

2011

# Hillcrest Investment Company v. Utah Department of Transportation : Brief of Appellee

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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HILLCREST INVESTMENT COMPANY, L.L.C., :

Plaintiff / Appellant, :

v. :

UTAH DEPARTMENT OF TRANSPORTATION, : Case No. 20110322-CA

Defendant / Appellee. :

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**BRIEF OF DEFENDANT / APPELLEE**

---

Appeal from the Judgment of the Second Judicial District Court, Davis Lake County,  
Judge John R. Morris

---

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FILED  
UTAH APPELLATE COURTS

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## LIST OF ALL PARTIES

To the best of Defendant's knowledge, all interested parties appear in the caption of this Brief.

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**IN THE UTAH COURT OF APPEALS**

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HILLCREST INVESTMENT COMPANY, L.L.C.,       :  
Plaintiff / Appellant,                               :  
v.   :  
UTAH DEPARTMENT OF TRANSPORTATION,       :  
Defendant / Appellee.                               :

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**BRIEF OF DEFENDANT / APPELLEE**

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**STATEMENT OF JURISDICTION**

This action comes within the original jurisdiction of the Utah Supreme Court under Utah Code Ann. § 78A-3-102(3)(j) (West 2009). On April 15, 2011, the Utah Supreme Court transferred this action to this Court pursuant to Rule 42(a) of the Utah Rules of Appellate Procedure.

**STATEMENT OF ISSUES ON APPEAL**

1. Did the integrated Right of Way Contract require the Utah Department of Transportation (UDOT) to build a frontage road as part of the consideration paid to the Horman Family Trusts who owned the property being purchased?

**ISSUE PRESERVED BELOW:** This issue was raised in the defendant's motion for summary judgment (R. 171-72, 868-69) and was one of the bases of the district court's decision. R. 926.

**STANDARD OF REVIEW:** A grant of summary judgment is reviewed for correctness, giving no deference to the district court's decision. Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Franco v. Church of Jesus Christ of Latter-Day Saints, 2001 UT 25, ¶32, 21 P.3d 198.

2. Hillcrest Investment Co. purchased the Horman Family Trusts' remaining property some years after UDOT bought the three parcels of property it needed for the Legacy Parkway Project. Does Hillcrest have standing to sue UDOT for alleged breaches of UDOT's contract with the Horman Family Trusts?

**ISSUE PRESERVED BELOW:** This issue was raised in the defendant's motion for summary judgment (R. 170, 867-68) and was one of the bases of the district court's decision. R. 924-25.

**STANDARD OF REVIEW:** Same as for the First Issue.

3. Did the district court err when it dismissed Hillcrest's unjust enrichment claim?

**ISSUE PRESERVED BELOW:** This issue was raised in the defendant's motion for summary judgment (R. 174-76) and was one of the bases of the district court's decision. R. 929-30.

**STANDARD OF REVIEW:** Same as for the First Issue.

#### **DETERMINATIVE STATUTES AND RULES**

There are no such statutes or rules.

## STATEMENT OF THE CASE

In January 2002, UDOT purchased three parcels of land from a group of family trusts referred to here as the Horman Family Trusts. R. 921-22. The property was to be used for the Legacy Parkway Project. In November 2005, Hillcrest bought the Trusts' remaining property adjacent to the land purchased by UDOT. R. 923.

Hillcrest claimed that UDOT was contractually obligated to build a frontage road on a portion of the property purchased from the Trusts. On December 1, 2008, Hillcrest filed this action against UDOT. R. 1-69. Hillcrest alleged six causes of action, asking the court to either force UDOT to build the frontage road or award damages to Hillcrest for UDOT's failure to construct the road.<sup>1</sup>

UDOT filed a motion for summary judgment on August 3, 2010. R. 164-231, 866-77. The court granted UDOT's motion on March 8, 2011. R. 919-33. Hillcrest filed its notice of appeal on April 4, 2011. R. 935-52. Hillcrest has not challenged the dismissal of its fraudulent inducement and negligent misrepresentation claims.

## STATEMENT OF RELEVANT FACTS

The following is a verbatim restatement of the first fourteen of the sixteen paragraphs of undisputed facts as set out by the district court. R. 921-23.

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<sup>1</sup> The causes of action were for: breach of contract; declaratory judgment; specific performance; fraudulent inducement; negligent misrepresentation; and unjust enrichment. R. 919-20.



1. Sometime in the 1990's, UDOT announced plans for the construction of the Legacy Parkway Project.

2. In September 2001, following unsuccessful negotiations for the purchase of three (3) parcels of real property located west of Interstate 15 in Centerville, Utah for the Legacy Parkway Project, UDOT filed a condemnation action against the property's owners: the trustees of the Namroh Trust; the trustees of the Phares T. Horman Family Trust; the trustees of the SCV Horman Family Trust; and the trustees of the Theodore and Birdie Horman Family Trust (collectively, the "Horman Family Trusts").

3. Hillcrest was not a party to the condemnation action, and at the time of the condemnation action's filing, Hillcrest was not a record titleholder or lien holder of the Horman Family Trust's property, but had invested funds for the property's development as an industrial park.

4. As part of the initial negotiations and settlement negotiations regarding the purchase of the three (3) parcels, UDOT made representations to the Horman Family Trusts and Centerville City that its plans for the Legacy Parkway Project would include the construction of a frontage road on the property.

5. On November 8, 2001, UDOT made an offer to settle the condemnation action, which the Horman Family Trusts accepted.

6. In January 2002, pursuant to the condemnation action's settlement, UDOT and the Horman Family Trusts entered Right of Way Contracts for the purchase of the three (3) parcels.

7. The Right of Way Contracts each contain an integration clause at ¶5, which states: “The parties have here set out the whole of their agreement. The performance of this agreement constitutes the entire consideration for the grant of said tract of land and shall relieve [UDOT] of all further obligations or claims on that account, or on account of the location, grade and construction of the proposed highway.”

8. The Right of Way Contracts do not contain any reference to an obligation for UDOT to pay for and construct a frontage road on the property.

9. The Right of Way Contracts each contain reference at ¶6(A) to certain Warranty Deeds, which convey the three (3) parcels to UDOT.

10. The referenced Warranty Deeds for one (1) of the three (3) parcels states in the property’s legal description: “An undivided . . . interest in a parcel of land in fee for a frontage road incident to the construction of a freeway known as [the Legacy Parkway Project].”

11. UDOT paid the Horman Family Trusts the agreed purchase price for the three (3) parcels.

12. On November 21, 2005, Hillcrest entered a Real Estate Purchase Contract for the purchase of the Horman Family Trusts’ remaining property located adjacent to the three (3) parcels previously purchased by UDOT as part of the Legacy Parkway Project.

13. The Real Estate Purchase Contract contains the following recital at ¶4: “Whereas, [the Horman Family Trusts are] desirous of selling the Property at a

discounted price that properly reflects the difficulties [Hillcrest] will encounter in developing and selling the Property to independent third parties.”

14. Throughout 2006 and 2007, UDOT exchanged correspondence with Hillcrest and Centerville City regarding the construction of a frontage road on the property purchased as part of the Legacy Parkway Project. Ultimately the frontage road was removed from the plans for the Legacy Parkway Project and the frontage road was not constructed.

UDOT has agreed that Centerville City can build the frontage road after the necessary environmental clearances are obtained and an approved development plan is in place. R. 227-31.

### **SUMMARY OF ARGUMENT**

Hillcrest’s first three causes of action claim that UDOT breached its Right of Way Contract with the Horman Family Trusts. It is undisputed that UDOT paid the full contract price in exchange for receiving the three parcels of property. Hillcrest’s claims are based on its argument that the contract also required UDOT to build a frontage road. The integrated contract does not contain such a requirement. The unambiguous contract only required UDOT to “[p]ay cash in full to the grantor(s)” in exchange for warranty deeds to the three parcels of property. R. 181.

Hillcrest’s breach of contract claims arise from a contract between UDOT and the Horman Family Trusts. Hillcrest was not a party to the contract. Hillcrest was not in privity to a party to the contract. Hillcrest was not an identified third-party beneficiary of

that contract. The district court correctly held that Hillcrest did not have standing to sue UDOT for allegedly breaching the contract.

Hillcrest's sixth cause of action was for unjust enrichment. But a prerequisite of an unjust enrichment claim is the absence of an enforceable contract. Hillcrest has not denied that the Right of Way Contract is an enforceable contract. An unjust enrichment claim cannot be used to alter the contractual agreement because Hillcrest disagrees with the deal made by the Horman Family Trusts with UDOT.

Hillcrest's fourth and fifth causes of action sounded in tort. They were dismissed because Hillcrest failed to file a notice of claim as required by the Utah Governmental Immunity Act. R. 926-29. Hillcrest has not challenged the dismissal of these claims in its opening brief.

## **ARGUMENT**

### **I. UDOT DID NOT BREACH ITS CONTRACT WITH THE HORMAN FAMILY TRUSTS**

Hillcrest claims that UDOT had a contractual obligation owed to the Horman Family Trusts, and Hillcrest, to build a frontage road; that UDOT breached this duty and should be required to either built the road or pay damages. Appellant's Brief at 21-34.

The Right of Way Contract required UDOT to pay the Horman Family Trusts a total of \$1,933,905.00 in exchange for Warranty Deeds for the three parcels of land sought by UDOT. R. 181. The money was due upon UDOT taking possession of the property. The contract contained an integration clause.

5. The parties have here set out the whole of their agreement. The performance of this agreement constitutes the entire consideration for the grant of said tract of land and shall relieve the Utah Department of Transportation of all further obligations or claims on that account, or on account of the location, grade and construction of the proposed highway.

Id.

Nothing in the Right of Way Contract requires that UDOT build a frontage road. Indeed the integration clause expressly relieves UDOT of any further obligations or claims based on how it completed the proposed highway project. The only consideration mentioned is a sum of money. The construction of a frontage road by UDOT was not listed as part of the consideration to be received by the Horman Family Trusts.

“When a contract includes an integration clause, the contract is presumed to contain the whole agreement and parties may not rely on extrinsic evidence in attempting to prove that the contract is not integrated.” City of Grantsville v. Redev. Agency of Tooele City, 2010 UT 38, ¶24, 233 P.3d 461. Hillcrest does not claim that the contract was not integrated. Instead, Hillcrest claims the contract is facially ambiguous as to whether UDOT was obligated to build a frontage road.

In arguing that the contract is ambiguous, Hillcrest relies on Daines v. Vincent, 2008 UT 51, 190 P.3d 1269, and Ward v. Intermountain Farmers Associates, 907 P.2d 264 (Utah 1995). Each case permits the use of extrinsic evidence to give meaning to ambiguous terms, or to provide evidence that the parties gave a different meaning to a particular phrase or term. But neither case permits a party to alter the actual terms of the contract, or to add new terms, based on extrinsic evidence.

In articulating the Ward rule, we sought to establish a balanced, “better-reasoned” approach to an analysis of facial ambiguity that would allow judges to “consider the writing in the light of the surrounding circumstances.” Id. However, we did not intend that a judge allow surrounding circumstances to create ambiguity where the language of a contract would not otherwise permit. In other words, our statement that “[r]ational interpretation requires at least a preliminary consideration of all credible evidence,” id. (internal quotation marks omitted), does not create a preference for that evidence over the language of the contract. See Saleh v. Farmers Ins. Exch., 2006 UT 20, ¶ 17, 133 P.3d 428 (stating that alternative interpretations of contractual language must be supported by the usual and natural meaning of the language used). Thus, under Ward, a finding of ambiguity after a review of relevant, extrinsic evidence is appropriate only when “reasonably supported by the language of the contract.”

Daines, 2008 UT 51 at ¶27.

Hillcrest has not identified any term in the Right of Way Contract that it claims is ambiguous. Instead, Hillcrest argues that the mention of the warranty deeds for the three parcels of land in the contract creates an ambiguity. Namely, the deed related to one of the three parcels states that UDOT was being given the “parcel of land in fee for a frontage road incident to the construction of a freeway.” R. 185. Hillcrest claims this showed that part of the consideration to be provided to the Horman Family Trusts for the sale of their property was the construction of the frontage road. The Right of Way Contract does not mention any such consideration. The only mention of the deeds in the Contract is in the provision stating that UDOT would:

Pay Cash in full to the grantor(s) for the following:

Land as described in Warranty Deed No. 0067:173:A

Land as described in Warranty Deed No. 0067:173

Land as described in Warranty Deed No. 0067:173:C

R. 181, ¶6A.

The Warranty Deeds are referenced for the limited purpose of providing the legal description of the land being purchased by the Right of Way Contract. UDOT paid cash for the land described in the deeds. This was the only reference to the deeds in the contract.

This is not the kind of ambiguity that Daines and Ward considered.

While the Ward rule allows for the admission of extrinsic evidence to uncover ambiguity, a finding of ambiguity will prove to be the exception and not the rule. Our holding in Ward provides for instances, though rare, where contractual terms are subject to alternative interpretations based on usage. For instance, to an American, the term “boot” refers to something you wear on your foot, but a person from Britain or New Zealand might refer to a “boot” as the storage area in the back of a car - what Americans would refer to as a “trunk.” Likewise, in America, we get “braces” to straighten our teeth, whereas the British use them to hold up their pants. When contracting parties have a contrasting understanding of express terms due to usage, the Ward rule provides the court with the ability to “place itself in the same situation in which the parties found themselves at the time of contracting.” Ward, 907 P.2d at 268 (internal quotation marks omitted).

Daines, 2008 UT 51 at ¶30 n.5.

Hillcrest asks this Court to add a new provision to the Right of Way Contract, not to address possible alternative interpretations of the terms used. The warranty deed in question only states the transportation purpose for which the property was being sought, a frontage road. UDOT can only condemn private property for transportation purposes.

See Utah Code Ann. § 72-5-103(1) (West 2004). Transportation purposes are defined by statute. See Utah Code Ann. § 72-5-102 (West 2004). The deeds for the other parcels of property expressly state they are being given to UDOT, in fee, for the purposes of building a freeway (R. 183) and “for a utility corridor incident to the construction of a

freeway.” R. 187. The recitation of the transportation purpose for which the parcels of property were sought does not affect the contract’s clear statement of the consideration to be paid.

None of the deeds contains a covenant running with the land that is enforceable by the Horman Family Trusts or Hillcrest. The deeds gave the land in fee to UDOT. There is no restrictive covenant that retains a right in the grantors to a frontage road or any other continuing right in the three parcels of property.

Where expressly stated, restrictive covenants are not favored in the law and are strictly construed in favor of the free and unrestricted use of property. Generally, *express* restrictive covenants are upheld only “where they are necessary for the protection of the business for the benefit of which the covenant was made and no greater restraint is imposed than is reasonably necessary to secure such protection.” Under certain extreme circumstances, a restrictive covenant may arise by implication from the language of a deed or lease or from the conduct of the parties. As a general rule, however, implied covenants are not favored in the law. In order for a restrictive covenant to be implied, the support for it must be “plain and unmistakable” or it must be “necessary” as a matter of law.

St. Benedict’s Dev. Co. v. St. Benedict’s Hosp., 811 P.2d 194, 198 (Utah 1991).

There is no “plain and unmistakable” support for the creation of a restrictive covenant in the warranty deed. UDOT obtained fee simple ownership of the parcels of property that it bought. The integration clause states that UDOT was relieved from all other obligations and claims related to the construction of the proposed highway project. If changing circumstances led to the decision not to build the freeway, that would not violate any right of the Horman Family Trusts or Hillcrest. If the purchased parcel was not used for a utility corridor it would not violate any right of the Horman Family Trusts



or Hillcrest. The same is true of the changed circumstances that led UDOT to alter its plans for the construction of the Legacy Parkway Project and leave the construction of the frontage road to Centerville City.

## **II. HILLCREST HAS NO STANDING TO SUE FOR BREACH OF UDOT'S CONTRACT WITH THE HORMAN FAMILY TRUSTS**

Hillcrest was not a party to the contract between the Horman Family Trusts and UDOT. Indeed, Hillcrest purchased the Trusts' remaining property "at a discounted price that properly reflects the difficulties [Hillcrest] will encounter in developing and selling the Property to independent third parties." R. 719 (Real Estate Purchase Contract). The district court properly held that Hillcrest did not have standing to enforce UDOT's contract with the Horman Family Trusts.

"It is axiomatic in the law of contract that a person not in privity cannot sue on a contract." Shire Dev. v. Frontier Inv., 799 P.2d 221, 223 (Utah App. 1990) (quoting Wing v. Martin, 688 P.2d 1172, 1177 (Idaho 1984)). Only the parties to a contract, and their intended beneficiaries, have standing to sue on a contract. Id. at 222-23. In Shire, joint venturers of a contracting party brought an action on the contract. Where the plaintiffs were neither parties to the contract, nor assignees of the contract they lacked standing to sue on the contract.

Hillcrest claims that it is the assignee of the Horman Family Trusts because of the Real Estate Purchase Contract. R. 719-24. But the contract does not claim to assign any rights in prior contracts to Hillcrest. "This court has made clear that assignments of

interest in property should be stated in the contract with specificity, including the usual words of assignment such as ‘assumes,’ ‘agrees to pay,’ ‘assigns,’ ‘transfers’ or ‘conveys.’” Shire Dev., 799 P.2d at 223. No such specific assignment of any rights in the Right of Way Contract was made.

Nor does Hillcrest’s claim that it was a beneficiary of one of the Horman Family Trusts (Appellant’s Brief at 36) make it a beneficiary of the Right of Way Contract. To be a third-party beneficiary of that contract, Hillcrest must prove that the contracting parties clearly intended to confer “a separate and distinct benefit on Hillcrest.” Wagner v. Clifton, 2002 UT 109, ¶11, 62 P.3d 440 (citation omitted). Such an intent must be found in the written contract. Id.

Hillcrest is not mentioned in the Right of Way Contract. No one is mentioned other than the parties. Nothing in the contract gave Hillcrest standing to bring this action.

### **III. THE DISTRICT COURT CORRECTLY DISMISSED HILLCREST’S UNJUST ENRICHMENT CLAIM**

Hillcrest seeks relief from UDOT under the Right of Way Contract that it made with the Horman Family Trusts. But Hillcrest also asks this Court to award damages for unjust enrichment. An unjust enrichment claim cannot be made where a valid contract exists. “[A] prerequisite for recovery on an unjust enrichment theory is the absence of an enforceable contract governing the rights and obligations of the parties relating to the conduct at issue.” Ashby v. Ashby, 2010 UT 7, ¶14, 227 P.3d 246 (unjust enrichment claims presuppose that no written or oral contract exists).

A claim of unjust enrichment cannot be used to enforce the Right of Way Contract. Unjust enrichment cannot be used to reform a contract. In Dalton v. Jerico Construction Co., 642 P.2d 748 (Utah 1982), a subcontractor claimed that his contract was unfair and that he was entitled to extra compensation. The subcontractor argued that the theory of unjust enrichment should be applied. The Court rejected this argument because the contract, and not the theory of unjust enrichment, controlled. Id. at 750. “[I]t is not for a court to rewrite a contract improvidently entered into at arm's length or to change the bargain indirectly on the basis of supposed equitable principles.” Id. Hillcrest cannot change the terms of the Right of Way Contract using the theory of unjust enrichment.

### CONCLUSION

The district court correctly held that: UDOT had not breached its contract with the Horman Family Trusts; Hillcrest did not have standing to bring this action; and, an unjust enrichment claim cannot be raised where an enforceable contract exists. The dismissal of this action should be affirmed on appeal.

Respectfully submitted this 14<sup>th</sup> day of November, 2011.



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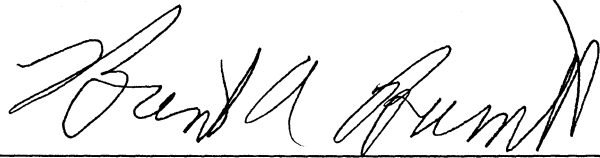
CERTIFICATE OF MAILING

This is to certify that I mailed, first class postage prepaid, two copies of the foregoing BRIEF OF DEFENDANT / APPELLEE to the following this 14<sup>th</sup> day of November, 2011:

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# **ADDENDUM “A”**

**FILED**

MAR - 8 2011

SECOND  
DISTRICT COURTIN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
FARMINGTON DEPARTMENT, STATE OF UTAHHILLCREST INVESTMENT  
COMPANY, LLC,

Plaintiff,

vs.

UTAH DEPARTMENT OF  
TRANSPORTATION,

Defendant.

RULING AND ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

Case No. 080700723

Judge John R. Morris

This matter is before the Court on Defendant's motion for summary judgment. The Court has reviewed the moving and responding papers, along with their supporting and supplemental materials, and the Court's case file. The Court also held a hearing on the matter on December 27, 2010. Having considered all of the arguments, being fully advised in the premises, and for the reasons set forth below, the Court GRANTS Defendant's motion.

**RELEVANT PROCEDURAL HISTORY**

Plaintiff Hillcrest Investment Company, LLC ("Hillcrest") initiated this action on December 1, 2008, filing a complaint against Defendant Utah Department of Transportation ("UDOT") that alleged six (6) causes of action: (1) breach of contract regarding UDOT's failure to construct a frontage road on certain real property purchased as part of the Legacy Parkway Project; (2) declaratory judgment regarding UDOT's obligation to construct a frontage road on certain real property purchased as part of the Legacy Parkway Project; (3) specific performance requiring UDOT to pay for and construct a frontage road on certain real property purchased as part of the Legacy Parkway Project; (4) fraudulent inducement pertaining to UDOT's representations that it would pay for and construct a frontage road on certain real property purchased as part of the Legacy Parkway Project; (5) negligent misrepresentation pertaining to UDOT's representations that it would pay for and construct a frontage road on certain real property purchased as part of the Legacy Parkway

Ruling and Order Granting Defendant's Motion for Summary Judgment  
Case No. 080700723

Project; and (6) unjust enrichment for the reduced purchase price and severance damages conferred on UDOT for its purchase of certain real property as part of the Legacy Parkway Project. On December 18, 2008, UDOT filed its answer to Hillcrest's complaint denying liability.

On August 3, 2010, UDOT filed a motion for summary judgment seeking the dismissal on each of Hillcrest's claims. Specifically, UDOT argues that Hillcrest's contract claims are barred as Hillcrest lacks any contractual privity with UDOT and because UDOT was not obligated to pay for and construct a frontage road as part of its purchase of the property for the Legacy Parkway Project, that Hillcrest's fraud and misrepresentation claims are barred by Hillcrest's failure to file a notice of claim in compliance with the Governmental Immunity Act of Utah, and that Hillcrest's unjust enrichment claim fails as a benefit was not conferred upon UDOT for which UDOT did not provide compensation.

Hillcrest filed its memorandum in opposition to UDOT's motion on September 10, 2010. In its opposition, Hillcrest argues that as a beneficial part-owner of the property at the time of UDOT's purchase, Hillcrest was in privity of contract with UDOT, and that language within the warranty deeds that conveyed the property to UDOT obligated UDOT to pay for and construct a frontage road on the property as part of the Legacy Parkway Project. Hillcrest further argues that it complied with the Governmental Immunity Act of Utah's notice of claim requirement as UDOT had actual notice of Hillcrest's claims. Finally, Hillcrest argues that equity necessitates recovery for the reduced purchase price and severance damages that UDOT received when it purchased the subject properties after representing that it would pay for and construct a frontage road on the property.

On September 29, 2010, UDOT filed a reply memorandum in support of its motion for summary judgment reasserting its prior arguments. That same day, UDOT also filed a request to submit its motion for decision.

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On December 27, 2010, the Court held a hearing on UDOT's motion for summary judgment.<sup>1</sup> At the hearing, the Court ruled that it would overlook the technical defects in the parties' pleadings<sup>2</sup> as the issues are relatively straightforward, neither party would be prejudiced, and because judicial economy favored a determination on the motion's merits rather than its mere refiling and rebriefing. Following argument by the parties, the Court took the matter under advisement. Accordingly, the Court finds that briefing on UDOT's motion for summary judgment is complete and that the matter is now ripe for determination.

**FINDINGS OF UNDISPUTED MATERIAL FACTS**

1. Sometime in the 1990's, UDOT announced plans for the construction of the Legacy Parkway Project.

2. In September 2001, following unsuccessful negotiations for the purchase of three (3) parcels of real property located west of Interstate 15 in Centerville, Utah for the Legacy Parkway Project, UDOT filed a condemnation action against the property's owners: the trustees of the Namroh Trust; the trustees of the Phares T. Horman Family Trust; the trustees of the SCV Horman Family Trust; and the trustees of the Theodore and Birdie Horman Family Trust (collectively, the "Horman Family Trusts").

3. Hillcrest was not a party to the condemnation action, and at the time of the condemnation action's filing, Hillcrest was not a record titleholder or lien holder of the

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<sup>1</sup> Also pending at the hearing were Hillcrest's motion to strike portions of UDOT's reply memorandum and Hillcrest's motion to reconsider the Court's order denying Hillcrest's *ex parte* motion to file overlength opposition memorandum.

<sup>2</sup> Hillcrest argued in its opposing memorandum that denial of UDOT's motion is appropriate due to UDOT's failure to separately number its statement of undisputed facts. *See* Utah R. Civ. P. 7(c)(3)(A). Additionally, the Court rejected Hillcrest's request to file an overlength opposition memorandum and Hillcrest failed to subsequently file an opposition memorandum of appropriate length. *See Id.* at 7(c)(2).



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Horman Family Trusts' property, but had invested funds for the property's development as an industrial park.

4. As part of the initial negotiations and settlement negotiations regarding the purchase of the three (3) parcels, UDOT made representations to the Horman Family Trusts and Centerville City that its plans for the Legacy Parkway Project would include the construction of a frontage road on the property.

5. On November 8, 2001, UDOT made an offer to settle the condemnation action, which the Horman Family Trusts accepted.

6. In January 2002, pursuant to the condemnation action's settlement, UDOT and the Horman Family Trusts entered Right of Way Contracts for the purchase of the three (3) parcels.

7. The Right of Way Contracts each contain an integration clause at ¶5, which states: "The parties have here set out the whole of their agreement. The performance of this agreement constitutes the entire consideration for the grant of said tract of land and shall relieve [UDOT] of all further obligations or claims on that account, or on account of the location, grade and construction of the proposed highway."

8. The Right of Way Contracts do not contain any reference to an obligation for UDOT to pay for and construct a frontage road on the property.

9. The Right of Way Contracts each contain reference at ¶6(A) to certain Warranty Deeds, which conveyed the three (3) parcels to UDOT.

10. The referenced Warranty Deeds for one (1) of the three (3) parcels states in the property's legal description: "An undivided ... interest in a parcel of land in fee for a frontage road incident to the construction of a freeway known as [the Legacy Parkway Project]."

11. UDOT paid the Horman Family Trusts the agreed purchase price for the three (3) parcels.

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12. On November 21, 2005, Hillcrest entered a Real Estate Purchase Contract for the purchase of the Horman Family Trusts' remaining property located adjacent to the three (3) parcels previously purchased by UDOT as part of the Legacy Parkway Project.

13. The Real Estate Purchase Contract contains the following recital at ¶4: "Whereas, [the Horman Family Trusts are] desirous of selling the Property at a discounted price that properly reflects the difficulties [Hillcrest] will encounter in developing and selling the Property to independent third parties."

14. Throughout 2006 and 2007, UDOT exchanged correspondence with Hillcrest and Centerville City regarding the construction of a frontage road on the property purchased as part of the Legacy Parkway Project. Ultimately the frontage road was removed from the plans for the Legacy Parkway Project and the frontage road was not constructed.

15. On October 28, 2008, Hillcrest delivered a letter to UDOT's executive director regarding Hillcrest's claims, which attached a draft of Hillcrest's complaint in this action; however, Hillcrest did not deliver a notice of its claims to the agent that UDOT has authorized to receive notices of claims against UDOT or the Office of the Attorney General prior to initiating this action.

16. Hillcrest commenced this action on December 1, 2008.

#### ANALYSIS

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). "Because disposition of a case on summary judgment denies the benefit of a trial on the merits, any doubt concerning questions of fact, including evidence and reasonable inferences drawn from the evidence, should be resolved in favor of the opposing party." *Beehive Brick Co. v. Robinson Brick Co.*, 780 P.2d 827, 831 (Utah 1989).

Here, UDOT seeks summary dismissal on each of Hillcrest's claims.

**Hillcrest's Contract Claims Against UDOT (Breach of Contract, Declaratory Judgment, and Specific Performance)**

In order to survive summary dismissal of its breach of contract claim and contract related claims, Hillcrest must show some evidence that a contract existed, that Hillcrest performed its obligations under the contract, that UDOT failed to perform under the contract, and that Hillcrest was damaged by UDOT's failure to perform. *See Bair v. Axiom Design, L.L.C.*, 2001 UT 20, ¶14, 20 P.3d 388. UDOT contends that Hillcrest was not party to, or in privity of, any contract with UDOT, and that even if a contract or privity exists, UDOT fully performed, as it was not obligated to construct a frontage road on the property purchased from the Horman Family Trusts as part of the Legacy Parkway Project.

"As a general rule, none is liable upon a contract except those who are parties to it." *Shire Dev. v. Frontier Invs.*, 799 P.2d 221, 223 (Utah Ct. App. 1990) (quoting *County of Clark v. Bonanza No. 1*, 615 P.2d 939, 943 (Nev. 1980)). "It is axiomatic in the law of contract that a person not in privity cannot sue on a contract." *Id.* (quoting *Wing v. Martin*, 688 P.2d 1172, 1177 (Idaho 1984)). Accordingly, "only parties to a contract, or intended beneficiaries thereof, have standing to sue [on a contract]." *Id.* at 222-23.<sup>3</sup>

Here, it is undisputed that Hillcrest was not a record titleholder of the properties UDOT purchased from the Horman Family Trusts for the Legacy Parkway Project, was not party to UDOT's condemnation action against the Horman Family Trusts, was not a party

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<sup>3</sup> "Third-party beneficiaries are persons who are recognized as having enforceable rights created in them by a contract to which they are not parties and for which they give no consideration." *SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc.*, 2001 UT 54, ¶47, 28 P.3d 669 (Internal quotations omitted). "The existence of third party beneficiary status is determined by examining a written contract." *Wagner v. Clifton*, 2002 UT 109, ¶11, 62 P.3d 440 (Internal quotations omitted). "The written contract must show that the contracting parties clearly intended to confer a separate and distinct benefit upon the third party." *Id.* (Internal quotations omitted). "Indeed, [the Utah Supreme Court] has stated that it is not enough that the parties to the contract know, expect or even intend that others will benefit from the [contract] . . . . The contract must be undertaken for the plaintiff's direct benefit and the contract itself must affirmatively make this intention clear." *SME Indus., Inc.*, 2001 UT 54, ¶47 (Internal quotations omitted).

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to the Right of Way Contracts between UDOT and the Horman Family Trusts, and did not purchase the Horman Family Trusts' remaining adjacent property until several years after UDOT and the Horman Family Trusts entered the Right of Way Contracts. Additionally, the clear and unambiguous language within the Right of Way Contracts and Warranty Deeds conveying the purchased property from the Horman Family Trusts to UDOT contain no reference to Hillcrest or any other potential third-party beneficiary. Accordingly, given these facts and the plain language of the Right of Way Contracts and Warranty Deeds, the Court must conclude as a matter of law that Hillcrest does not have standing to sue UDOT on its contract claims, as Hillcrest was not a party to, or in privity of, UDOT's contracts with the Horman Family Trusts.<sup>4</sup>

Moreover, even if Hillcrest was a party to, or in privity of, UDOT's contracts with the Horman Family Trusts, the Court finds that UDOT was not obligated to pay for and construct a frontage road on the property purchased from the Horman Family Trusts for the Legacy Parkway Project. Specifically, UDOT's Right of Way Contracts with the Horman Family Trusts contain a clear and unambiguous integration clause that indicates the document sets forth the parties' entire agreement. (*See* Right of Way Contracts, ¶5).<sup>5</sup> The Right of Way Contracts do not contain any reference to an affirmative or executory obligation of UDOT to pay for and construct a frontage road on the purchased property. (*See generally*

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<sup>4</sup> The fact that Hillcrest invested funds for the development of the Horman Family Trusts' property prior to UDOT's purchase of the property for the Legacy Parkway Project and subsequently purchased the Horman Family Trusts' remaining adjacent property is insufficient to demonstrate that Hillcrest was in privity of contract or an intended third-party beneficiary of the contracts between UDOT and the Horman Family Trusts. Further, Hillcrest has failed to present sufficient competent evidence that it was a beneficiary of, or successor entity to, the Horman Family Trusts, that the Horman Family Trusts have assigned to Hillcrest any claims they may have against UDOT, or any other evidence to establish a privity relationship with the Horman Family Trusts or UDOT.

<sup>5</sup> "An integrated agreement is defined as a writing ... constituting a final expression of one or more terms of an agreement. When a contract includes an integration clause, the contract is presumed to contain the whole agreement and parties may not rely on extrinsic evidence in attempting to prove that the contract is not integrated." *City of Grantsville v. Redev. Agency of Tooele City*, 2010 UT 38, ¶24, 233 P.3d 461 (Internal citations omitted).

*Id.*). Further, while the Right of Way Contracts specifically reference the Warranty Deeds that conveyed the purchased property from the Horman Family Trusts to UDOT, and the property's legal description within the Warranty Deeds refers to a general purpose "for a frontage road incident to the construction of a freeway known as [the Legacy Parkway Project,]" the Court finds that this language does not modify the parties' obligations set forth in the Right of Way Contracts and does not create an additional obligation on the part of UDOT to pay for and construct a frontage road on the purchased property. (*See Id.* at ¶6(A); *see also* Warranty Deeds). Rather, the plain language of the Warranty Deeds merely reflects that the purchased property may be used for a frontage road incident to the Legacy Parkway Project. (*See* Warranty Deeds). Accordingly, despite any representations made by UDOT during initial negotiations and settlement negotiations with the Horman Family Trusts, and subsequent correspondence with Hillcrest and Centerville City, the Court must conclude as a matter of law that UDOT was not contractually obligated to pay for and construct a frontage road on the property that it purchased from the Horman Family Trusts as part of the Legacy Parkway Project. The Court, therefore, GRANTS UDOT's motion for summary judgment as to Hillcrest's claims for breach of contract, declaratory judgment, and specific performance.

**Hillcrest's Fraudulent Inducement and Negligent Misrepresentation Claims**

Hillcrest alleges that UDOT fraudulently induced settlement of its condemnation action against the Horman Family Trusts by representing that it would pay for and construct a frontage road on the property purchased as part of the Legacy Parkway Project. Hillcrest further alleges that UDOT negligently misrepresented its intent and commitment to construct the frontage road as part of the Legacy Parkway Project.

"The Utah Governmental Immunity Act, establishes the parameters under which parties may bring suit against governmental entities for injuries." *Greene v. Utah Transit Auth.*, 2001 UT 109, ¶10, 37 P.3d 1156. "Utah law mandates strict compliance with the re-

quirements of the Immunity Act." *Id.* at ¶12. Relevant to this case, the Act provides that a notice of claim must be filed prior to the initiation of court action:

"Any person having a claim against a governmental entity, or against its employee for an act or omission occurring during the performance of the employee's duties, within the scope of employment, or under color of authority shall file a written notice of claim with the entity before maintaining an action, regardless or whether or not the function giving rise to the claim is characterized as governmental."

Utah Code Ann. § 63G-7-401(2) (Emphasis added). The Act further provides that "[t]he notice of claim shall be ... directed and delivered by hand or by mail according to the requirements of Section 68-3-8.5 to the office of: ... (E) the attorney general, when the claim is against the state; ... or (G) the agent authorized by a governmental entity to receive the notice of claim by the governmental entity under Subsection (5)(e)." *Id.* at § 63G-7-401(3)(b)(ii)(E) & (G).<sup>6</sup>

"The primary purpose of a notice of claim requirement is to afford the responsible public authorities an opportunity to pursue a proper and timely investigation of the merits of a claim and to arrive at a timely settlement, if appropriate, thereby avoiding the expenditure of public revenue for costly and unnecessary litigation." *Brittain v. State by & through Utah Dep't of Employment Sec.*, 882 P.2d 666, 671 (Utah Ct. App. 1994) (quoting *Stahl v. Utah Transit Auth.*, 618 P.2d 480, 482 (Utah 1980)). "Furthermore, filing notice of claim tends to minimize the difficulties that may arise due to changes in administrations... [and] protects against the passage of time obscuring memory and distorting a plaintiff's recollection of the events which are at the heart of the claim." *Id.* (Internal citations omitted). Accordingly, "the [Utah] supreme court has held the statutory notice requirement is a jurisdictional re-

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<sup>6</sup> Pursuant to Utah Code Ann. § 63G-7-401(5)(a) and (e): "Each governmental entity subject to suit under [the Governmental Immunity Act of Utah] shall file a statement with the Division of Corporations and Commercial Code within the Department of Commerce ... [and] may, in its statement, identify an agent authorized by the entity to accept notices of claim on its behalf." Utah Code Ann. § 63G-7-401(5)(a) & (e). UDOT has identified Shelley Exeter as its authorized agent to accept notices of claim on its behalf.

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quirement and a precondition to suit." *Lamarr v. Utah State Dep't of Transp.*, 828 P.2d 535, 540 (Utah Ct. App. 1992) (citing *Madsen v. Borthick*, 769 P.2d 245, 250 (Utah 1988)).

Here, it is undisputed that Hillcrest did not deliver a notice of its claims against UDOT to the Office of the Attorney General or the agent that UDOT has authorized to receive notices of claim prior to initiating this action. Further, while UDOT had actual notice of Hillcrest's claims prior to the filing of Hillcrest's complaint by virtue of the October 28, 2008 letter Hillcrest delivered to UDOT's executive director, "the [Utah] supreme court has indicated that actual notice cannot cure a failure to comply with the notice provisions of the Governmental Immunity Act." *Lamarr*, 828 P.2d at 541 (citing *Varoz v. Sevey*, 506 P.2d 435, 436 (Utah 1973)). Accordingly, the Court must conclude that it is without jurisdiction to hear Hillcrest's fraudulent inducement and negligent misrepresentation claims against UDOT.

Additionally, even if Hillcrest had strictly complied with the notice of claim requirement of the Governmental Immunity Act of Utah, Hillcrest's claims for fraudulent inducement and negligent misrepresentation are fundamentally flawed. Specifically, Hillcrest's complaint alleges that it sold property to UDOT at a reduced cost based upon UDOT's representations that it would pay for and construct a frontage road across the purchased property as part of the Legacy Parkway Project. (See Complaint, ¶¶45-60). However, Hillcrest did not convey any property to UDOT to support these allegations. Rather, the undisputed facts show that Hillcrest was not a record titleholder of the property that UDOT purchased from the Horman Family Trusts and was not a party to UDOT's condemnation action against the Horman Family Trusts.<sup>7</sup> Moreover, the Court has found that Hillcrest was not

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<sup>7</sup> Indeed, the undisputed facts demonstrate that Hillcrest purchased the Horman Family Trusts' remaining adjacent property several years after UDOT purchased the property for the Legacy Parkway Project from the Horman Family Trusts. (See Real Estate Purchase Contract). At the time of this purchase, it was uncertain whether a frontage road would be included in UDOT's plans for the Legacy Parkway Project. In fact, Hillcrest purchased the remaining adjacent property at a discounted price, which reflected the difficulties Hillcrest would encounter in developing and selling the property to independent third parties. (See *Id.* at Recital ¶4).

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party to the Right of Way Contracts between UDOT and the Horman Family Trusts, was not in privity of contract or an intended third-party beneficiary of the Right of Way Contracts, and that Hillcrest has not presented sufficient evidence to establish that it was a beneficiary of, or successor entity to, the Horman Family Trusts, or that the Horman Family Trusts assigned Hillcrest any claims that they may have against UDOT. Accordingly, given the undisputed facts in this matter and the Court's rulings on Hillcrest's contract related claims, the Court must conclude as a matter of law that Hillcrest cannot succeed on its fraudulent inducement and negligent misrepresentation claims. The Court, therefore, GRANTS UDOT's motion for summary judgment as to Hillcrest's claims for fraudulent inducement and negligent misrepresentation.

**Hillcrest's Unjust Enrichment Claim**

Hillcrest complains that UDOT has been unjustly enriched and that equity necessitates recovery for the reduced purchase price and severance damages that UDOT received when it purchased the property from the Horman Family Trusts upon representing that it would pay for and construct a frontage road on the property.

"A claim for unjust enrichment is an action brought in restitution, and a prerequisite for recovery on an unjust enrichment theory is the absence of an enforceable contract governing the rights and obligations of the parties relating to the conduct at issue." *Ashby v. Ashby*, 2010 UT 7, ¶14, 227 P.3d 246. "If there were a contract, it, rather than the law of restitution, would govern the parties' rights and determine their recovery." *Id.* "Recovery under [unjust enrichment] presupposes that no enforceable written or oral contract exists." *Id.* (Internal quotations omitted).

Here, the Court has found that no enforceable contract exists between Hillcrest and UDOT. Nevertheless, to succeed on its claim for unjust enrichment, Hillcrest must establish three elements:

"First, there must be a benefit conferred by one person on another. Second the conferee must appreciate or have knowledge of the benefit. Third, there must be acceptance or retention by the conferee of the benefit under such circum-



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tances as to make it inequitable for the conferee to retain the benefit without payment of its value."

*Allen v. Hall*, 2006 UT 70, ¶26, 148 P.3d 939. It is undisputed that Hillcrest was never a record titleholder of the property UDOT purchased from the Horman Family Trusts as part of the Legacy Parkway Project, and that Hillcrest did not purchase the Horman Family Trusts' remaining adjacent property until several years after UDOT and the Horman Family Trusts entered the Right of Way Contracts. Under these facts, the Court cannot find that Hillcrest ever conferred a benefit on UDOT to support Hillcrest's claim for unjust enrichment. Additionally, Hillcrest has presented no evidence to establish that it was a beneficiary of, or successor entity to, the Horman Family Trusts, or that the Horman Family Trusts have assigned to Hillcrest any claims they may have against UDOT. Regardless, however, the Court has found that the Right of Way Contracts between UDOT and the Horman Family Trusts do not contain any affirmative or executory obligation for UDOT to pay for and construct a frontage road on the property purchased as part of the Legacy Parkway Project. Accordingly, the Court must conclude as a matter of law that UDOT did not receive a benefit for which it did not compensate the Horman Family Trusts upon its performance under the Right of Way Contracts. The Court, therefore, GRANTS UDOT's motion for summary judgment as to Hillcrest's unjust enrichment claim.

**CONCLUSIONS OF LAW**

1. The Right of Way Contracts between UDOT and the Horman Family Trusts are fully integrated and contain the parties' entire agreement.
2. The Right of Way Contracts and Warranty Deeds between UDOT and the Horman Family Trusts are clear and unambiguous.
3. Hillcrest does not have standing to assert its contract claims against UDOT, as Hillcrest was not a party to any contract with UDOT, and was not in privity of contract or an intended third-party beneficiary of UDOT's Right of Way Contracts with the Horman Family Trusts.

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4. UDOT's Right of Way Contracts with the Horman Family Trusts do not contain any obligation, executory or otherwise, requiring UDOT to pay for and construct a frontage road on the property purchased as part of the Legacy Parkway Project.

5. The Warranty Deeds conveying the purchased property for the Legacy Parkway Project from the Horman Family Trusts to UDOT do not modify UDOT's obligations under the Right of Way Contracts, and do not create an additional obligation for UDOT to pay for and construct a frontage road on the property.

6. UDOT performed its obligations under the Right of Way Contracts with the Horman Family Trusts.

7. The Court lacks jurisdiction over Hillcrest's fraudulent inducement and negligent misrepresentation claims against UDOT, as Hillcrest failed to deliver the requisite notice of claim in accordance with the Governmental Immunity Act of Utah.

8. UDOT's actual notice of Hillcrest's claims prior to the filing of Hillcrest's complaint does not cure Hillcrest's failure to comply with the notice of claim requirement of the Governmental Immunity Act of Utah.

9. Even if Hillcrest had complied with the Governmental Immunity Act of Utah's notice of claim requirement, Hillcrest was not the record titleholder of, and could not convey, the property UDOT purchased from the Horman Family Trusts as part of the Legacy Parkway Project, and therefore, Hillcrest cannot establish the necessary elements to support its claims of fraudulent inducement and negligent misrepresentation.

10. Hillcrest did not confer a benefit upon UDOT for purposes of Hillcrest's unjust enrichment claim, and UDOT did not unjustly receive a benefit from the Horman Family Trusts, as UDOT was not obligated to pay for and construct a frontage road on the property purchased as part of the Legacy Parkway Project.

**ORDER**

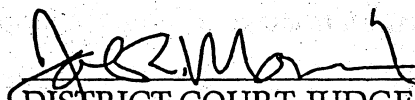
Based on the foregoing, IT IS HEREBY ORDERED that UDOT's motion for summary judgment is GRANTED.

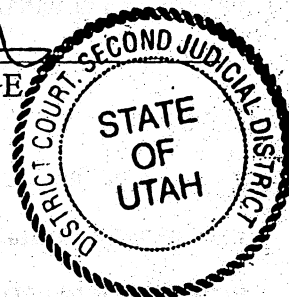
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IT IS FURTHER HEREBY ORDERED that as a consequence of this ruling, all other pending motions are rendered moot.

This Ruling shall also constitute the Court's Order in this matter; no separate order is necessary or required.

Date signed: 3/7/11

  
DISTRICT COURT JUDGE  
JOHN R. MORRIS



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CERTIFICATE OF MAILING

I hereby certify that on the 8<sup>th</sup> day of march, 2011, I sent a true and correct copy of the foregoing **Ruling and Order** to the parties as follows:

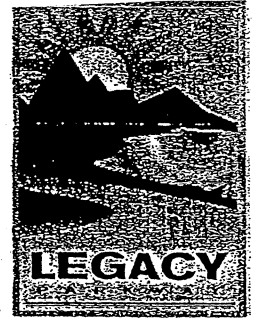
Randy S. Hunter  
OFFICE OF THE UTAH ATTORNEY GENERAL  
160 East 300 South, 5<sup>th</sup> Floor  
P.O. Box 140857  
Salt Lake City, Utah 84114-0857

Thomas L. Van Wyngarden  
Adelaide Maudsley  
CHAPMAN AND CUTLER, LLP  
201 South Main Street, Suite 2000  
Salt Lake City, Utah 84111

  
Deputy Court Clerk

# **ADDENDUM “B”**

# RIGHT OF WAY CONTRACT



th. No. 70004 PPMS Pin No. 1793 Region No. 2 Project No. SP-0067(1)0

ect Name: Legacy Parkway - So. Davis Co. Parcel No. 173:A, 173, 173:C

te: The Namroh Trust, The Phares T Horman Family Trust, The SCV Horman Family Trust,  
The Theodore & Birdie Horman Family Trust Grantor(s) of

See Below Warranty deed(s) for a tract of land for transportation purposes over property described in said deed will be delivered to 1 J. West, SR/WA Acquisition Agent, as escrow agent, with instructions to deliver said deed(s) to the Utah Department of Transportation, 48420, 4501 South 2700 West, 4<sup>th</sup> Floor South, Salt Lake City, Utah 84114-8420, upon the delivery to said escrow agent, for the undersigned or(s) of a copy of this agreement, properly executed and approved by the Utah Department of Transportation.

IN CONSIDERATION of the foregoing, and other considerations hereinafter set forth it is mutually agreed by the parties hereto as follows:

1. Said tract of land is granted free and clear. All liens and encumbrances and partial releases for said tract of land shall be furnished to the Utah Department of Transportation, and the total amount in cash settlement shall be paid to the grantor except such portion thereof, as the grantor may assign to a lien holder in obtaining the partial releases.
2. All work done under this agreement, shall conform to all applicable building, fire and sanitary laws, ordinances and regulations relating to such work, and shall be done in a good and workmanlike manner.
3. All structures, improvements, or other facilities when removed and relocated or reconstructed, shall be left in as good condition as found.
4. No work, improvement, alteration or maintenance will be done or made other than or in addition to that provided in this agreement.
5. The parties have here set out the whole of their agreement. The performance of this agreement constitutes the entire consideration for the grant of said tract of land and shall relieve the Utah Department of Transportation of all further obligations or claims on that account, or on account of the location, grade and construction of the proposed highway.
6. If and when possession is taken by it of the said tract of land(s) hereinabove referred to, the Utah Department of Transportation shall comply with the following:

nam R. Horman, Rhys Horman & Kenneth Erickson, trustees of the NAMROH TRUST, (an und. 23.445410% int.)

as T. Horman, Jr., Kevin Ririe & Kenneth L. Spurlock, trustees of the PHARES T. HORMAN FAMILY TRUST (an und. 23.079810%)

es H. Horman, trustee of the SCV HORMAN FAMILY TRUST; (an und. 30.139510%)

is Horman, trustee of the THEODORE AND BIRDIE HORMAN FAMILY TRUST; (an und. 33.5270% int.)

y Cash in full to the grantor(s) for the following:

Land as described in Warranty Deed No. 0067:173:A

Land as described in Warranty Deed No. 0067:173

Land as described in Warranty Deed No. 0067:173:C

\$1,933,905.00

7. Grantor agrees to pay any and all taxes assessed against this property to date of closing. However, all taxes assessed against the Property to the date of closing shall not include any rollback taxes or any fee in lieu of payments that may be required, as described Total Cash Settlement \$1,933,905.00 Code Ann. § 59-2-511. All rollback taxes and any one-time in lieu of payments shall be paid full solely by the Utah Department of Transportation.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written. It is understood that this is only an option until approved by the Utah Department of Transportation.

## UTAH DEPARTMENT OF TRANSPORTATION

led for Approval

Right of Way Agent  
[Signature] Date 01/16/02  
 of Way Division

GRANTOR(S)

William R. Horman  
Rhys Horman  
Kenneth R. Erickson, Trustee  
Phares Horman  
Ken Spurlock

[Signature]  
Dennis Horman

UTAH DEPARTMENT OF TRANSPORTATION

2002

APPROVAL OF CONSTRUCTION ITEMS:

Rv