Broker must make full disclosure of all facts which his principal should know in transacting business.

# 4. Brokers ⇨65(1)

Failure to discharge with reasonable diligence and care duty owed by broker to principal precludes broker's recovery for services rendered.

# 5. Brokers ⇨19, 65(1)

It is duty of broker to inform principal of all facts which might influence principal in accepting or rejecting offer, and broker is not entitled to recover fee unless he has fully performed that duty.

# 6. Brokers ⇨88(7)

In action to recover broker's commission, evidence would sustain finding that plaintiff had not sufficiently informed or made clear to defendant who was to pay mortgage and other encumbrances and that he had not fairly disclosed to defendant all of material facts which he knew concerning transaction.

Preston & Harris, Logan, for appellant.  
Sherma Hansen, Brigham City, Olson & Calderwood, Logan, for respondent.

CROCKETT, Justice.

A. L. Reese sued Thomas R. Harper for \$1,500 as a real estate commission for attempting to sell Harper's farm. A ju-

ry made findings adverse to plaintiff, and judgment was entered accordingly, from which he appeals.

The problem of concern here is the nature and extent of the duty a real estate agent owes to his principal, and whether plaintiff discharged it.

Mr. Reese is a licensed real estate broker, doing business as Atlas Realty Company in Logan, Utah. He contacted Mr. Harper and procured him to list for sale his dry farm of 700 acres in Hansel Valley in western Box Elder County. The listing authorized Reese to find a buyer at \$45,000 or such other price as might be agreed upon. Five days later Reese proposed to Harper a deal with one Ezra J. Zollinger for \$30,000. Reese presented to Harper a document entitled "Receipt and Agreement to Purchase" (hereinafter called Receipt). The latter looked it over cursorily and signed.

In view of the contentions of the parties, discussed below, these facts are of critical importance: the figure \$30,000, representing the purchase price, was filled in the printed form by hand; also on a separate line, noticeably separated from the other lines of fine print in the document were the words: "Encumbrances, except None"; the word "None" was also in handwriting. Due to such fact, and that the handwriting is much larger than the fine print of the document, the eye can pick out the \$30,000 and the line with the words "Encumbrances, except None," much easier than the other parts thereof.

Thereafter a contract of sale and escrow agreement were prepared and presented to Mr. and Mrs. Harper. By it they were to receive \$30,000 but out of it they were required to pay the encumbrances on the property, including a mortgage balance of \$8,500, and some crop mortgages, the exact amount of which is not shown in the record. The Harpers contend that the obligations aggregated substantially \$15,000 and the trial court so found. Just what the evidence will support as to encumbrances above the \$8,500 mortgage is not of con-



trolling importance. The Harpers' version of the proposed transaction, which was accepted by the jury and the trial court, was that Mr. Harper had understood that they would receive \$30,000 net for their property, and that the purchaser would assume and pay the encumbrances. This would give them somewhere reasonably near the \$45,000 they were asking; whereas if they had to pay the encumbrances out of the \$30,000, they would get less than half the \$45,000 at which Reese procured the listing. Defendant points out that the Receipt, particularly the parts referred to above, readily gives an impression consistent with their understanding.

The plaintiff Reese argues that the Receipt, properly read and understood, is clearly an offer to sell the farm for \$30,000 free of encumbrances, as provided in the proposed contract which the Harpers refused to sign; that Harper is therefore bound to pay the commission on the deal because Reese procured Zollinger as a ready, willing and able purchaser upon the terms Harper had agreed to. Mr. Reese further avers that as between him and Harper, their dealings were at arm's length; that he was under no particular duty to coddle and "spoonfeed" Harper; that inasmuch as the latter had ample opportunity to read the Receipt and thereafter voluntarily signed it, he is precluded from questioning its contents and is bound by it.

[1] The above contention is sound as between people dealing with each other under usual circumstances. But the relationship of real estate agent and client makes the situation quite different. The agent is issued a license and permitted to hold himself out to the public as qualified by training and experience to render a specialized service in the field of real estate transactions. There rests upon him the

responsibility of honestly and fairly representing the interests of those who engage his services, and upon failing to do so his license may be revoked.<sup>1</sup> Accordingly, persons who entrust their business to such agents are entitled to repose some degree of confidence that they will be loyal to such trust and that they will, with reasonable diligence and in good faith, represent the interests of their clients. Unless the law demands this standard, instead of being the badge of competence and integrity it is supposed to be, the license would serve only as a foil to lure the unsuspecting public in to be duped by people more skilled and experienced in such affairs than are they, when they would be better off taking care of such business for themselves.

[2-4] Because of the specialized service the real estate broker offers in acting as an agent for his client there arises a fiduciary relationship between them;<sup>2</sup> it is incumbent upon him to apply his abilities and knowledge to the advantage of the man he serves; and to make full disclosure of all facts which his principal should know in transacting the business.<sup>3</sup> Failure to discharge such duty with reasonable diligence and care precludes his recovery for the service he purports to be rendering.

In *Reich v. Christopoulos*<sup>4</sup> the broker had informed his principal that he had a check for \$5,000, intimating that it was an outright down payment on the transaction; whereas, in fact the check was given only subject to conditions not disclosed to the principal. It was held that this failure to disclose was a breach of duty precluding recovery.

[5] A case closely analogous to the instant one is *Duncan v. Barbour*.<sup>5</sup> A broker was authorized to find a sale for property on terms of 20% cash, payments

over a period not less than five years, and bearing 4½% interest. The broker procured a deal for a substantially different down payment and certain other differences in terms. He drew up a contract and submitted it to the seller. At the trial there was a dispute as to whether the seller had in fact understood and agreed to the new terms. The court observed that the broker had not discharged his duty in that he had not explained the contract to his client nor called his attention to the variance in terms. Upon suit of the broker for his commission the court held:

"Under these circumstances it was the duty of the agent to disclose to his principal the vital differences in the terms . . . . This duty was not discharged by simply handing to the owner an unsigned contract . . . . It was his duty to inform his principal of all facts which might influence his principal in accepting or rejecting the offer. An agent is not entitled to recover until he has fully performed this duty . . . ."

We regard the doctrine just stated as salutary and as controlling here. Without burdening this opinion with a discussion of the authorities cited by the plaintiff, we observe that a careful reading will disclose that they are clearly distinguishable from the instant situation.<sup>6</sup>

It is pertinent to observe that the broker Reese had Mr. Harper at even more disadvantage than might normally be expected. The wide difference in experience and business acumen resulting in the parties being in an unequal position for bargaining are things which the court and jury were entitled to take into consideration in determining the matters in contention between

them.<sup>7</sup> Mr. Harper was a farmer, obviously inexperienced in business; was hard of hearing and therefore had some difficulty in conversing with others; and in addition thereto the court made an express finding indicating that he was somewhat inept and lacking in acumen with respect to business affairs.

[6] The issue was submitted to the jury as to whether Mr. Reese had discharged his duty hereinabove discussed. It found that he "did not sufficiently inform or make clear to Mr. Harper who was to pay the mortgage and encumbrances"; and further that he did not "fairly disclose to Mr. Harper all material facts which Mr. Reese knew . . . concerning the transaction . . . ." In view of such finding, which is supported in the evidence, the plaintiff Reese cannot here contend that he discussed and made plain the contents of the Receipt and the nature of the transaction to Mr. Harper. In fact, during cross-examination Mr. Reese manifested a somewhat indifferent attitude toward the suggestion that he should have done so. He observed that "it isn't often that all the details of an earnest money agreement receipt is read," implying that it was unnecessary to do so, but that the customer should rely upon the agent, which is exactly what Mr. Harper did.

There being support in the record for the determination made below: that the plaintiff had not discharged his duty in connection with the attempted sale of the property for the defendant, the judgment is affirmed. Costs to defendant.

MCDONOUGH, C. J., and WADE, WORTHEN and HENRIOD, JJ., concur.

6. *Garff Realty Co. v. Better Buildings, Inc.*, 120 Utah 311, 231 P.2d 812; *Johnson v. Allen*, 109 Utah 148, 168 P.2d 134, 150 A.L.R. 250; *Ashworth v. Charlesworth*, 110 Utah 650, 231 P.2d 721; *Little v. Fishman*, 35 Utah 809, 101 P.

684, 24 L.R.A.N.S., 1182; *Curtis v. Mortensen*, 1 Utah 2d 354, 207 P.2d 237; *Blackburn v. Bozo*, 82 Utah 550, 20 P.2d 512.

7. *Lowie v. White*, 2 Utah 2d 101, 200 P.2d 805.

1. 01-2-11, U.C.A. 1968.

2. See *St. Germain v. Watson*, 95 Cal App. 2d 802, 214 P.2d 99; *Haynes v. Rogers*, 70 Ariz. 408, 222 P.2d 789, 17 A.L.R. 2d 890; *Anderson v. Thacher*, 70 Cal. App.2d 530, 172 P.2d 533.

3. See 8 Am.Jur., *Brokers*, Sec. 80.

4. 123 Utah 137, 250 P.2d 248.

5. 188 Va. 53, 40 S.E.2d 290, 295.

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

6 MAHLON PECK & FAMILY, INC., )  
7 Plaintiff, )  
8 vs. )  
9 LLOYD R. BROOKS, STANLEY W. )  
10 ROBINSON dba CENTURY 21 )  
11 ROBINSON & WILSON REALTY, )  
12 DONNA ROBINSON dba CENTURY 21 )  
13 ROBINSON & WILSON REALTY, and )  
14 DENICE A. WILSON JEPSEN dba )  
15 CENTURY 21 ROBINSON & WILSON )  
16 REALTY, )  
17 Defendants. )  
18  
19  
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21  
22  
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24  
VERIFIED COMPLAINT AND  
DEMAND FOR JURY TRIAL  
Civil No. 94-0400145  
Judge Park

COMES NOW the Plaintiff and for cause of action against the  
Defendants, asserts, alleges, and complains, as follows:

GENERAL ALLEGATIONS

1. The amount at issue herein exceeds the sum of  
\$50,000.00.
2. The Plaintiff, Mahlon Peck & Family, Inc., is a Utah  
Corporation doing business in Utah County, State of Utah, (herein  
referred to as "Peck").

1           3.    The Defendant, Lloyd R. Brooks, is a resident of Utah  
2 County, State of Utah, and engages in the real estate business in  
3 Utah County, State of Utah, as a real estate salesman operating  
4 under Stanley W. Robinson, as the principal broker, and is an agent  
5 of Stanley W. Robinson, Donna Robinson, and Denice A. Wilson  
6 Jepsen.

7           4.    The Defendants, Stanley W. Robinson, Donna Robinson,  
8 and Denice A. Wilson Jepsen, at all times relevant herein were  
9 doing business as Century 21 Robinson & Wilson Realty, which is a  
10 real estate brokerage located at 405 East State Road, American  
11 Fork, Utah 84003.

12           5.    The property which is the subject matter of this  
13 litigation, contains 8.43 acres, is located in Utah County, State  
14 of Utah, and all events alleged herein occurred within Utah County,  
15 State of Utah.

16           6.    On or about the 24th day of October, 1990, an Earnest  
17 Money Sales Agreement was prepared wherein Carl Mellor offered to  
18 purchase certain property owned by the Plaintiff located in Utah  
19 County, State of Utah.

20           7.    The Defendant, Lloyd R. Brooks, prepared the Earnest  
21 Money Sales Agreement and thereafter presented the Earnest Money  
22 Sales Agreement to the Plaintiff for signature. A copy of the  
23 Earnest Money Sales Agreement dated the 24th day of October, 1990,

1 is attached hereto as Exhibit A and incorporated herein by this  
2 reference.

3 8. The Earnest Money Sales Agreement, Exhibit A, specifies  
4 that Lloyd Brooks is both the listing agent and the selling agent,  
5 and that Lloyd Brooks represents the Seller, the Plaintiff herein.

6 9. The Earnest Money Sales Agreement, Exhibit A, contains  
7 a counteroffer made by the Plaintiff, which counteroffer was then  
8 accepted by Carl J. Mellor, the Buyer, on or about the 27th day of  
9 October, 1990.

10 10. The Earnest Money Sales Agreement, Exhibit A, had a  
11 closing date requirement of on or before May 31, 1991.

12 11. The property identified in the Earnest Money Sales  
13 Agreement, Exhibit A, as of October 1990, was located in Utah  
14 County, State of Utah, outside of the City limits of Lehi City.

15 12. On or about the 25th day of October, 1990, the  
16 Plaintiff entered into a Sales Agency Contract wherein Century 21  
17 Robinson & Wilson Realty is listed as the listing company, Stanley  
18 W. Robinson is listed as the principal broker and Lloyd R. Brooks  
19 is listed as the authorized agent. A copy of the Sales Agency  
20 Contract is attached hereto as Exhibit B and incorporated herein  
21 by this reference.

22 13. The Sales Agency Contract, Exhibit B, referenced the  
23 subject property located in Utah County, State of Utah, and  
24

1 provided for an expiration date of the 31st day of May, 1991,  
2 subject to the 90 day protection period, as described in the Sales  
3 Agency Contract, Exhibit B.

4 14. On or about the time that the Sales Agency Contract,  
5 Exhibit B, was signed on behalf of the Plaintiff, the Defendant,  
6 Lloyd R. Brooks, made express statements and representations to  
7 Mahlon Peck, the agent for the Plaintiff, that Lloyd R. Brooks was  
8 acting as the agent and representative of the Plaintiff and would  
9 protect the interests of the Plaintiff concerning the proposed sale  
10 of the subject property.

11 15. The Earnest Money Sales Agreement, Exhibit A, expired  
12 on the 31st day of May, 1991, without a closing on the subject  
13 property.

14 16. The Sales Agency Contract, Exhibit B, expired on the  
15 31st day of May, 1991, and the 90 day protection period expired 90  
16 days thereafter, without a closing occurring on the subject  
17 property.

18 17. On or about November or December 1991, the Defendant,  
19 Lloyd R. Brooks, made arrangements to have the subject property  
20 surveyed by Bruce Chestnut for the preparation of an annexation  
21 plat and rezoning plan for the subject property, to effectuate the  
22 annexation of the subject property into the City of Lehi.  
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1           18. On or about the 9th day of January, 1992, the Planning  
2 and Zoning Committee of Lehi City approved the subject property to  
3 be annexed into Lehi City, with a zoning of Commercial (GC-2).

4           19. On or about the 11th day of February, 1992, the Lehi  
5 City Council approved the subject property to be annexed into Lehi  
6 City, and the subject property was thereby annexed into Lehi City  
7 and was thereby zoned Commercial (GC-2).

8           20. On or about the 30th day March, 1992, the subject  
9 property was sold to Carl J. Mellor and Dimple A. Mellor (Mellor  
10 Purchasers) for the sum of \$134,880.00.

11           21. As a part of the closing of the subject transaction,  
12 a commission was paid to the defendants, in the total sum of  
13 \$8,092.80.

14           22. The purchase price was based upon a per acre price of  
15 \$16,000.00 per acre.

16           23. At the time of the closing of the sale of the subject  
17 property, on or about the 30th day of March, 1992, the Earnest  
18 Money Sales Agreement, Exhibit A, had previously expired and the  
19 Sales Agency Contract, Exhibit B, had previously expired.

20           24. During the period from October 1990 to the 30th day of  
21 March, 1992, the closing date, the value of the subject property  
22 had increased significantly, in such amount as shall be established  
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1 at the time of trial, including, but not limited to, an increase  
2 in value based upon the following factors:

- 3 a. The annexation of the subject property into Lehi  
4 City.
- 5 b. The zoning of the property to the Commercial (GC-  
6 2) Zone.
- 7 c. General increase in market values of real estate.
- 8 d. Development of the Lehi Interchange on Interstate  
9 15.
- 10 e. Additional factors as shall be established at the  
11 time of trial.

12 25. At the time of the closing, and at all times prior  
13 thereto, the Defendant, Lloyd R. Brooks, purported to be  
14 representing the seller of the property, the Plaintiff herein.

15 26. Prior to the closing date, Mahlon Peck, the  
16 representative of the Plaintiff, was told by Lloyd R. Brooks that  
17 the Plaintiff was legally obligated to proceed with the closing and  
18 sale of the subject property based upon the Earnest Money Sales  
19 Agreement, dated the 25th day of October, 1990, Exhibit A, and that  
20 the Defendants were entitled to a real estate commission, based  
21 upon the Sales Agency Contract, dated the 25th day of October,  
22 1990, Exhibit B.

1           27. The Defendants, at no time, disclosed to the Plaintiff  
2 any of the following items:

- 3           a. That the Earnest Money Sales Agreement, Exhibit  
4           A, had expired.
- 5           b. That the Sales Agency Contract, Exhibit B, had  
6           expired.
- 7           c. That the Plaintiff was not obligated to sell the  
8           property to the Buyer, Carl Mellor, in accordance  
9           with the terms of the Earnest Money Sales  
10          Agreement, Exhibit A.
- 11          d. That the Plaintiff was not obligated to sell the  
12          property for \$16,000.00 per acre.
- 13          e. That the property had increased in value since the  
14          24th day of October, 1990, because of the  
15          annexation of the property into Lehi City.
- 16          f. That the property had increased in value since the  
17          24th day of October, 1990, because of the zoning  
18          of the property as Commercial (GC-2) Zone.
- 19          g. That the subject property had increased in value  
20          since the 24th day October, 1990, because of the  
21          general increase in property values in the area.
- 22          h. That the subject property had increased in value  
23          since the 24th day October, 1990, because of the  
24



development of the Lehi Interchange on Interstate  
15.

i. That the property had increased in value for any  
other reason.

j. That the Plaintiff had no legal obligation to pay  
a real estate commission to the Defendants.

28. Upon information and belief, on or about the 10th day  
of November, 1992, the Defendants listed the subject property with  
the Mellor Purchasers, the purchaser of the property from the  
Plaintiff, for the price of \$50,415.00 per acre with utilities  
installed, and for the price of \$32,028.00 per acre, AS IS.

29. Upon information and belief, on or about the 23rd day  
of August, 1993, the Mellor Purchasers, the purchaser of the  
property from the Plaintiff, received an offer to purchase the  
property from Carl Mellor for the sum of \$270,000.00 (\$32,028.00  
per acre) from Kay D. Ventures of Sandy, Utah.

30. Upon information and belief, on or about September or  
October, 1993, the Mellor Purchasers, the purchasers of the  
property from the Plaintiff, received an offer of approximately  
\$300,000.00 (\$35,587.00 per acre) for the subject property from a  
fertilizer company.

31. During all relevant periods of time herein, the  
Defendant, Lloyd R. Brooks, was the agent and representative of

1 the Defendants, Stanley W. Robinson, Donna Robinson, and Denice A.  
2 Wilson Jepsen, and the actions of Lloyd R. Brooks, as described  
3 herein, were performed within the scope of such agency and  
4 employment relationship and Stanley W. Robinson, Donna Robinson,  
5 and Denice A. Wilson Jepsen are liable for the actions of Lloyd R.  
6 Brooks pursuant to the doctrine of respondeat superior.

7 FIRST CLAIM

8 (Breach of Fiduciary Duty)

9 32. Plaintiff incorporates herein by this reference ¶ ¶ 1-  
10 31 of this Complaint.

11 33. The Defendants were each agents and representatives of  
12 the Plaintiff in a fiduciary capacity, and each of the Defendants,  
13 separately and independently, owed fiduciary duties to the  
14 Plaintiff with regard to the sale by the Plaintiff of the subject  
15 property.

16 34. The Defendants, and each of them, did breach the  
17 fiduciary duty owed by each of the Defendants to the Plaintiff, by  
18 the following separate and independent items:

- 19 a. Failure to disclose all facts material to the  
20 business of the Plaintiff related to the subject  
21 real estate transaction.

- 1           b.    Failure to disclose that the Earnest Money Sales  
2                Agreement, Exhibit A, had expired prior to the  
3                closing.
- 4           c.    Failure to disclose that the Sales Agency  
5                Contract, Exhibit B, had expired prior to the  
6                closing.
- 7           d.    Failure to disclose that the Plaintiff was not  
8                obligated to sell the property to the Buyer, Carl  
9                Mellor, in accordance with the terms of the  
10              Earnest Money Sales Agreement, Exhibit A.
- 11          e.    Failure to disclose that the Plaintiff was not  
12                obligated to sell the property for \$16,000.00 per  
13                acre.
- 14          f.    Failure to disclose that the property had  
15                increased in value since the 24th day of October,  
16                1990, because of the annexation of the property  
17                into Lehi City.
- 18          g.    Failure to disclose that the property had  
19                increased in value since the 24th day of October,  
20                1990, because of the zoning of the property as  
21                Commercial (GC-2) Zone.
- 22          h.    Failure to disclose that the subject property had  
23                increased in value since the 24th day October,  
24

1 1990, because of the general increase in property  
2 values in the area.

3 i. Failure to disclose that the subject property had  
4 increased in value since the 24th day October,  
5 1990, because of the development of the Lehi  
6 Interchange on Interstate 15.

7 j. Failure to disclose that the property had  
8 increased in value for any other reason.

9 k. Failure to disclose that the Plaintiff had no  
10 legal obligation to pay a real estate commission  
11 to the Defendants.

12 l. Other items of nondisclosure as shall be shown at  
13 trial.

14 m. By representing to the Plaintiff that the  
15 Plaintiff was legally obligated to proceed with  
16 the closing and sale of the subject property and  
17 to pay to Defendants a real estate commission.

18 35. As a direct and proximate result of the breach of the  
19 fiduciary duty owed by the Defendants to the Plaintiff, the  
20 Plaintiff has been damaged in such sum as shall be established at  
21 the time of trial, including, but not by way of limitation, the  
22 following damage items:

- 1           a.    The difference between the sales price of  
2               \$16,000.00 per acre, and the value of the property  
3               at the time of the closing, in such sum as shall  
4               be established at the time of trial.  
5           b.    The amount of the sales commission paid to the  
6               Defendants in the sum of \$8,092.80.  
7           c.    Interest at the legal rate from the date each item  
8               of damage was incurred, in such sum as shall be  
9               established at the time of trial.  
10          d.    Such additional damages as shall be established  
11               at the time of trial herein.

12           36. The conduct of the Defendants in breaching their  
13   fiduciary duty, as described above, is willful and malicious or  
14   intentionally fraudulent conduct, or conduct that manifests a  
15   knowing and reckless indifference toward, and a disregard of, the  
16   rights of the Plaintiff, entitling the Plaintiff to punitive  
17   damages, in such sum as shall be established at the time of trial.

18                               SECOND CLAIM

19                               (Fraudulent Non-Disclosure)

20           37. Plaintiff hereby incorporates by reference ¶ ¶ 1-36 of  
21   this Complaint, as if fully set forth herein.  
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1           38. The Defendants, by the nature of their representation  
2 and relationship with the Plaintiff, each owed a duty of disclosure  
3 to the Plaintiff.

4           39. The Defendants made fraudulent non-disclosures to the  
5 Plaintiff, including but not limited to the following items:

6           a. Failure to disclose all facts material to the  
7 business of the Plaintiff related to the subject  
8 real estate transaction.

9           b. Failure to disclose that the Earnest Money Sales  
10 Agreement, Exhibit A, had expired prior to the  
11 closing.

12           c. Failure to disclose that the Sales Agency  
13 Contract, Exhibit B, had expired prior to the  
14 closing.

15           d. Failure to disclose that the Plaintiff was not  
16 obligated to sell the property to the Buyer, Carl  
17 Mellor, in accordance with the terms of the  
18 Earnest Money Sales Agreement, Exhibit A.

19           e. Failure to disclose that the Plaintiff was not  
20 obligated to sell the property for \$16,000.00 per  
21 acre.

22           f. Failure to disclose that the property had  
23 increased in value since the 24th day of October,  
24

1 1990, because of the annexation of the property  
2 into Lehi City.

3 g. Failure to disclose that the property had  
4 increased in value since the 24th day of October,  
5 1990, because of the zoning of the property as  
6 Commercial (GC-2) Zone.

7 h. Failure to disclose that the subject property had  
8 increased in value since the 24th day October,  
9 1990, because of the general increase in property  
10 values in the area.

11 i. Failure to disclose that the subject property had  
12 increased in value since the 24th day October,  
13 1990, because of the development of the Lehi  
14 Interchange on Interstate 15.

15 j. Failure to disclose that the property had  
16 increased in value for any other reason.

17 k. Failure to disclose that the Plaintiff had no  
18 legal obligation to pay a real estate commission  
19 to the Defendants.

20 l. Other items of nondisclosure as shall be shown at  
21 trial.

22 40. The items, as described above, which were not  
23 disclosed, and which the Defendants owed a duty to disclose to the  
24

1 Plaintiff, were concerning presently existing material facts, which  
2 the Defendants either knew should have been disclosed, or the  
3 Defendants were reckless as to the non-disclosure of said facts.

4 41. The facts which were not disclosed by the Defendants,  
5 were not disclosed for the purpose of inducing the Plaintiff to act  
6 without the knowledge of said facts and the Plaintiff did, in fact,  
7 reasonably act without the knowledge of said facts to the injury  
8 and damage of the Plaintiff, which damages include all of the items  
9 of damages as set forth and described above, in such sum as shall  
10 be established at the time of trial herein, together with interest  
11 thereon at the legal rate.

12 42. The failure to disclose the facts, as described above,  
13 constitutes acts or omissions of the Defendants which are the  
14 result of willful and malicious or intentionally fraudulent  
15 conduct, or conduct that manifests a knowing and reckless  
16 indifference toward, and a disregard of, the rights of the  
17 Plaintiff, entitling the Plaintiff to punitive damages in such sum  
18 as shall be established at the time of trial herein.

19 THIRD CLAIM

20 (Fraudulent Misrepresentation)

21 43. Plaintiff hereby incorporates by reference ¶ ¶ 1-42 of  
22 this Complaint, as if fully set forth herein.  
23  
24



1           44. The Defendants made material representations of fact  
2 to the Plaintiff concerning the sale of the subject property.

3           45. The representations made by the Defendants include, but  
4 not by way of limitation, the following:

5           a. That the Plaintiff was legally obligated to  
6 proceed with the closing and sale of the subject  
7 property and to pay to Defendants a real estate  
8 commission.

9           b. Other items as shall be shown at trial.

10          46. The representations, as described above, were of  
11 presently existing material facts.

12          47. The representations, as described above, were false.

13          48. The representations, as described above, were made by  
14 the Defendants knowing that the misrepresentations were false, or  
15 were made recklessly, knowing that the Defendants had insufficient  
16 knowledge upon which to base said representations.

17          49. The representations, as described above, were made by  
18 the Defendants to induce the Plaintiff to sell the subject  
19 property, as described above, and to pay to the Defendants the real  
20 estate commission, as described above.

21          50. The Plaintiff reasonably and justifiably relied to its  
22 detriment on the misrepresentations of the Defendants, as described  
23 above.

1           51. As a direct and proximate result of the fraudulent  
2 misrepresentations of the Defendants, the Plaintiff has suffered  
3 all the damages, as set forth and described above, together with  
4 all additional special and general damages as will be established  
5 at the time of trial herein, together with interest at the legal  
6 rate from the date that each item of damage was incurred.

7           52. The acts of the Defendants, in making the  
8 misrepresentations, as described above, are the result of willful  
9 and malicious or intentionally fraudulent conduct, or conduct that  
10 manifests a knowing and reckless indifference toward, and a  
11 disregard of, the rights of the Plaintiff, entitling the Plaintiff  
12 to punitive damages, in such sum as shall be established at the  
13 time of trial.

14                           FOURTH CLAIM

15                           (Constructive Fraud)

16           53. The Plaintiff hereby incorporates by reference ¶ ¶ 1-  
17 52 of this Complaint, as if fully set forth herein.

18           54. In the alternative, if it is determined that the above-  
19 stated items of non-disclosure and items of misrepresentation were  
20 not made knowingly, willfully, and with an intent to deceive, then  
21 the non-disclosure and the misrepresentations constitute  
22 constructive fraud on the part of the Defendants entitling the  
23 Plaintiff to all of the damages, plus interest at the legal rate,  
24

1 as set forth and described above, in such sum as will be  
2 established at the time of trial.

3 FIFTH CLAIM

4 (Negligent Misrepresentation)

5 55. The Plaintiff hereby incorporates by reference ¶ ¶ 1-  
6 54 of this Complaint, as if fully set forth herein.

7 56. In the alternative, if it is determined that the  
8 misrepresentations and the items of non-disclosure, as set forth  
9 and described above, were not made knowingly, and with an intent  
10 to deceive, then the misrepresentations and items of non-disclosure  
11 were made negligently and in breach of the duty of due care owed  
12 by the Defendants to Plaintiff.

13 57. As a direct and proximate result of the negligent  
14 misrepresentations and negligent non-disclosure, as described  
15 above, the Plaintiff has incurred all of the damages, plus interest  
16 at the legal rate, as set forth and described above, in such sum  
17 as shall be established at the time of trial.

18 SIXTH CLAIM

19 (Breach of Contract)

20 58. Plaintiff hereby incorporates by reference ¶ ¶ 1-57 of  
21 this Complaint, as if fully set forth herein.

22 59. In the event it is determined that a contract existed  
23 between the Defendants and the Plaintiff with regard to the real  
24

1 estate transaction, concerning the real estate commission, then,  
2 in that event, and in the alternative, the Defendants, through  
3 their actions, as described above, breached the agreement and the  
4 Plaintiff has incurred all of the damages, as set forth and  
5 described above, plus interest at the legal rate, plus attorney's  
6 fees incurred herein, in such sum as shall be established at the  
7 time of trial.

#### 8 SEVENTH CLAIM

##### 9 (Statutory Violations)

10 60. The Plaintiff hereby incorporates by reference ¶ 1-  
11 59 of this Complaint, as if fully set forth herein.

12 61. The Defendants are subject to the provisions of Chapter  
13 Two of Title 61 of Utah Code Annotated, 1953 as amended.

14 62. The actions and non-disclosure by the Defendants, as  
15 set forth and described above, establish that the Defendants did  
16 breach provisions of Section 61-2-11, Utah Code Annotated, 1953 as  
17 amended, including, but not by way of limitation, the following  
18 portions thereof:

- 19 a. The Defendants did make substantial  
20 misrepresentations, as set forth and described  
21 above.

- 1                   b.   The Defendants did make false promises of a  
2                   character likely to influence, persuade, or  
3                   induce, as set forth and described above.
- 4                   c.   The Defendants did act for more than one party in  
5                   a transaction without the informed consent of the  
6                   Plaintiff in that the Defendants were representing  
7                   the interests of the Buyer, Carl Mellor, with  
8                   regard to the subject transaction, and at the same  
9                   time, were representing Carl Mellor with regard  
10                  to other transactions, without adequately  
11                  disclosing said representation to the Plaintiff  
12                  herein.
- 13                  d.   As to the Defendants, Stanley W. Robinson, Donna  
14                  Robinson, and Denice A. Wilson Jepsen, failure to  
15                  exercise reasonable supervision over the  
16                  activities of Lloyd R. Brooks.
- 17                  e.   Breaching the fiduciary duty owed to the Plaintiff  
18                  with regard to the subject real estate  
19                  transaction.
- 20                  f.   Other conduct which constitutes dishonest dealing,  
21                  as set forth and described above.
- 22                  g.   Other actions, as shall be established at the time  
23                  of trial, constituting a violation of Section 61-
- 24

1 2-11, 1953 as amended, including the various  
2 subparts thereof.

3 63. As a direct result of the actions of the Defendants in  
4 violating the provisions of Section 61-2-11, 1953 as amended, as  
5 described above, the Plaintiff has been damaged, which damages  
6 include all of the damages, plus interest at the legal rate, as set  
7 forth and described above, in such sum as shall be established at  
8 the time of trial.

9 64. Pursuant to the provisions of Utah Code Annotated  
10 Section 61-2-17(4), 1953 as amended, the Plaintiff, in addition to  
11 the other damages incurred, is entitled to recover from the  
12 Defendants, the real estate commission paid to the Defendants, in  
13 the sum of \$8,092.80, plus three times the real estate commission,  
14 together with interest at the legal rate, in such total sum as  
15 shall be established at the time of trial.

16 65. The Plaintiff is further entitled to recover from the  
17 Defendants the amount of any prior, or subsequent, related  
18 commissions, compensation, or profit, plus three times the amount  
19 of such sums, related to any other transactions related to the  
20 subject property, as shall be established at the time of trial.

1 EIGHTH CLAIM

2 (Negligent Supervision)

3 66. The Plaintiff hereby incorporates by reference ¶ 1-  
4 65 of this Complaint, as if fully set forth herein.

5 67. The Defendants, Stanley W. Robinson, Donna Robinson,  
6 and Denice A. Wilson Jepsen, owed a duty to the Plaintiff to  
7 sufficiently and properly train and supervise their agents,  
8 including the Defendant Lloyd R. Brooks.

9 68. The Defendants, Stanley W. Robinson, Donna Robinson,  
10 and Denice A. Wilson Jepsen were negligent in that said Defendants  
11 failed to sufficiently train and/or supervise their agents,  
12 including Lloyd R. Brooks, with regard to the actions of said Lloyd  
13 R. Brooks, as set forth and described above.

14 69. As a direct and proximate result of the negligence and  
15 breach of duty by the Defendants, Stanley W. Robinson, Donna  
16 Robinson, and Denice A. Wilson Jepsen, the Plaintiff has suffered  
17 all of the damages, as described above, together with interest at  
18 the legal rate, together with such additional general and special  
19 damages as will be established at the time of trial.

20 NINTH CLAIM

21 (Respondeat Superior)

22 70. The Plaintiff hereby incorporates by reference ¶ 1-  
23 69 of this Complaint, as if fully set forth herein.

1           71. The Defendant, Lloyd R. Brooks, is an agent of the  
2 Defendants, Stanley W. Robinson, Donna Robinson, Denice A. Wilson  
3 Jepsen, and said Defendants are therefore liable for the actions  
4 of the Defendant Lloyd R. Brooks pursuant to the Doctrine of  
5 Respondeat Superior, in that the actions of the Defendant Lloyd R.  
6 Brooks, as described herein, were performed during the course and  
7 within the scope of the employment and agency relationship of Lloyd  
8 R. Brooks with Stanley W. Robinson, Donna Robinson, and Denice A.  
9 Wilson Jepsen.

10                           TENTH CLAIM

11                           (Unjust Enrichment)

12           72. The Plaintiff hereby incorporates by reference ¶ 1-  
13 71 of this Complaint, as if fully set forth herein.

14           73. The Sales Agency Contract, Exhibit B, had expired prior  
15 to the closing of the sale, and the Defendants had no legal right  
16 or claim to the real estate commission.

17           74. The payment of the real estate commission to the  
18 Defendants constitutes unjust enrichment. The Plaintiff is  
19 entitled to the recovery of said commission, plus interest at the  
20 legal rate from the date of payment of said commission, together  
21 with such additional damages as shall be established at the time  
22 of trial herein.



1           WHEREFORE, the Plaintiff prays for judgment against the  
2 Defendants, as follows:

3                           FIRST CLAIM

4           For judgment against the Defendants, jointly and severally,  
5 as follows:

6           1.   For judgment in such amount as shall be established at  
7 the time of trial, plus interest at the legal rate, plus such  
8 additional damages and incidental and consequential damages as  
9 shall be established at the time of trial.

10          2.   For punitive damages in such amount as shall be  
11 established at the time of trial.

12          3.   For costs of court and such other and further relief  
13 as to the court appears just and equitable in the premises.

14                           SECOND CLAIM

15          For judgment against the Defendants, jointly and severally,  
16 as follows:

17          1.   For judgment in such amount as shall be established at  
18 the time of trial, plus interest at the legal rate, plus such  
19 additional damages and incidental and consequential damages as  
20 shall be established at the time of trial.

21          2.   For punitive damages in such amount as shall be  
22 established at the time of trial.

1           3.    For costs of court and such other and further relief  
2 as to the court appears just and equitable in the premises.

3                           THIRD CLAIM

4           For judgment against the Defendants, jointly and severally,  
5 as follows:

6           1.    For judgment in such amount as shall be established at  
7 the time of trial, plus interest at the legal rate, plus such  
8 additional damages and incidental and consequential damages as  
9 shall be established at the time of trial.

10          2.    For punitive damages in such amount as shall be  
11 established at the time of trial.

12          3.    For costs of court and such other and further relief  
13 as to the court appears just and equitable in the premises.

14                           FOURTH CLAIM

15          For judgment against the Defendants, jointly and severally,  
16 as follows:

17          1.    For judgment in such amount as shall be established at  
18 the time of trial, plus interest at the legal rate, plus such  
19 additional damages and incidental and consequential damages as  
20 shall be established at the time of trial.

21          2.    For costs of court and such other and further relief  
22 as to the court appears just and equitable in the premises.

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FIFTH CLAIM

For judgment against the Defendants, jointly and severally,  
as follows:

1. For judgment in such amount as shall be established at  
the time of trial, plus interest at the legal rate, plus such  
additional damages and incidental and consequential damages as  
shall be established at the time of trial.

2. For costs of court and such other and further relief  
as to the court appears just and equitable in the premises.

SIXTH CLAIM

For judgment against the Defendants, jointly and severally,  
as follows:

1. For judgment in such amount as shall be established at  
the time of trial, plus interest at the legal rate, plus such  
additional damages and incidental and consequential damages as  
shall be established at the time of trial.

2. For costs of court, attorney's fees incurred herein,  
and such other and further relief as to the court, appears just and  
equitable in the premises.

SEVENTH CLAIM

For judgment against the Defendants, jointly and severally,  
as follows:

1           1.    For judgment in such amount as shall be established at  
2 the time of trial, including the following:

3           a.    \$8,092.80, the real estate commission.

4           b.    Three times the real estate commission:  
5                \$24,278.40.

6           c.    Interest at the legal rate.

7           d.    The amount of all prior and subsequent related  
8                real estate commissions, compensations, and  
9                profits, plus three times the amount of said sums.

10          e.    All other damages as shall be shown at the time  
11                of trial.

12          2.    For costs of court and such other and further relief  
13 as to the court appears just and equitable in the premises.

14                   EIGHTH CLAIM

15          For judgment against Stanley W. Robinson, Donna Robinson,  
16 and Denice A. Wilson Jepsen, jointly and severally, as follows:

17          1.    For judgment in such amount as shall be established at  
18 the time of trial, plus interest at the legal rate, plus such  
19 additional damages and incidental and consequential damages as  
20 shall be established at the time of trial.

21          2.    For costs of court and such other and further relief  
22 as to the court appears just and equitable in the premises.

1 NINTH CLAIM

2 For judgment against Stanley W. Robinson, Donna Robinson,  
3 and Denice A. Wilson Jepsen, jointly and severally, as follows:

4 1. For judgment in such amount as shall be established at  
5 the time of trial, plus interest at the legal rate, plus such  
6 additional damages and incidental and consequential damages as  
7 shall be established at the time of trial.

8 2. For costs of court and such other and further relief  
9 as to the court appears just and equitable in the premises.


10 TENTH CLAIM

11 For judgment against the Defendants, jointly and severally,  
12 as follows:

13 1. For judgment in the amount of \$8,092.80, plus interest  
14 at the legal rate, plus such additional damages as shall be  
15 established at the time of trial.

16 2. For costs of court and such other and further relief  
17 as to the court appears just and equitable in the premises.

18 DATED this 8th day of March, 1994.

19  
20   
21 DAVID H. SHAWCROFT, Attorney for  
Plaintiff

22 Plaintiff's Address:  
23 Mahlon Peck & Family, Inc.  
24 6800 West 10170 North  
Highland, UT 84003

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STATE OF UTAH                    )  
                                      ) ss.  
COUNTY OF UTAH                )

MAHLON PECK, being first duly sworn, deposes, and says as follows: I have read the foregoing Complaint, and the information contained therein is true to the best of my knowledge, information, and belief.

DATED this 8th day of March, 1994.

J. Mahlon Peck

SUBSCRIBED AND SWORN to me before me this 8th day of March, 1994, by MAHLON PECK.

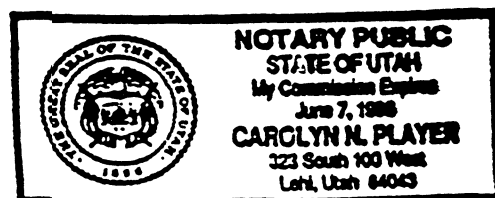
Carolyn H. Player  
NOTARY PUBLIC

My Commission Expires:

6-7-96


Residing at:

Salt Lake City



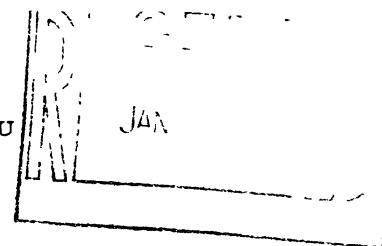
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DATED this 8th day of March, 1994.

BY   
DAVID H. SHAWCROFT  
Attorney for Plaintiff

LAW OFFICES  
**SNOW, CHRISTENSEN & MARTINEAU**  
A PROFESSIONAL CORPORATION  
10 EXCHANGE PLACE, ELEVENTH FLOOR  
POST OFFICE BOX 45000  
SALT LAKE CITY, UTAH 84145-5000  
TELEPHONE (801) 521 9000  
FACSIMILE (801) 363 0400

ROBERT C. KELLER



WRITER'S DIRECT NUMBER  
(801) 322 9172

January 8, 1997

**Via Hand Delivery**

Mr. Stephen B. Nebeker  
RAY, QUINNEY & NEBEKER  
79 South Main, #500  
P.O. Box 45385  
Salt Lake City, Utah 84145

Re: Pre-hearing Submission in the Matter of Peck Family Inc. v. Brooks and  
All Pros Realty

Dear Mr. Nebeker:

On behalf of the defendants in the above-referenced matter, Lloyd R. Brooks and All Pros Realty, this will provide a brief overview of the dispute in this case and introduce the written materials submitted herewith. We understand the arbitration hearing is scheduled to be held in your office beginning 1:00 p.m. on Wednesday, January 15, 1997.

The plaintiff is a family corporation holding certain assets used primarily for dairy farming and other agricultural interests. At relevant times plaintiff's president, Mr. Mahlon Peck, was an active dairy farmer approximately 70 years old who, with his wife, held title to the 8.5 acres of undeveloped farm land which is the subject of this dispute. Before the closing of the transaction at issue, Mr. Peck transferred title to the family corporation. Defendants are Lloyd Brooks, an experienced and knowledgeable real estate agent in the American Fork area, and the agency with whom he is associated.

The transaction arose in October 1990 when the buyer of the property, Mr. Carl Mellor, approached Mr. Brooks to inquire whether Mr. Brooks was aware of any available commercial properties in the area. Mr. Mellor was considering moving his family business and at that time wanted to acquire property for that purpose.

Mr. Brooks had heard that Mr. Peck might be interested in selling some land. After Mr. Mellor's inquiry he approached Mr. Peck and Mr. Peck confirmed his desire to sell. The property was not then annexed into the City of Lehi and zoned for commercial use, but the parties



January 8, 1997

Page 2

contemplated that the annexation and rezoning could be done in order to accommodate Mr. Mellor's business.

Mr. Brooks did some market research to determine a sale price. He recommended, and the parties eventually agreed upon, a purchase price of \$16,000 per acre. The parties entered into a standard form Earnest Money Sales Agreement and related agreements on or about October 25, 1990.

The closing on the transaction was initially scheduled to occur some six months after the earnest money was signed, in March 1991. As the initial closing date approached, however, the buyer requested some additional time. Mr. Peck agreed to another sixth month extension of the agreement and at that time the buyer also agreed to provide a down payment of \$2,000 for the benefit of the sellers.

As the second closing date approached, however, the seller Mr. Peck requested some additional time. The contemporaneous documents indicate Mr. Peck wanted the time to transfer ownership of the property to the family corporation and to consider tax implications of the transaction. The buyer agreed to the extension and, at Mr. Brook's suggestion, the buyer paid another \$500 as an additional down payment.

Before expiration of the last extension, in March 1992 and approximately 1½ years after the earnest money was signed, the parties closed at the original purchase price of \$16,000 per acre. Mr. Brooks was and is aware of contemporaneous comparable sales that supported his initial valuation, and was and is aware of no sales or other indications that would have led him to believe the property was undervalued to begin with, had significantly increased in value during the pendency of the earnest money or would substantially increase in the immediate future. Mr. Brooks' opinion as to value is strongly supported by the testimony of Mr. Mellor, who was an independent, willing buyer at the time.

At that time, however, there is no question the area was experiencing some growth and shortly thereafter land values did increase quite dramatically. Mr. Mellor had obtained more convenient property on which to locate his business, and eventually sold the subject property to another developer in late 1994 for some \$36,000 an acre.

Six months to a year after the transaction closed, Mr. Brooks became aware Mr. Peck's son Wayne was unhappy about having sold the property. Mr. Brooks approached Mahlon Peck to discuss the matter. Mr. Peck indicated he had "no problem" with the transaction, but the family was apparently still frustrated.

January 8, 1997

Page 3

In March 1994 and without any additional consultation with Mr. Brooks, the corporation filed the lawsuit which has eventually resulted in this arbitration. Plaintiff's primary allegations were that the earnest money agreement and related documents expired by their terms before the first extension in early 1991, and Mr. Peck was somehow duped or defrauded by Mr. Brooks and Mr. Mellor together into going forward with the transaction in early 1992 when he wasn't obligated to do so. The property had increased dramatically in value in the interim, and plaintiff was entitled to the difference in value, plus consequential, punitive and treble damages, etc.

Through discovery, plaintiff has modified its claims. As defendants currently understand it, the primary issues to be resolved by the arbitrator concern whether Mr. Brooks failed to exercise the appropriate care for plaintiff's interest during the transaction and, if so, whether that failure resulted in any damages to plaintiff under all of the applicable circumstances. Damages, according to plaintiffs, are primarily the difference between what the property was worth according to their reconstruction of value and what Mr. Mellor actually paid.

Defendants are confident Mr. Brooks did everything humanly and professionally possible to insure the sellers got the appropriate price for the land at the closing in early 1992. Although it is unfortunate from the Peck's perspective they sold the property when they did, absent a crystal ball or some foresight not required by any standard cited by plaintiff's Mr. Brooks could not have known the property might be worth substantially more in future years.

In this regard, the factors Mr. Brooks considered in establishing the purchase price are important, and defendants expect that the arbitration hearing to focus on those factors. Other evaluations of the property during relevant periods are also significant, and both parties have hired appraisers to do historical appraisals. The appraisals differ, and defendants also expect the arbitration to address the differences in the appraisals and the reasons therefore.

Defendants believe that the relevant issues can be explored in depth and informally, and Mr. Brooks and defendants' appraiser will attend the hearing to discuss their reasoning and the conclusions reached. Defendants may also call Mr. Mellor to discuss his testimony.

In addition, the following documents may assist the arbitrator in preparing for the hearing and becoming conversant with the issues, and are submitted herewith:

1. Deposition transcript of Mahlon Peck, with attached exhibits, including plaintiff's complaint;
2. Deposition transcript of Lloyd Brooks, with attached exhibits;

January 8, 1997

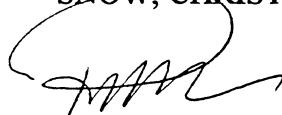
Page 4

3. Deposition transcript of Carl Mellor, with attached exhibits;
4. Appraisal report of Kent J. Carpenter, MIA; and
5. Appraisal report of Don R. Gurney, SRA.

We appreciate your attention to this matter and look forward to the arbitration hearing.

Very truly yours,

SNOW, CHRISTENSEN & MARTINEAU

A handwritten signature in black ink, appearing to be 'RCK', written over a circular scribble.

Robert C. Keller

RCK:sh

Enclosures

cc: Gordon Duvall, Esq. (without enclosures)

N:\1634635\RCK\WEBEKE.LTR

COPY

Gordon Duval, Bar No. 6532  
DUVAL, HANSEN, WITT & MORLEY, P.C.  
Attorney for Plaintiff  
110 South Main Street  
Pleasant Grove, Utah 84062  
Telephone: (801) 785-5350

MAHLON PECK & FAMILY, INC.,  Plaintiff,  vs.  LLOYD R. BROOKS et al.,  Defendants.	CLOSING ARGUMENT AND REQUEST FOR ORAL ARGUMENT    CASE NO. 940400145 Arbitrator Stephen Nebeker
--	---

Mahlon Peck & Family, Inc., hereby respectfully submit  
the following request for oral argument.

REQUEST FOR ORAL ARGUMENT

Determining the issues at hand hinges on whether the  
highest and best use of the Peck property on the date of the sale  
from the Pecks to Carl Mellor was as commercial property. If so,  
than was the price Brooks set for the property on the day it was  
sold to Mellor in 1992 the true fair market value of the  
property? According to Brooks, the land value was flat from  
October 1990, when Mellor entered into the first earnest money  
agreement, through the date of sale in 1992. Then, according to  
Brooks, the value of the land doubled in seven months. Did the  
land value really remain completely stagnant for 17 months and  
then suddenly skyrocket doubling in value in the next \_\_\_\_ months?  
The Pecks believe that did not occur.

MAILED  
1-30-97 5:00 PM  
to Stephen Nebeker; Faxed to Robert Koller 1-22-97

These valuation issues were clouded by Brooks' testimony which included subsequent land sales and his testimony that any land sales for more than \$16,000 an acre were not comparable pieces of property. He has failed to explain, even though asked several times, how he determined that while all of the other land values in northern Utah County were rapidly increasing from the time of the earnest money agreement in 1990 to the time the sale was consummated in 1992, the value of the Peck property did not increase at all. To fully explain the increase in value of land in Lehi during the time in question, the differences between the two appraisals, and the inconsistencies of Brooks' statements at deposition and arbitration, the plaintiff, upon recommendation, now requests the opportunity for brief oral closing arguments, possibly 20 or 30 minutes per side.

#### HIGHEST AND BEST USE: COMMERCIAL V. RESIDENTIAL

Whether or not the price Lloyd Brooks and Carl Mellor set for Mahlon and Marie Peck's property was reasonable depends upon whether the highest and best use of the property is for commercial or residential use. What is the highest and best use of the Peck's property? That is the question of fact to be decided. Look at the evidence on this issue.

1. Lloyd Brooks stated at his deposition that the property was best suited for commercial use. Brooks depo. at 42,43. Brooks stated that the land was worth "much more" as commercial. Brooks depo. at 25. The property was identified by Brooks for

his client Mellor as a desirable location for Mellor's commercial use.

2. Don Gurney, an appraiser with over twenty years experience, the last ten years of which he has specialized in the appraisal of commercial property in Utah County, has concluded that the highest and best use of this property is commercial.

3. Carl Mellor, the buyer who originally hired Brooks to determine if the Peck property was for sale, determined that the property was well suited for his commercial business. He bought the land for commercial use and sold it as commercial property.

4. Roger Young, a potential purchaser, was willing to pay \$375,000 for the property as commercial land.

5. The subsequent purchasers of the property, Allred and Robbins, also believed the Peck land to be desirable as commercial property.

6. The only person who believes that this property, situated along the State Street corridor and within sight and hearing of I-15, was best suited for residential use is Kent Carpenter. The appraisal by Carpenter takes the astounding position that the subject property is best suited for residential use rather than commercial.

Carpenter notes that approval for the commercial zoning and annexation by Lehi was "virtually assured" and that the annexation and rezone could have been obtained at "any time." Carpenter appraisal at 23, 77. That having been said, it is interesting that none of the earnest money agreements signed by Mellor listed the annexation and rezone as a condition of the sale.

Carpenter and Brooks place much emphasis on the railroad track as an undesirable element of the property. Both Carpenter

and Brooks testified that property along the north side of the railroad tracks was, and continues to be, undesirable. Carpenter and Brooks point to commercial land sale number 4 of Carpenter's appraisal as evidence of this. Carpenter appraisal p. 68. Carpenter uses the sale of this parcel to Charles Lebaron at \$10,808 per acre as evidence of the value of commercial land on the north side of the railroad tracks on the State Street corridor. Carpenter, for some reason, misleadingly states that this "comparable" property is "intended for GC-1 rezone." In fact, the property was purchased solely for agricultural use. It was not annexed into a city. No "intended for GC-1" zoning designation for this property was ever made by Utah County since no such zoning designation exists. (See affidavits of Charles Lebaron and Jeff Mendenhall.) This same property, however, in spite of the supposed disadvantage of being located north of the railroad tracks, is just now in 1997 being considered for annexation into American Fork City as commercial property. Mr. Lebaron has a bona fide offer of \$200,000 per acre for the property. (See affidavit of Charles Lebaron). What makes Carpenter's selection of this property as a comparable even more suspect is that the property is located four miles south of the Peck property, not only outside of Lehi, but outside of American Fork and adjacent to Pleasant Grove as well. When all the facts are brought to light concerning this "comparable," which

Carpenter admits he included even though it was outside the area he would normally draw land sale data from, it becomes clear that Carpenter's true motive was to lower the value of commercial property in his appraisal to the exact price paid by his client. These facts reinforce the conclusions in the appraisal prepared by Mr. Gurney, the appraiser with the most expertise in commercial land appraisals and the appraiser most familiar with the Utah County real estate market.

#### LACK OF RELEVANT EXPERIENCE

Carpenter's conclusion in his appraisal that the property is best suited for residential use is not surprising considering his very limited experience in conducting commercial land appraisals. Carpenter stated that this appraisal was only his fifth commercial land appraisal in Utah. This was his first ever in Utah County. His prior experience was in California where he served as a review appraiser for some banks and a savings and loan. In contrast to Mr. Gurney's twenty years of continuous work as an appraiser, Mr. Carpenter is not now currently working as an appraiser. Carpenter had not lived in Utah since 1981. He had, in fact, only moved back to Utah in 1995, the same year he was hired by the defendant to conduct this appraisal. The Utah County market which Carpenter was acquainted with in 1981 was very different then the same market in 1992. Carpenter was not



present in Utah or Utah County during the time in question to feel the energy that was stimulating the real estate market to record levels.

#### UTILITIES

Mr Carpenter's appraisal contains some assumptions which are not based in fact, and which result in his arrival at a sales price which is remarkably and "coincidentally" exactly the same amount his client set for the land. Carpenter's appraisal states the cost of extending the sewer line to the property was \$24,500. Carpenter also assumes that this cost was necessary to extend the sewer into a cul de sac, yet none of the parties to the lawsuit have stated that there was ever a plan to construct a cul de sac, nor is a cul de sac necessary to develop the property for commercial purposes. Carpenter's appraisal unfortunately fails to factor in the many more commercial options which would require much less infrastructure and cost to develop. Carpenter, by his own admission, did not attempt to determine what the cost of extending the sewer line would have been at the time of the sale. This omission is not surprising in light of his lack of familiarity with the subject market of his appraisal. In the early 1990's construction costs were dramatically lower than in late 1995 when his appraisal was conducted. The sharp rise in construction costs was due to the booming construction market and the nearby Micron project which left subcontractors in high

demand and short supply. During that extraordinary 1995 time period a good carpenter, excavator or construction worker was impossible to find, and if they were available, they were demanding top dollar.

Another error in Carpenter's utility estimate is the cost of extending the secondary water to the property, which he states would have to be extended 1,760 feet at a cost of \$17,600.00. The actual location of the secondary water line is only 200 feet from the subject property, and using Carpenter's estimated cost per foot, would calculate to \$2,000.00, \$15,600.00 less than his estimate. Again, it bears mention that Carpenter's estimate is based on December 1995 figures and not early 1992 cost.

#### PRICE

Brooks claimed in arbitration that he considered numerous land sales when assembling his purported market analysis. Mr. Peck flatly denies that he was ever shown or given any market analysis. Brooks' deposition testimony in 1994 contradicts his testimony at the arbitration. In Brooks' December 1994 deposition he was asked if he supplied a market analysis to Mr. Peck. At that time, which was much closer to the transaction than the arbitration hearing, Brooks was also asked if he could remember any properties that might have been involved in his market analysis. His reply was "Not at this time, no." Brooks depo. at 25. When asked about how many pieces of property he

included in his market analysis, Brooks replied "If you can find them, you generally use three, if there was that many available." When asked if he could remember if he had used three in this case, he replied "No. I don't." Brooks depo. at 25. In stark contrast to his arbitration testimony, in 1994 when Brooks was asked if he could recall any properties which might have been included in the market analysis, his reply was "No, I do not." Brooks depo. at 25. It is not surprising that at the deposition Brooks could not remember how many properties he had used in his alleged market analysis, or whether he had even conducted a market analysis on the Peck property, because none of the commercial properties Brooks had listed in 1990-1991 were even close to \$16,000 per acre. Brooks had three commercial properties listed in Lehi, one for \$60,215 an acre, one for \$50,000 an acre, and one for 25,180 an acre. (Exhibit A). In 1992 Brooks called the Peck property "prime" and "ideal" commercial land. Yet in the arbitration, Brooks would lead one to think the Peck property was slightly worse than land on the Dugway proving ground.

Two years ago Brooks could not remember the number of properties or which properties he had used to determine the selling price for Mr. Peck's property. Now all of a sudden in the 1997 arbitration, six years after the last extension, Brooks remembers lots of comparables. The reason in 1994 that Brooks

could not remember doing a market analysis or which comparable he used is because it was in fact Mellor, and not Brooks, who determined the purchase price of the property. Mellor approached Brooks and asked Brooks to find out if the Peck property was for sale. Mellor depo. at 14. Mellor told Brooks that he wanted to pay only \$15,000.00 an acre for the property. Mellor depo. at 17. That is why Brooks told Peck to sell the land for only \$14,000 per acre. Peck balked at that price and demanded more. Mr. Peck testified that it was Brooks who told him that \$16,000 was the top price for his land. Peck depo. at 32. Brooks, eager to make a sale to Mellor, made sure that the asking price was in line with what Mellor was willing and able to pay for the property.

#### TITLE

Lloyd Brooks is the only one who seems to have been unsure of the title to the property. Mr. Peck, in his deposition, stated that he recalled all of the items listed on the second earnest money agreement except for the first item stating that the seller wanted to extend closing for "up to six months allowing seller time to make modifications in title (Family corporation, etc.) as deemed necessary by seller. Also allowing seller time to work out tax implications which may be created through this sale." When questioned by the defendant's attorney about this, Mr. Peck replied "I don't recall and I don't know of

anything having to be done." Deposition of Mahlon Peck, page 36. When asked about the purported tax implications, as well as if there was "some question about how you wanted to take title for tax purposes? Do you recall anything like that?," Mr. Peck replied "No." Peck deposition at 32. In fact, the title to the property was already in the name of the family corporation, as it had been since 1974. (Exhibit B).

#### SIGN

Brooks stated at the arbitration hearing that it was agreed that a "for sale" sign would not be posted on the property because Mr. Peck needed to farm the land. That is not true. Mr. Peck stated that he was never asked if the sign would interfere with his farming of the land, and in fact that Brooks had never discussed placing a "for sale" sign on his property at all. When asked whether Brooks had requested from Mr. Peck permission to place a for "sale sign" on the property, Brooks repeatedly stated that it was "agreed" not to place the sign. When asked why he did not post the sign facing State Street where it would not interfere with the farming of the property, Brooks' reply was that it was not effective to post a sign parallel with the roadway, rather that the sign would need to be posted perpendicular to the roadway at an angle. Yet, he also testified that when he posted a sign for Mellor shortly after Mellor had purchased the property from Mr. Peck, he posted the sign parallel

to the roadway. Apparently, placing the sign parallel to the roadway for Mellor did not have an adverse effect on the sale of the property nor on Peck's continued farming of the land during that time.

The failure of Brooks to place a "for sale" sign when he listed the property for Peck was due to the fact that he actually was a de facto agent for Mellor, and was working to sell the property to Mellor at the price determined by Mellor as the price he was willing to pay. Because of Brooks' loyalty to Mellor, the purchase price for this property was never tested in the commercial market.

#### CONCLUSION

The facts of this matter are clear:

- \* Mellor asks Brooks to find out if Marie and Mahlon Peck's property is for sale. Mellor enlists Brooks as his agent.

- \* Mellor sets a price of \$15,000 an acre.

- \* Brooks, acting as Mellor's agent, inquires about the Peck property.

- \* When the Pecks indicate a willingness to sell, Brooks indicates to them that he is their exclusive agent.

- \* While not disclosing his agency for Mellor, Brooks extends an offer of \$14,000 an acre which is in line with his true client's wishes.

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\* When the Pecks indicate a willingness to sell, Brooks indicates to them that he is their exclusive agent.

\* While not disclosing his agency for Mellor, Brooks extends an offer of \$14,000 an acre which is in line with his true client's wishes.

\* The Pecks balk at selling the property for \$14,000 an acre, so Brooks tells them that \$16,000 is the top price they can get for the land.

\* The Pecks are never provided a market analysis, relying on Brooks as their exclusive agent to provide them with accurate information and disclosure of any conflict of interest. Brooks fails them on both counts.

\* Brooks does not advertise the property even once.

\* Brooks does not promptly arrange for the rezone so the land can be listed as commercial property.

\* Brooks does not affirmatively take any action to test the value of the land in the commercial market.

\* Brooks does not ask the Pecks if he can place a "for sale" sign on the property and does not place a sign anywhere on


deed the property to the family trust. Mr. Peck flatly denies that he ever discussed this with Brooks.

\* The fact that the property was transferred into the name of the family trust since 1974 along with the fact that Mellor deposited another \$500 dollars on the property when Brooks claims that the extension was at the request of the seller reveal that Brooks' motives were to protect the interest of his true client, Mellor.

\* Because Brooks breached his fiduciary duty under Utah law as noted in the brief submitted before arbitration, plaintiff respectfully requests that judgment be for the plaintiff.

Submitted this 30 day of January, 1997.

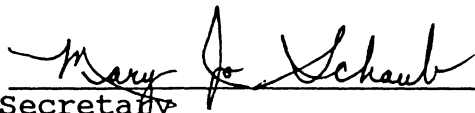
DUVAL HANSEN WITT & MORLEY, P.C.

  
\_\_\_\_\_  
GORDON DUVAL  
Attorney for Plaintiff Mahlon Peck  
& Family, Inc.



**CERTIFICATE OF SERVICE**

I hereby certify that I faxed a true and correct copy of the Closing Argument and Request for Oral Argument to Robert Keller at 1-801-363-0400, and mailed a true and correct copy of the same document to Stephen Nebeker, Arbitrator, at RAY QUINNEY & NEBEKER, 79 South Main, Ste. 700, Salt Lake City, UT 84111, postage prepaid, on this 30th day of January, 1997.

  
\_\_\_\_\_  
Secretary

SG:c:\shawn\peck\close.arg  
c:\wp51\docs\peck\peck-close.arg

# AREAS 1 THRU 23 FOR SALE

PHOTO NOT AVAILABLE  
AT THIS TIME  
\$33,111/ACR

#	1939	101 W MAIN ST	C0 N	C-3
LEH	125,000	LEH	YRBLT	C01
OWN CONFIDENTIAL	PH 225-3910	POSS UC OCCP RN		
OCM H D PENNY	PH 768-9214	APPT LO, OC		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT .000 # 0	2INT .000 # 0	APMT 0		
1PMT 0	2PMT 0	DNPMT \$		
INC 1PTY INC	2PTY ASMTS P TX 206	GS \$		
TD 01-028-0017 MT		VAC \$		
TY TM CV, CS	L #	TOE \$		
TSQ 1,568	LOT 20 X 81.5	NOI \$		
OSO BLD TYP CH, RO, MO				
BUS OPEN	ACR	PK	CAPRTX	
VT PS AP	SD CH AC	HEAT GS	RFAS	
INC HV, PV				
UT/MT CC SH NG EL GC EC				
PRICED TO SELL FAST! GREAT COMMERCIAL SITE ON				
MAIN ST. MANY COMMERCIAL USES				
FRM ERA HT LAND	PH 785-5013	ID 00140	LST ERS	
LAGT DALE C JOHNSON	PH 225-3910	BKRCOM 3		

#	497	225 S 850 E	C	G-C1
LEH	112,000	LEH	YRBLT	C01
OWN KENNETH WEBB	PH 000-0000	POSS UC OCCP VA		
OCM VACANT LAND	PH 756-3591	APPT LO, NA		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT #	2INT #	APMT		
1PMT	2PMT	DNPMT \$		
INC 1PTY INC	2PTY ASMTS TX 55	GS \$		
TD 13-015-0027 MT		VAC \$		
TY TM CV, CS	L #	TOE \$		
TSQ 0	LOT	NOI \$		
OSO BLD TYP				
BUS	ACR	1.86 PK	CAPRTX	
VT 440 PS 3 AP	SD CH AC	HEAT	RFOT	
INC HV				
UT/MT CC SH NG EL TR				
I-15 HIGH VISIBILITY, NEXT TO NEW INTERCHANGE,				
NEAR SMALL LAKE CO-AGENT SUE 756-7574 *BB 4x				
FRM ROBINSON WILSON	PH 756-3591	ID 00158	LST ERS	
LAGT LLOYD BROOKS	PH 768-3547	BKRCOM 5		

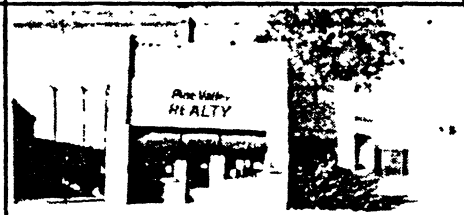


PHOTO NOT AVAILABLE  
AT THIS TIME  
\$50,000/ACR

#	99263	975 W STATE ST	C10 N	G-C1
LEH	114,900	LEH	YRBLT	C01
OWN R. GARRICK	PH 225-1500	POSS UC OCCP VA		
OCM VACANT	PH 225-1500	APPT NA		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT #	2INT #	APMT		
1PMT	2PMT	DNPMT \$		
INC 1PTY INC	2PTY ASMTS TX 95	GS \$		
TD 12-018-0017 MT		VAC \$		
TY TM CV, CS	L #	TOE \$		
TSQ 18,908	LOT 58 X 326	NOI \$		
OSO BLD TYP				
BUS	ACR	.45 PK	CAPRTX	
VT PS AP	SD CH AC	HEAT OT	RFOT	
INC HV				
UT/MT CC SH NG EL				
ACREAGE IS APPROX BACKS IN TO I-15 GOOD FREE-				
WAY EXPOSURE				
FRM MANSELL & ASSOC	PH 225-1500	ID 00137	LST ERS	
LAGT BILL BROWN	PH 489-4980	BKRCOM 4		

#	1249	46 W MAIN	C	C-0
LEH	129,500	LEH	YRBLT	C01
OWN CO-OP ASSOCIA	PH 756-2287	POSS UC OCCP RN		
OCM PINE VALLEY	PH 756-3581	APPT ON, LO		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT 13,500 # 12	2INT	APMT		
1PMT 301	2PMT	DNPMT \$		
INC PI 1PTY F INC	2PTY ASMTS TX 263	GS \$		
TD 01-036-0012 MT		VAC \$		
TY TM CV	L #	TOE \$		
TSQ 0	LOT 80X40	NOI \$		
OSO BLD TYP CH				
BUS REAL ESTATE	ACR	PK	CAPRTX	
VT 120 PS 1 AP	SD CH ACEV	HEAT GS	RFSH	
INC RS				
UT/MT CC SH NG EL				
HIGH VISIBILITY CENTER OF BUSINESS DISTRICT				
RESTORED EARLY ARCHITECTURE				
FRM PINE VALLEY	PH 756-3581	ID 00150	LST ERS	
LAGT RON JONES	PH 756-4340	BKRCOM 3		

#	495	425 S 850 E	C	G-C1
LEH	125,000	LEH	YRBLT	C01
OWN KENNETH WEBB	PH 000-0000	POSS UC OCCP VA		
OCM VACANT LAND	PH 756-3591	APPT LO, NA		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT #	2INT #	APMT		
1PMT	2PMT	DNPMT \$		
INC 1PTY INC	2PTY ASMTS TX 157	GS \$		
TD 13-016-0025 MT		VAC \$		
TY TM CV, CS	L #	TOE \$		
TSQ 0	LOT 503 X 435	NOI \$		
OSO BLD TYP				
BUS	ACR	5.00 PK	CAPRTX	
VT 440 PS 3 AP	SD CH AC	HEAT	RFOT	
INC HV				
UT/MT CC SH NG EL TR				
I-15 HIGH VISIBILITY, NEXT TO NEW INTERCHANGE,				
NEAR SMALL LAKE CO-AGENT SUE 756-7574 *BB 4x				
FRM ROBINSON WILSON	PH 756-3591	ID 00158	LST ERS	
LAGT LLOYD BROOKS	PH 768-3547	BKRCOM 5		

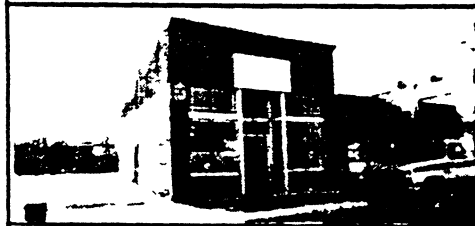


PHOTO NOT AVAILABLE  
AT THIS TIME  
\$25,180/ACR

PHOTO NOT AVAILABLE  
AT THIS TIME  
\$84,270/ACR

#	1940	169 W MAIN ST	C0 N	C-3
LEH	120,000	LEH	YRBLT	C01
OWN CONFIDENTIAL	PH 225-3910	POSS UC OCCP RN		
OCM CLOGGERS	PH 225-3910	APPT LO, OC, KL		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT .000 # 0	2INT .000 # 0	APMT 0		
1PMT 0	2PMT 0	DNPMT \$		
INC 1PTY INC	2PTY ASMTS P TX 251	GS \$		
TD 01-028-0010 MT		VAC \$		
TY TM CV, CS	L #	TOE \$		
TSQ 1,146	LOT 23 X 90 75	NOI \$		
OSO BLD TYP CH, RO, MO				
BUS OPEN	ACR	.05 PK	CAPRTX	
VT 220 PS 2 AP	SD CH ACEV	HEAT GS	RFAS	
INC HV, PV				
UT/MT CC SH NG EL				
PRICED TO SELL FAST! GREAT COMMERCIAL BLDG ON				
MAIN ST. GREAT FOR SALES, OFFICE OR GENERAL U				
FRM ERA HT LAND	PH 785-5013	ID 00140	LST ERS	
LAGT DALE C JOHNSON	PH 225-3910	BKRCOM 3		

#	499	955 E MILL POND DR	C	G-C1
LEH	135,000	LEH	YRBLT	C01
OWN KENNETH WEBB	PH 000-0000	POSS UC OCCP VA		
OCM VACANT LAND	PH 756-3591	APPT LO, NA		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT #	2INT #	APMT		
1PMT	2PMT	DNPMT \$		
INC 1PTY INC	2PTY ASMTS TX 44	GS \$		
TD 13-016-0026 MT		VAC \$		
TY TM CV, CS	L #	TOE \$		
TSQ 0	LOT	NOI \$		
OSO BLD TYP				
BUS	ACR	1.39 PK	CAPRTX	
VT 440 PS 3 AP	SD CH AC	HEAT	RFOT	
INC HV				
UT/MT CC SH NG EL TR				
I-15 HIGH VISIBILITY COMMERCIAL LAND LOCATED				
NEAR SMALL LAKE CO-AGENT SUE 756-7574 *BB 4x				
FRM ROBINSON WILSON	PH 756-3591	ID 00158	LST ERS	
LAGT LLOYD BROOKS	PH 768-3547	BKRCOM 5		

#	1883	480 E STATE ST	C200 S	G-C1
LEH	175,000	LEH	YRBLT	C03
OWN VALLEY B&T	PH 224-6171	POSS UC OCCP VA		
OCM VACANT	PH 224-1234	APPT NA		
LLP				
SL	IN	LS	LEAS	PER
1BAL 0	2BAL 0	ADDE 0		
1INT #	2INT #	APMT		
1PMT	2PMT	DNPMT \$		
INC 1PTY INC	2PTY ASMTS TX 280	GS \$		
TD 13-057-0038 MT		VAC \$		
TY TM CV, CS	L #	TOE \$		
TSQ 0	LOT .89	NOI \$		
OSO BLD TYP				
BUS	ACR	.89 PK	CAPRTX	
VT PS AP	SD CH AC	HEAT	RFOT	
INC HV				
UT/MT CC SH NG EL				
EXCELLENT EAST STATE STREET LOCATION				
FRM C21 BSHNL-CRISY	PH 224-1234	ID 00116	LST ERS	
LAGT MIKE BUSHNELL	PH 224-6171	BKRCOM 3		

## WARRANTY DEED

19949

MAHLON PECK and MARIE M. PECK, husband and wife, grantors of American Fork, County of Utah, State of Utah, hereby convey and warrant to MAHLON PECK & FAMILY INC. of American Fork, County of Utah, State of Utah for the sum of TEN DOLLARS the following described tracts of land in Utah County, State of Utah, to-wit:

- A1322 A  
E 2 NE 1/4  
112-58  
9767-71  
3296-41
- (a) W $\frac{1}{2}$  of the following: Com at NE cor of Lot 3, Sec 16, T 5 S, R 1 E, SLM, E 5.62 chs, S 8°31' W 24.50 chs m or l to St Road, NW-ly 539 ft m or l along road, N 8°31' E 17.40 chs to St Road, N 88 $\frac{1}{4}$ ° E 2.36 ch to beg. Less sold State Road Comm. Area 8.65 acres.
- (b) Com. 1 ch E of SW cor of Sec 10, T 5 S, R 1 E, SLM, N 370.07 ft; S 86°09' E 331.73 ft, N 121 ft, N 85°30' W 8.2 ft; N 49' W 196.4 ft, S 89°34' W 320.01 ft, N .10 chs, E 5.45 chs, S 20.25 chs to N side of State Road; N 62°30' W 405.52 ft to E side of st line N 478.70 ft to beg. Area 7.98 acres.
- (c) Com. 20 rods W of SE cor of SW $\frac{1}{4}$  of Sec 3, T 5 S, R 1 E, SLM, W 20 chs; N 9.87 chs; E 20 chs, S 9.87 chs to beg. Area 19.50 acres.
- (d) Com. 6 chs W of NE cor of SE $\frac{1}{4}$  of Sec 9, T 5 S, R 1 E, SLM, W 6.32 chs, S 33.50 ft; E 6.37 chs; N 33.50 ft to beg. Area .32 of an acre.
- (e) Com. 4.31 chs W of SE cor of Sec 9, T 5 S, R 1 E, SLM, W 1.99 chs, N 9.34 chs, E 1.99 chs, S 9.34 chs to beg. Area 2.03 acres.
- (f) Com. 4.31 chs W of NE cor of Sec 16, T 5 S, R 1 E, SLM, W 5.75 chs, S 1°5' W 1.8 chs, S 62° 49' E 6.20 chs, N 4.50 chs to beg. Area 1.30 acres.
- (g) Com. 6.30 chs W of SE cor of Sec 9, T 5 S, R 1 E, SLM; W 248 ft, N 1° 05' E 552 ft; E 59 ft; N 1° 05' E 68 ft, E 189 ft, S 620 ft to beg. Area 2.06 acres.
- (h) Commencing 15 chains south and .77 chain west of the northeast corner of the northwest quarter of Section 3, Township 5 South, Range 1 East, Salt Lake Base & Meridian, thence west 19.28 chains; thence south 15 chains; thence east 19.28 chains; thence north 15 chains to the place of beginning. Area 29.12 acres.
- (i) Commencing 6.45 chains East of the Southwest corner of Section 10, Township 5 South, Range 1 East of the Salt Lake Base and Meridian, thence North 10.1 chains; thence East 5.89 chains; thence South 10.1 chains, thence West 2.15 chains; thence South 6° 30' West 2.38 chains; thence South 9.54 chains; thence North 62° 30' West 3.75 chains; thence North 10.25 chains to beginning. Area 10.1 Acres.
- (j) Commencing 10.00 chains North of the Southeast Corner of the Southwest Quarter of Section 3, Township 5 South, Range 1 East of the Salt Lake Base and Meridian, thence North 10 chains; thence West 20 chains; thence South 10 chains; thence East 20 chains to the place of beginning. Area 20 Acres.

WITNESS the hands of said grantors, this 1st day of Aug. A.D. 1974

Signed in the presence of

Mahlon Peck  
Mahlon Peck

Marie M. Peck  
Marie M. Peck

STATE OF UTAH

On the 1st day of Aug. A.D. 1974, personally appeared before me Mahlon Peck and Marie M. Peck, the signers of the within instrument who duly acknowledged to me that they executed the same.

My Commission Expires:



S. H. Hibbert  
Notary Public

BOOK 1393 PAGE 494

EXHIBIT B

19949

RECORDED AT THE REQUEST OF  
*Myrtlewood*  
BOOK PAGE

1974 NOV -5 AM 11:24

NINA B. REID  
UTAH COUNTY RECORDER  
DEPUTY *REID* FEB 12 1975  
PR ABS IND  
PL S T R

*R. G. D. #1 Box 442*

*Amman and Fork*

*REID*

*87008*

19949

GORDON DUVAL, Bar No. 6532  
DUVAL, HANSEN, WITT & MORLEY, P.C.  
Attorney for Plaintiff  
110 South Main Street  
Pleasant Grove, Utah 84062  
Telephone: (801) 785-5350

MAHLON PECK & FAMILY, INC.,  
Plaintiff,

VS.

LLOYD R. BROOKS et al.,  
Defendants.

AFFIDAVIT OF CHARLES LEBARON

Case No. 940400145  
Arbitrator Stephen Nebeker

I, Charles Lebaron, having been duly sworn, state:

1. I am the owner of the property located at 150 South 800 East in American Fork, Utah,
2. The property is located along State Street on the north of the railroad tracks.
3. I purchased the property on January 8, 1991.
4. At that time, the property was not zoned commercial and my intention was to use the land for agricultural purposes.
5. I did not have any intention of using the land for commercial purposes at that time.

6. At the time of purchase, I had no intention of annexing my property to American Fork and zoning it for commercial use.

7. Because of the dramatic increase in property values in Utah County, I am now in the process of annexing the property to American Fork City and zoning it for commercial use.

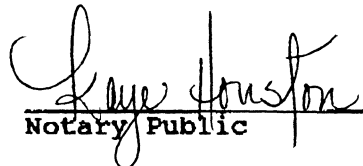
8. I have received a bona fide offer to purchase the property for \$200,000.00 an acre.

DATED this 29 day of January, 1997.

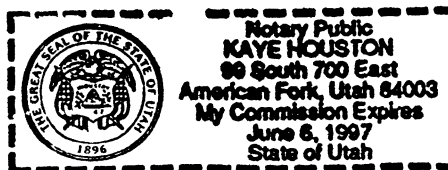
  
CHARLES LEBARON

STATE OF UTAH )  
                  ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of January, 1997, by Charles Lebaron.

  
Notary Public

c:\wp51\docs\peck\peck-leb.aff



January 23, 1997

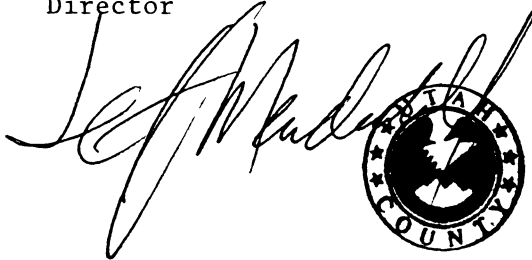
Utah County Community Development Department  
100 East Center Street, Room 3800  
Provo UT 84606

RE: PARCEL 13:058:0039 (SEE ATTACHED MAP)

TO WHOM IT MAY CONCERN:

THE ABOVE IDENTIFIED PARCEL HAS BEEN IN THE TR-5, TRANSITIONAL RESIDENTIAL  
ZONE DESIGNATION FROM JANUARY 1977 UNTIL THE PRESENT TIME.

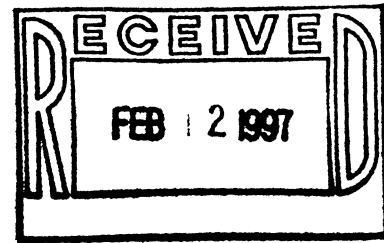
Jeff Mendenhall  
Director



Utah County Planning Department  
100 East Center, Suite 3800  
Provo, Utah 84606







ROBERT C. KELLER (A4861)  
SNOW, CHRISTENSEN & MARTINEAU  
Attorneys for Defendants  
10 Exchange Place, Eleventh Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145  
Telephone: (801) 521-9000

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INTERMOUNTAIN ADR GROUP

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MAHLON PECK & FAMILY, INC.,

Plaintiff,

vs.

LLOYD R. BROOKS, et al.

Defendants.

DEFENDANTS' OBJECTION TO  
ADDITIONAL ARGUMENT OR  
SUBMISSIONS, AND CLOSING  
ARGUMENT

Case No. 940400145

Arbitrator Stephen B. Nebeker

---

OBJECTION TO ADDITIONAL ARGUMENT OR SUBMISSIONS

As discussed at length below, in a case accusing an active real-estate agent of egregious misconduct and seeking treble damages and attorneys' fees in addition to compensatory damages, plaintiff's written argument is remarkable in its failure to recite and analyze specific testimony or other evidence that directly supports its claims. Rather, plaintiff labors to discuss evidence that is essentially peripheral to the issues, and in any event does not reasonably allow the conclusions plaintiff draws.

Plaintiff's request for additional, oral argument does not indicate why it was not able to present its case by written argument as it originally agreed to do, or give any indication how the additional twenty to thirty minutes of oral argument requested would add to the presentation. Instead, plaintiff's request gives every indication any additional argument would continue to focus on issues of very marginal relevance.

Under the circumstances, defendants strenuously object to the request and suggest the matter can and should be submitted on the evidence before the Arbitrator at the close of the hearing, and argument now submitted.

### ARGUMENT

Distilled, arduously, to its essence, plaintiff's case depends upon two related and unlikely propositions: (1) because of a long-standing personal relationship with and associated loyalties to the buyer, Carl Mellor, Mr. Brooks was actually representing and working for Mr. Mellor in the subject transaction while purporting to act as plaintiff's agent;<sup>1</sup> and (2) Mr. Brooks was dramatically mistaken in his belief the property was worth between \$14,000 and \$15,000 an acre at the time of the subject transaction and had some duty to prevent Mr. Peck from deciding to sell

---

<sup>1</sup>Plaintiff states, for example:

[Brooks] actually was a de facto agent for Mellor, and was working to sell the property to Mellor at the price determined by Mellor as the price he was willing to pay. Because of Brooks' loyalty to Mellor, the purchase price of the property was never tested in the commercial market. . . . Brooks' motives were to protect the interest of his true client, Mellor.

See Plaintiff's Closing Argument at pp. 11, 13.

the property for \$16,000 an acre, because the parcel was actually worth some \$22,000 to \$23,000 (or more) an acre.

By variations on these two notions, plaintiff has accused and continues to accuse an honest, extremely competent, well-respected and active real-estate agent of failures to disclose, double-dealing, outright misrepresentations, and shoddy practices. Significantly, the evidence supports neither of plaintiff's unfortunate proposals, and in fact directly contradicts them.

Perhaps most tellingly, plaintiff ignores the testimony of the one disinterested person most intimately familiar with both the personal relationships and property values at the very heart of this matter: Mr. Carl Mellor himself. That testimony is not rebutted or diluted by cross-examination, wholly supports what Mr. Brooks has said, and flatly contradicts the bizarre insinuations, both as to relationships and value, plaintiff continues to characterize as facts.

Mr. Mellor testified:

Q: [By Mr. Duvall] You mentioned various purchases and sales of real property involving Mr. Brooks [only one of which was prior to the subject transaction]. Have you ever been involved in any other types of business deals with Mr. Brooks?

A: [By Mr. Mellor] No business deals.

Q: Any other kind of deals with him?

A: Church service.

...

Q: Are you in the same ward?

A: No.

Q: Same stake?

A: Yes.

Q: Are you social acquaintances as well?

A: Well, I certainly don't ignore him when I see him. *We're not, what you would say, close.*

Q: Has he ever been to your house, for example, for dinner or you at his house?

A: No. One of the few that hasn't. In our catering business, we serve everybody as often as we can. I don't recall him ever accepting the invitation.

...

Q: When did you decide that you wanted to sell the property purchased from the Pecks?

A: When I found property which was the same size that I could get for \$11,500 [an acre].

...

Q: Did you expect him [Mr. Brooks] to protect your interests [in the subject transaction]?

A: *Not when he told me he was selling--that he was representing the seller at the time.*

...

Q: [By Mr. Keller] In this Peck transaction, do you feel like you got any special favors from Mr. Brooks?

A: No.

Q: Do you feel like he represented the Pecks' interests as he should have?

A: I felt that he did. In fact--when I adjusted my agreements with the Pecks to go on. I would have borrowed money for the whole thing had the Pecks not wanted to pay separately.

...

Q: Now, one of the claims that the Pecks are making in this lawsuit is that [Mr. Brooks] should have got a higher price than \$16,000 an acre for that property. In fact, they're saying he should have got \$22,000 an acre.

A: \$22,000?

Q: Would you have paid \$22,000 an acre?

A: No, no way.

Q: Why is that?

A: Because \$22,000 would have taken \$7,000 per acre more, which would have been \$56,000, and I just wouldn't have gone that much more.

Q: *Did you think the property was worth more than \$16,000 when you bought it?*

A: *No.*

Q: *Why did you think it wasn't worth more than \$16,000?*

A: *Because for business development, the fact they would take--I think my son, who is an engineer, figured that it would take, you know, as much as the property is worth to get the sewer functioning underneath the railroad tracks on State Street, and the fact that the railroad tracks prevented the lower part of the property from being highly valuable for commercial development. At that time, the trains were going through there on a daily basis, and we had no idea it would be different. And then the drainage problems with the railroad track at that point, you had to take water uphill to get it away from there. And so, for all of those reasons, and, you know, I just didn't.*

...

Q: As I understand your testimony, after you purchased that Peck property, you hadn't moved your business yet. Then you found another piece of property that was cheaper than the Peck property [for the business].

A: Yes.

Q: And where was that?

A: *That was approximately a mile from the Peck property. It was on freeway where we would have freeway visibility as far as advertising from a sign. And it was isolated more than the--it was between the railroad and the freeway, but it was right in the center of Lehi. And it--*

Q: Was it commercial property?

A: Yes. . . .

Q: It was in the city?

A: It was in the city. . . .

Q: And you eventually acquired that property?

A: Yes.

Q: Was that \$11,000 an acre that you bought that for?

A: I think it was \$11,500.

Q: Did you eventually relocate your business to that property?

A: Right.

Q: Did you check on the cost of utilities on that property . . . ?

A: *Definitely. I knew that the sewer went in front of it and the culinary water, and the irrigation water. And I got gas lines going three ways. And it was all to a greater advantage.*

Q: *When you say "greater advantage," it was less expensive to put the utilities there than it would have been to the Peck property?*

A: *Much, much less.*

Q: Now, during the time that you had this Peck property under agreement where you'd agreed to buy it in October of '90, and then there was an

extension six months later that you asked for, and there was an extension six months later that Mr. Peck asked for, did you have the impression that the property was going up in value?

A: No.

Q: Were you aware of any other sales in the area that were high that would make you think it was more valuable?

A: Not that I--

See Depo. of Carl Mellor at pp. 12-13, 35, 48, 56-62 (emphasis added). See also *id.* at pp. 55-56 (clarifying that prior to the subject transaction Mr. Mellor and Mr. Brooks had only had one prior dealing involving Mr. Mellor's purchase of a property listed by Mr. Brooks).

The themes sounded by Mr. Mellor's disinterested and uncontradicted testimony illustrate the striking deficiencies in the Gurney appraisal, which would be the centerpiece of plaintiff's case. Mr. Gurney simply failed to analyze and adjust for the factors which Mr. Mellor considered, and which any buyer in the market would consider, in selecting between the subject property and those properties whose sales Mr. Gurney simply averaged to derive a market value.<sup>2</sup> By that failure Mr. Gurney grossly overestimates the market value of the subject parcel during the relevant period, and does the parties to this litigation a great disservice.

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<sup>2</sup>In the more technical terms employed by his own appraisal, Mr. Gurney wholly failed to: "[c]ompare comparable sale properties with the subject property *using the elements of comparison* and *adjust* the sale price of each comparable appropriately to the subject" and then "[r]econcile the various value indications produced from the *analysis* of the comparables into a single value. . . ." See Gurney Appraisal at p. 10 (describing what a sales comparison approach should do to arrive at a range of value) (emphasis added).

Literally all of the adjustment and reconciliation Mr. Gurney did he describes in several short sentences:

After evaluating the physical differences between the subject and the comparables [which are not specified], it is my opinion that they are quite similar on an overall basis (for those factors which would require a measurable adjustment) [which are also not specified]. . . .

. . .

Since the premise of this analysis assumes that “annexation and zone change were contemplated” as of all the valuation dates, the commercial values are emphasized in bold print on the previous page. Thus, the final estimates of Market Value are reconciled and rounded to be as follows, as determined by the Sales Comparison Approach: [and setting forth the average of the sales price of the three commercial sales].

*See* Gurney Appraisal at pp. 18-19 (emphasis in original).

Mr. Gurney’s average-commercial-sales-price analysis, *without any adjustment whatsoever for differences in location or utility availability or anything else*, is breathtakingly incomplete. This is demonstrated by the testimony of a buyer in the subject market, Mr. Mellor, regarding the particular factors he considered in choosing both the subject parcel and its replacement. Those factors specifically included the cost of developing the subject parcel for any commercial use, which Mr. Mellor’s engineer son estimated “would take, you know, as much as the property is worth to get the sewer functioning underneath the railroad tracks on State Street . . .” *See* Mellor Depo. at p. 57.

As explained by both Mr. Brooks and Mr. Carpenter at the hearing, buyers (like Mr. Mellor or others) would consider and have in fact considered the three commercial sales Mr.



Gurney averaged to be superior to the subject parcel because of particular location making two of the three suitable for high volume retail development, and because in each case the sellers either provided utilities, sewer, water, etc., or the necessary utilities were much closer and less expensively provided.<sup>3</sup>

As Mr. Carpenter noted in his appraisal while actually making the adjustment and reconciliation required by a sales comparison approach:

Two of the comparables (C-1 and C-2 at \$25,000 and \$20,000/acre) were representative of freeway commercial land prices for parcels with excellent access and exposure. Additionally, these sites had utility available and an accessibility that was much superior to the subject property. Commercial land sale number 3 also reflected a similar price per acre (\$25,000) due in part to its good access/exposure and seller installation of utilities, characteristics which are considered superior to those possessed by the subject property. The price paid for this property in its original purchase (\$8,986/acre) sheds some light on the upside potential for a small parcel sell off, that has good development potential and utilities installed.

See Carpenter Appraisal at p. 73.

As Mr. Carpenter and Mr. Brooks also explained at the hearing, as a general rule comparable parcels of property will demonstrate similar use patterns over time. The comparables Mr. Gurney used to derive a value for the subject parcel without adjustment are currently being used for high-end retail development requiring excellent exposure and access. They have current values in the range of \$400,000 an acre.

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<sup>3</sup>It is significant Mr. Gurney's information regarding his third, less desirably (than the other comparables) located comparable property, is very much mistaken. As Mr. Carpenter explained in his appraisal and at the arbitration, what Mr. Gurney described as the sale of a 13 acre parcel for \$25,000 an acre was in fact a double escrow wherein a 5 acre portion was sold on a *finished* basis, with the seller providing on-site fill, drainage, sewer installation, curb/gutter/sidewalks, utility laterals and street paving for \$25,000 an acre. The remaining *undeveloped* portion of the parcel sold for \$8,986 per acre. Compare Gurney Appraisal at p. 13 with Carpenter Appraisal at pp. 66, 76.

The subject property, in sharp contrast, remains undeveloped, and although a developer purchased it for speculative purposes in late 1994 for \$38,000 an acre, the buyer has not found it financially feasible to develop the subject parcel. This contrast graphically illustrates differences Mr. Gurney simply failed to adjust for or reconcile, but which adjustment and reconciliation is absolutely essential to derive any reasonably accurate range of market value.<sup>4</sup>

Perhaps recognizing these deficiencies, plaintiff's closing argument does not discuss the Gurney appraisal, or indeed mention it except in passing. However, plaintiff does allude to two other things it apparently perceives as indicia of the subject parcel's value.

First, plaintiff states, "the value of the [subject] land doubled in seven months." *See* Plaintiff's Closing Argument at p. 1. Plaintiff apparently derives its double-in-seven-month apprehension from the fact that Mr. Mellor *listed* the property for resale seven months later. *See, e.g.,* Plaintiff's Exhibits No. 17 and 18. In another portion of the argument, plaintiff states, "Roger Young, a potential purchaser, was willing to pay \$375,000 for the property as commercial land." *Id.* at p. 3 and Plaintiff's Exhibit No. 21 (Roger Young Offer of August 19, 1993).

In fact this evidence is meaningless at best, and at worst intentionally misleading. As Mr. Brooks explained, Mr. Mellor's listing included Mr. Mellor's calculation of the cost of utilities, sewer, etc., and factored those costs into the increased asking price when he relisted the property

---

<sup>4</sup>This historical perspective also illustrates what plaintiff calls Mr. Carpenter's "astounding" conclusion the highest and best use of the property was and is residential, rather than commercial. The market conditions, as opposed to Mr. Carpenter's analysis, have not dictated commercial use or development of the subject parcel, and the surrounding property uses indicate that when the subject parcel is used it may very well be for residential development similar to surrounding parcels.

seven months later.<sup>5</sup> Although the property was “tested” on the commercial market at that price, no one actually purchased the property seven months after the subject transaction, and in fact there was no purchase until November of 1994. Similarly, the Roger Young offer, which was not even made until 1993, did not result in a purchase because of contingencies and other problems with the offer.

Mr. Brooks’ testimony and a cursory review of both the appraisals indicate that the persons with any expertise in the appraisal or valuation of commercial property do not rely on a listing for the sale of different property (developed as opposed to undeveloped land), or a single unconsummated offer in a dramatically different market, to derive a market value. *Compare* Carpenter Appraisal *with* Gurney Appraisal (both relying exclusively on *sales* data within the 1990 to 1992 time period, rather than later, unaccepted offers). And as Mr. Gurney himself noted with respect to the market and the relevance of later activity:

While demand was increasing for land such as the subject during the May 1991 to March 1992 time period, the growth rate was much less than what took place after the middle of 1992.

. . .

It is noted that, since the dates of these appraisal [sic], interest rates reached a 20-year low and Micron Technologies announced and began construction of a multi-billion dollar computer chip manufacturing facility in Lehi. These factors, together with other positive economic news in the area, have resulted in major real estate value increases; accordingly, recent sales transactions *have no resemblance whatsoever to these that took place 3-4 years ago.*

---

<sup>5</sup>The price Mr. Mellor asked for the subject parcel is thus wholly consistent with Mr. Mellor’s testimony that his son, an engineer, had analyzed certain development costs and “it would take, you know, as much as the property was worth to get the sewer functioning underneath the railroad tracks on State Street . . . . See Mellor Depo. at p. 57.

*See Gurney Appraisal at pp. 9, 19 (emphasis added).*

In short, Mr. Mellor's listing of the property seven months after the subject closing, and the offer by Roger Young, are *not* evidence the property's market value had "doubled" within any appropriately comparable time period. Plaintiff's implication to the contrary is wholly unsupported.

Plaintiff's second purported indicator of value is similarly deficient (and objectionable for not being submitted before the hearing when plaintiff has had Mr. Carpenter's appraisal since early 1996). Plaintiff now submits a affidavit from Charles Lebaron whose conclusory statements cannot be tested by cross-examination or placed in any appropriate context. The affidavit states in pertinent part: (1) Mr. Lebaron purchased the parcel in January 1991 intending it for agricultural use only, (2) he now contemplates a commercial use, and (3) in 1997 he has an unspecified offer to purchase the land (at least) for \$200,000 an acre. *See Affidavit of Charles Lebaron, and Plaintiff's Argument at p. 4.*

Plaintiff argues this affidavit is rebuttal to Mr. Carpenter's information the property was intended for rezone and commercial use in 1991. *Id.* It is less clear, however, what else plaintiff intends the affidavit to prove. In any event, the Arbitrator should note several things regarding the affidavit and the Lebaron purchase.

First, the sales comparison approach to valuation does not depend upon a particular buyer's intended use of a particular parcel. Rather, the approach considers what uses are possible, and relies heavily upon selection of properties with similar physical and zoning characteristics to predict a range of value. *See, e.g., Carpenter Appraisal at pp. 21-27.*

Regardless of Mr. Lebaron's intended use of his parcel in 1991, at that time the parcel was a similar size to the subject parcel and had similar physical characteristics because it was located on the north side of state street and bounded by railroad tracks on one side. It also had similar zoning characteristics in that it was in a transitional zone, while the subject was zoned for agricultural use and intended for rezone. The parcel did actually sell during the relevant time period for \$10,500 an acre.

Accordingly, like Mr. Mellor's purchase of a replacement property for the subject parcel for \$11,500 an acre, the sale of the Lebaron parcel is an indicator that in 1991 the market would not compel buyers like Mr. Mellor or others to pay \$22,000 or \$23,000 or \$32,000 or \$38,000 an acre for the subject parcel absent some indication the subject parcel was vastly superior. Plaintiff wholly fails to demonstrate such superiority by the affidavit or other papers and evidence submitted.

Second, Mr. Lebaron's bald statement that he has now, six years later, an unspecified offer of \$200,000 an acre for the parcel is not relevant. Every knowledgeable person who offered any evidence in this matter agrees the sales comparison approach requires the comparison of similar *sales* at similar times with adjustment for differences. An unspecified offer only, made after a dramatic change in market conditions, tells no one anything about either the original value of the Lebaron parcel or the value of the subject parcel at relevant times.

Finally, photographs attached to Mr. Carpenter's appraisal indicate the Lebaron property was being developed in late 1995. Mr. Brooks is aware that since purchasing the property Mr.

Lebaron has spent hundreds of thousand dollars to put utilities and improvements on the land, and has also created and connected streets adjoining the property consistent with a master plan to make the parcel and adjoining parcels a commercial center. The \$200,000 an acre offer, whatever else it includes, includes these development and planning costs.

Again, and like the Mellor listing and the Roger Young Offer, the Lebaron affidavit is at best only marginally relevant to the issues in this matter. Without more than plaintiff has provided, the untimely affidavit sheds no light, and indeed without additional explanation it confuses the issues.

The remainder of what plaintiff chooses to discuss in its closing argument is perhaps even more peripheral. Whatever Mr. Carpenter's experience or the details of his utilities cost analysis, both of which plaintiff discusses at length (as opposed to the merits of the analysis and conclusions of the appraisal itself), Mr. Carpenter at least recognizes some of the same principle factors recognized by a disinterested buyer in the market and made adjustments for those factors by giving a range of utility development costs that effect the market value of the subject parcel. Even if he were off by thousands of dollars, which Mr. Mellor's testimony demonstrates was not the case, there is little dispute some adjustment had to be made and Mr. Gurney, with whatever experience he has, wholly failed to make it.

Similarly, inconsistencies between what Mr. Peck can now recall about whether Mr. Brooks provided a formal market analysis and Mr. Brooks recollection of the details of the analysis years later, or Mr. Peck's recollections of any conversations with Mr. Brooks about placing a sign on the property when it was already under contract, or what Mr. Peck can now

recall about all of the reasons for the last extension,<sup>6</sup> do not prove plaintiff's case or remedy its greatest deficiency.

Simply put, when stripped of argument and innuendo plaintiff's evidence consists almost entirely of an historical appraisal as to the value of the subject parcel, which is rebutted by another appraisal that by virtue of a reasonable analysis by the appraiser comes to a different conclusion as to historical value. There is certainly no testimony by any real-estate professional to the effect that where there is some market volatility and some possibility that future appraisers might

---

<sup>6</sup>Plaintiff's discussion of the title issue, evidently to imply Mr. Brooks simply made up the second extension for Mr. Mellor's benefit, is particularly disingenuous. Mr. Mellor and Mr. Brooks testified unequivocally that the second extension was given at the request of Mr. Peck. *See* Mellor Depo. at pp. 21-23; Brooks Depo. at p. 40. A fair reading of Mr. Peck's own testimony indicates he recalls signing the addendum requesting the extension and would have read it beforehand; he just couldn't recall the reasons for the first item on the extension request:

Q: [By Mr. Keller] Do you have any understanding that's different than what's written on this document [second addendum]?

...

A: [Item] [n]umber one, I don't recall any differences there.

Q: But you do recall signing it on 27 September [1991]?

A: Uh-huh. (Affirmative).

Q: And you would have read it before you signed it?

A: Hopefully. *I do recall the items, but I don't recall --*

Q: That first one?

A: Yes.

*See* Depo. of Mahlon Peck at pp. 36-37.

disagree as to value, a real-estate agent is strictly liable for the difference between the appraisers' opinions.

Nor is there expert or other testimony that there were material facts or market conditions Mr. Brooks should have investigated and discovered but he was unaware of, or material facts or conditions Mr. Brooks knew about but failed to disclose to plaintiff. *Compare Smith v. Carroll Realty Company*, 335 P.2d 67 (Utah 1959) (upholding jury verdict against real-estate agent who promised to investigate and ascertain value of real-estate, but then failed to do anything other than call a neighbor who had no expertise in real estate and affirmatively withheld negative information provided by the neighbor).

Instead, the simple facts surrounding the transaction plaintiff has in retrospect come to regret demonstrate that Mr. Brooks knew the market as well or better than even the professional appraisers who have been subsequently hired. At a time when Mr. Peck wanted to sell the subject parcel, Mr. Brooks provided a buyer who was willing to pay the highest amount dictated by the market at the time, and who in fact paid more than the property was worth to him because he ultimately found a less-expensive property for his intended use. Mr. Brooks did not deviate one whit from the high standard of reasonable care owed by a realtor to his principal, or do anything even approaching a dishonest or secret act that should have been disclosed to plaintiff and was not.



### CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above and at the hearing in this matter, Mr. Brooks respectfully requests the Arbitrator's judgment, no cause of action, denying plaintiff's claims in their entirety. Moreover, in light of plaintiff's continued request for treble damages and attorneys' fees (*see* Plaintiff's Pre-hearing Brief at p. 15), and the continued cloud over Mr. Brooks reputation arising from such claims, Mr. Brooks requests an award of his own reasonable costs and attorneys' fees pursuant to the arbitration provision of the Sales Agency Contract. *See, e.g.*, Plaintiff's Exhibit No. 3.

DATED this 1/12 day of February, 1997.

SNOW, CHRISTENSEN AND MARTINEAU

A handwritten signature in black ink, appearing to read 'R. C. Keller', is written over a horizontal line.


Robert C. Keller  
Attorneys for Defendants

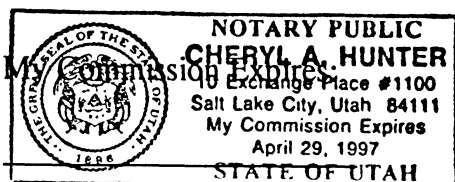
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STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

Gordon Duval  
DUVAL, HANSEN, WITT & MORLEY  
110 South Main Street  
Pleasant Grove, UT 84062

Dixie Bowen  
Dixie Bowen

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing in the State of Utah



## SUMMARY OF CLOSING ARGUMENT

MR. BROOKS HAD A GENERAL FIDUCIARY DUTY TO THE PECKS. (Reese v. Harper) HE BREACHED THAT GENERAL DUTY.

Mr. Brooks breached that duty by trying to serve two masters.

His first agency contract was with Mellor.

Mellor identified the property he wanted

Mellor depo p.14, l.14

Mellor indicated the sales price  
(how much he could afford)

Mellor depo p.17, l.16

Mellor depo p.46, l.16

Mellor determined the amount of earnest money

Brooks depo p.19, l.22

Mellor indicated the interest rate he would pay

Mellor depo p.29, l.19

Citadel Group offered 10.5%

Mellor's time frame dictated the closing

Mellor hadn't closed on other property

Never a counteroffer

*Agency  
Relationship  
b/t Mellor &  
Brooks*

His second agency contract was with the Pecks

Mr. Brooks had a sale as long as he could keep BOTH of his clients happy. In serving BOTH clients, he did not adequately serve the Pecks.

MR. BROOKS HAD A SPECIFIC FIDUCIARY "DUTY TO DETERMINE THE REASONABLE VALUE OF THE PROPERTY." (Smith v. Carroll Realty) HE BREACHED THAT SPECIFIC DUTY.

No market analysis

No signs, not even a little one on the fence

but later when relisted for Mellor, a sign went up quickly

No advertising (like was done for Mellor)

No flyers (like was done for Mellor)

No action to formalize rezone/annexation for 15 months

gets it rezoned the month before it is closed for Mellor

Listed as "vacant land," not commercial

Listed as "sold and closed" in reports to the MLS

THOSE BREACHES BY MR. BROOKS DAMAGED THE PECKS

Loss of the difference between \$134,880 and the real FMV (\$54,620)

What is the real FMV?

What do the appraisers say?

Carpenter

residential????

railroad tracks

across the street from commercial

within sight of the I-15 freeway

within ear shot of the I-15 freeway

Brooks

Commercial is as "the highest value of the property."

Brooks depo p.41, 1.21

Brooks depo p.42, 1.4

What else was listed?

nothing for less than \$25,000/acre

What was the trend for real estate appreciation?

1% per month (Brooks depo p.78, 1.14)

What did Mr. Brooks and Mellor believe it was worth?

7 months later the property is listed at \$425,000

\$50,400/acre

triples in value in 7 months??

What were disinterested third parties willing to pay?

Young--\$275,000 — 16 mos after closing w/ Peck

Citadel--\$311,000

Allred--\$320,000

What does common sense dictate?

absolutely flat for 17 months???

then doubles in value in next year???

1/620 Loss of prejudgment interest as of time of hearing

\$24,132 at 9.22% for 4.79 years

(simple interest, not compounded annually)

Treble damages penalty for the commission (61-2-11)

\$24,278.40 (3 times the \$8092.80 commission)

Loss of attorneys fees and costs

II - want FMV - for appraisal

Duty - To determine FMV of property

Breached -

If realtor  
breaches  
fiduciary duty

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

\* \* \*

MAHLON PECK & FAMILY,  
INC.,

Plaintiff,

vs.

LLOYD R. BROOKS, STANLEY  
W. ROBINSON, dba CENTURY  
21 ROBINSON & WILSON  
REALTY, DONNA ROBINSON,  
dba CENTURY 21 ROBINSON  
& WILSON REALTY, and  
DENISE A. WILSON JEPSEN,  
dba CENTURY 21 ROBINSON  
& WILSON REALTY,

Defendants.

:  
:  
:  
: DEPOSITION OF:  
:  
: LLOYD R. BROOKS  
:  
: Civil No. 940400145  
:  
:  
: **CERTIFIED COPY**  
:  
:  
: (Judge Park)  
:

\* \* \*

BE IT REMEMBERED that on the 2nd day of December, 1994, the deposition of LLOYD R. BROOKS, produced as a witness herein at the instance of the Plaintiff herein, in the above-entitled action now pending in the above-named court, was taken before VIKI E. HATTON, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 10:00 a.m. of said day at the offices of HARDING & ASSOCIATES, 110 South Main Street, Pleasant Grove, Utah.

That said deposition was taken pursuant to notice.



**REPORTING SERVICES, LLC**

525 FIRST INTERSTATE PLAZA  
170 SOUTH MAIN STREET  
SALT LAKE CITY, UTAH 84101  
(801) 328-1188 / 1-800-DEPOMAX  
FAX 328-1189

\* \* \*

(Judge Park)

\* \* \*



FAX 328-1189

A P P E A R A N C E S

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For the Defendant: ROBERT C. KELLER  
SNOW, CHRISTENSEN  
& MARTINEAU  
Attorneys at Law  
10 Exchange Place  
Salt Lake City, Utah 84111

Also Present: Wilford Farley  
ImaJean Farley  
Wayne Peck  
Marie Peck  
Mahlon Peck

I N D E X

WITNESS

PAGE

LLOYD R. BROOKS

Examination by Mr. Duval

4

E X H I B I T S

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2	Sales agency contract	26
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5	Extension on listing	34
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12	Listing	64
13	Ad	65
14	Earnest money	66
15	Earnest money	69
16	Addendum	69
17	Addendum	70
18	Addendum	74

\*\* Retained by witness

REQUEST FOR PRODUCTION OF DOCUMENTS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	Document showing property is under contract	35
2	Authorization schedule	49



P R O C E E D I N G S

LLOYD R. BROOKS,

called as a witness for and on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DUVAL:

Q Mr. Brooks, my name is Gordon Duval. Have you ever had your deposition taken before?

A I have.

Q On a few occasions or how many times?

A No. Once before.

Q Just once before? We're just going to ask you some questions here. If you don't understand any question that I pose, then just go ahead and ask me to rephrase it and I'll be glad to do that.

A Sure.

Q You may be aware that after you've had your deposition taken, they will give you a chance to review your deposition so you can make any corrections or review it to make sure it correctly reflects what you wanted to say.

Before we get started, maybe you can just give me some background information. What is your full name for the record?

EXAMINATION BY MR. DUVAL

1           A       Lloyd R. Brooks.

2           Q       And where do you work?

3           A       I work with Century 21 All Pros Realty in  
4 American Fork.

5           Q       How long have you been there?

6           A       At this office about five and-a-half --  
7 six years.

8           Q       Are you married?

9           A       I am.

10          Q       Do you have any children?

11          A       I have three children.

12          Q       Are they grown?

13          A       They are. I have eight grandchildren.

14          Q       What kind of education do you have?

15          A       High school and two years of college.

16          Q       What kind of experience or classes have  
17 you had in real estate? Real estate classes,  
18 primarily?

19          A       After my license or prior to?

20          Q       Prior to your license?

21          A       I picked up my license through UVSC and  
22 after that time have continued with GRI classes in  
23 real estate.

24          Q       So how long have you been licensed as a  
25 real estate salesman?

1           A       Oh, about 18 and-a-half years.

2           Q       And you mentioned continuing classes, are  
3 those for additional certifications?

4           A       Well, GRI, there is a certification called  
5 GRI. I take those mainly just to stay on top of the  
6 areas in which I deal.

7           Q       And what does GRI stand for?

8           A       Graduate Real Estate Institute.

9           Q       Are those classes required or are they  
10 optional?

11          A       They're optional.

12          Q       How often do you take those classes?

13          A       Oh, over the years, I've been to about  
14 five or six of those courses.

15          Q       Okay. Are you engaged in real estate as  
16 your sole source of income?

17          A       Yes.

18          Q       About how many sales do you close a month  
19 or a year, however is convenient for you?

20          A       Oh, that's hard to say. It varies --  
21 every year it varies. For instance, this year, I  
22 will say I've been involved in about 27. Last year  
23 probably 50 some odd, the year before that, even  
24 more. I don't remember the numbers. It just  
25 fluctuates every year depending on the size and the

1 type of transactions.

2 Q You mentioned the size and the  
3 transactions. Have you been involved in  
4 transactions where the property was valued at more  
5 than half a million?

6 A Yes.

7 Q Is that occasionally or a routine thing  
8 for you?

9 A Well, you don't -- that's not the majority  
10 of the sales.

11 Q Okay. What about sales over \$250,000? Is  
12 that a good share of your business or not?

13 A Yes.

14 Q It is? What kind of area do you work in,  
15 primarily? Do you have a specialty that you work  
16 in?

17 A I deal a lot in land, have done all of my  
18 life. I also do residential.

19 Q Do you work in the commercial area?

20 A Commercial land.

21 Q Commercial land primarily, then?

22 A Yes.

23 Q Of the sales that you close or list, what  
24 percent might be involved in land sales as opposed  
25 to residential homes?

1           A       It's very hard to say. Probably a third  
2 to a half.

3           Q       Okay. Have you received any awards in  
4 your work like the Million Dollar sales award or  
5 something like that?

6           A       Yes.

7           Q       How many times do you think you've been in  
8 the Million Dollar Club?

9           A       With the county, probably I'd say five  
10 years. Century 21 also has its own award program.

11          Q       What award program is that?

12          A       Well, it's basically the same thing,  
13 Million Dollar Club, Five Million Dollar Club, Ten,  
14 whatever it is that you're in.

15          Q       Have you ever been in the Ten Million  
16 Club?

17          A       No.

18          Q       The Five Million Club?

19          A       I have.

20          Q       How many times in that?

21          A       I think once in the Five Million.

22          Q       In the last five years, were you involved  
23 in either the One Million or the Five Million Club?

24          A       Yes.

25          Q       How many times in the last five years, do

1 you think?

2 A I would say probably three or four.

3 Q Have you ever testified in a trial?

4 A No.

5 Q Have you ever served as an expert witness  
6 or something like that?

7 A No.

8 Q Do you consider yourself an expert in real  
9 estate?

10 A Yes.

11 Q Are there any special designations or  
12 certifications for people that deal in commercial  
13 properties in real estate?

14 A There can be. There can be, yes.

15 Q What kind of designations would those be?

16 A Well, they have -- they have many  
17 designations, depending on where you want to get  
18 them throughout the country. For instance, there's  
19 a CRS, that's a Certified Residential Specialist,  
20 GRI, most people who deal in commercial are GRI  
21 designates or just following some of those  
22 specialized classes.

23 Q Are you a GRI designate?

24 A No.

25 Q Is there a correlation between trends in

1 residential real estate and commercial real estate  
2 values?

3 A There are. They lag behind each other,  
4 but there's a correlation, yes.

5 Q Which typically lags behind the other? Is  
6 there a correlation which one of them leads the way  
7 and the other drags behind?

8 A It depends on the area that you're in.  
9 Commercial comes into an area when there are enough  
10 roof tops or enough population in the area to  
11 warrant investing into the commercial end. So when  
12 a small area is growing, the commercial lags behind  
13 the residential.

14 Q Is that what has happened in Utah County  
15 over the last few years?

16 A Yes.

17 Q Just describe how you would view the  
18 residential market here in Utah County over the last  
19 five years?

20 A In about the last two and-a-half years  
21 it's been very strong, very strong. Up through, oh,  
22 probably 1991, it was quite sluggish, just started  
23 to turn around. We'd been on a nine year down slide  
24 from about 1980 on down to 1989 or 1990 when it kind  
25 of leveled off and then it very slowly started back

1 and the last couple of years it's been very  
2 aggressive. In fact, I'd say two to two and-a-half  
3 years, up until about the last, oh, maybe four  
4 months, and with interests rates rising, then the  
5 market is starting to drag again.

6 Q Okay. And what about commercial  
7 properties? Explain what's happened in the  
8 commercial sector the last five years?

9 A Well, in the very north end of the county  
10 here, after the population started to increase very  
11 strongly here, then there has been some interest in  
12 the last year and-a-half or two years in  
13 commercial. A few sales have taken place. There  
14 are some properties under contract presently that if  
15 the numbers turn out for the investors, then they  
16 will go ahead and purchase when they get all their  
17 data in line and they're satisfied that the  
18 investment is a wise investment.

19 Q Okay. You mentioned a healthy real estate  
20 market in the residential sector. How would you  
21 characterize the commercial sector the last two  
22 and-a-half years?

23 A Depending on the location. If you're down  
24 in the Orem area, it's been much stronger there than  
25 here, because they have the population base. If you



1 look around American Fork, Lehi for instance, not a  
2 lot of commercial development going on. There is  
3 some that's in the beginning stages, at least the  
4 research stage.

5 Q Okay. So would it be sluggish, healthy,  
6 do you have a way to characterize it?

7 A No, I wouldn't characterize it healthy.  
8 At least in the north end of the county, it's  
9 hopefully becoming healthy, but it's not been a real  
10 strong market.

11 Q Okay. Do you enter into a written sales  
12 agency contract for every real estate transaction  
13 when you list property?

14 A Yes.

15 Q Is that required by law? Do you know?

16 A It is.

17 Q Are there any circumstances where you list  
18 property without even -- without signing one of  
19 those sales agency contracts?

20 A Not normally in the last several years, I  
21 would see no reason why.

22 Q After you enter into a sales agency  
23 contract, what efforts do you take after listing the  
24 property or to list the property.

25 A To list the property?

1           Q     To list it, to advertise it and to market  
2 it?

3           A     That's kind of a broad question, I'm not  
4 quite sure where you want me to start.

5           Q     After you sign -- after you get a  
6 licensing agreement signed --

7                     MR. KELLER: Residential or commercial?

8                     MR. DUVAL: Let's just talk commercial.

9           Q     (BY MR. DUVAL) After you get a commercial  
10 listing signed, what steps do you take to then  
11 market and sell that property?

12          A     Well, you start doing a number of  
13 advertising, contact all of the other real estate  
14 companies that are actively working in that market,  
15 send out fliers to potential users and prior to  
16 that, of course, you do what you can to help  
17 establish the value of the property with the person  
18 who is going to sell it, so that they can make a  
19 reasonable decision.

20          Q     Okay. Is there also a listing that you  
21 include for the MLS?

22          A     Oh, yes.

23          Q     How do you go about listing a property in  
24 the MLS? What steps do you have to take?

25          A     You fill out a form that is simply mailed

1 to the county association, which is in Orem, they  
2 place it in the book.

3 Q Okay. Do you also place signs on  
4 property? Is that one of the steps that's taken  
5 often?

6 A Yes.

7 Q Just a general question now regarding  
8 earnest money. Is there a rule of thumb on what  
9 type of earnest money is appropriate for a  
10 commercial contract, a percentage of sales price or  
11 anything like that?

12 A Totally depending on what the seller wants  
13 to accept. I would say that if we averaged them  
14 out, probably one percent.

15 Q What about in the residential sector?

16 A About the same.

17 Q How long have you known Carl Mellor?

18 A Well, I've known of him for probably 25 --  
19 30 years.

20 Q And how long have you done business with  
21 Carl Mellor?

22 A Oh, I'd have to guess. I sold him a piece  
23 of property probably 10 years ago.

24 Q About how many listings do you think you  
25 may have had -- excuse me, not listings, but

1 transactions have you been involved in with Mr.  
2 Mellor?

3 A Maybe half a dozen.

4 Q Any in the last five years, other than the  
5 sale we're talking about now?

6 A Yes.

7 Q How many in the last five years?

8 A More recently than this sale, probably  
9 about four -- four, maybe five.

10 Q Since this sale?

11 A Yes.

12 Q Was this sale the first sale to Mr. Mellor  
13 that you've been engaged in?

14 A No, it would have probably been the  
15 second.

16 Q Do you currently have property listed for  
17 Mr. Mellor or selling property to Mr. Mellor?

18 A No.

19 Q When was the last time that you had  
20 property transaction with Mr. Mellor?

21 A This particular piece right here.

22 Q I'm sorry, was there other transactions  
23 after that one?

24 A Well, after the sale that you're referring  
25 to, yes, but the same piece of property that we're

1 talking about. Mr. Mellor decided he wanted to sell  
2 and he came back to my firm to do that.

3 Q Have you ever entered into any business  
4 arrangements with Mr. Mellor other than on a  
5 straight commission as a realtor?

6 A No.

7 Q Do you have any contacts with Mr. Mellor  
8 besides business contacts?

9 A Through the church, through the LDS  
10 Church.

11 Q Any social contacts with Mr. Mellor?

12 A No.

13 Q Do you consider him a friend?

14 A Well, I don't know how you're going to  
15 define a friend. I consider a lot of people  
16 friends; socially, no.

17 Q Okay. How did you first become aware that  
18 Mr. Mellor was looking for commercial land to buy?

19 A He stopped at my office, told me that he  
20 was looking for a property to locate his business  
21 on, and we went through the list of the things that  
22 I had and I did not have anything at that time that  
23 interested him.

24 Q And what kind of business was it that he  
25 was talking about?

EXAMINATION BY MR. DUVAL

1           A       He has a catering business.

2           Q       So what steps did you then take to find  
3 property for Mr. Mellor at that time?

4           A       I looked up the MLS to see what was  
5 there. He wanted to be in Lehi, that's where he  
6 lives and has been located. We did not find  
7 anything in Lehi that looked like it would work for  
8 him. I had heard that Mr. Peck was considering  
9 selling some property, decided that even though that  
10 was county property, was not in the city, was not  
11 zoned, with my experience with the city and annexing  
12 property, I felt like that was a possibility if Mr.  
13 Peck was, in fact, interested in selling. So then I  
14 approached Mr. Peck to see if he was interested and  
15 he was.

16          Q       So was it at Mr. Mellor's suggestion that  
17 you approached Mr. Peck?

18          A       I don't think so. No, not that I recall.

19          Q       How did Mr. Mellor become aware that Mr.  
20 Peck's property might be for sale?

21          A       I think I told him that. I think I told  
22 him that there was a piece that was located along  
23 State Street and 1200 East that I heard was for  
24 sale, and that I would check into that and if the --  
25 if it was a fact, I'd get back in touch with him.

1           Q     And how did you become aware that it might  
2 be for sale?

3           A     Just through the grapevine. In my  
4 business, you hear of a lot of properties, people  
5 who are thinking of selling.

6           Q     Okay. How many contacts did you have with  
7 Mr. Mellor before the October 24, 1990 date?

8           A     I don't recall. I really don't recall.  
9 It may have been three or four.

10          Q     Regarding this property?

11          A     Regarding a purchase of some commercial  
12 property, yeah.

13                                 (Whereupon, Exhibit  
14                                 No. 1 was marked for  
                                  identification.)

15          Q     (BY MR. DUVAL) Do you recognize that  
16 document there?

17          A     Yes.

18          Q     And what is that, please?

19          A     It's an earnest money sales agreement.

20          Q     Is it related to the property that we're  
21 here about today?

22          A     It is, yes.

23          Q     Did you fill this out, then?

24          A     I did.

25          Q     How did you arrive at the sales price

1 that's listed there on the front page?

2 A Well, that's the price that Mr. Peck  
3 determined on the property based upon some research  
4 that I had shared with him and then the seller  
5 determines the price.

6 Q So at the time you filled out the earnest  
7 money, did the seller determine the price or did the  
8 buyer make an offer? How did that work in this  
9 case?

10 A No, as I recall, the buyer made an offer.  
11 I'd told him the property was available and told him  
12 the price that Mr. Peck wanted. As I recall, he  
13 wanted to make an offer of \$15,000 an acre, and I  
14 simply indicated to him that the seller would not be  
15 interested in that, that he had set a price and so  
16 he came back and we wrote an offer at \$16,000 an  
17 acre.

18 Q So is it fair to say that there were some  
19 verbal negotiations before getting to the point of  
20 signing the earnest money?

21 A Yes.

22 Q And how did you arrive at the earnest  
23 money deposit figure that's contained there?

24 A That's what was offered by the buyer. You  
25 know, you can make a recommendation to the buyer,



1 but you can't tell him what to do.

2 Q Did you make such a recommendation in this  
3 case?

4 A I always make a recommendation of one  
5 percent, that's my standard recommendation. Many do  
6 not use it.

7 Q Did you suggest a higher earnest money in  
8 this case?

9 A Always one percent.

10 Q On that second page there, item 8, it  
11 lists a closing date. How did you arrive at that  
12 closing date?

13 A That was the date that the buyer suggested  
14 that he could perform on.

15 Q I believe it was signed in October and the  
16 date is May 31, 1991.

17 A Yes.

18 Q Seven months. Is that a standard amount  
19 of time for closing or is that --

20 A For commercial, it's probably average.  
21 Many of them are a year.

22 Q Why does commercial take longer?

23 A Most commercial investors want time to do  
24 soil analysis, get approvals through the city to be  
25 able to perform on or build whatever they're

1 requiring to go on the property.

2 Q Okay. Item 10 there is entitled agency  
3 disclosure. Could you please describe how -- what  
4 factors you considered when you filled out those  
5 spaces on item 10?

6 A Well, it's very simple. My fiduciary  
7 responsibility is to the person whom I'm  
8 representing and that's the seller.

9 Q Is it possible to represent the seller as  
10 the listing agent and the buyer as the selling  
11 agent?

12 A It is now. It was not then.

13 Q It was not -- by law it was not possible  
14 at that time?

15 A Well, I can't say by law it was not  
16 possible. By the -- by the state real estate  
17 regulations, back in those days, historically, we  
18 represented the seller. The new disclosure  
19 statements that they have out now, you can take a  
20 position where you represent both the buyer and the  
21 seller.

22 Q So when did that change occur? Do you  
23 remember, roughly?

24 A Oh, probably in the last 18 months.

25 Q Just for clarification, am I reading this

1 correctly that at the middle of the page where it's  
2 got Mr. Mellor's signature there on page 2, that  
3 that was signed on October 24? Did you approach him  
4 on that date for his signature?

5 A You're looking in the middle of page 2?

6 Q Yes.

7 A Right there under where it says "10:00, 31  
8 October?"

9 Q Right.

10 A Yes, probably.

11 Q Okay.

12 A That was the date.

13 Q And do you remember what time of the day  
14 that was? Was that the morning or afternoon? Do  
15 you remember at all?

16 A No, I do not.

17 Q And then please explain the sequence of  
18 events after you got that -- got the earnest money  
19 signed by Mr. Mellor until you got Mr. Peck's  
20 signature. What happened there?

21 A Well, I simply called to make an  
22 appointment to visit with Mr. Peck.

23 Q Okay. And it shows a time of 8:00 p.m.  
24 Does that reflect your memory, as well, that it was  
25 in the evening some time?

1           A       Well, that's probably correct. Mr. Peck  
2 runs a dairy, he's a very, very busy gentleman, and  
3 when I would call his home, he often times would be  
4 out on the farm feeding cattle or doing whatever.  
5 It seems like that the evenings was an easier time  
6 to catch him.

7           Q       You mentioned as an agent that at times  
8 you'll discuss the selling price with the person  
9 that's listing the property. What kind of  
10 conversations occurred between you and Mr. Peck at  
11 that time when you discussed the selling price on  
12 this piece of property?

13          A       At the time I presented this?

14          Q       Yes.

15          A       Well, we established the price or he  
16 established the price prior to selling it. In fact,  
17 we take a listing on the property at the price he's  
18 wanting for it. So the price is already  
19 established. Now, whether the offer comes in at  
20 that price or not, that's up to the buyer who is  
21 making the offer. We then present that to the  
22 seller and in representing the seller, then it's  
23 discussed whether or not that's an acceptable  
24 offer.

25          Q       What kind of input did you make as to the

1 sales price in this case to Mr. Peck?

2 A Simply what other properties had sold for  
3 at the time, whether they be residential,  
4 commercial, county property, whatever the case be,  
5 and then indicate based upon that what we feel like  
6 the property might sell for, then he uses that  
7 information and determines what price he thinks he  
8 will accept for the property.

9 Q Did you provide a market analysis?

10 A We do.

11 Q Did you in this case?

12 A I'm sure I did. Property was not selling  
13 very readily back at that particular time, so  
14 depending on how active the market is, sometimes you  
15 have a lot of sales data, other times you have very  
16 little sales data.

17 Q And so was that a written market analysis?

18 A Yes.

19 Q Would you happen to have a copy of that  
20 market analysis?

21 A No, that would have been given to Mr.  
22 Peck.

23 Q Do you remember any of the properties that  
24 might have been involved in that market analysis  
25 that you may have used?

1           A       Not at this time, no.

2           Q       How many pieces of property might you have  
3 included in that market analysis? Do you remember  
4 how many parcels you included?

5           A       If you can find them, you generally use  
6 three, if there are that many available.

7           Q       Do you remember if there were that many  
8 for this particular case?

9           A       No, I don't.

10          Q       You don't remember?

11          A       If you think of what the market might have  
12 been, I have to assume that there were probably  
13 three available, but I do not remember for sure.  
14 There may have only been two, but normally we try to  
15 get three.

16          Q       And do you remember which properties might  
17 have been included in that market analysis?

18          A       No, I do not. Mr. Peck's property was an  
19 unusual situation, as I mentioned before, or maybe I  
20 didn't. It was a piece of county property, it was  
21 not annexed, it was not zoned. The whole theory of  
22 doing Mr. Peck's property was annex it into the city  
23 and zone it commercial. Therefore being able to get  
24 a much higher price for it than what we would have  
25 been able to have gotten out of it had we sold it as

1 unzoned property in the county.

2 Q Did you have an estimate as to what it  
3 would have been valued as unzoned property in the  
4 county?

5 A Oh, I can -- yeah, I can tell you just  
6 from the history of property. It would have sold  
7 for somewhere between \$5,000 and \$10,000 an acre.

8 Q Okay. Do you have in your file any other  
9 documents that you may have used to establish the  
10 sales price in this case?

11 A No. Generally you share those with the  
12 seller and the seller determines the price.

13 Q Okay. I'll provide another document  
14 here.

15 (Whereupon, Exhibit  
16 No. 2 was marked for  
identification.)

17 Q (BY MR. DUVAL) Do you recognize this  
18 document marked as Exhibit 2?

19 A Yes.

20 Q And what is that, please, Mr. Brooks?

21 A That's the sales agency contract.

22 Q What's the date that this was signed?

23 A It says October 25, 1990.

24 Q Did you obtain Mr. Peck's signature at the  
25 same time that you signed the earnest money?

1           A       Could have done, yes.

2           Q       In the middle of that document, there's a  
3 paragraph that says -- maybe you can find it, it's  
4 right in the middle. It says, "You are hereby  
5 authorized to obtain financial information." Do you  
6 see that sentence?

7           A       Yes.

8           Q       Maybe I could read it. "You are hereby  
9 authorized to obtain financial information from any  
10 mortgage or other party holding a lien or interest  
11 in the described property and I agree to execute any  
12 additional documents that may be necessary for you  
13 to obtain financial information." Then there's a  
14 sentence, "You are hereby authorized and instructed  
15 to offer this property through the multiple listing  
16 service through the Board of Realtors to which you  
17 belong."

18                   Did you do that with this particular piece  
19 of property?

20          A       Yes.

21          Q       And you mentioned earlier that there's a  
22 form that you fill out?

23          A       Yes.

24          Q       Do you have a copy of that?

25                   (Off-the-record discussion)



1 THE WITNESS: Right there (indicating).

2 MR. DUVAL: Could we obtain a copy of  
3 this?

4 MR. KELLER: Sure. I thought I gave you  
5 one, but I guess I didn't. In fact, I'm sure -- why  
6 don't we make a copy. Do you care if we make a  
7 copy?

8 THE WITNESS: No, you're welcome to. This  
9 is a reduced copy, they normally come in a normal  
10 sized sheet.

11 Q (BY MR. DUVAL) On what day was that  
12 transmitted to the MLS? Can you tell?

13 A No, I can't tell. The office -- we turn  
14 these into the office and the secretary takes care  
15 of sending those down.

16 Q Is there a date on that document that says  
17 when it was filled out?

18 A The listing -- let's see, the listing, 25  
19 October to 31 May and the Pecks signed it on October  
20 25.

21 MR. DUVAL: We may want to have that  
22 marked as Exhibit 3.

23 (Off-the-record discussion)

24 (Whereupon, Exhibit  
25 No. 3 was marked for  
identification.)

1           Q       (BY MR. DUVAL) Did you have any other  
2 property, commercial property listed in that  
3 neighborhood at that time? Do you remember?

4           A       I don't know if it was exactly that time.  
5 In and around that period of time, I had a piece  
6 right there by the mill pond.

7           Q       And how far is that from the subject  
8 property?

9           A       I'm going to say about six blocks.

10          Q       And how much was that listed for?

11          A       That piece of property was \$25,000 an  
12 acre.

13          Q       And why was that a different price than  
14 the \$16,000 an acre on the subject property?

15          A       It backed up against the freeway. It had  
16 freeway visibility, it was improved property, it had  
17 sewer, water, curb and gutter, asphalted street. It  
18 had been developed, it was a developed property.

19          Q       Did you use that as a comparable to  
20 determine the price in this case?

21          A       If it was right at this time, we would  
22 have done, yes.

23          Q       Did you consider it as a comparable piece  
24 of property?

25                 MR. KELLER: Well, what do you mean by

1 comparable? He just talked about the differences.

2 MR. DUVAL: I know.

3 Q (BY MR. DUVAL) I'm just wondering if you  
4 used that as a --

5 A The Peck property, of course, is not  
6 developed property. There is no sewer at that  
7 property. So you find the best source you can find  
8 and then you have to point out the differences in  
9 the property.

10 Q So was this one of the properties you may  
11 have used it a comparable at that time?

12 A It may have been, yes.

13 Q I'm going to hand you another document  
14 here for the reporter, if we could have that marked  
15 as Exhibit 4.

16 (Whereupon, Exhibit  
17 No. 4 was marked for  
identification.)

18 Q (BY MR. DUVAL) Do you recognize this  
19 document marked as Exhibit 4, Mr. Brooks?

20 A Yes.

21 Q Can you please explain what it is?

22 A That's an addendum to an earnest money, to  
23 the original earnest money.

24 Q Please explain if you remember the  
25 circumstances leading up to the signing of this

1 document?

2 A Well, the buyer requested an extension on  
3 the closing.

4 Q Do you know why he asked for that  
5 extension?

6 A As I recall, he had a piece of property  
7 listed for sale through a Salt Lake firm that had  
8 had an offer on it, it was a piece of commercial  
9 property, and that property had not closed. It was  
10 his intent to close that, I think, and use the funds  
11 or some of the funds from that to purchase this. So  
12 he requested an extension.

13 Q You mentioned the other sale. Was he  
14 trying to obtain a tax free exchange? Was that one  
15 of the things he was trying to accomplish?

16 A That was his goal was to do a tax free  
17 exchange.

18 Q The last handwritten entry there in the  
19 main section, it says, "Buyer to deposit \$2,000 with  
20 seller as down payment."

21 A Yes.

22 Q How did that element come to be in this  
23 addendum?

24 A Sitting in the home of the sellers, the  
25 Pecks, I presented the buyer's request to them, and

1 as I recall, Mr. Peck indicated that he wanted a  
2 little money at the time or was in need of a little  
3 money at that time, so we discussed some  
4 alternatives and he determined that he was not  
5 opposed to the extension, but would like some money  
6 deposited from the seller. The reason why those are  
7 initials is because I contacted the buyer on the  
8 phone and indicated to him that it was acceptable to  
9 the seller with him putting \$2,000 down. He agreed  
10 to do that. So we made that part of the addendum.  
11 He authorized that to be done.

12 Q And was that nonrefundable earnest money  
13 or was that refundable?

14 A It was a deposit, in other words, that's  
15 money that is used towards the purchase.

16 Q Like an earnest money, if the buyer does  
17 not go through, the earnest money is forfeited; is  
18 that correct?

19 A It depends on the circumstances. If the  
20 offer is made subject to financing or subject to  
21 other conditions that have to be met, and those  
22 conditions aren't met, then it is refundable. If  
23 those conditions are not met and he does not go  
24 through with it, it is normally forfeited.

25 Q In which case would this \$2,000 have been

1 forfeited if the other \$5,000 would have been  
2 forfeited?

3 A Well, it was used as a deposit. In fact,  
4 on the check, there was a document that was prepared  
5 to indicate that it was part of the closing price.

6 Q And I'm sorry, I'm having trouble. An  
7 earnest money is also prior to the closing papers,  
8 but it would be refunded if the contingency was not  
9 met. I'm just wondering if this is a refundable or  
10 if it was nonrefundable?

11 A It was a deposit, it was not an earnest  
12 money, it was a deposit or part of the purchase, or  
13 in other words, let's say it was a down payment on  
14 the property.

15 Q Okay. So if one of the contingencies  
16 hadn't occurred, the Pecks would have had to return  
17 that \$2,000?

18 A No, they would not have done. That \$2,000  
19 was turned right over to Mr. Peck, it was not held  
20 in my trust account.

21 Q Okay. Other than his -- the buyer's  
22 intention to obtain a tax free exchange, were there  
23 any other factors that influenced this extension,  
24 that prompted this extension?

25 A I don't know about that.

1                   MR. DUVAL: If I could just have another  
2 exhibit marked here

3   (Whereupon, Exhibit  
4   No. 5 was marked for  
   identification.)

5           Q       (BY MR. DUVAL) Do you recognize this  
6 document, Exhibit 5?

7           A       I do.

8           Q       Could you please explain what that is?

9           A       It's an extension on the listing.

10          Q       Explain what purpose this serves, this  
11 extension?

12          A       Well, when we're representing a seller and  
13 an extension is requested on the closing, then in  
14 order to continue the contract with the seller on  
15 the property, you need to extend the listing time so  
16 you're representing, then, beyond the closing date  
17 that's just been established.

18          Q       Under the top half of that document, there  
19 is an area called "status." That was not filled out  
20 in this case. Is that usual or unusual?

21          A       Well, it has nothing do with this  
22 particular document. When the property is under  
23 contract, the -- when the earnest money offer is  
24 turned into the secretary, then she will fill out an  
25 under contract with contingencies, et cetera, and

1 that's sent to the boards. The purpose of this  
2 particular document that you have in front of me is  
3 specifically to change the expiration date of the  
4 listing.

5 Q Would there have been a document like this  
6 that would have identified the fact that this  
7 property was under contract?

8 A There would have been, yes.

9 Q Do you have a copy of that?

10 A I do not, no.

11 Q Could we obtained a copy from you?

12 A I'm sure you could.

13 MR. KELLER: Do you have a COPY of it?

14 THE WITNESS: Well, we don't fill that  
15 out. That's something that's done at the office.

16 MR. KELLER: Okay.

17 THE WITNESS: So it would be in the office  
18 file.

19 Q (BY MR. DUVAL) At the time you filled out  
20 this extension, did the MLS show that the property  
21 was sold or under contract, do you know?

22 A I really don't know.

23 Q Would there be a way to determine that?

24 A There would be by the date that the under  
25 contract information was sent to the board.



1           Q     Okay. So that other document we're  
2 talking about would reflect the date that the MLS  
3 was advised it was under contract?

4           A     What happens, I don't know how they record  
5 them down at the MLS, but after they receive the  
6 information, they feed that into the book that's  
7 going to be printed and then in the next book two  
8 weeks later or three weeks later, based on the  
9 cutoff time, it would come out in the book as  
10 showing under contract.

11          Q     Okay. What efforts did you make to market  
12 this property, this subject property?

13          A     Well, you have to keep in mind that the  
14 property was listed because there was a potential  
15 buyer out there. At the time that we actually got  
16 the buyer and the seller together, it was under  
17 contract. In other words, it had an offer on it  
18 immediately. We searched out this piece of property  
19 and put something together for Mr. Peck with an  
20 existing potential buyer. After that, we continue  
21 to market the property, to take up what we call a  
22 backup offer in case for any reason the first offer  
23 falls through.

24          Q     Did you receive any inquiries about this  
25 property?

1           A       Oh, I'm sure we did. I had inquires on  
2 that property even after it was under contract this  
3 last time. There were only -- as I recall, we tried  
4 to sell this property or take a backup offer from a  
5 firm in American Fork. Let's see, if I can remember  
6 their names. They have a little cabinet shop right  
7 on the south side of the freeway in American Fork.  
8 They did not ever come through with an offer. There  
9 was only one other party that came forth with an  
10 offer at the time we were dealing on this with Mr.  
11 Peck and Mr. Mellor.

12           Q       And who was that?

13           A       I don't know if I can recall the name. It  
14 was a -- it was a manufacturer that was going to do  
15 something along the line of fertilizers, wanted a  
16 railroad spur into the property, was -- I take that  
17 back. That particular offer came to pass after Mr.  
18 Mellor decided he wasn't going to put his business  
19 on the property. So I don't recall any other offers  
20 that came in at the time we had it under contract.  
21 But you have to realize that many, many buyers are  
22 reluctant to get in a backup position because they  
23 have to wait through the whole period of time to see  
24 if the first offer is going to close.

25           Q       Do you have any records or documents

1 indicating communications or correspondence  
2 regarding inquiries on this property during that  
3 time period when it was listed for Mr. Peck?

4 A No.

5 Q Do you remember if you had any at the  
6 time?

7 A Well, we never had any offers, otherwise  
8 we would have presented them to Mr. Peck.

9 Q But inquiries, did you have any notes of  
10 correspondence, for example, with the cabinet shop  
11 people?

12 A No. But as I say, that ended up -- that  
13 ended up never coming to fruition. No one ever made  
14 an offer on it.

15 Q When Exhibit 4, which is the addendum  
16 counteroffer to the earnest money sales agreement  
17 was signed, did Mr. Peck have an obligation to  
18 extend that?

19 A Going back to -- let's make sure we're  
20 talking about the same thing here.

21 Did he have an obligation to accept this?

22 Q To extend it, yes.

23 A You mean the closing? To extend the  
24 closing and sign such a document? No, he could have  
25 rejected that.

1           Q       Could he have imposed additional  
2 conditions besides the \$2,000 down payment in  
3 exchange for extending the closing date?

4           A       Could have done.

5           Q       Is it common to raise the sales price at  
6 such times when there's an extension?

7           A       Totally depends on the market. I mean, as  
8 a seller or a buyer, you could request anything you  
9 wanted to, but normally a decision like that would  
10 be based on what the market was doing.

11          Q       Do you remember what the market was doing  
12 at this time?

13          A       The market started to move probably about  
14 two and-a-half years ago, started moving up. There  
15 are many sales in and around this period of time  
16 that are much lower than this.

17          Q       So are we talking mid 1992? Is that when  
18 you believe the market started to move?

19          A       Yes, it's been over two years ago, about  
20 mid 1992.

21                 MR. DUVAL: I'm going to have another  
22 document marked here, Exhibit 6.

23                                 (Whereupon, Exhibit  
24                                 No. 6 was marked for  
                                  identification.)

25          Q       (BY MR. DUVAL) Do you recognize

1 Exhibit 6?

2 A Yes.

3 Q Did you prepare that document?

4 A I did.

5 Q Explain the facts leading up to its  
6 signing.

7 A We were getting close to a closing and as  
8 I was communicating with Mr. Peck, he indicated that  
9 he had some concerns for taxes, and something to do  
10 with the fact that he wanted to discuss with his CPA  
11 or his attorney, I don't recall which, about the  
12 best way to handle the sale for -- that was involved  
13 in the corporation.

14 Q So was this generated, then, at the Pecks'  
15 prompting?

16 A It was. It was Mr. Peck's request and I  
17 prepared a document there that seemed to cover his  
18 needs to extend the closing for up to six months,  
19 allowing him to make some modifications to the title  
20 and so forth deemed necessary by him and had to do  
21 with taxes.

22 Q Okay. Item 4 there mentions an additional  
23 \$500 down payment. Do you know if that was  
24 refundable or nonrefundable?

25 A Here again, it was a down payment to the

1 seller -- it was money that was actually turned over  
2 to the seller. It was nonrefundable funds.

3 Q Was this prompted in any way by the  
4 process of annexation or zoning that was being  
5 pursued?

6 A We had a long time in getting the  
7 annexation and the zoning of this piece of property  
8 through. We had some problems with the railroad,  
9 with Union Pacific Railroad. The title, trying to  
10 get the title cleared on that piece of property.  
11 The title company early on run onto a strip of  
12 property that was in question on the south side.  
13 There's a fence down there, but the railroad deed  
14 shows as coming up into the Peck property, and Union  
15 Pacific would not respond to their requests. Their  
16 attitude was it was such a small situation that they  
17 didn't have the time to deal with it. So that's  
18 what was delaying us in getting the title worked out  
19 and so forth to finalize the annexation, because we  
20 wanted to annex in the property that's owned.

21 Q How did it come to be that annexation was  
22 involved in this sale?

23 A Well, that's the only way we could sell it  
24 as commercial property and get the maximum money out  
25 of it. That was the whole purpose. You have to

1 realize that the buyer was looking for commercial  
2 property. A buyer is not interested in buying a  
3 commercial piece of property that's in the county  
4 that's not zoned and not annexed. So the whole idea  
5 with Mr. Peck is we thought we could get him pretty  
6 good money out of the property by annexing into the  
7 city and zoning it into commercial. That's the  
8 highest value of the property, and so that was the  
9 whole intent of it, the whole thing.

10 Q Did the earnest money reflect that  
11 intent? Do you remember?

12 MR. KELLER: Other than the purchase  
13 price?

14 MR. DUVAL: I'm just wondering if there  
15 was a condition there.

16 THE WITNESS: I don't quite understand  
17 what you're asking.

18 Q (BY MR. DUVAL) If it was contingent upon  
19 it being commercial property, did the earnest money  
20 reflect that that was a contingency?

21 A The whole idea was that the property would  
22 be commercial. The reason it would be commercial is  
23 because it was contiguous with commercial property  
24 on the south side of State Street and knowing that  
25 as long as you're contiguous, knowing what the

1 ordinance was in the city at that time, by going  
2 through the process, we could get the thing annexed  
3 and zoned commercial.

4 Q If the city had for some reason denied the  
5 request for annexation, would the sale have fallen  
6 apart?

7 A Well, that's a good question. I guess I  
8 can't answer that because I'm not the buyer of the  
9 property.

10 Q Okay. If the sale -- if the annexation or  
11 zoning had not been approved for whatever reason,  
12 would you have advised Mr. Peck to return the  
13 earnest money if the buyer did not want to go  
14 forward?

15 A That's a good question too, because  
16 without that happening, I don't know what my  
17 recommendation would have been for Mr. Peck.

18 Q Okay. Who had the obligation to pursue  
19 annexation and zoning through the city? The buyer  
20 or the seller?

21 A I offered to do that for the seller.

22 Q And what efforts did you make in that  
23 regard?

24 A I approached the city, made the  
25 application, paid the fee.



1 Q And what fee? How much was the fee?

2 A \$25.

3 Q Did you also contact a surveyor?

4 A Yes.

5 Q Who was that?

6 A Let's see, the surveyor we used was  
7 Chestnut, Bruce Chestnut.

8 Q Did he have a fee for his services?

9 A He did.

10 Q Who paid for that?

11 A Mr. Peck did.

12 Q Was that part of the closing costs, do you  
13 know?

14 A It was.

15 Q What other expenses might have been  
16 incurred in try to pursue the annexation and zoning  
17 change, other than the city's fee and the surveyor's  
18 fee?

19 A Well, the city has a fee where they charge  
20 per acre. The official fee that I instigated was  
21 just the -- I don't even know what they call it, but  
22 planning and zoning requires a \$25 fee to get it on  
23 the agenda. And after that, I don't recall the  
24 city's exact fees, but they do charge a fee. I  
25 think it's based on a per acre that's being annexed

1 into the city.

2 Q And who would have paid that fee? Do you  
3 know?

4 A Mr. Peck, I'm sure.

5 Q When the extension was signed, Exhibit 6  
6 that we have there -- do you have that exhibit, the  
7 addendum?

8 A Oh, that's this one, okay.

9 Q I believe it's dated by the Pecks on  
10 September 27, 1991. Is that what you notice, as  
11 well?

12 A Yes.

13 Q Had there been any appreciation in the  
14 value of the property between its original listing  
15 in October of 1990 and September of 1991?

16 A I doubt that. If there had been, we would  
17 have probably made a recommendation to Mr. Peck to  
18 renegotiate. You have to keep in mind that the  
19 market was very flat at that time, wasn't a lot of  
20 properties being sold, so until I do some research,  
21 I'd say very likely not.

22 Q Do you remember doing any research at the  
23 time of this document being executed?

24 A I keep on top of the sales weekly. That's  
25 my business.

1           Q     Did you do any research specifically for  
2 this project?

3           A     I don't recall.

4           Q     You might remember that at the deposition  
5 -- when Mr. Peck's deposition was taken, Mr. Keller  
6 asked Mr. Peck about a conversation you had with Mr.  
7 Peck at the property, were there some conversations  
8 regarding this -- this addendum? Do you remember  
9 what that question was? I can pull the deposition.  
10 It was just --

11          A     I don't recall the question that you're  
12 asking.

13               MR. KELLER: The conversation that I was  
14 referring to in my question occurred after the  
15 closing.

16               MR. DUVAL: Oh, okay. Thank you for that  
17 clarification.

18          Q     (BY MR. DUVAL) Did you ever meet with Mr.  
19 Peck along his property when he was out in the  
20 field? There was some question about that  
21 conversation, as well. I'm just trying to figure  
22 out some of the conversations you may have had  
23 regarding this addendum.

24          A     Did I meet with him on this particular  
25 piece of property? Is that what you're asking?

1 Q Yes.

2 MR. KELLER: I'm unclear on the question.  
3 Is the question did you meet with him about this  
4 addendum? Is that the question?

5 Q (BY MR. DUVAL) Right, where did you meet  
6 with him when you were signing this document?

7 A Each of these documents were prepared at  
8 the home of Mr. Peck.

9 Q Okay. Is that where most of your  
10 conversations with the Pecks occurred?

11 A That's correct.

12 Q Did you have any conversations outside of  
13 the home with Mr. Peck regarding this?

14 A Well, we had conversations out in the  
15 yard. I remember a time or two that he and I  
16 visited out there, but I think at this time we ended  
17 up in the house. I had a conversation with Mr. Peck  
18 after the sale out where he was doing some  
19 irrigating.

20 MR. DUVAL: Okay. I'm going to ask that  
21 another document be marked as an exhibit here.

22 (Whereupon, Exhibit  
23 No. 7 was marked for  
identification.)

24 Q (BY MR. DUVAL) Do you recognize this  
25 Exhibit 7?

1           A       I do.

2           Q       Did you prepare this?

3           A       I did.

4           Q       Could you please explain under the status  
5 box once again some of the terms there for us? When  
6 it says terms or loan type, what does CS mean?

7           A       Cash, probably.

8           Q       Do you know at this time when this  
9 addendum was prepared if there was -- if the  
10 property was listed as being under contract or not?

11          A       Well, it would never change from the  
12 original status unless you modified that status. If  
13 you were to -- for instance, you see down here A, it  
14 says "contract failed, reinstate." Had the status  
15 of the property changed to a failed, then the  
16 secretary would have sent that back in and they  
17 would have taken it out of the under contract  
18 status.

19          Q       Okay. There at the bottom it says, "These  
20 changes require seller's signature" and there's  
21 boxes for listing date, or expiration date change,  
22 or price change. Do you also have to fill out one  
23 of these when there's a price change in the  
24 property?

25          A       Yes.

1           Q       When you filled this out, was there any  
2 discussion regarding changing the price?

3           A       Oh, I don't know about that. We discussed  
4 a lot of things. Mr. Peck was still wanting to sell  
5 the property and it was he that requested the last  
6 extension for his benefit. Historically, I guess,  
7 if you were to request an extension for something  
8 that you wanted to perform on, and the buyer was  
9 ready to close, as a for instance, and it was your  
10 request to extend it for something that you wanted  
11 to take care of, it would be unlikely that you would  
12 request an extension for something to your benefit  
13 and then turn around and request a price increase at  
14 the same time.

15          Q       Do you know if the buyer was ready to  
16 perform at this time?

17          A       We were setting up the closing and getting  
18 it ready to go. And I think that's what prompted  
19 the tax situation. We'd been talking about how he  
20 wanted to take his money and, in fact, I had in my  
21 files where I had run some different methods of down  
22 payment. He was discussing taking different amounts  
23 down and I run on the computer what the payments  
24 would be with -- I don't remember what they were, 25  
25 percent down, 30 percent down, those kinds of

1 things. And I think that's what prompted that is we  
2 got closer to that and he was working with either  
3 his CPA or his attorney, he decided that he needed  
4 to take a little time to do this thing.

5 Q Could you provide us with copies of those  
6 documents you're referring to?

7 A I might even have them here, I'm not  
8 sure.

9 All it was is an authorization schedule  
10 and if I don't have one here, I can certainly  
11 provide one to you.

12 Q Did you provide one to Mr. Peck at that  
13 time?

14 A Yes, I did that at his request.

15 Q That's fine, we can look for them later,  
16 thanks.

17 Had annexation and zone changes been  
18 approved at this time?

19 A I don't remember the exact date that we  
20 completed that. We had -- we had received  
21 preliminary approval. Generally when I do a zone  
22 annexation, an annexation and a zone change -- well,  
23 it actually was a zone change from county -- it was  
24 county A-1, so any time you annex it into the city,  
25 you have to establish a zone or request a zone. I

1 generally do a little bit of preliminary work with  
2 both the members of the planning and zoning and the  
3 city council to see what their attitude towards it  
4 is, so we have some feeling before we actually  
5 proceed with it. I don't recall the exact date that  
6 that was completed, we'd have to get that file from  
7 the state.

8 (Whereupon, Exhibit  
9 No. 8 was marked for  
identification.)

10 Q (BY MR. DUVAL) You might want to take a  
11 minute and review that. I believe the first page  
12 and the last page are the most relevant to this  
13 project.

14 Do you recognize this document at all?  
15 Have you seen this?

16 A Well, that's a city document. It's -- I  
17 attend the meeting, I don't go back to them and ask  
18 them for copies of their documents.

19 Q Okay. Were you at this meeting it refers  
20 to here on January 9 of 1992?

21 A I attend all the meetings that have  
22 anything to do with the annexation I'm involved in.

23 Q Does that seem like a correct date to you,  
24 January 9, 1992 when this may have occurred?

25 A I have no reason to question it.



1           Q     On the last page there it discusses the  
2 subject property and it talks about fourplexes along  
3 the property.

4           A     Yes.

5           Q     Whose idea was that?

6           A     When you're doing a commercial property  
7 and you have a party who is talking about a specific  
8 use of the property, you simply look at all the  
9 options and see what the city would like and they  
10 talked about a buffer zone between commercial and  
11 residential, and a buffer zone can be a number of  
12 things, multiple units, for instance, is what they  
13 consider a buffer zone between commercial. So you  
14 simply discuss the possibility of putting in  
15 multiple unit type dwellings in there to see if that  
16 will satisfy the city for a buffer zone.

17          Q     Would you have discussed fourplexes with  
18 Mr. Peck?

19          A     No. In fact, we probably didn't even  
20 really have any intent of discussing fourplexes,  
21 other than the fact that it's being -- like I say,  
22 it's part of what you're trying to do to satisfy a  
23 city's buffer zone. It would not necessarily have  
24 to be fourplexes, it's anything that they would  
25 accept and by looking at this, fourplexes were being

1 discussed as to whether or not -- in other words,  
2 multiple dwellings, whether or not the city would  
3 accept them in a JC2 zone.

4 Q Did you discuss fourplexes with Mr.  
5 Mellor?

6 A No, I don't think he had any interest in  
7 fourplexes. If he did, I would not be aware of it.

8 Q With reference to that last extension  
9 dated September 27, having viewed this document now,  
10 at the time of extension, in September, was the  
11 property zoned -- rezoned at that time?

12 A No.

13 Q So would the buyer -- was the buyer  
14 prepared to go forward at this time in September?

15 A There was no conditions in the contract  
16 that he would not close it whether the zoning was  
17 completed or not.

18 Q So but for Mr. Peck's request to extend  
19 it, the closing would have occurred prior to that,  
20 then?

21 A It would have had to have occurred then or  
22 he would have been in default and would have had to  
23 have walked away from the property.

24 Q Okay. The next exhibit is Exhibit 9.

25 \*

1 (Whereupon, Exhibit  
2 No. 9 was marked for  
identification.)

3 Q (BY MR. DUVAL) Do you recognize this  
4 document at all?

5 A Well, I recognize what it is, it's a trust  
6 deed note.

7 Q You mentioned you ran some projections.

8 A Yes.

9 Q Did you discuss interest rates with Mr.  
10 Peck regarding any of those projections?

11 A Yes.

12 Q What interest rate is listed here?

13 A Eight percent.

14 Q Did you discuss that with Mr. Peck, do you  
15 remember?

16 A We did. We determined -- his final  
17 decision was the amount of money that he wanted to  
18 take down, and we looked at what interest rates were  
19 doing at that time and an interest rate was  
20 determined and it appears that eight percent is what  
21 was determined.

22 Q Did you make any recommendations regarding  
23 interest rates?

24 A Well, I let them know what the market is,  
25 what the mortgage market is and generally the

1 private contracts run a little below whatever the  
2 mortgage market is.

3 Q Okay. So do you remember what the  
4 mortgage market was at that time?

5 A No, no, we'd have to go back and  
6 reconstruct that. It would have been somewhere in  
7 that neighborhood right there.

8 Q Is that a reasonable number, do you feel?

9 A Oh, yeah. We're doing contracts today at  
10 eight percent interest at a high interest rate  
11 market, so, yes, it would be reasonable.

12 Q High interest rate market now?

13 A Well, we're in a nine and-a-quarter  
14 percent interest rate with the mortgage and a lot of  
15 private contracts that are being written are eight  
16 percent today.

17 Q There's a date on there, March 30, does  
18 that ring any bells?

19 A Well, that would have to correspond with  
20 the closing date.

21 Q And the original earnest money was October  
22 of 1990, that's about 17 months. Is that a standard  
23 time for a closing to occur?

24 A No.

25 Q Longer or shorter?

1           A       Longer.

2           Q       Significantly or a little bit longer?

3           A       Well, in this particular case, it was  
4 exactly right, because you had the extensions that  
5 brought it up to that closing date. If you had a  
6 normal purchase that was a simple purchase, they  
7 would take place in six months to a year.

8           Q       Was it a simple purchase or not?

9           A       Well, that's a very vague question in my  
10 opinion. I don't know what you would consider to be  
11 simple or complicated. It was a purchase that we  
12 were trying to annex and zone some property that was  
13 taking longer because we, for one, couldn't get the  
14 title worked out with the railroad. There was two  
15 extensions requested, one by the buyer, one by the  
16 seller, so the closing took place right exactly as  
17 the buyer and the seller agreed to close it. I  
18 don't know if you consider that complicated. I do  
19 it all the time and to me, it's an average sale.

20          Q       Okay. Have you had closings that have  
21 lasted longer than 17 months?

22          A       I'm sure I have, yes.

23          Q       Regarding the annexation, whose idea was  
24 it to contact Mr. Chestnut?

25          A       As I recall, I simply indicated that there

1 were -- that there were a number of engineering  
2 firms and Mr. Peck asked me to follow through and do  
3 that and I suggested that a fellow by the name of  
4 Bruce Chestnut had done a lot of surveying on some  
5 of the annexations that had taken place in Lehi, he  
6 was experienced with the process through Lehi, but  
7 there were a number of them and I think he asked me  
8 to go ahead and follow through with that and I did  
9 for him.

10 Q Did you attend the closing when this  
11 property sold?

12 A Yes.

13 (Whereupon, Exhibit  
14 No. 10 was marked for  
identification.)

15 Q (BY MR. DUVAL) Do you recognize this  
16 exhibit?

17 A It looks like the closing statement.

18 Q Does that closing statement reflect any  
19 fees for surveying or annexation?

20 A No.

21 Q Would they normally be in a closing  
22 statement like that?

23 A It depends. Generally when a surveyor  
24 does his work, he will bill the party. If the  
25 closing was taking place right immediately, let's

1 say right after that was done, then we would have  
2 them withheld from the closing. Otherwise, the  
3 seller would have records where he had paid the --  
4 paid for the survey for tax purposes.

5 Q Do you know in this case how Mr. Chestnut  
6 got paid?

7 A Well, I assume that he sent a bill to Mr.  
8 Peck and Mr. Peck paid it.

9 Q Outside of the closing?

10 A Yes. The survey probably would have been  
11 completed considerably before the closing.

12 Q What about costs to the city? How would  
13 those costs have been paid?

14 A He probably wrote a check out. The city  
15 would have -- the city would have billed him at the  
16 time it was done.

17 Q Would Mr. Mellor have paid any of these  
18 expenses, do you know?

19 A No, I don't think so.

20 Q The property value, did that also account  
21 for the Lehi interchange?

22 A Well, the Lehi interchange is something  
23 that's been going on for about 10 years now, common  
24 knowledge. The time that the interchange would be  
25 completed was anybody's guess.

1 between January and a closing date?

2 A Yes.

3 MR. DUVAL: The next document will be  
4 Exhibit 11.

5 (Whereupon, Exhibit  
6 No. 11 was marked for  
identification.)

7 (Off-the-record discussion)

8 Q (BY MR. DUVAL) Do you recognize this  
9 Exhibit 11?

10 A I do.

11 Q Could you please explain what it is?

12 A Well, it's a listing.

13 Q On the subject property?

14 A It is.

15 Q With whom?

16 A With Mellor.

17 Q The purchaser of the property from Mr.  
18 Peck?

19 A Yes.

20 Q And how much is the property listed for?

21 A \$425,000.

22 Q Did you ever advise Mr. Mellor regarding  
23 that sales price?

24 A I think the only discussion that we had  
25 was what it was going to -- an estimate of what it



1 might cost to develop the property. And I think the  
2 only -- the only part of that that I ever got  
3 involved with at all is I contacted -- I think it  
4 was Hadfield Irrigation to give just a verbal  
5 estimate of what it might cost to run the sewer  
6 under State Street and under the tracks and so forth  
7 and shared that with him and then whether he got  
8 other bids or not, I don't know.

9 Q Do you remember a ballpark figure of how  
10 much that bid was for the development?

11 A For some reason, the sewer system, the  
12 underground stuff going up to the property, for some  
13 reason, about \$80,000 sticks in my mind. That would  
14 have had nothing to do with curb and gutter and  
15 sidewalks and asphaltting and all of those kinds of  
16 things.

17 Q Did you have an idea as to how much total  
18 development costs may have been on that property?

19 A No.

20 Q Did you discuss with him the value of that  
21 property unimproved?

22 A No. I think that what his intent was here  
23 was he was wondering whether or not he could put his  
24 business in there and if we could sell the  
25 properties around him and in that discussion was

1 that he seemed to be kind of backing off of putting  
2 his own business in this location and thought that  
3 if he improved it, maybe we ought to offer the whole  
4 thing for sale.

5 Q Did he approach you about selling it?

6 A He did.

7 Q Was there any discussion at that time of  
8 listing it as unimproved property?

9 A No. Not at this time.

10 Q Was there later?

11 A There was.

12 Q What prompted the change to considering it  
13 as unimproved property?

14 A I don't know. I think the main thing was  
15 that when you develop a piece of property you better  
16 have users in mind, because the way you run the  
17 streets and the stub-in's of the utilities is  
18 determined by those who are going to use it, what  
19 their needs might be. And I think as several  
20 different people came forward and at least looked at  
21 the property, there was never enough interest there  
22 to put a number of them together, and I think some  
23 time after this, he made the decision that rather  
24 than take the risk of putting all of that money into  
25 the development, that maybe he'd be wiser to just

1 sell it and let somebody else develop it the way  
2 they wanted to.

3 Q Okay. And what value did you establish as  
4 undeveloped property with Mr. Mellor?

5 A Here at this time?

6 Q Or later.

7 A Later on, he asked \$32,000 an acre, some  
8 time after that. I suspect that that would have  
9 been about probably 18 months ago, something like  
10 that.

11 Q From this listing agreement, what's the  
12 date on that listing agreement or --

13 A 24 October of 1992.

14 Q So how many months is that after the  
15 closing?

16 A We closed in March, so about seven  
17 months.

18 Q What would account for the increase in the  
19 value of the land in that seven months?

20 A Oh, it never sold for that. Are you  
21 asking me what caused him to ask that price for it?

22 Q Correct.

23 A I don't know. He approached me with the  
24 idea that if he put all the utility costs in there,  
25 he wanted to list the property at this price and

1 that's what we did.

2 (Whereupon, Exhibit  
3 No. 12 was marked for  
identification.)

4 Q (BY MR. DUVAL) Do you recognize this  
5 Exhibit 12?

6 A Well, it's a listing in the multiple -- it  
7 looks like a copy of the Multiple Listing Service.

8 Q There in the center in the top, do you  
9 recognize a listing there?

10 A I have spotted it, yes.

11 Q Can you please describe what that is and  
12 how that would come to be there?

13 A It's the listing that went into the  
14 Multiple Listing Service based on that document  
15 which you just looked at, what you have as exhibit  
16 11. That's what they look like when they go into  
17 the Multiple Listing Service.

18 Q And what's the sales price listed there?

19 A Same, \$425,000.

20 Q There's a date on the top of that,  
21 November 10. Do you have any reason to doubt that  
22 date might reflect the date this was copied from?

23 A Oh, I have no way of knowing that.

24 Q Okay. What's the date on the listing?

25 MR. KELLER: October 24.

1 THE WITNESS: Okay.

2 (Whereupon, Exhibit  
3 No. 13 was marked for  
identification.)

4 Q (BY MR. DUVAL) Do you recognize this  
5 Exhibit 13?

6 A I do.

7 Q And what is it?

8 A That's an ad run by myself, probably in a  
9 local paper.

10 Q Does it identify this property, the  
11 subject property?

12 A Well, it looks like that you've marked  
13 something -- yes, probably the 8.43 acres is  
14 probably this property.

15 Q In Lehi, the one at the bottom?

16 A Yes.

17 Q What's it listed for?

18 A I'm not sure I can make that out, but I  
19 think it says \$270,000.

20 Q Do you remember placing this property for  
21 sale in the paper?

22 A Oh, I run a lot of my properties in the  
23 paper, yes.

24 Q And the date on this, under the statue, I  
25 believe it says 1992. Does that sound familiar that

1 this could have happened in 1992?

2 A No, no, it didn't happen in 1992.

3 Q Is that an incorrect date there, you  
4 think?

5 A No, that has nothing to do with the ad.  
6 That's the year that I was a centurion.

7 Q Do you know, did you receive any responses  
8 to this ad, as far as inquiries regarding the  
9 property, the subject property?

10 A No. Responses? I don't know, I don't  
11 remember.

12 Q Did you ever later on receive responses to  
13 any ads that were of that property?

14 A Well, an offer came in through another  
15 real estate company on that property some time  
16 later, I have no idea where the buyers picked up on  
17 that, whether it was the other real estate company  
18 or something that they saw that I might have had  
19 advertised.

20 Q How much was that offer for?

21 A I think it was \$32,000 an acre.

22 Q We have a document here if we can have it  
23 marked as Exhibit 14.

24 (Whereupon, Exhibit  
25 No. 14 was marked for  
identification.)

1           Q       (BY MR. DUVAL) Is this Exhibit 14 the  
2 offer you were talking about?

3           A       No, that is not the offer that I'm  
4 referring to.

5           Q       Have you seen this document before?

6           A       I believe, even though there's not a name  
7 on there, I believe that it is a document that was  
8 prepared by an agent, Guy Cash.

9           Q       And did he provide a copy of this to you?

10          A       Yes. He met and presented this offer.

11          Q       Was this offer accepted?

12          A       No. No, it was not.

13          Q       Do you know why it was not?

14          A       Because of all the -- of all of the  
15 contingencies that the people wanted because of the  
16 nature of their business.

17          Q       Which contingencies are you referring to?

18          A       Well, they have -- it's awful hard to read  
19 in this, especially, it says -- -- it says,  
20 "Nonrefundable if city and railroad approve," I  
21 can't read the rest of that on this copy. Let's  
22 see, and buyer something perform -- I can't quite  
23 read the rest of that.

24          Q       Do you have a better copy of this  
25 document?

1           A       I don't know.

2                   MR. KELLER: I don't have a better copy, I  
3 have one that's not much better.

4                   THE WITNESS: Well, part of it, I just  
5 can't read his writing. And railroad approve and  
6 buyer fails to perform or if buyer fails to --

7                   MR. KELLER: Pursue?

8                   THE WITNESS: Pursue approvals, I guess it  
9 is, I don't know what that WI is, within time, I  
10 guess, given something on contract.

11           Q       (BY MR. DUVAL) So did you or Mr. Mellor  
12 have concerns about that -- those contingencies?

13           A       Yes, we did. This offer -- and I think  
14 this is common knowledge, it's been stated at -- by  
15 Mr. Mellor at some of the city meetings when the  
16 other folks were trying to buy this property. This  
17 offer was actually a little higher than the one that  
18 he accepted. The seller had some concerns about the  
19 nature of the business that was going to be put  
20 there, thought it was not a clean business. There  
21 were some -- he asked them about odors and those  
22 kinds of things, and also it was subject to getting  
23 a spur off of the railroad and Union Pacific has not  
24 been agreeable to providing new spurs and so he just  
25 felt like that it was -- it had a lot of



1 Q Does it also refer to the 1031 exchange?

2 A Yes.

3 Q So this is the offer that was, then,  
4 accepted on the property?

5 A Yes.

6 Q Was it eventually closed?

7 A No. Never did close.

8 Q What happened? Do you know why it didn't  
9 close?

10 A Well, the -- they didn't get the approvals  
11 that they wanted through the city, and later the  
12 city came back with a final request, oh,  
13 8 -- 9 -- 10 months after that, and give them a  
14 preliminary approval for the project that they  
15 wanted to do. They wanted them to modify the  
16 streets into there. Finally they at a later date  
17 came back and agreed that they'd let them put the  
18 streets in where they wanted, but unfortunately in  
19 the meantime a couple of things happened, the real  
20 investor, the one with the money, lost interest and  
21 I suspect as that they penciled the whole thing out,  
22 it was not a -- would not have been a good  
23 investment for them.

24 (Whereupon, Exhibit  
25 No. 17 was marked for  
identification.)

1 Q (BY MR. DUVAL) Do you recognize Exhibit  
2 17?

3 A I do.

4 Q What is that?

5 A That is an addendum.

6 Q To the Citadel offer?

7 A Yes.

8 Q And what were the facts arising to its  
9 execution?

10 A Let's see. What happened was Citadel did  
11 not -- did not close on the offer, and therefore  
12 they wanted to extend the closing. As I recall,  
13 what happened was Mr. Mellor had a 1031 exchange in  
14 mind for the property and when they would not close  
15 as they were supposed to, he lost the 1031 exchange,  
16 the property for the 1031 exchange. Therefore, if  
17 they were to close at a later date, the monies then  
18 became taxable, at least a portion of the monies.  
19 These people wanted to extend the closing and they  
20 talked about paying more money if he would give them  
21 the extension and what was agreed to is the price  
22 would be raised to \$311,000 if he would -- if he  
23 would give them the extended time that they had  
24 requested.

25 Q Okay. And you mentioned that this

1 property never did close?

2 A No.

3 Q Excuse me, this transaction.

4 A Yes.

5 Q Did this property later sell?

6 A Yes.

7 Q How much did it later sell for?

8 A I don't have any authorization from either  
9 the buyer or the seller to disclose that. It will  
10 become knowledge when it's disclosed in the books,  
11 but I have never asked permission of either the  
12 buyer or the seller to discuss that transaction.  
13 What do you recommend?

14 MR. KELLER: Well, it's going to probably  
15 have to be disclosed at some point, why don't we  
16 give him a range, and then we'll give him the exact  
17 dollar amount as soon as we have -- or we can just  
18 agree on the record to keep it confidential.

19 MR. DUVAL: Until authorization from you  
20 to release it.

21 MR. KELLER: Okay.

22 THE WITNESS: I'll agree to that. I just  
23 don't normally disclose things that people have not  
24 authorized me to do. So --

25 Q (BY MR. DUVAL) Sure.

1           A       The property sold for \$320,000.

2           Q       And when was that closing?

3           A       It was closed Monday of this week.

4           Q       And how long had that transaction taken to  
5 close from the time the earnest money was originally  
6 signed?

7           A       Oh, I'm going to say two and-a-half  
8 weeks.

9           Q       This document, Exhibit 17, the last  
10 addendum, No. 4, was dated January 18. When did  
11 this deal fall through?

12          A       That's a hard one to answer. They did not  
13 perform on this extension. Right now, I can't tell  
14 you if they even performed on the next extension,  
15 which I'm not sure was signed by their side, but  
16 they had probably two, at least two extensions after  
17 this one that was at least granted to them, which  
18 they never performed on, and finally the seller just  
19 got tired of them not honoring any of their  
20 commitments and basically indicated to them to  
21 perform or forget it and he wasn't under contract  
22 with them any longer, at any rate, he was just  
23 trying to be fair and reasonable with them.

24          Q       Okay. Maybe one of the extensions you're  
25 referring to we'll have marked as Exhibit 18.

1 27.

2 Q Was there another extension after this  
3 one?

4 A I believe that there was one that was  
5 written and was never -- that they requested, the  
6 buyer, Citadel, it was written, as I recall, Mellor  
7 even signed it and honored it and Citadel  
8 themselves, I don't think they ever signed it --  
9 their investor ever signed it.

10 Q So was it within weeks or months that the  
11 subsequent offer came in that actually closed of  
12 this July 27 deadline?

13 A The person that actually made the final  
14 offer on the property had been looking at another  
15 property within the area, actually at the  
16 interchange, did not ever proceed, found out that  
17 that property went under contract and contacted me  
18 to see what the status of this one was and that was  
19 probably, oh, I'm going to say maybe -- maybe a week  
20 before we wrote his offer. So maybe three  
21 and-a-half weeks ago -- four weeks ago, somewhere in  
22 that neighborhood, because the property has been  
23 closed now for four days, I guess.

24 Q Okay. So the offer was placed some time  
25 in November?

1           A       Yes.

2           Q       So were there any other offers between  
3 July and November?

4           A       No.

5           Q       Did you ever discuss selling the property  
6 for \$14,000 an acre with Mr. Peck when you first  
7 discussed selling it to Mr. Mellor?

8           A       I don't think so. As I recall, Mr. Mellor  
9 offered -- I was thinking \$15,000 an acre for it  
10 after Mr. Peck had established the price, but I  
11 don't ever recall talking about \$14,000 an acre.

12          Q       Do you know if an appraisal was ever done  
13 on this property?

14          A       At the time that we listed it?

15          Q       At the time in question here between  
16 October of 1990 and today?

17          A       No, I don't think there's ever been an  
18 appraisal done on it even now.

19          Q       Have you listed the same piece of  
20 property -- excuse me, in this case you listed the  
21 property for Mr. Peck and sold it to Mr. Mellor then  
22 listed it again for Mr. Mellor. Has that sequence  
23 of events occurred in other pieces of property?

24          A       Oh, yes.

25          Q       Is it very frequent?

1           A       Quite. Thinking back on housing, it seems  
2 like that there's been a home or two in my career  
3 that I've sold at least three times.

4           Q       First to the buyer and then later listing  
5 it for the seller?

6           A       Yeah, they'll come back and decide they  
7 want to sell it for one reason or another or they  
8 don't like the house or whatever and they'll go back  
9 and have you resell the thing for them. It happens  
10 quite often.

11          Q       You mentioned fiduciary duties. Do you  
12 feel you've fulfilled your fiduciary duties to Mr.  
13 Peck in this case?

14          A       I do. No question.

15          Q       Do you feel you got the best price  
16 possible for the land?

17          A       I do.

18          Q       Was the property worth any more than  
19 \$16,000 an acre at the time the second extension was  
20 signed in September of 1991?

21          A       I'd have to go back and reconstruct that.  
22 I can't say for sure, but I don't think so. I don't  
23 think there was that much activity going on.

24          Q       The sales price of 300 plus thousand, for  
25 which it closed within a year and-a-half, is that

1 unusual to have that kind of appreciation?

2           A       I think you're talking about two  
3 and-a-half years. Is it uncommon? No. I could go  
4 back and cite you some others that probably sold at  
5 about the same time and with the conditions that's  
6 happened in Utah and in Utah county in the last two  
7 and-a-half years that have sold for two and-a-half  
8 and maybe even three times what they sold for back  
9 just two and-a-half to four years ago.

10           Q       Do you think this property experienced  
11 unusual appreciation or was it standard?

12           A       I think the whole county has experienced  
13 unusual appreciation.

14           Q       Did you ever discuss with Mr. Wayne Peck  
15 the appreciation of one percent a month? Does that  
16 figure ring a bell? Have you had any discussion  
17 regarding that?

18           A       I'm not sure that I did, other than I  
19 remember Wayne and I spoke at the north stake one  
20 time after I have tried to contact him and in fact,  
21 that happens to be the time that I had the  
22 discussion with his dad, with Mahlon, where he was  
23 irrigating, some time after that, when Wayne, I  
24 think, came back in from a summer camp with the navy  
25 or where ever it was he was at the north stake. I



1 asked if he had any questions or anything that I  
2 could get for him. And I believe he asked me the  
3 question that he couldn't understand quite why the  
4 property was trying to be marketed at a higher value  
5 and at that particular time, the market was moving  
6 at about one percent per month.

7 Q Have you ever seen in your experience in  
8 Utah County it grow at faster than one percent per  
9 month?

10 A Oh, I think that in the last two  
11 and-a-half years, if we pointed at certain  
12 properties, housing or commercial, there's instances  
13 probably where they've gone up much more than that.

14 Q More than two percent per month?

15 A Oh, I don't know that I could put a  
16 percentage on it, but certainly more than one  
17 percent per month. Real estate, and especially  
18 commercial, timing is very important. Here I think  
19 lately it almost surprises you that it almost seems  
20 like overnight that if there's a -- if the  
21 conditions are just right, people are looking and  
22 high prices.

23 Q I'm sorry, you may have mentioned this  
24 earlier, what percentage of your time is spent in  
25 commercial real estate?

1           A       Oh, time that I spend in there probably is  
2 50 plus percent, maybe even 70 percent of the time  
3 that I spend there promoting and marketing  
4 commercial property.

5           Q       Does it also reflect 50 to 70 percent of  
6 the dollar volume of sales that you do?

7           A       When you ask me a question like that,  
8 without researching and actually going back and  
9 comparing it, I don't know. You know, I just have  
10 to speculate that as far as dollar volume, yes, that  
11 could be likely. You close maybe more residences in  
12 number, but probably dollar volume -- I would think  
13 that that's possible, yes.

14                 MR. DUVAL: Those are the questions that  
15 we have.

16                 MR. KELLER: Okay.

17                 (Deposition concluded at 11:30 a.m.)  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

STATE OF \_\_\_\_\_)  
: ss.  
COUNTY OF \_\_\_\_\_)

I HEREBY CERTIFY that I have read the foregoing testimony consisting of 78 pages, numbered from 3 through 80, inclusive, and the same is a true and correct transcription of said testimony with the exception of the corrections I have listed below in ink, giving my reasons therefor.

1.	Page _____	Line _____	Correction _____
	Reason _____		
2.	Page _____	Line _____	Correction _____
	Reason _____		
3.	Page _____	Line _____	Correction _____
	Reason _____		
4.	Page _____	Line _____	Correction _____
	Reason _____		
5.	Page _____	Line _____	Correction _____
	Reason _____		
6.	Page _____	Line _____	Correction _____
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7.	Page _____	Line _____	Correction _____
	Reason _____		
8.	Page _____	Line _____	Correction _____
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9.	Page _____	Line _____	Correction _____
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	Reason _____		
11.	Page _____	Line _____	Correction _____
	Reason _____		
12.	Page _____	Line _____	Correction _____
	Reason _____		

\_\_\_\_\_  
LLOYD R. BROOKS

SUBSCRIBED AND SWORN to at \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

My Commission expires: \_\_\_\_\_  
NOTARY PUBLIC  
Residing at \_\_\_\_\_

C E R T I F I C A T E

STATE OF UTAH )  
:  
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the deposition of LLOYD BROOKS, the witness in the foregoing deposition named, was taken before me, VIKI E. HATTON, a Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the State of Utah, residing at Salt Lake City, Utah.

That the said witness was by me, before examination, duly sworn to testify the truth, the whole truth and nothing but the truth in said cause.

That the testimony of said witness was reported by me in Stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages numbered from 3 through 80, inclusive, and said witness deposed and said as in the foregoing annexed deposition.

I further certify that after the said deposition was transcribed, the original of same was delivered to Mr. Keller, to be by him submitted to the witness for reading and signature, signed before a Notary Public, and to be returned to me for filing with the Clerk of the said Court.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the events thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 3rd day of January, 1994.

*Viki E. Hatton*  
VIKI E. HATTON, C.S.R., R.P.R.  
Utah License No. 93

My Commission Expires:  
June 9, 1998

