

2001

John Groberg and Shauna Groberg, Plaintiffs/
Appellants/Cross-Appellees vs. Housing
Opportunities, Inc., a Utah nonprofit corporation,
Margaret M. Dahle, John L. Krueger, and Granite
Credit Union, a Utah corporation, Defendants/
Appellees/Cross-Appellant : Brief of Appellee

Utah Court of Appeals

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

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

Bryan H. Booth; Kirton & McConkie; Attorney for Plaintiff.

Rodney Gilmore; J. Bruce Reading; Scalley & Reading; Attorneys for Appellee.

Recommended Citation

Brief of Appellee, *Groberg v. Housing Opportunities, Inc.*, No. 20010754 (Utah Court of Appeals, 2001).
https://digitalcommons.law.byu.edu/byu_ca2/3461

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

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOHN GROBERG and SHAUNA
GROBERG,

Plaintiffs/Appellants/Cross-
Appellees,

vs.

HOUSING OPPORTUNITIES, INC., a Utah
nonprofit corporation, MARGARET M.
DAHLE, JOHN L. KRUEGER, and
GRANITE CREDIT UNION, a Utah
corporation,

Defendants/Appellees/Cross-
Appellant,

Case No. 20010754 CA

Civil No. 990912183
Third District Court, Salt Lake County

ORAL ARGUMENT AND PUBLISHED
DECISION REQUESTED

BRIEF OF APPELLEE/CROSS APPELLANT HOUSING OPPORTUNITIES,
INC.

Appeal from a Final Order of the Third Judicial District Court,
in and for Salt Lake County, Judge Tyrone E. Medley

Bryan H. Booth (#7471)
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, Utah 84145-0120
*Attorney for Plaintiffs/Appellants/Cross-
Appellees*

Rodney Gilmore (#8425)
P.O. Box 1971
Layton, UT 84041
*Attorney for Appellees Margaret M. Dahle
and John L. Krueger*

J. Bruce Reading (#2700)
Scalley & Reading, P.C.
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
*Attorney for Defendant/Appellee/Cross-
Appellant Housing Opportunities, Inc.*

IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOHN GROBERG and SHAUNA
GROBERG,

Plaintiffs/Appellants/Cross-
Appellants,

vs.

HOUSING OPPORTUNITIES, INC., a Utah
nonprofit corporation, MARGARET M.
DAHLE, JOHN L. KRUEGER, and
GRANITE CREDIT UNION, a Utah
corporation,

Defendants/Appellees/Cross-
Appellees,

Case No. 20010754 CA

Civil No. 990912183
Third District Court, Salt Lake County

ORAL ARGUMENT AND PUBLISHED
DECISION REQUESTED

**BRIEF OF APPELLEE/CROSS APPELLANT HOUSING OPPORTUNITIES,
INC.**

Appeal from a Final Order of the Third Judicial District Court,
in and for Salt Lake County, Judge Tyrone E. Medley

Bryan H. Booth (#7471)
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, Utah 84145-0120
*Attorney for Plaintiffs/Appellants/Cross-
Appellees*

Rodney Gilmore (#8425)
P.O. Box 1971
Layton, UT 84041
*Attorney for Appellees Margaret M. Dahle
and John L. Krueger*

J. Bruce Reading (#2700)
Scalley & Reading, P.C.
261 East 300 South, Suite 200
Salt Lake City, Utah 84111
*Attorney for Defendant/Appellee/Cross-
Appellants Housing Opportunities, Inc.*

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iv
STATEMENT OF JURISDICTION	1
STATEMENT OF ISSUES PRESENTED BY APPELLANTS AND APPLICABLE STANDARDS OF REVIEW	1
STATEMENT OF ISSUE RAISED BY CROSS-APPELLANT HOUSING OPPORTUNITIES INC. AND APPLICABLE STANDARD OF REVIEW	2
DETERMINATIVE STATUTORY PROVISIONS	4
STATEMENT OF THE CASE	5
A. Nature of the Case	5
B. Course of Proceedings	7
C. Disposition of the Case	8
D. Statement of Facts	10
SUMMARY OF THE ARGUMENTS	14
ARGUMENT	16
I. BECAUSE THE GROBERGS ALONE DECIDED TO PERFORM LABOR ON LOT 13, AND BECAUSE THEY MADE IMPROVEMENTS OF THEIR OWN CHOOSING, THEY ARE NOT ENTITLED TO A MECHANIC’S LIEN	16
A. Because the Grobergs Have Failed to Appeal the Trial Court’s Finding of Fact that HOI Did Not Request the Work, the Grobergs Are Not Entitled to a Mechanic’s Lien for Labor or Materials	19

B.	Because There Was No Express or Implied Contract for the Grobergs' Labor, They Cannot Assert a Mechanic's Lien Against HOI	22
1.	The REPC Did Not Expressly Require the Grobergs to Do Their Own Labor	22
2.	In Making Expensive Improvements of Their Own Choosing, the Grobergs Went Well Beyond the "Rehabilitation" of the House Required by the REPC, and Caused the Project to Exceed the Budgetary Constraints of the McClelland Contract	24
3.	HOI Did Not Have an Implied Contract With the Grobergs	26
C.	The Cases Cited by the Grobergs in Support of Their Mechanic's Lien Claim are Clearly Distinguishable From the Case at Bar	28
D.	Because the Grobergs Were Not Licensed Contractors at the Time They Performed the Work, They are Statutorily Barred From Bringing an Action Under Either the Mechanic's Lien Statute or Under An Unjust Enrichment Cause of Action	32
II.	BECAUSE THE GROBERGS NEVER TENDERED \$138,000, AND BECAUSE HOI NEVER AGREED TO SELL THE HOUSE ON LOT 13 TO THE GROBERGS FOR \$138,000, HOI DID NOT BREACH A CONTRACT TO SELL THE PROPERTY FOR THAT PRICE	35
III.	BECAUSE THE GROBERGS PROVIDED NO BENEFIT TO HOI, THEY CANNOT RECOVER ON A CLAIM OF UNJUST ENRICHMENT . . .	38
A.	The Grobergs Failed to Show That They Provided Any Benefit to HOI	38
B.	The Grobergs' Reliance on <i>Jeffs v. Stubbs</i> Is Misplaced	40
C.	The Trial Court's Decision on the Unjust Enrichment Claim is Entitled to Deference Due to the Trial Court's Ability to Observe Non-Record Facts, and Due to the Complexity and Novelty of the Facts Under Review	41

IV.	THE DISTRICT COURT ERRED IN REFUSING TO AWARD HOI REASONABLE ATTORNEY FEES FOR PREVAILING ON THE GROBERGS' BREACH OF CONTRACT AND UNJUST ENRICHMENT CLAIMS	42
CONCLUSION		44
CERTIFICATE OF SERVICE		45
APPENDIX		Tab A

TABLE OF AUTHORITIES

<i>A.K.&R. Whipple Plumbing and Heating v. Aspen Construction</i> , 977 P.2d 518 (Utah Ct. App. 1999)	33, 38
<i>A&M Enterprises, Inc. v. Hunziker</i> , 482 P.2d 700 (Utah 1971)	17, 19, 32
<i>Bailey v. Call</i> , 767 P.2d 138 (Utah Ct. App. 1989)	1, 16, 19, 22, 26, 28, 30-31
<i>Barton Enterprises v. Tsern</i> , 928 P.2d 368 (Utah 1996)	36-37
<i>Belnap v. Condon</i> , 97 P. 111 (Utah 1908)	17, 18, 19, 32
<i>Bill Nay & Sons Excavating v. Neeley</i> , 677 P.2d 1120 (Utah 1984)	36
<i>Davies v. Olson</i> , 746 P.2d 264 (Utah Ct. App. 1987)	26-28, 38, 39
<i>Davis v. Barrett</i> , 467 P.2d 603 (Utah 1970)	19, 28-30
<i>Dejavue, Inc. v. U.S. Energy Corp.</i> , 993 P.2d 222 (Utah Ct. App. 1999)	42-43
<i>Dipoma v. Mcphie</i> , 29 P.3d 1225 (Utah 2001)	36
<i>Dugger v. Cox</i> , 564 P.2d 300 (Utah 1977)	1, 17, 22, 26
<i>Durant v. Independent Sch. Dist. No. 17</i> , 990 F.2d 560 (10 th Cir. 1993)	43
<i>ELM, Inc. v. M.T. Enters., Inc.</i> , 968 P.2d 861 (Utah Ct. App. 1998)	20
<i>First Inv. Co. v. Andersen</i> , 621 P.2d 683 (Utah 1980)	27, 39
<i>Hargreaves v. Burton</i> , 206 P. 262 (Utah 1922)	37
<i>In Re Davidson Lumber</i> , 164 B.R. 773 (D. Utah 1993)	30
<i>Interiors Contracting, Inc. v. Navalco</i> , 648 P.2d 1382 (Utah 1982)	17, 22, 26
<i>Jeffs v. Stubbs</i> , 970 P.2d 1234 (Utah 1998)	2, 40-42

<i>Kurth v. Wiarda</i> , 991 P.2d 1113 (Utah Ct. App. 1999)	42-44
<i>Pingree v. Continental Group of Utah, Inc.</i> , 558 P.2d 1317 (Utah 1976)	36
<i>Prows v. Hawley</i> , 271 P. 31 (1928)	29-30
<i>SLW/Utah, L.C., v. Griffiths</i> , 967 P. 2d 534 (Utah Ct. App. 1998)	24
<i>State v. Thurman</i> , 846 P.2d 1256 (Utah 1993)	1
<i>Valcarce v. Bitters</i> , 12 Utah 2d 61, 362 P.2d 427 (1961)	36
<i>Valcarce v. Fitzgerald</i> , 961 P.2d 305 (Utah 1998)	3, 20
<i>Wadsworth Constr'n v. City of St. George</i> , 865 P.2d 1373 (Utah Ct. App. 1993)	1
Utah Code Ann. § 38-1-3	4, 16
Utah Code Ann. § 38-1-18	4, 44
Utah Code Ann. § 58-55-301	32-33
Utah Code Ann. § 58-55-604	4, 32-34
Utah Code Ann. § 78-2a-3	1
Utah Code Ann. § 78-27-56	10
Utah Code Ann. § 78-27-56.5	4
<i>American Heritage Dictionary of the English Language</i> , Fourth Ed. 2000	24
1 Joseph M. Perillo et al., <i>Corbin on Contracts</i> § 4.3, at 569 (rev. ed. 1993)	36
53 Am. Jur. 2d, <i>Mechanics' Liens</i> 132	17

STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this appeal, as transferred from the Utah Supreme Court, pursuant to Utah Code Ann. § 78-2a-3(2)(j).

STATEMENT OF ISSUES PRESENTED BY APPELLANTS AND APPLICABLE STANDARDS OF REVIEW

1. **Issue:** Whether the district court correctly found that HOI had not requested the Grobergs' work and that the Grobergs were therefore not entitled to assert a mechanic's lien against HOI.

Standard of Review: Entitlement to a mechanic's lien is a mixed question of law and fact. *See Bailey v. Call*, 767 P.2d 138, 139-40 (Utah Ct. App 1989) ("So long as it can be found that the [contractor] performed the work at the instance of [the owner] under an express or implied contract . . . the lien is valid. "*Dugger v. Cox*, 564 P.2d 300, 302 (Utah 1977). In determining whether a contract or implied contract exists, the trial court "first finds the facts to which the law will be applied, and then it applies the law to those facts to reach a conclusion of law." *Wadsworth Constr'n v. City of St. George*, 865 P.2d 1373 (Utah Ct. App. 1993) (*citing State v. Thurman*, 846 P.2d 1256, 1270 n. 11 (Utah 1993)).

2. **Issue:** Whether the district court correctly ruled that the Grobergs had failed to demonstrate that HOI breached a contract for the sale of real property to the Grobergs.

Standard of Review: The Grobergs correctly assert that the issue of whether a contract has been breached is a matter of law, reviewed for correctness, insofar as the facts

regarding the conduct in question are undisputed; and that the underlying factual findings upon which the court's legal conclusions are based should be reversed only if they are clearly erroneous.

3. Issue: Whether the district court correctly ruled that the Grobergs had failed to fulfill the elements required to prevail on a contract implied in law.

Standard of Review: While the Grobergs correctly identify this issue as a mixed question of law and fact, the Utah Supreme Court has held that “[u]njust enrichment law developed to remedy injustice when other areas of the law could not. Unjust enrichment must remain a flexible and workable doctrine. Therefore, we afford broad discretion to the trial court in its application of unjust enrichment law to the facts.” *See Jeffs v. Stubbs*, 970 P.2d 1234, 1245 (Utah 1998). Among the factors to be considered in favor of granting broad discretion to the trial court in the application of law to fact are: (1) the level of factual complexity; (2) the novelty of the factual situation; and (3) the trial judge's reliance on non-record facts such as the demeanor of witnesses. *See Id.* at 1244.

STATEMENT OF ISSUE RAISED BY CROSS-APPELLANT HOUSING OPPORTUNITIES, INC. AND APPLICABLE STANDARD OF REVIEW

Cross-Appellant Housing Opportunities, Inc. (“HOI”) asserts the following issue on cross-appeal:

Issue: Whether the district court erred in concluding that HOI was not entitled to attorney fees, even though HOI was the prevailing party on the Grobergs' breach of contract, unjust enrichment, and mechanic's lien claims.

a. **Standard of Review:** Whether attorney fees are recoverable is a question of law reviewed for correctness. *See Valcarce v. Fitzgerald*, 961 P.2d 305, 315 (Utah 1998).

b. **Preservation of the Issue:** This issue was raised by the Affidavit of Attorney's Fees and Costs (R. at 304-312) filed by HOI's counsel. The Grobergs' counsel filed an Objection to the Affidavit (R. at 332-39), and HOI's counsel filed a Reply to the Grobergs' Objection (R. at 340-43). In their Objection to HOI's Affidavit of Attorney's Fees and Costs, the Grobergs argued that HOI could not recover attorney fees for successfully defending against the Grobergs' breach of contract or unjust enrichment claims (R. at 335), and argued that HOI could only recover for successfully defending the mechanic's lien claim. HOI's counsel filed a Reply to the Grobergs' Objection, and argued that because the Grobergs' contract claim and unjust enrichment claim involved a common core of facts and related legal theories, HOI was entitled to attorney fees for prevailing on both claims (R. at 340-43). The District Court agreed with the Grobergs and concluded that "HOI is entitled to recover reasonable attorney's fees for defending against the Grobergs' mechanic's lien claim and the Grobergs are entitled to recover reasonable attorney's fees for defending against HOI's Counterclaim." (R. at 347.) The District Court concluded that, because the attorney fees and costs to which each party was entitled was substantially the same, no attorney fees should be awarded to either party. (R. at 348.)

DETERMINATIVE STATUTORY PROVISIONS

Utah Code Ann. § 38-1-3

Contractors, subcontractors, and all persons performing any services or furnishing or renting any materials or equipment used in the construction, alteration, or improvement of any building or structure or improvement to any premises in any manner and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other like professional service, or bestowed labor, shall have a lien upon the property upon or concerning which they have rendered service, performed labor, or furnished or rented materials or equipment for the value of the service rendered, labor performed, or materials or equipment furnished or rented by each respectively, whether at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise except as the lien is barred under Section 38-11-107 of the Residence Lien Restriction and Lien Recovery Fund Act. This lien shall attach only to such interest as the owner may have in the property.

Utah Code Ann. § 38-1-18

(1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action.

Utah Code Ann. § 58-55-604

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

Utah Code Ann. § 78-27-56.5

A court may award costs and attorney's fees to either party that prevails in a civil action based upon any promissory note, written contract, or other writing executed after April 28, 1986, when the provisions of the promissory

note, written contract, or other writing allow at least one party to recover attorney's fees.

STATEMENT OF THE CASE

A. The Nature of the Case

This case arose from a July, 1996 real estate purchase contract (“REPC”) under which HOI would purchase a house owned by the Grobergs (the “Groberg Property”) for \$87,500, and the Grobergs would purchase a house from HOI for an unspecified price. Under the REPC, HOI would provide the Grobergs with an existing house, which was to be moved to Lot 13 of a subdivision under development by HOI. The Grobergs would then pay for the rehabilitation of the house and pay for the associated costs using the equity they had in the Groberg Property. If the costs exceeded their equity, HOI would assist the Grobergs in obtaining a mortgage loan.

However, the Grobergs were given the option of keeping their original house if they were not satisfied with their new property on Lot 13. In consideration for this option and the assistance with obtaining a loan, the Grobergs were required to grant HOI a utility easement over the Groberg Property. If the Grobergs exercised their option to keep their original house, HOI’s utility easements would remain on the Groberg Property. The REPC specified that no closing would occur until the Grobergs had completed the rehabilitation work on Lot 13.

Accordingly, an existing house was moved to Lot 13 and the Grobergs selected and hired their own contractor, Matt McClellan, to perform the renovations. Because HOI had

not closed on the Groberg Property, the Grobergs needed financing to pay McClellan. HOI obtained limited, but adequate financing for McClellan's work from the Housing Authority of Salt Lake County, and began making progress payments as the work proceeded. The specifications and price of the renovation were determined by the Grobergs and McClellan, and memorialized in a Home Repair Contract. However, unbeknownst to HOI, the Grobergs began to install custom features in the house which were more expensive than those specified in the Home Repair Contract, causing renovation costs to exceed the available financing. Because the Grobergs planned on living in the house on Lot 13, they began paying for these custom features out of pocket and performing their own labor. HOI had neither approved these custom features nor requested the Grobergs' labor.

After McClellan had completed approximately 82% of the work, the Grobergs became dissatisfied with his work, fired him, and took over as general contractor on Lot 13. The Grobergs continued to draw on the financing HOI had obtained for Lot 13. After assuming control of Lot 13, they continued to install custom features in the house that were not part of the McClellan contract. The Grobergs did not expect any compensation from HOI for the custom work because they considered Lot 13 to be their own house and they expected to enjoy the benefits of such work.

In November of 1998, HOI sent the Grobergs a letter, for the first time specifying the price for Lot 13 would be based upon the appraised value of Lot 13 (\$138,000) plus additional development and administrative costs. The Grobergs did not respond to the

letter, but continued to work on Lot 13. Approximately eleven months later, after continued disagreement with HOI on the price, and after HOI paid to settle a mechanic's lien claim by McClellan for \$12,980, the Grobergs decided to exercise their option not to purchase Lot 13, and surrendered the property to HOI. Disappointed with their inability to enjoy the fruits of the labor they had volunteered on Lot 13, the Grobergs filed their own mechanic's lien against Lot 13. They later sued HOI, hoping to foreclose on the property and to recover for breach of contract or quantum meruit.

HOI subsequently determined that, after settling McClellan's mechanic's lien and paying commission and closing costs, it had spent \$176,735.28 on Lot 13. Because HOI was eventually able to sell Lot 13 for only \$149,000, HOI incurred a \$27,735.28 loss on the property.

B. Course of Proceedings

The Grobergs filed a notice of a mechanic's lien against Lot 13 in hopes of recovering the value of their work. They subsequently brought suit against HOI for foreclosure of the lien, breach of contract, and quantum meruit. (R. at 47–51.) HOI answered the Grobergs' Complaint and Counterclaimed for Breach of Contract, alleging that the Grobergs had added improvements exceeding 90% of the appraised value of Lot 13, and that as a consequence, HOI lost \$27,735.28 in the sale of Lot 13. (R. at 87–88.) In the alternative, HOI alleged that the Grobergs had breached the covenant of good faith and fair

dealing implied in the contract by overbuilding on Lot 13, and then refusing to purchase it at cost. (R. at 88–89.)

Trial was held on April 11 and 12, 2001. Judge Tyrone E. Medley concluded that, with the exception of the price for Lot 13, the REPC was an integrated contract. (R. at 318–319.) Judge Medley ultimately denied any relief to either party for all causes of action asserted in either the Grobergs’ Complaint or HOI’s Counterclaim.

C. Disposition of the Case

Judge Medley found that the Grobergs’ improvements to Lot 13 were “not requested by HOI nor provided at the instance of HOI.” (R. at 320.) He therefore concluded that the Grobergs were not entitled to foreclose on the mechanic’s lien.

With regard to the Grobergs’ contract claim, he found that the parties had orally agreed that the purchase price of Lot 13 would be the appraised value, determined to be \$138,000 after the house had been moved onto the lot. (R. at 320.) In the alternative, he concluded that HOI’s November 11, 1998 letter requiring an additional \$40,000 in development costs constituted an amendment to the REPC which was ratified by the Grobergs’ continued work on the premises. (*Id.*) He therefore denied the Grobergs’ contract claim.

With regard to the Grobergs’ claim for quantum meruit, Judge Medley held that the Grobergs could not recover on either branch of the doctrine. First, because HOI had not requested the Grobergs’ work, and because HOI had not engaged in any misleading acts,

HOI's retention of the benefits of the Grobergs' work was not inequitable. (R. at 321–22.).

The Grobergs thus could not prevail on a contract implied in law. (*Id.*) Second, the Grobergs could not prevail on a contract implied in fact because HOI had never requested their work and because the Grobergs had no expectation of payment at the time they performed the work. (R. at 322.)

In addition, Judge Medley denied HOI's breach of contract and related covenant of good faith claim because "the evidence established that the Grobergs had no obligation to repay HOI for excess renovation costs" and because HOI had not met the required burden to show any breach of good faith or fair dealing. (R. at 322.)

After trial, counsel for HOI and counsel for the Grobergs both submitted affidavits in support of awards for attorney fees and costs. HOI's counsel averred to have expended \$11,807.50 in defending against the Grobergs' mechanic's lien claim, the breach of contract claim, and the related unjust enrichment claim. (R. at 304.) However, the Grobergs' counsel objected to this amount on the ground that HOI's counsel could only recover attorney fees for defending against the mechanic's lien claim, and that there was no statute or contract that provided for attorney fees to the prevailing party on either the Grobergs' unjust enrichment claim or their contract claim. (R. at 332.) In addition, the Grobergs' counsel argued that various costs claimed by HOI's counsel were improper and that HOI's billing rates were excessive. He concluded that HOI's counsel was therefore only entitled to recover \$2,857.63.

Counsel for the Grobergs requested a total of \$3,530.50 in attorney fees for defending against HOI's counterclaims, and argued that they arose from the REPC, which entitles the prevailing party to attorney fees. (R. at 282–297.) In the alternative, counsel for the Grobergs argued that HOI's counterclaim was without merit and he was entitled to recovery fees pursuant to Utah Code Ann. § 78-27-56.

Apparently convinced by the arguments of the Grobergs' counsel, Judge Medley agreed that HOI's attorney could only claim attorney fees for defending against the Grobergs' mechanic's lien claim. (R. at 347.) Judge Medley concluded that because the legitimate attorney's fees and costs recoverable by each party were substantially the same, no award should be made to either party. (R. at 348.)

D. Statement of Facts

This case arose from a July, 1996 real estate purchase contract ("REPC") under which HOI would purchase a house owned by the Grobergs (the "Groberg Property") for \$87,500. (*See* REPC, provided in the Groberg (Appellant's) Addendum at 23-26.) The Grobergs would in turn move, rehabilitate, and purchase an existing house supplied by HOI and to grant HOI a utility easement over the Groberg Property. (*See Id.* at 26.) The REPC specified that no closing would occur until the Grobergs had completed the rehabilitation work on the new property. (*Id.* at 25.) The house the Grobergs planned to purchase from HOI was an existing house that would be moved to a subdivision under development by HOI. (*Id.* at 26 and R. 367, p. 39). [Note: both volumes of the Trial Transcript, R. 367–68

will be hereinafter referred to as “Tr.” followed by the page number of the transcript.] HOI’s goal was to provide the Grobergs with a house equal to or better than the Groberg Property for approximately the appraised value of the Groberg Property. (*See* Exhibit A of the REPC, provided in the Groberg (Appellants’) Addendum at 26.) Under the REPC, if the Grobergs were at any time not satisfied with their new property, they could back out of the contract and keep their original house. (*See Id.*) However, if the Grobergs exercised this option, HOI’s utility easements would remain on the Groberg Property. (*Id.*)

Under the REPC, the Grobergs’ new house would be moved to Lot 13 of the HOI subdivision (hereinafter, “Lot 13” or “the house on Lot 13”). (*See* Appellant’s Groberg (Appellant’s) Addendum at 26.) HOI would credit the Grobergs’ equity in the Groberg Property toward the costs associated with Lot 13. (*Id.*) If the costs associated with Lot 13 exceeded the Grobergs’ equity, HOI was required assist the Grobergs in obtaining additional financing. (*Id.*)

The REPC did not specify the price for Lot 13 because the rehabilitation costs were not known at the time the REPC was executed. (Tr. at 231; 248; 261-62.) The Grobergs testified that they believed that the price of Lot 13 was \$70,000. (Tr. at 44.) Scott Lancelot, who testified for HOI, believed the price of Lot 13 would be determined, in part, by its appraised value. (Tr. at 159-60.) However, Dick Welch, who negotiated the REPC with the Grobergs, admitted at trial that he never told the Grobergs that they would pay the appraised price. (Tr. at 326-27.) Nevertheless the REPC specified that HOI was obligated

to assist the Grobergs in obtaining financing for the cost of the rehabilitation up to 90% of the appraised value of Lot 13. (*See* Groberg (Appellant's) Addendum [REPC] at 26.)

Accordingly, an existing house was moved to Lot 13 in October of 1997. (Tr. at 67.) The Grobergs selected and hired their own contractor, Matt McClellan, to perform the renovations. (Tr. at 120.) The specifications and price of the renovation were determined by the Grobergs and McClellan, and memorialized in a Home Repair Contract. (*See* "Home Repair Contract," provided in Cross-Appellant HOI's Addendum at 1-15, and introduced at trial as Plaintiff's Exhibit 21.) HOI was not a party to the Home Repair Contract. (*See Id.*) In order to pay McClellan, the Grobergs signed a promissory note in favor of the Housing Authority of Salt Lake for \$83,770, to be secured by Lot 13. (*See* Cross-Appellant HOI's Addendum at 16, introduced at trial as Plaintiff's Exhibit 17.) The Housing Authority thereafter paid McClellan in installments as McClellan's work proceeded, subject to the Grobergs' approval of McClellan's work. (Tr. at 350.) In addition, unbeknownst to HOI, the Grobergs decided to supply certain labor and materials of their own choosing to Lot 13, which were not contemplated in the Home Repair Contract with McClellan. (Tr. at 124-133; 141-49; 352-54; 460-61; 468-74.)

After McClellan had completed approximately 82% of the work, the Grobergs became dissatisfied and fired him in December of 1998. (Tr. at 161.) At that point, the Grobergs decided to finish the work on Lot 13 themselves. (*Id.*) However, the Grobergs were not licensed contractors, nor were the various relatives who assisted them in their

work. (Tr. at 168.) After taking over the work, the Grobergs continued to stray from the McClellan Home Repair Contract specifications, and installed such improvements in Lot 13 as they alone decided, without making change orders as required by their agreement with the Housing Authority. (See Tr. at 354; *see also* “Housing Authority Rehabilitation Agreement With Owner at ¶¶ 1, 2 and 11, provided in Cross-Appellant HOI’s Addendum at 17-18 and introduced at trial as Plaintiff’s Exhibit 20.) The Grobergs did not expect any compensation from HOI for such extra labor and materials because they planned on purchasing Lot 13 and retaining the benefits of their labor. (Tr. at 138; 150.)

In November of 1998, HOI sent the Grobergs a letter, for the first time specifying a price for Lot 13 based upon the appraised value (\$138,000) plus additional development and administrative costs. (See Letter from Scott Lancelot to John Groberg, dated 11-11-98, provided at Cross-Appellant HOI’s Addendum at 19-21 and introduced at trial as Plaintiff’s Exhibit 26.) The Grobergs did not respond to the letter, but continued to work on Lot 13. (Tr. at 161.)

In October of 1999, hoping to close the transaction, HOI offered Lot 13 to the Grobergs for approximately \$156,000, based upon an estimate of the site development and renovation costs HOI had incurred on Lot 13 as of that date. (See Letter from Scott Lancelot to John Grobergs’ attorney, Richard L. Tretheway, dated 10-4-99, provided in Cross-Appellant HOI’s Addendum at 22-24 and introduced at trial as Plaintiff’s Exhibit 29.) Shortly thereafter, the Grobergs decided to exercise their option not to purchase Lot 13,

and surrendered the property to HOI. (Tr. at 88.) HOI subsequently determined that it had spent \$176,735.28 (Tr. at 287) on Lot 13. This included settling a mechanic's lien for \$12,980 placed on the property by McCiellan. (Tr. at 269-71.) HOI was eventually able to sell Lot 13 for only \$149,000 (Tr. at 282). HOI thus incurred a \$27,735.28 loss on the property.

SUMMARY OF THE ARGUMENTS

Because HOI did not request the Grobergs' labor on Lot 13, and because the Grobergs made custom improvements of their own choosing on Lot 13 without HOI's authorization, the trial court properly denied the foreclosure of their mechanic's lien. Vendees in possession of real property who improve premises in their own way and according to their own special desires cannot assert a mechanic's lien because such improvements are not "at the instance of" the owner as required by the mechanic's lien statute. Moreover, the trial court's finding that the Grobergs did not renovate Lot 13 at HOI's request is fatal to the Grobergs' mechanic's lien claim because the statute requires, at minimum, a request for labor or materials. Because the Grobergs' have failed to marshal the facts in support of the trial court's finding that HOI did not request the renovations, and have failed or to show how this finding is against the clear weight of the evidence, the trial court's decision should be affirmed.

Further, the Grobergs were not licensed contractors when they performed the work on Lot 13. By statute, contractors cannot commence or maintain any cause of action for

compensation for work they have performed while unlicensed. While the statute admits of common law exceptions related to whether the public is adequately protected, none of the common law exceptions to the statute apply in this case.

The trial court also correctly denied the Grobergs' breach of contract claim. The real estate purchase contract ("REPC") provided that if the Grobergs decided not to purchase Lot 13, they would be returned to their former estate as to ownership of properties and debt, with the exception of the easements that the Grobergs had granted to HOI. HOI fulfilled this agreement and returned the Grobergs to their former status. The Grobergs now claim that HOI breached a contract to sell them Lot 13 for \$138,000, although they never contended at trial that such price had been agreed upon. Assuming there was such a contract, nothing in the record shows that the Grobergs ever tendered \$138,000 to HOI for Lot 13. HOI thus committed no breach. In the alternative, the reviewing Court can find that the record does not support the notion that the Grobergs and HOI ever agreed to a \$138,000 price. If there was no meeting of minds on the price, there could be no breach of contract for a \$138,000 sales price.

Because the Grobergs failed to demonstrate that their labor benefitted HOI, the trial court's decision that HOI was not unjustly enriched should be affirmed. Rather than realizing a benefit from the Grobergs' improvements, HOI lost over \$27,000 on Lot 13. The Grobergs installed custom improvements of their own choosing in Lot 13, resulting in an over-improvement Lot 13 in relation to other houses in the low income subdivision

where it was located. As a result, HOI could not realize the full value of the Grobergs' improvements upon the sale of the house.

Finally, the trial court erred in denying HOI attorney fees for its successful defense of the Grobergs' breach of contract and unjust enrichment claims. The breach of contract claim arose from the REPC, which provides for reasonable attorney fees to the prevailing party. HOI was therefore entitled to attorney fees for defending that claim. In addition, the Grobergs' unjust enrichment claim arose from the same nucleus of material fact that served as the basis for their mechanic's lien claim. Because the trial court held that HOI was entitled to attorney fees for prevailing on the mechanic's lien claim, it should have also found HOI entitled to attorney fees for successfully defending the factually and theoretically overlapping unjust enrichment claim.

ARGUMENT

I. BECAUSE THE GROBERGS ALONE DECIDED TO PERFORM LABOR ON LOT 13, AND BECAUSE THEY MADE IMPROVEMENTS OF THEIR OWN CHOOSING, THEY ARE NOT ENTITLED TO A MECHANIC'S LIEN

A person who performs labor, or supplies materials used in the construction of premises, can only assert a mechanic's lien for such labor or materials if they were supplied "*at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise . . .*" See Utah Code Ann. § 38-1-3 (emphasis added). Utah courts have consistently held that, for purposes of the mechanic's lien statute, "at the instance of" the owner means an express or implied contract with the owner. *Bailey v. Call*,

767 P.2d 138, 140 (Utah 1989) (*citing Dugger v. Cox*, 564 P.2d 300, 302 (Utah 1977)); *Interiors Contracting, Inc. v. Navalco*, 648 P.2d 1382, 1386 (Utah 1982). However, a vendee in possession who improves premises in his own way and according to his own needs and desires cannot assert a mechanic's lien because such improvements are not "at the instance of" the owner. *See A&M Enterprises, Inc. v. Hunziker*, 482 P.2d 700 (Utah 1971); *Belnap v. Condon*, 97 P. 111 (Utah 1908).

In *A&M*, Barrett, the owner of a ski lift, entered into an option contract with Western Lift and Crane Corporation ("Western") for the sale of the lift. Western took possession of the lift, and requested maintenance and repair work by plaintiff A&M. After A&M did the work, Western was unable to make the payments necessary to exercise its option, and did not pay A&M for its work. A&M thereafter attempted to foreclose on a lien against Barrett under the mechanic's lien statute.

The *A&M* court held that the purchaser of property under an executory contract has the status of a tenant, and as such cannot subject the property owner to a mechanic's lien unless the purchaser has acted as the owner's agent in requesting the work. *See A&M*, 482 P.2d at 700. The *A&M* court observed that the purchaser of the lift "made such improvements as it and it alone decided. Barrett had nothing to do with any work contracted for." *See A&M*, 482 P.2d at 701. "Knowledge of, and acquiescence in, the making of improvements by the tenant, are insufficient to establish agency." *Id.* at 702 (*citing* 53 Am. Jur. 2d, Mechanics' Liens 132).

The Utah Supreme Court also denied a mechanic's lien under similar circumstances in *Belnap*. In that case, Lizzie Condon entered into an executory contract for the sale of real property to the Beckers. The Beckers agreed to make interest payments to Condon for five years, after which time the full purchase price was due. After the contract was signed, Belnap supplied lumber to the Beckers, who made improvements on the property. However, the Beckers never purchased the property from Condon. When Belnap discovered that Condon was the owner of the property, he filed a mechanic's lien against Condon.

In denying Belnap's lien, the Court held that "the person who can bind the owner's land for the things for which a lien is given must in some way obtain his authority to do so from the owner. Without such authority, express or implied . . . the owner's property is not bound, although the improvements may benefit his land." *Belnap*, 97 P. at 113. Although Condon had a strong expectation that the Beckers would build a dwelling on the property, the Court noted that the written contract of sale did not require the Beckers to make improvements, and distinguished the case from those cited by Belnap's counsel, all of which involved contracts that required lessees or vendees to make "*certain stipulated improvements*." *Belnap*, 97 P. at 114 (emphasis added). The Court explained that "when one purchases land of any kind, he has at least the implied power to improve it in his own way. If he does so upon his own responsibility, it is not easy to perceive how, in the

absence of an express statute, he thereby binds the owner of the title for the value of the improvements.” *Id.*

Like the purchase contracts in *A&M* and in *Belnap*, the Grobergs’ REPC with HOI did not require the Grobergs themselves to make any specific improvements on the property in question. The REPC did not even require the Grobergs to perform their own labor or to directly provide any materials. Rather, the Grobergs chose to perform their own labor and to provide materials at their own expense because they believed they were improving their own house, and planned to retain the benefits. Further, the Grobergs made such improvements as they alone chose on Lot 13. None of the specific improvements they made were requested or suggested by HOI. Finally, the bulk of the improvements they made went well beyond the basic rehabilitation specified in the REPC, and caused the costs of the construction to exceed the price for which the Grobergs’ own contractor had agreed to do the work.

A. Because the Grobergs Have Failed to Appeal the Trial Court’s Finding of Fact that HOI Did Not Request the Work, the Grobergs Are Not Entitled to a Mechanic’s Lien for Labor or Materials

There is no entitlement to a mechanic’s lien unless the owner requested the claimant’s labor or materials, or an agent of the owner requested such labor or materials. *See Davis v. Barrett*, 467 P.2d 603 (Utah 1970) (holding owner who orally requested subcontractor to perform work outside his contract with the primary contractor was liable for mechanic’s lien); *Bailey v. Call*, 767 P.2d 138 (Utah Ct. App. 1989) (holding owner

who directly contracted with first supplier was found liable for lien by secondary supplier because first supplier had apparent authority to act for owner in requesting secondary supplier's materials).

In the case at bar, the trial court made findings of fact that were fatal to the Grobergs' mechanic's lien claim. First, it found that "the Grobergs had substantial control as to the construction that was pursued and the costs associated with the renovation." (R. at 317, ¶ 26.) Second, it found that "HOI did not request that the renovation work be done on the house on Lot 13." (R. at 318, ¶ 27.)

Because these factual findings contradict the notion that the Grobergs provided labor and materials "at the instance" or request HOI, and because the Grobergs have failed to appeal these findings, their mechanic's lien claim must fail. "To successfully challenge a trial court's findings of fact on appeal, '[a]n appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be "against the clear weight of the evidence," thus making them 'clearly erroneous.'"

Valcarce v. Fitzgerald, 961 P.2d 305, 312 (Utah 1998) (citations omitted).

To fulfill the marshaling requirement, an appellant must first present all the evidence that supports the trial court's finding, and then show that despite this evidence, the trial court's finding is so lacking in support as to be against the clear weight of evidence. See *ELM, Inc. v. M.T. Enters., Inc.*, 968 P.2d 861, 865 (Utah Ct. App. 1998). However, the

Grobergs have not even attempted to marshal the evidence in support of the trial court's findings, which are amply supported by the record.

The Grobergs were not required to physically perform any labor on, or to supply any materials directly to Lot 13. (Tr. at 122.) In fact, the original understanding was that McClellan and other contractors would perform all the work, and that such work would be funded by the equity the Grobergs had in their existing home and by additional loans, if necessary. (*See* Tr. at 122 and Groberg (Appellant's) Addendum at 26, ¶ 3 (Exhibit "A" of the REPC)).

Further, testimony at trial showed that the Grobergs chose to work on Lot 13 for numerous reasons, none of which were the result of a request by HOI. John Groberg testified that he did the work because McClellan did not perform up to his expectations. (Tr. at 80-81.) He put in some stairs because stairs installed by McClellan did not pass code. (Tr. at 115-16.) He put in an air duct on the advice of a "furnace guy." (Tr. at 114.) He alone chose to install tile rather than the vinyl floors specified in the McClellan contract, in the absence of any request or authorization by HOI. (Tr. at 126-27.) While John Groberg claimed he had HOI's permission to install tile rather than vinyl flooring (Tr. at 126-27), this testimony was contradicted by Dick Welch (Tr. at 352-53) and John Grobergs' own admission that he never obtained change order approval as required by HOI. (Tr. at 164.) Rather than working "at the instance of" HOI, the Grobergs' did the work because they "were willing to do the work to make it nice." (Tr. at 118.)

Furthermore, John Groberg repeatedly testified that he did not expect compensation for the work because he was working on his own house and the expectation was that he would benefit himself by doing the work. (Tr. at 133, 138, 149, 150.) By his own admission, he installed “extras” without first requesting change orders to determine whether they were within the limits of the financing provided by HOI. (Tr. at 164.) Without this authorization to perform the extra work, it is difficult to see how HOI authorized or even suggested the Grobergs’ work. The trial court thus reasonably concluded that HOI did not request the work done by the Grobergs, and that the Grobergs had substantial control of the work they performed.

B. Because There Was No Express or Implied Contract for the Grobergs’ Labor, They Cannot Assert a Mechanic’s Lien Against HOI

For purposes of the mechanic’s lien statute, “at the instance of” the owner means an express or implied contract with the owner. *See Bailey v. Call*, 767 P.2d 138 (Utah 1989) (*citing Dugger v. Cox*, 564 P.2d 300, 302 (Utah 1977)); *Interiors Contracting, Inc. v. Navalco*, 648 P.2d 1382, 1386 (Utah 1982). However, in the case at bar, there was neither an express nor implied contract with HOI for the Grobergs’ work.

1. The REPC Did Not Expressly Require the Grobergs to Do Their Own Labor

Although the Grobergs argue that the REPC obligated them to perform labor and supply materials, an analysis of the REPC and the surrounding circumstances show that this is not so. The REPC states that “[t]he Grobergs will move a house and rehabilitate the

house utilizing the escrow fund.” (See Pltfs. Ex. 10, provided in Groberg (Appellants’) Addendum, at 26.) However, nothing in this language requires the Grobergs, themselves, to perform the physical labor or to provide materials. The REPC did not prohibit them from delegating the work to contractors. In fact, the work was delegated to the Grobergs’ own contractor, McClellan, who performed approximately 82% of the work on Lot 13. (Tr. at 455.)

Moreover, ample evidence was presented at trial to show that neither the Grobergs nor HOI, at the time of the July 1996 REPC, expected the Grobergs to perform any of their own labor. For example, John Groberg testified that, due to back surgery he had undergone prior to entering the REPC, he could not perform his own labor, and that Dick Welch was aware of this at the time the REPC was negotiated. (Tr. at 37.) That the Grobergs were not required to perform any labor or supply materials under the REPC was also made plainly evident at trial in the following colloquy between John Groberg by HOI’s counsel:

Q Okay. But pursuant to this contract [i.e., the Grobergs’ rehabilitation contract for Lot 13 with McClellan] all the things contained within this contract, isn’t it true that you believed then that Mr. McClelland [sic] was going to do everything in this document, you were to do nothing?

A That was the way I understood it.

(Tr. at 122, explanatory material added in brackets.)

John Groberg selected and hired McClellan as the general contractor for the rehabilitation work despite HOI’s recommendation of other contractors (Tr. at 120), and

John Groberg alone made the decision to fire McClellan (Tr. at 82 and 161). Furthermore, HOI was not a party to the Grobergs' contract with McClellan (*see* Pltfs. Ex. 21, "Home Repair Contract" provided in Cross-Appellant HOI's Addendum at 1). Instead, the Grobergs had "full control of the rehabilitation process on that house" (*see* testimony of Dean Maltsberger, Tr. at 282). Finally, HOI never insisted that the Grobergs fire McClellan or that the Grobergs take over as general contractor on Lot 13. (Tr. at 455-56.) The Grobergs did these things on their own initiative.

2. **In Making Expensive Improvements of Their Own Choosing, the Grobergs Went Well Beyond the "Rehabilitation" of the House Required by the REPC, and Caused the Project to Exceed the Budgetary Constraints of the McClellan Contract**

The REPC only required the Grobergs (or their agents) to "rehabilitate" the house on Lot 13. *See* Addendum to the Groberg Brief at 26. In interpreting a contract, the meaning of its terms are often best determined through the use of standard, non-legal dictionaries. *See SLW/Utah, L.C., v. Griffiths*, 967 P. 2d 534 at 535 (Utah Ct. App. 1998). "Rehabilitate" means to "restore to good condition, operation, or capacity." *American Heritage Dictionary of the English Language*, Fourth Ed. 2000.

The record shows that most of the work or materials for which the Grobergs seek compensation went well beyond mere "rehabilitation" of the house. Moreover, the Grobergs' work was largely outside the specifications of their contract with McClellan, which was financed by a \$70,111.00 loan HOI had obtained for the Grobergs. Thus, as a result of their own decisions, the Grobergs' expenses exceeded the anticipated expenses of

the McClellan contract and their existing loan. Rather than requiring McClellan to finish his work (and thus keeping costs within the range of the McClellan bid) the Grobergs instead decided to fire him and take over the work. This led not only to a duplication of charges for the labor and materials that McClellan had bid a fixed price for (Tr. at 270-71), but also to expensive changes of the Grobergs' own choosing. None of these changes were authorized or even suggested by HOI.

During the cross examination of John Groberg, counsel for HOI demonstrated that well over half the materials for which the Grobergs sought compensation were "extras" not contemplated in the McClellan contract. Of the \$10,179.39 in materials claimed by the Grobergs, \$6,822.52 were shown to be outside the Grobergs' contract with McClellan. See items 1, 5, 6, 9, 12, 19, 26, 29, 29, 37, 51, and 65 of the Grobergs' "Expense List" (Pltfs. Ex. 39, provided in Cross-Apellant HOI's Addendum at 25-29) and compare with the trial testimony of John Groberg, Tr. at 139-50).

The Grobergs' Expense List contained, among other things, charges for the following items that were neither within the scope of the McClellan contract nor requested by HOI: \$1,125 for extra gutters (items #1 and # 37); \$1,000 for coaxial cables; \$1,500 for the construction of a garage storage room; \$1,140.81 for materials to upgrade a gas burning fireplace to wood burning (items # 9 and # 12); multiple charges for tile supplies; \$240 for beam wrap; and \$1,650 for a master walk-in closet and counter with shelves and

drawers. All these items were shown, on the cross examination of John Groberg, to be outside the McClellan contract. (Tr. at 139–150.)

Moreover, the items mentioned above were supplied by the Grobergs without any request by, or approval from, HOI. Dick Welch, Program Director for HOI, testified that the Grobergs had no authority to exceed their budget with McClellan, and that change orders were required if the Grobergs wished to make any changes to the specifications of the McClellan contract. (Tr. at 352.) Nevertheless, the Grobergs made numerous changes without ever requesting a change order. (Tr. at 354.) These changes included, according to Welch, 68 hours of quarry tile work by the Grobergs (*See* Tr. at 352 and Groberg (Appellant’s) Addendum at 68) and the construction of a garage storage room (Tr. at 353).

3. HOI Did Not Have an Implied Contract With the Grobergs

While the issue of whether the Grobergs are entitled to recover on an implied contract theory is more fully addressed in Part III of this Memorandum, below, the issue also deserves treatment at this point to establish that the Grobergs were not entitled to their mechanic’s lien. *See Bailey v. Call*, 767 P.2d 138 (Utah 1989) (*citing Dugger v. Cox*, 564 P.2d 300, 302 (Utah 1977)); *Interiors Contracting, Inc. v. Navalco*, 648 P.2d 1382, 1386 (Utah 1982) (holding mechanic’s lien requirement that the work be done “at the instance of the owner” means there is either an express or implied contract with owner).

There are two branches of *quantum meruit* (also known as “implied contracts”): contracts implied in fact and contracts implied in law. *Davies v. Olson*, 746 P.2d 264 (Utah

Ct. App. 1987). The Grobergs have not appealed the trial court's conclusion that there was no contract implied in fact. (R. at 322.)

The Grobergs have, however, appealed the trial court's conclusion that there was no contract implied in law (also known as "unjust enrichment"). The elements of a unjust enrichment are: (1) the defendant has received a benefit; (2) the defendant appreciates the benefit; and (3) the circumstances make it unjust for the defendant to retain the benefit without paying for it. *Davies*, 746 P.2d at 269.

In *Davies*, the court noted that the measure of recovery for unjust enrichment "is the value of the benefit conferred on the defendant (the defendant's gain) and not the detriment incurred by the plaintiff . . . or necessarily the reasonable value of plaintiff's services." *Id.* at 269 (*citing First Inv. Co. v. Andersen*, 621 P.2d 683, 687 (Utah 1980)).

Because HOI gained nothing from the Grobergs' labor, HOI was not unjustly enriched by the Grobergs. Rather than showing that HOI received a benefit, the uncontroverted evidence at trial showed that HOI actually lost \$27,735.28 on Lot 13. As a result, the Grobergs are not entitled to recover for unjust enrichment. This was shown on direct examination of Scott Lancelot, when counsel for HOI introduced Defendant's Exhibit 11 into evidence, showing a complete breakdown of the costs expended by HOI on Lot 13. (See R. at 373 and Cross-Appellant's Addendum at 30-33.) According to Defendant's Exhibit 11, which was received without objection, HOI expended \$176,735.28 on Lot 13. However, HOI was only able to sell Lot 13 for \$149,000.00.

Under *Davies*, the detriment to the plaintiff does not determine his entitlement to recovery. Rather, it is the benefit to the defendant that is relevant. Even assuming that the Grobergs have accurately stated the reasonable value of their work as \$16,808.72, HOI's losses exceeded the Grobergs' by over \$10,000. (*See* Plaintiff's Exhibits 39 [claiming \$10,861.22 in materials and utilities] and 46 [claiming \$5,947.50 in labor] for a total of \$16,808.72.) It is thus impossible that the Grobergs provided any benefit to HOI.

C. The Cases Cited by the Grobergs In Support of Their Mechanic's Lien Claim Are Clearly Distinguishable From the Case at Bar

The Grobergs cite *Davis v. Barrett*, 467 P.2d 603 (Utah 1970) for the proposition that the word "instance," as used in the mechanic's lien statute denotes "'impelling motive, influence, or cause; at the solicitation or suggestion of.'" They also cite to *Bailey v. Call*, 767 P.2d 138 (Utah Ct. App. 1989) for the proposition that the owner consent requirement of the statute is fulfilled by mere "authority to commence work on improvements."

However, these quotations are taken out of context and without reference to the underlying facts of *Davis* or *Bailey*. The language cited in *Davis* was quoted from a non-mechanic's lien case, and such language has never been cited or relied upon by another state court decision regarding mechanic's liens. Even more importantly, both cases are clearly distinguishable from the case at bar, and involved significantly contrasting factual and policy considerations.

In *Davis*, the owner of the property, Barrett, entered into a primary building contract for the construction of a supermarket with Peterson. Under the contract, Peterson was

responsible for providing a finished, “turn-key” product. Peterson subcontracted out the wiring to Davis. During construction, Davis informed Barrett that Davis’s contract with Peterson did not require Davis to wire certain refrigeration units that were necessary to finish the job, and that he would not do the work without an adjustment in his pay. Barrett “instructed Davis to go ahead and do the wiring in order to get the store open” and promised to compensate Davis for the extra work through a deduction in Peterson’s pay. *Davis*, 467 P.2d at 604. When Davis was not fully paid for his work, he filed a mechanic’s lien.

In holding that Davis was entitled to a mechanic’s lien, the *Davis* court held that it was immaterial whether Barrett had agreed to pay for the work. *Davis*, 467 P.2d at 605. The relevant consideration was whether Barrett had *instructed* Davis do the extra wiring. Because there was no doubt that Barrett had instructed Davis to do so, the mechanic’s lien was valid.

Thus, the *Davis* court’s quotation of *Prows v. Hawley*, 271 P. 31, 35 (1928) (“‘instance’ denotes an impelling motive, influence, or cause; at the solicitation or suggestion of”) was not necessary to justify a decision in favor of Davis. Barrett had actually requested that Davis perform the specific job upon which the lien was based. Moreover, the *Prows* case did not even involve a mechanic’s lien. The *Prows* court was interpreting language found in a complaint against the members of a partnership for the breach of a contract for the sale of horse feed.

Significantly, no other published decision has ever cited *Prows* to justify such an overbroad interpretation of Utah's mechanic's lien statute. Indeed, *Davis* itself has only been cited once in a published opinion, and the broad *Prows* definition of "at the instance of" is neither mentioned or paraphrased in that decision. See *In Re Davidson Lumber*, 164 B.R. 773, 776 (D. Utah 1993). Thus, *Davis*'s excessively broad interpretation of the mechanic's lien statute is an aberration, and has not been considered definitive by other courts.

Turning to the case at bar, there is nothing in the record remotely parallel to the facts of *Davis*. While Barrett specifically instructed Davis to do extra wiring outside his contract, there is simply no evidence that HOI specifically instructed or guided the Grobergs in making any specific improvements to Lot 13.

Nor do the facts of *Bailey*, upon which the Grobergs rely, bear any resemblance to the facts of the case at bar. In *Bailey*, the owner of a furniture store, Call, decided to repair the store's roof. Call contracted with Gurule for materials to be incorporated into the work. Under the contract, Gurule was to supply the materials from his own stock at a substantial discount. However, instead of supplying the materials himself, Gurule ordered the materials on open account from Bailey, incurring substantially higher costs than he had agreed to charge Call. When Gurule did not pay Bailey, Bailey placed a mechanic's lien on Call's store.

The trial court held that Gurule had exceeded his authority in ordering the materials from Bailey, and held that Bailey was therefore not entitled to his lien. In reversing, the Court of Appeals held that “[o]nce the owner gives *authority to his contractor agent* to begin work, secret limitations as to the price or nature of the work are an ineffective defense against a mechanic’s lien.” *Bailey*, 767 P.2d at 141 (emphasis added). In other words, once an agency relationship was established between Call and Gurule, Gurule had authorization to enter contracts with third parties to supply materials. Call could not defeat Bailey’s lien by claiming that Gurule had exceeded his authority because Bailey had no notice of the price limitations that Call had specified in his contract with Gurule. All that was required for a valid lien was a showing that Gurule had authority to commence work as Call’s agent. Thus, the *Bailey* court’s holding that the owner consent required by the mechanic’s lien statute is “merely authority to commence work on improvements” referred to an agency relation between the primary contractor and the owner. *See Bailey*, 767 P.2d at 141–42. Thus, once the agency relation is established, anything the contractor-agent causes a third party to do in furtherance of the original contract can be the basis of a mechanic’s lien.

In contrast, the issue presented by the case at bar does not involve the complication of owner-contractor agency and the agent’s contract with a third party. The Grobergs were aware of the specifications in the McClelland contract which HOI had funded. They were further aware that any “extras” beyond standard rehabilitation that they added to the house would increase the cost of the house. There were no “secret limitations as to the price or

nature of the work” that would result in unfairness to them due to their unawareness of such limitations.

The facts under consideration in the case at bar are closer to those found in *See A&M Enterprises* and *Belnap*, described in Part I, above. Those cases hold that a vendee in possession who improves premises in his own way and according to his own needs and desires cannot assert a mechanic’s lien because such improvements are not “at the instance of” the owner.

D. Because the Grobergs Were Not Licensed Contractors at the Time They Performed the Work, They Are Statutorily Barred From Bringing an Action Under Either the Mechanic’s Lien Statute or Under An Unjust Enrichment Cause of Action

The Grobergs are barred by statute from bringing any action for compensation for their labor on Lot 13. Utah Code Ann. § 58-55-604 provides that:

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

Among the licenses required by Chapter 55 are licences for general building contractors and residential contractors. *See* Utah Code Ann. § 58-55-301. However when asked at trial whether he or any of his family or friends who had provided the labor that was the subject of this suit had construction trades licensing, John Groberg replied “probably not.” (Tr. at 168.)

The Utah Court of Appeals has held that § 58-55-604 serves the purpose of protecting the public from incompetent contractors and provides a sanction to contractors who fail to obtain a license. *A.K.&R. Whipple Plumbing and Heating v. Aspen Construction*, 977 P.2d 518, 522 (Utah Ct. App. 1999). As such, the statutory bar to recovery can only be overcome by four specific, common law exceptions. *See Id.* at 523–24. This is so regardless of whether recovery is sought under the mechanic’s lien statute or under equitable theories of relief. *See Id.* at 524.

In *A.K.&R. Whipple*, the Utah Court of Appeals affirmed the trial court’s denial of HVAC subcontractor Whipple’s mechanic’s lien against Aspen on the ground that Whipple was not licensed. However, the trial court’s decision to allow Whipple to recover on alternative principles of equity was reversed. *See A.K.&R. Whipple*, 977 P.2d at 524. The *Whipple* Court held that at least one of four established common law exceptions to § 58-55-301 must apply to overcome the statute’s bar to recovery, and that this is so whether recovery is sought under the mechanic’s lien statute or under an equitable theory such as quantum meruit. *See A.K.&R. Whipple*, 977 P.2d at 522.

First, the statute may be overcome if the work is done for a party who possesses skill and expertise in the field. *See A.K.&R. Whipple*, 977 P.2d at 523. Second, the statute may be overcome if the unlicensed contractor was supervised by a licensed contractor. *See Id.* Third, if the reason the contractor fails to obtain a license is minor, and does not undermine his ability to perform the work, the contractor may recover. *See Id.* Finally,

whether the party requesting the work relied on the unlicensed contractor's representation that he was licensed or whether the contractor has posted a performance bond are relevant factors to consider in deciding whether the statute applies.

In the case at bar, the Grobergs were working for themselves, and the house on Lot 13 was eventually sold to a member of the public at large, Appellees Margaret Dahle and John Krueger. (R. at 318.) Therefore, because it cannot be said that the house was being built for someone with expertise in the field, the first exception does not apply.

The second common law exception does not apply because nothing in the record indicates that the Grobergs' labor was supervised by a licensed contractor. Nor does the third exception: the Grobergs' failure to be licensed was not due to a lapsed license, and nothing in the record shows that the Grobergs believed they were covered by another person's license.

Finally, while nothing in the record indicates that the Grobergs held themselves out to the public as contractors, there is no evidence in the record that they posted a performance bond for the completion of the rehabilitation of the house on Lot 13, as would be required under the fourth common law exception. Therefore, the Grobergs cannot meet any of the common law exceptions to Utah Code Ann. § 58-55-604. Because they were not licensed contractors at the time they performed the work for which they are requesting recovery, they are not entitled to recovery under either the mechanic's lien statute or any equitable theory of recovery.

II. BECAUSE THE GROBERGS NEVER TENDERED \$138,000, AND
BECAUSE HOI NEVER AGREED TO SELL THE HOUSE ON LOT
13 TO THE GROBERGS FOR \$138,000, HOI DID NOT BREACH A
CONTRACT TO SELL THE PROPERTY FOR THAT PRICE

The trial court correctly denied the Grobergs' breach of contract claim. The real estate purchase contract ("REPC") provided that if the Grobergs decided not to purchase Lot 13, they would be returned to their former estate as to ownership of properties and debt, with the exception of the easements that the Grobergs had granted to HOI. *See* Groberg (Appellant's) Addendum at 26 (Exhibit A of the REPC). HOI fulfilled this agreement and returned the Grobergs to their former status. The Grobergs now claim that HOI breached a contract to sell them Lot 13 for \$138,000, although they never made any such contention at trial.

Assuming there was a contract to sell Lot 13 for \$138,000, nothing in the record shows that the Grobergs ever tendered \$138,000 to HOI. It cannot therefore be said that HOI breached a contract to sell Lot 13 for \$138,000. When asked by the Grobergs' counsel if HOI would have sold Lot 13 to the Grobergs for \$138,000 in November of 1998 Scott Lancelot stated:

Yeah. At this point . . . if they had represented to us . . . on September 30th that they thought they would be done and be able to close within 30 days and certainly by the end of the year and . . . we could have sold them this for 138,000

(Tr. at 266.)

In the alternative, the reviewing Court can find that the record does not support the notion that the Grobergs and HOI ever agreed to a \$138,000 price. If there was no meeting of minds on the price, there could be no breach of contract for a \$138,000 sales price. On appeal, the trial court's decision may be affirmed on any proper ground or theory apparent from the record, even if it does so upon a ground that differs from the one the trial court has relied upon. *See Bill Nay & Sons Excavating v. Neeley*, 677 P.2d 1120, 1123 (Utah 1984) (affirming trial court's decision on alternate ground of purchase money resulting trust, although trial court decision was grounded upon finding of fraudulent conveyance); *Dipoma v. Mcphie*, 29 P.3d 1225, 1230 (Utah 2001) (affirming dismissal of case for failure to pay filing fee, but on grounds of lack of timeliness rather than on jurisdictional grounds). This holds true even if such ground or theory was not raised in the lower court, and was not considered or passed on by the lower court. *See Id.*

In the case at bar, the Court of Appeals can affirm the trial court's decision that HOI did not breach the REPC with the Grobergs by finding that there was no contract to sell Lot 13 for \$138,000. In *Barton Enterprises v. Tsern*, 928 P.2d 368 (Utah 1996) the court declared:

It is fundamental that a meeting of the minds on the integral features of an agreement is essential to the formation of a contract. *See Pingree v. Continental Group of Utah, Inc.*, 558 P.2d 1317, 1321 (Utah 1976); *Valcarce v. Bitters*, 12 Utah 2d 61, 362 P.2d 427, 428 (1961). An agreement cannot be enforced if its terms are indefinite or demonstrate that there was no intent to contract. *Valcarce*, 362 P.2d at 428; 1 Joseph M. Perillo et al., *Corbin on Contracts* § 4.3, at 569 (rev. ed. 1993).

Barton, 928 P.2d at 373 (finding no agreement to abate rent on account of lessor’s failure to repair elevator in commercial lease). For an agreement on price to exist, the parties must have a distinct intention common to both, such that they assent to “the same thing in the same sense.” *Hargreaves v. Burton*, 206 P. 262, 266 (Utah 1922) (finding no agreement on the purchase price for real property where plaintiff, defendant, and the trial court all had different opinions on the agreed-upon amount).

It is plainly evident from the record that the Grobergs and HOI never shared a common idea or intention with regard to the purchase price of Lot 13. John Groberg testified that he understood the purchase price of Lot 13 was to be \$70,000. (Tr. at 44.) Although Scott Lancelot testified all homes in the Madison subdivision were priced based on the appraised value (Tr. at 288), John Groberg claimed that he had never seen the May 20, 1998 appraisal which came in at \$138,000, and that he never agreed to this price. (Tr. at 159–60.) Moreover, when asked by the Grobergs’ counsel at trial whether he had ever told the Grobergs that they would have to pay the appraised price of the house, Dick Welch—who negotiated the REPC with the Grobergs—replied, “the answer is no, I didn’t tell them that.” (Tr. at 326-27.) Because the record does not support the notion that there was a contract to sell Lot 13 for \$138,000, the trial court’s decision that HOI did not breach its contract with the Grobergs should be affirmed.

//

//

III. BECAUSE THE GROBERGS PROVIDED NO BENEFIT TO HOI, THEY CANNOT RECOVER ON A CLAIM OF UNJUST ENRICHMENT

As an initial matter, it should be noted that a party who cannot foreclose a mechanic's lien for failure to hold a contractor's license is also barred from recovering on alternative, equitable theories. *See A.K.&R. Whipple Plumbing and Heating v. Aspen Construction*, 977 P.2d 518, 524 (Utah Ct. App. 1999). Thus, if the Court agrees with HOI's argument (*see* Part I D, *supra*) that the Grobergs cannot recover for their mechanic's lien because they were unlicensed, it need not consider the arguments which follow.

Nevertheless, because HOI lost \$27,735.28 on Lot 13, it is difficult to see how HOI received a benefit from the Grobergs' labor or how they can be entitled to recover for the unjust enrichment of HOI. Moreover, the Utah Supreme Court has held that it is appropriate to grant trial courts broad discretion in applying law to fact in unjust enrichment cases. For these reasons, the trial court's decision that the Grobergs were not entitled to recover for unjust enrichment should be affirmed.

A. The Grobergs Failed to Show That They Provided Any Benefit to HOI

There are two branches of *quantum meruit* (also known as "implied contracts"): contracts implied in fact and contracts implied in law. *Davies v. Olson*, 746 P.2d 264 (Utah Ct. App. 1987). The elements of contracts implied in law (also known as "unjust enrichment"), are: (1) the defendant has received a benefit; (2) the defendant appreciates the benefit; and (3) the circumstances make it unjust for the defendant to retain the benefit

without paying for it. *Davies*, 746 P.2d at 269. In *Davies*, the court noted that the measure of recovery for unjust enrichment “is the value of the benefit conferred on the defendant (the defendant’s gain) and not the detriment incurred by the plaintiff . . . or necessarily the reasonable value of plaintiff’s services.” *Id.* at 269 (*citing First Inv. Co. v. Andersen*, 621 P.2d 683, 687 (Utah 1980)).

Because HOI gained nothing from the Grobergs’ labor, HOI was not unjustly enriched by the Grobergs. Rather than showing that HOI received a benefit, the uncontroverted evidence at trial showed that HOI actually lost \$27,735.28 on Lot 13. (*Compare* sales price [Tr. at 282] with costs to HOI [Tr. at 287].) According to Defendant’s Exhibit 11, which was received without objection (Tr. at 21–23), HOI expended \$176,735.28 on Lot 13. (Tr. at 287.) However, HOI was only able to sell Lot 13 for \$149,000.00. (Tr. at 282.)

Under *Davies*, the detriment to the plaintiff does not determine his entitlement to recovery. Rather, it is the benefit to the defendant that is relevant. HOI’s counsel established at trial that the Grobergs had provided little, if any benefit, to HOI through their labor on Lot 13. He called Dee McRae, a realtor with 16 years experience who was familiar with Lot 13, to render an opinion on its potential value. She testified that Lot 13 “had the custom features of a \$180,000 house.” (Tr. at 500.) In contrast, the neighboring houses in the subdivision had an average value of \$100,000. (*Id.*) She testified that, due to a concept known as “regression,” the installation of custom features on a house in that

particular subdivision could have only a limited effect on the price of such a house. (Tr. at 501–502.) She testified that the full value of custom improvements installed in a house in HOI’s subdivision could not be realized in the sale of a home in that location, and that the \$149,000 sales price was “the best you could do” (Tr. at 502.)

Because the Grobergs provided no benefit to HOI, the trial court’s decision that the Grobergs could not recover for unjust enrichment should be affirmed.

B. The Grobergs’ Reliance on *Jeffs v. Stubbs* Is Misplaced

The Grobergs rely on *Jeffs v. Stubbs* for the proposition that a plaintiff can prevail on an unjust enrichment claim even if he has performed labor primarily for his own benefit. However, the facts of that case are clearly distinguishable from the case at bar. In *Jeffs*, the plaintiffs were religious adherents who had deeded their own land to a religious organization, UEP. The plaintiffs understood that they could not thereafter sell or mortgage the lots they had donated to UEP, and that they would forfeit any improvements they had made to the lots if they abandoned them. *See Jeffs*, 970 P.2d at 1239. However, UEP promised that the plaintiffs could live on the land “forever.” *See Id.* at 1240. In spite of this agreement, UEP later declared that all its adherents were merely tenants at will, and evicted numerous adherents from the land after the group had split over doctrinal disputes. *See Id.* In *Jeffs*, the third element of unjust enrichment was clearly fulfilled: it was inequitable for the UEP to evict the plaintiffs, who had not only made improvements on

their land, but also had *donated land to the organization and relied upon a promise that they could live there forever.*

In contrast, the Grobergs did not donate property to HOI. Unlike the plaintiffs in *Jeffs*, who donated property to UEP and ended up with nothing, the Grobergs entered into the REPC with full knowledge that if they did not purchase Lot 13, they would be entitled to have their original house back and that the easements granted to HOI would stay in place. They were permitted to return to their property, and no promises were broken. The case at bar hardly bears a comparison with *Jeffs*.

C. **The Trial Court's Decision on the Unjust Enrichment Claim is Entitled to Deference Due to the Trial Court's Ability to Observe Non-Record Facts, and Due to the Complexity and Novelty of the Facts Under Review**

While the Grobergs correctly identify this issue as a mixed question of law and fact, the Utah Supreme Court has held that “[u]njust enrichment law developed to remedy injustice when other areas of the law could not. Unjust enrichment must remain a flexible and workable doctrine. Therefore, we afford broad discretion to the trial court in its application of unjust enrichment law to the facts.” *See Jeffs v. Stubbs*, 970 P.2d 1234, 1245 (Utah 1998). Among the factors to be considered in favor of granting broad discretion to the trial court in the application of law to fact are: (1) the level of factual complexity; (2) the novelty of the factual situation; and (3) the trial judge’s reliance on non-record facts such as the demeanor of witnesses. *See Id.* at 1244.

All three *Jeffs* factors tilt in favor of granting the trial court broad discretion in this case. First, the transaction between the Grobergs and HOI involved numerous documents and discussions that resulted in a lack of a clear understanding between the parties. Both HOI and the Grobergs sustained losses as a result, and the trial court decided to let the chips fall where they had landed. Second, the “house swapping” transaction that HOI and the Grobergs arranged was unusual, and is not likely to serve as useful precedent for future decisions. Finally, the trial court had the opportunity to observe the demeanor of the witnesses to determine their credibility.

For the foregoing reasons, the trial court’s decision should be affirmed.

IV. THE DISTRICT COURT ERRED IN REFUSING TO AWARD HOI REASONABLE ATTORNEY FEES FOR PREVAILING ON THE GROBERGS’ BREACH OF CONTRACT AND UNJUST ENRICHMENT CLAIMS

Although the district court recognized that HOI was entitled to attorney fees as the prevailing party on the Grobergs’ mechanic’s lien claim, it improperly denied HOI’s request for attorney fees as the prevailing party on the Grobergs’ breach of contract and unjust enrichment claims. (*See* R. at 347-48.) When a party is entitled to attorney fees by contract or statute, and prevails on multiple claims involving a common core of facts and related legal theories, he is entitled to all fees reasonably incurred in the litigation. *See Dejavue, Inc. v. U.S. Energy Corp.*, 993 P.2d 222, 227 (Utah Ct. App. 1999); *Kurth v. Wiarda*, 991 P.2d 1113, 1117 (Utah Ct. App. 1999). Prevailing party status on one claim will even subsume a failure to prevail on another when the claims are closely related. *See*

Dejavue, 993 P.2d at 227 (citing *Durant v. Independent Sch. Dist. No. 17*, 990 F.2d 560, 566 (10th Cir. 1993)).

The Grobergs' contract claim arose from the REPC, which provides that "the prevailing party shall be entitled to costs and reasonable attorney's fees." *See* Groberg (Appellant's Addendum) at 24. Nevertheless, the Grobergs argued (R. at 334-35), and the trial court apparently agreed, that their breach of contract claim was not related to the REPC because their Amended Complaint did not specifically allege a breach of the REPC. (*See* R. at 48–49.) The Grobergs apparently believed that a distinct contract, unrelated to the REPC, existed regarding the easements they granted to HOI. However, the district court found that the REPC was an integrated agreement except for the price of Lot 13, and that the entire consideration for the easements was contained in the REPC. (*See* R. at 321, ¶ 8.) Thus, the Grobergs' attempt to characterize their breach of contract claim as a claim separate and distinct from the REPC fails, and HOI is entitled to all attorney fees reasonably incurred in defending against that claim.

Further, HOI is entitled to attorney fees for successfully defending against the Grobergs' unjust enrichment claim because that claim, like their mechanic's lien claim, arose from the theory that the Grobergs were entitled to compensation for the work they provided on Lot 13. In *Kurth v. Wiarda*, the court affirmed an award of attorney fees to Kurth, who successfully defended against Wiarda's mechanic's lien claim, although the mechanic's lien claim itself had been dismissed by the time of trial and the bulk of Kurth's

fees arose from prosecuting claims for which attorney fees are not ordinarily awarded. The court held that “attorney’s fees were properly awarded because a portion of these otherwise non-compensable claims overlapped the mechanic’s lien action on which the Kurths prevailed.” *See Kurth*, 991 P.2d at 1116 . Because the Grobergs’ mechanic’s lien claim and their unjust enrichment claim overlap, HOI was entitled to all fees reasonably incurred in defending against their unjust enrichment claim. HOI therefore respectfully requests that the Court remand the question of an appropriate attorney fee award to HOI as the prevailing party on the Grobergs’ breach of contract and unjust enrichment claims.

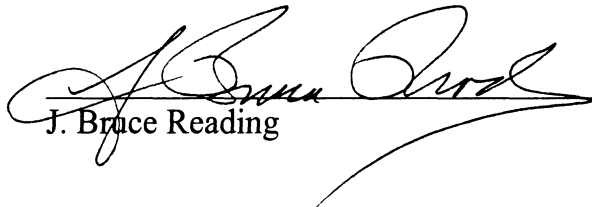
CONCLUSION

For the foregoing reasons, HOI respectfully requests that the Court of Appeals affirm the trial court’s conclusions that the Grobergs were not entitled to foreclose their mechanic’s lien, or to recover on their breach of contract and unjust enrichment claims.

However, HOI invites the Court of Appeals to reverse the trial court’s denial of HOI’s request for attorney fees incurred in defending against the Grobergs’ breach of contract and unjust enrichment claims. HOI was the prevailing party and should be entitled to reasonable attorney fees under the REPC and under Utah Code Ann. § 38-1-18 (providing attorney fees to prevailing party in action to foreclose a mechanic’s lien claim). Further, HOI respectfully requests that the Court of Appeals remand the issue of HOI’s entitlement to attorney fees for the determination of an appropriate award, including the attorney’s fees incurred in defending this appeal.

RESPECTFULLY SUBMITTED this 17 day of June, 2002.

SCALLEY & READING, P.C.

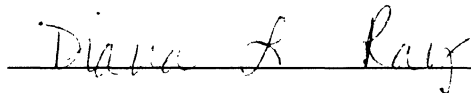

J. Bruce Reading

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of June, 2002, I caused two true and correct copies of the foregoing **BRIEF OF APPELLEE/CROSS-APPELLANT HOUSING OPPORTUNITIES, INC.** to be mailed by United States mail, postage prepaid, to the following:

Bryan H. Booth
Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, Utah 84145-0120

Rodney Gilmore
P.O. Box 1971
Layton, Utah 84041


Diana A. Ray

ADDENDUM

Index

<u>Item</u>	<u>Page</u>
1. Pltfs. Ex. 21 (Home Repair Contract)	1-15
2. Pltfs. Ex. 17 (Promissory Note)	16
3. Pltfs. Ex. 20 (Housing Authority Rehabilitation Agreement With Owner . . .	17-18
4. Pltfs. Ex. 26 (11/11/98 letter from Scott Lancelot to John Groberg)	19-21
5. Pltfs. Ex. 29 (10/04/99 letter from Scott Lancelot to Richard Tretheway)	22-24
6. Pltfs. Ex. 39 (Expenses)	25-29
7. Def. Ex. 11 (Breakdown of HOI's costs on Lot 13)	30-33

Tab A

HOME REPAIR CONTRACT

THIS CONTRACT AND AGREEMENT, entered into this 1st day of April, 1998, between McClellan Constructi having an office for business at 3197 Patrick Drive hereafter referred to as CONTRACTOR,

and Groberg, John A. Groberg, Shauna residing at 7395 West 3100 South hereinafter referred to as OWNER.

WHEREAS, the Owner desires certain rehabilitation on the premises owned by him (them) and known and numbered as 7395 W 3100 S, Magna 840

WHEREAS, the Contractor is a licensed Contractor under the laws of the State of Utah; and

NOW THEREFORE, in consideration the mutual promises and covenants contained herein, and for other good and valuable consideration, the parties agree and contract as follows:

- A. The Contractor agrees to furnish all labor, material, supervision and services necessary to complete the work described on the work description attached hereto and which is hereby incorporated by reference.
- B. The Owner agrees to pay to the Contractor the total sum of \$ 70,111.00 in accordance with the terms and conditions of the agreement upon total completion of the contract and upon total satisfaction of all other contractual terms by the Contractor.
- C. This Contract is subject to the issuance of a proceed order by the Owner and no work shall be commenced by the Contractor until the Contractor receives a written proceed order. If the Owner desires to proceed with the contract, the Owner shall issue a proceed order within 010 calender days from the date of acceptance of the Contractor's bid and proposal. If the proceed order is not received by the Contractor within this period, the Contractor has the option of withdrawing his bid and proposal.
- D. If the Owner does not issue a written proceed order, this agreement shall be null and void and neither party shall be bound by any of the terms hereof.
- E. The Contractor shall commence within 10 calender days after receiving the proceed order.
- F. The Contractor shall satisfactorily complete the work within 120 calender days after issuance of the proceed order. Time is the essence of the Agreement.

- G. If performance by Contractor is prevented or delayed as a direct result of riot, insurrection, fire or Acts of God, an extension of one (1) working day in the time limit for completion of the work to be done hereunder will be allowed the Contractor for each working day lost from such cause, provided the Contractor, within three (3) days after the beginning of such delay, gives written notice to the Housing Rehabilitation Division of the delay and the reason or reasons for it.
- H. IF PRIOR TO OR WITHIN ONE (1) YEAR AFTER THE DATE of substantial completion, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it within (10) days after receipt of a written notice from the Owner. The Owner shall give such notice promptly after discovery of the condition. The Contractor shall bear all costs of correcting any such defective work. This clause shall survive the closing and payment under this contract.
- I. In the event that it shall be necessary for the Contractor to perform any corrective work, the Contractor shall bear the cost of all such work, including work performed by subcontractors and redoing work which was damaged or destroyed during the removal, installation or correction of any work.
- J. Subcontractors shall be bound by the terms and conditions of this contract insofar as it applies to their work, but this shall not relieve the General Contractor from the full responsibility to the Owner for the proper completion of all work to be executed under this Agreement, and the General Contractor shall not be released from this responsibility by a Sub-Contractual Agreement he may make with others. The terms of this Agreement shall be incorporated by reference into all subcontract agreements. The Contractor shall only employ the subcontractors listed on the "List of Subcontractors and Suppliers" form. Any substitutions or additions shall be given to the Housing Rehabilitation Division.
- K. Repairs shall be made to any part of the Owner's home damaged during construction, whether by the Contractor or by a subcontractor. This includes all surfaces, furnishings, or equipment damaged. The Contractor shall make all such repairs at no additional cost to the Owner.
- L. Termination by the Contractor. If the work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, through no act or fault of the Contractor or a subcontractor or their agents or employees or any other persons performing any of the work under a contract with the Contractor, or if the work should be stopped for a period of eight (8) days by the Contractor because the Owner fails to issue payment as provided in the Agreement, then the Contractor may, upon seven (7) days written notice to the Owner with a copy to the housing Rehabilitation Division terminate the Contract.

- M. The Contractor shall be deemed in default if the Contractor:
1. Is adjudged bankrupt; or
 2. Makes a general assignment for the benefit of his creditor; or
 3. Becomes insolvent and receiver is appointed; or
 4. He fails or refused (except in cases for which extension of time is provided) to promptly commence work and diligently continue with the work to completion; or
 5. He fails to supply enough properly skilled workmen or proper materials; or
 6. He fails to make prompt payment to subcontractor or for materials or labor; or
 7. He permits liens to be filed against the Owner's property; or
 8. He disregards or does not comply with all laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
 9. He fails to make steady progress in the work; or
 10. He otherwise violates the Contract Documents.
- N. In the event of a default by the Contractor, the Owner shall give the Contractor seven (7) days written notice to perform the necessary work or make the necessary corrections. In the event that the Contractor fails to remedy the default within the seven (7) day period, the Owner shall have the right to take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the work, the Contractor shall receive the lesser of a) the reasonable value of work and materials performed by the Contractor less damages caused by Contractor's breach, poor workmanship or materials and other backcharges; or b) the amount by which unpaid balance of the contract sum exceeds the total cost of completion of the contract. If the cost of finishing the work exceeds the unpaid contractual balance, the Contractor shall pay the difference to the Owner. The costs incurred by the Owner must be reasonable.
- O. Prior to being paid the Contract Price;
1. The Contractor shall assign all warranties with regard to any equipment or supplies which the Contractor has installed in the subject property. The Contractor shall also execute a guarantee for a one (1) year period of time, in accordance with Paragraph H of the Contract.
 2. The Owner shall have certified, in writing, that insofar as the Owner is aware, the work has been done satisfactorily and the disbursement of funds may be made.
 3. The Rehabilitation Division has made a final inspection and has indicated that for its lending purposes the work has been satisfactorily completed.
 4. The Contractor and Owner shall have executed a "Statement of Completion," a copy of which is attached.

5. A lien waiver must be executed and presented to the Owner by the contractor.
6. Protection against liens and civil action. Notice hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "Owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:
 - a. the Owner must enter into a written contract with either an "original contractor" who is properly licensed or exempt of licensure, or with a "real estate developer";
 - b. required building permits must have been obtained and;
 - c. the Owner must pay in full the original contractor or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."
7. When progress payments are to be made, the Contractor will include a schedule which specified the stages at which payments will be made and the percentage (or amount) or the contract price which will be paid for the satisfactory completion of each stage. Progress payments shall not exceed eighty percent (80%) of the value of the work satisfactorily completed. Progress payments (limited to two (2)) and final payment due within twenty (20) days after the Owner, in care of the Rehabilitation Division, receives the Contractor's invoice and satisfactory release of lien for completion of work or installed materials and acceptance of work by the Owner.
8. The Contractor shall indemnify the Owner and the Housing Rehabilitation Division from any and all claims by third parties injured on or about the subject premises as a result of any negligence of the Contractor, his subcontractors, agents, employees, materialmen or laborers, and from all claims by subcontractors, agents, employees, materialmen, equipment suppliers, material suppliers or laborers for nonpayment or any other claim arising out of this contract and the work hereunder, including reasonable attorney's fees for the defense of any such claim.

- P. The Contractor shall make no changes in the material used, or in the specified manner of constructing and/or installing the improvements; nor shall the Contractor supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless authorized by the Owner and approved by the Housing Rehabilitation Division in the form of a written change order with proper signatures of all parties involved. No claim for adjustment of the contract price will be valid unless so ordered.
- Q. The Contractor shall be required to;
1. Promptly pay all subcontractors, materialmen, laborers and employees, and shall require all subcontractors to do likewise, and shall keep the property free from all liens, claims or judgments, and shall defend, indemnify and hold harmless the Owner and the Housing Rehabilitation Division from and against any and all such liens, claims or judgments and from and against any and all suits, actions or proceedings and of defending the same.
 2. Furnish evidence of comprehensive public liability insurance coverage protecting the Owner for not less than \$300,000.00 in the event of bodily injury including death and \$300,000.00 in the event of property damage arising out of work performed by the Contractor.
 3. Furnish evidence of insurance or other coverage as required by the State of Utah governing Workmen's Compensation.
 4. Obtain and pay for all permits and licenses necessary for the completion and execution of the work and labor to be performed.
 5. Perform all work in conformance with the Uniform Building Code and all other building codes, ordinances, regulations and requirements, or all applicable municipal or county governments whether or not covered by the specifications and drawings for the work.
 6. Abide by the following federal and local regulations (copies may be obtained from the Housing Rehabilitation Office);
 - a. Contractor must comply with the Copeland Act (Anti-Kickback Act) of June 13, 1934, (Title 18, U.S.C., Section 874): Kickbacks from public works employees.
 - b. Lead-base paint regulations 24CFR, Part 35.
 - c. This Contract is subject to Section 3 of the Housing and Community Development Act of 1968, as amended, (Title 12 U.S.C. 170 U): Opportunity for training, employment, contracts and trade with residents and business concerns in the project area.

- d. *When the sum of the Contract exceed \$10,000.00; Federal and local regulations pertaining to Equal Opportunities as set forth in the Terms and Conditions Form H.U.D. 6231, Section 8-a(17).*
 - e. *If the structure contains eight (8) or more dwelling units after rehabilitation; Federal Labor Standards Provisions as set forth in Form H.U.D. 7322, Federal Labor Standards as modified by Form H.U.D.3200A, Amendment to Federal Labor Standards Provisions*
 - f. *For nonresidential contract; Federal Labor Standards Provision as set forth in Form H.U.D. 3200, Federal Labor Standards Provisions, as modified by Form H.U.D. 3200B, Amendment to Federal Labor Standards Provisions.*
- 7. Keep the premises clean, orderly and safe during the course of the work and remove all debris from the premises at the completion of the work. Materials and equipment which have been removed and replaced as part of the work shall belong to the Contractor, unless otherwise specified in the Work Description.
 - 8. Not assign this contract without the written consent of the Owner and Housing Rehabilitation Division.
 - 9. Guarantee all work performed against defects of material and workmanship for a period of one (1) year from the date of final acceptance of all work required by this Contract, unless otherwise specified. This clause shall survive the completion of the work hereunder and shall survive the closing and termination of this contract.
 - 10. Provide the Owner, in care of the Housing Rehabilitation Division, with all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under this contract.
 - 11. Provide competent supervision at all times during the progress of the work.
 - 12. Agree that all work shall be done in a good workmanlike manner in accordance with good trade practices, and using materials as specified.
 - 13. Permit the U.S. Government, or its designee to examine and inspect the rehabilitation work.
 - 14. Certify that he has made a physical, on-site inspection of the subject property before submitting his bid and proposal.

15. Contractor shall provide all necessary sketches, plans or drawings as required by the Building Inspection Department.

R. The Owner will;

1. Permit the Contractor to use, at no cost, the existing facilities such as heat, power and water, necessary to carry out and complete the work.
2. Cooperate with the Contractor to facilitate the performance of the work. Neither the Owner nor any members of the Owner's family or household will hinder the Contractor in his work.
3. Neither permit nor make any substitutions, changes or additions to the work description, contract, plans or specifications without approval of the Housing Rehabilitation Division; such written approval to be in the form of a written change order.
4. Will not change his (their) mind(s) once he (they) has (have) chosen the color of paint or other materials and the Contractor has ordered said materials.
5. Allow the necessary removal and displacement of rugs, furniture, appliances, etc. necessary to the performance of the work.
6. The Owner agrees to give the Contractor access to the real property which is the subject of this action, and to the interior thereon within ten (10) days of the execution of this agreement. The Owner understands that if the Contractor cannot obtain access to the home within ten (10) days of this Agreement, or if the Contractor does not have continued access throughout the duration of the Contract, the Contractor shall have the right to give written notice of his termination of this Agreement to both the Owner and the HOUSING AUTHORITY, and shall at that time, be relieved of all liability to perform this Contract.

- S. The premises are to be occupied unless specified in writing during the course of the construction work.
- T. Final Payment of the contract amount will be made only after final inspection by the Housing Rehabilitation Division and acceptance by the Owner of all work to be performed by the Contractor, and when the Contractor has furnished the Owner, in care of the Housing Rehabilitation Division, at 3595 S Main St. Salt Lake City, Utah, with satisfactory release of lien or claims for liens by the Contractor. Final payment shall not limit the Contractor's responsibility with respect to payment of all sub-contractors, laborers, materialmen and for all equipment and other parts of this Contract.
- U. The contract consists of the following:
1. Rehabilitation Contract - pages 1 through 8.
 2. Description of Work, Bid and Specification Pages 1 through 8.
 3. Plans N/A
- V. For the consideration named herein the Contractor proposed to furnish all materials and to do all the work described in, and in accordance with the contract identified above in item U. of the General Condition for the lump sum price of \$ 70,111.00.
- W. Total Cost of Addendums, if required: \$ _____.

Contractor and Owner hereby acknowledge acceptance of this agreement:

[Signature]
Owner

4-1-98
Date

[Signature]
Owner

April 1st 98
Date

7395 W 3100 S, Magna 840
Address of Property to be Rehabilitated

McClellan Constructi
Contractor - Firm Name

April 7 98
Date

3197 Patrick Drive
Address

[Signature]
Contractor Signature

pres
Title

4:15pm
12/30/9

DESCRIPTION OF WORK
(Proposal/Bid)

Date: October 21, 1998

Matt McLellan
250-3142-

John and Shauna Groberg
Lot 13, Madison Subdivision

PROPOSAL

BID

EXTERIOR

- 75²⁰ ✓
5-20-98 Replace all windows with Amsco V60 white vinyl. Include replacing new sills on interior. Frame living room window for proper height from floor. Frame Bedrooms + 1/4 Bath windows
- 500 ✓
9-98 Install new bay window to replace slider door in kitchen. Frame bench in kitchen.
- 150 ✓
9-98 Replace front door with new 5'6" unit with oval top and glass light on side. (supplied by owner)
- ✓ ~~11~~ Increase foundation for porch area and storage under in basement with steel frame and door.
- ✓ 0 ✓ ~~Install stop and waste valve, shut off valves, plastic pipe and sprinkler heads for exterior sprinkler system.~~ (By Owner) *By contract for PL 11/11/98*
- 585 ✓
- Install wood fence on ~~same~~ property line. Six feet high to match existing style in subdivision.
- 71 ✓ Excavate form and pour cutout in foundation for extending vent chase for fire place in basement.
- 50 ✓
9-98 Form and pour concrete landings for porch steps, ~~sidewalks~~ on front and rear entrance steps in garage
- ✓
- Excavate, form and pour basement walls. Install center support walls and beam per drawing.
- PI ✓
- Install sewer and water lines from stub out in curb to dwelling. Include backflow valve and shut off valve.
- E 14. ✓ Connect electrical to meter base. Connect exterior and interior ground system.
- Garage
- 2500 ✓ Repair framing + sheet rock -
- 650 ✓ 2x install door + closer
- 1850 ✓ 3x install metal door (passage)
- 175 ✓ 4x Window in garage + both sides of door

INTERIOR

Living Room

- 500 1x Remove two walls in entrance way. See drawing.
49 install stair grade post & rail
800 2x Install new sheet rock to ceiling in living rooms with knock down finish
0 3x Install hardwood floor in living room and hall to bathroom door. (Owner)
P2 4x Paint walls, ceiling and trim. Include stairway and new closet.
98 5x Reconnect existing gas log. (new insulated & facing on wall, share with)
8x Frame closet with door, rod, shelves and entrance way. See drawing.
F 7 Remove closet in hall and install stairway to basement. (install hand rail)
- 8. Install light and switch over stairway. fixture
F 9. Install new track light on ceiling with four fixtures.
F 10. Install (2) ceiling light with fan in ceiling.
0 11. Install carpet and pad down stairway to basement. (By owner)

Kitchen

- 0 1. Remove all kitchen cabinets. & counter tops (by owner)
0 2. Install new cabinets, sink, taps, island with stove installed. (by owner)
0 3. Install new refrigerator, dish washer and dishwasher microwave. (by owner)
25 4x Install hardwood floor in kitchen/dining area. secure existing floor to stop squeak (by owner)
68 5x Install new insulated - steel door to garage/kitchen. Automatic closer required.

John and Shauna Groberg
Lot 13, Madison Subdivision
Page 3

- E 6. Install new light fixtures with fan in kitchen. *Light only.*
(and dining area)(2). *(Fixtures by owner)*
- E 7. Install G. F. I. in outlets in kitchen counter area.
- O 8. Install new heat register in dining area.
(to match floor etc)
- P 9. Paint wall, ceiling and trim in kitchen.
10. ~~Install new chair rail on kitchen/dining wall.~~

Main Floor Bathroom

- P 1. *By owner*
Contractor
Remove existing vanity. Install new vanity with formica top and (sink, taps and drain)
- E 2. Install G.F.I. in bath.
- O 3. Install new vinyl floor. *(by owner)*
- E 4. ~~Install new hardware on door.~~
Light fixture, re-install mirror
- IO 5. Install new six panel colonial door & hardware
- P 6. Install new shower head.
- P 7. Paint walls, ceiling and trim.
- P 8. *install shower door } supplied by owner*
install toilet
hallway
- 110? 1. ~~Install new sliding doors in closet with new~~
~~hardware~~ *match bedroom doors.* *DELETED*
2. Install new carpet on floor *(by owner)*
- P 3. Paint walls, ceiling and trim. Include inside of closets.
- E 4. Install 4' two-tube fixture in hall.
- OO 5. ~~Remove ramp ecover.~~ Frame, fill in and
sheetrock ceiling. Repair hole in roof.
Match existing shingles.

John and Shauna Groberg
Lot 13, Madison Subdivision
Page 4

Main Floor 3/4 Bath

2. ~~Remove existing shower.~~
 2. Install cabinets to left side with doors on upper and drawers on bottom half.
 3. ~~Install shower on right side with taps, shower head, shower door.~~
 4. Install new vanity with sink, taps and drains.
 5. Install new vinyl floor.
 6. Paint walls, ceiling and trim.
 7. Medicine cabinet & shower door (supplied by owner)
- All Upper Bedrooms

1. ~~1~~ Install new six panel colonial type doors and hardware.
2. Install mirror sliding doors on closet, brass or white trim. (mirror by owner)
3. ~~Sheetrock ceilings to cover spray material.~~
Prep ready for paint.
4. Paint all walls, ceiling and trim, include closets.
5. Install new carpet and pad in rooms. Include (By owner) closets.
6. Install new ceiling fixtures where broken or missing.

Basement

1. ~~1~~ Install window in all rooms to code.

Family Room

1. Install electrical, sheet rock. Prep for paint.
2. ~~1~~ Install fireplace insert, ^{by owner} gas line, and gas log with vent flue.
- 3 gas Log insert ~

John and Shauna Groberg
Lot 13, Madison Subdivision
Page 5

- O 3. Install carpet and pad to floor. (By owner)
- P2 4. Paint walls, ceiling and trim.

Basement Kitchen

- E 1. Install wiring for range, ^{110v} refrigerator, G.F.I. outlet over counter, light switches and room outlets to code.
- O 2. Install plumbing, drains, water lines for sink. & gas line for stove
- 300 3. Install kitchen base cabinets, countertop and upper cabinets per drawing. Install sink, taps, shut off valves. (cabinets By owner)
- O 4. Install vinyl, carpet and pad to floor per drawing. Owner to choose style and color. (By owner)
- 148
75 5. Install double french doors to exterior door way.
- F 6. ~~Frame closet, install door and shelves.~~
Hurry ceiling Area Owner supply Lights (3)
- P2 7. Paint walls, ceiling and trim.

1/2 Bathroom

- F 1. Frame and sheetrock per drawing.
- P1 2. Install plumbing and drain lines.
- P1 3. Install toilet and vanity. supply by owner
- O 4. Install vinyl floor. Owner to choose. By owner.
- E 5. Install electrical system, lights, G.F.I. outlets and vent fan to exterior.
- P2 5. Paint walls, ceiling and trim.

John and Shauna Groberg
Lot 13, Madison Subdivision
Page 6

Furnace Room

- 3 F 1. Frame, sheetrock walls and ceiling.
5925 2. Install 80% furnace, ducts, vents and cold air to code. include central air
1200-x 3. Install water heater, vents and water lines.
Install electric light and outlet. & floor drain
55 L 4. Install louver doors on entrance.

Utility Room

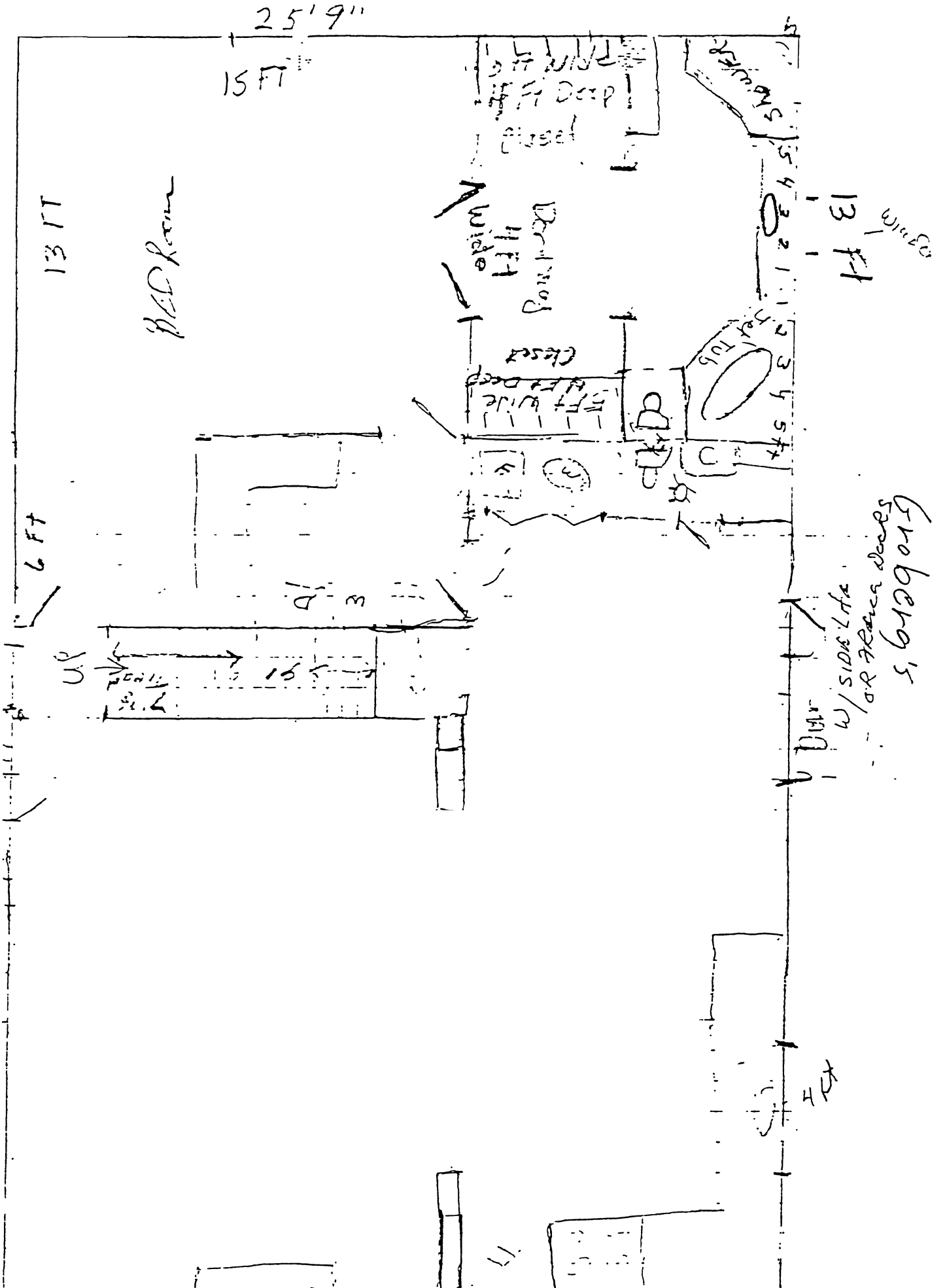
- F 1. Frame and sheetrock per drawing.
P-E 2. Install water, drain, electric system, dryer vents and lights. & floor drain
P2 3. Paint walls, ceiling and trim.

Lower Master Bedroom

- F 1. Frame and sheetrock walls and ceiling.
E 2. Install electrical light, plugs to code.
P2 3. Paint walls, ceiling and trim.
195 4. Install entrance doors (2).

Main Bath - Lower

- P 1. Frame and sheetrock ready for paint per drawing.
P-E 2. Install water, drains, and electrical system to code. Include vent fan, G.F.I. outlets and light fixtures.
P 3. Install cabinets, countertop, sink, jet tub, toilet, and shower per drawing. (supplied by owner)
P2 4. Paint walls, ceiling and trim.



PROMISSORY NOTE

MADE AND ENTERED INTO AT SALT LAKE COUNTY, STATE OF UTAH this 1st day of April, 1998.

FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay THE HOUSING AUTHORITY OF THE COUNTY OF SALT LAKE (hereinafter called "The Housing Authority") the sum of: Eighty Three Thousand Seven Hundred Seventy and NO/100's DOLLARS (\$ 83,770.00), and to pay interest on the unpaid principal balance at the rate of Zero percent (0%) per annum until paid in full. All principal and interest shall be immediately due and payable upon the occurrence of the first of any of the following:

1. Any actual or attempted transfer, whether voluntary or involuntary, including by operation of law, or upon the death of the undersigned, of certain real property used to secure this note pursuant to a Trust Deed/Assignment of Uniform Real Estate Contract of even date herewith, signed by the undersigned (said real property is hereinafter referred to as "secured property").
2. Sale of the secured property.
3. Any conveyance of the secured property.
4. Transfer of assignment of any equity or interest of the undersigned in the secured property.
5. Payment shall be made on or before the 1st day of April, 2003. 1999 *John A. Groberg*

Said payment shall be made in lawful money of the United States of America at the office of the Housing Authority of its assignee, or at such other place as shall be designated by the Housing Authority of its assignee.

The undersigned reserves the right to repay at any time all or any part of the principal amount of this note without the payment of penalty or premium.

If suit or legal action is instituted by The Housing Authority to recover on this note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and costs of Court in the event that The Housing Authority is the prevailing party.

Demand, protest, and notice of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all Homestead and other exemption rights which would otherwise apply to the debt evidenced by this note.

This note is secured by Trust Deed of even date, duly filed for record in the office of the County Recorder, Salt Lake County, Utah.

IN WITNESS WHEREOF, this note has been duly executed by the undersigned as of the date first above written.

John A. Groberg

John A. Groberg
Shauna Groberg

Shauna Groberg

On the 1st day of April, 1998, personally appeared before me
John A. Groberg and Shauna Groberg
the signer(s) of the foregoing Promissory Note, who duly acknowledged to me
that he executed the same.

NOTARY PUBLIC
Residing at: Salt Lake County, Utah
My Commission Expires: November 18, 1999

HOUSING AUTHORITY REHABILITATION AGREEMENT WITH OWNER

This agreement made and entered into on the 1st day of April, 1998, by and between the Housing Authority of the County of Salt Lake (herein referred to as "Housing Authority"), and John A. Groberg and Auna Groberg (herein referred to as "Owner").

WHEREAS, the Housing Authority anticipates lending certain funds to the Owner for the purpose of certain home repairs; and

WHEREAS, the Housing Authority can provide said sums only in accordance with various regulations governing its various governmental programs for the lending of said funds; and

WHEREAS, the Housing Authority can lend said funds only if the work is performed in accordance with the applicable building codes and is performed satisfactory to its own criteria; and

WHEREAS, the Owner understands and agrees that the Housing Authority's relationship is solely as lender;

NOW THEREFORE the parties agree as follows:

1. The Owner will contract with the contractor solely for the home repairs as outlined and agreed to by the Housing Authority.
2. The Owner recognizes and understands that the Housing Authority will not lend funds for any changes, trades, repairs or remodeling other than those agreed to by the Housing Authority. Furthermore, the parties understand that the Housing Authority will not lend funds for work outside the agreed upon scope of work of any sort even if the new work or different work is agreed to by the contractor as a "trade or exchange" on other work that was to be performed pursuant to the scope of work.
3. The parties understand and agree that the Housing Authority shall not pay or release any funds to the Owner or Contractor unless the work which is part of the scope of work has been completed to the satisfaction of the Housing Authority and in accordance with all municipal and county ordinances and in accordance with all other regulations which govern the scope of work and quality and condition of the work done pursuant to the governmental programs supplying the funds to be lent to the Owner.
4. The Owner does hereby agree to indemnify the Housing Authority, and to save and hold the Housing Authority harmless, with regard to all payments made by the Housing Authority pursuant to the Owner's authorization or approval. Further, the Owner agrees to indemnify and save and hold harmless the Housing Authority with regard to any non-payment of a Contractor by the Housing Authority, if so authorized or approved by the Owner.
5. The Housing Authority shall have no liability to the owner for any breaches of contract by the Contractor nor in the event that the Contractor shall fail to make any payment to any materialmen, laborer, supplier, subcontractor, or any other person. The Owner shall be solely responsible for any and all liens.

6. The Owner understands and agrees that the Home Repair Contract and this document is a binding legal agreement and that the Housing Authority does not act as legal counsel for either party. The Owner understands and agrees that they can have this document and the Home Repair Contract reviewed by their own attorneys.
7. The Owner understands and agrees that the Housing Authority is not the Owner's agent but acts solely as lender of construction funds. The Owner is responsible for issuing authority to the Housing Authority with respect to disbursement of funds to the Contractor. The Owner is responsible for having the Contractor obtain payment and performance bonds if the Owner so desires.
8. The parties agree that the Housing Authority acts solely as a lender and that it inspects the property for the purposes of fulfilling its duties to safeguard the governmental/programmatic funds loaned to the Owner.
9. The Housing Authority shall have no liability to any contractor, materialmen, laborers, subcontractor or suppliers as a result of any failure to pay such contractors, materialmen, laborers, subcontractors or suppliers.
10. The Owner agrees and understands that the Housing Authority is not responsible for any mistakes, delays or defects in workmanship by the contractor, subcontractors, suppliers, laborers or materialmen. It is understood that the Housing Authority's inspection is for its own purposes only and is not a guarantee or approval of the work performed by the contractor, subcontractors, materialmen, laborers or suppliers.
11. The Owner agrees that if there is any difference in work between the scope of work approved by the Housing Authority and that which the Owner wants done, that money loaned by the Housing Authority will be used to pay for that work only if the owner obtains the prior written approval of the Housing Authority.
12. The parties incorporate by reference the attached Scope of Service Agreement.

DATED this 1st day of April, 1998.

ing Authority of the County of Salt Lake

M. G. G. G.

J. J. J.

R. R. R.

Dean -
Hand deliver and go over
this with Groberg.
S



**HOUSING
AUTHORITY**

OF THE COUNTY OF SALT LAKE

3595 So. Main
Salt Lake City, UT 84115
Phone (801) 284-4400
Fax (801) 284-4406

November 11, 1998

TRY IT - YOU'LL USE IT - YOU'LL SEE

Mr. John Groberg
7395 West 3100 South
Magna, UT

HAND DELIVERED

Dear John,

The rehabilitation of your new home at the Madison development seems to be more contentious than I believe is necessary. I want to restate in writing the general terms and conditions of our agreement to avoid any more problems or surprises as we get to the end of the project. These items have been discussed with you on a number of occasions.

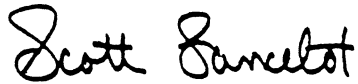
1. We have signed a contract to purchase your existing house for the appraised value of \$87,500.
2. You have agreed to purchase the home on lot 13 of the Madison subdivision for the appraised price of \$138,000.
3. You have hired a contractor to complete the rehabilitation work to your specifications for \$70,111. If there are extras to the contract that you request it will decrease the final equity in your new home.
4. We met on Sept. 30 with Dick Welch before his retirement. There were two issues that you raised which we agreed to pay for in consideration of the long time that it has taken to complete this project and in consideration that the appraisal on your existing home is more than 2 years old. These items were the installation of concrete for the driveway back to the sewer cleanout and trees and some landscaping on the property. These are the only two items that we will pay additional for and Dean has given you the parameters of our work. Anything else must be in writing in the existing contract.

5. Financing of this property will be accomplished as follows:
- a. At closing your house will be purchased by HOI for \$87,500. We will each pay or split customary closing costs. You have approximately \$30,000 remaining on the mortgage at the house. This will be paid off at closing as will any other records liens. The balance of the proceeds from the sale of your house, approximately \$57,000 (subject to verification of your mortgage balance and closing costs) will be applied to the down payment on your new home on lot 13. You will not receive any cash at closing from the sale of your home.
 - b. The applied proceeds of sale will be subtracted from the \$138,000 sales price of your new home, leaving a balance of about \$81,000 for a mortgage to be issued by the Housing Authority from our bank pool funds. This loan will currently be at 6.68 percent amortized over 20 years. If closing is after January 1, 1999 the rate may change up or down. Your monthly mortgage payment on an \$81,000 loan will be approximately \$612 per month plus about \$110 per month for taxes and insurance escrows for a total payment of \$722 per month. If the mortgage amount increases because the proceeds from your current house are less than \$57,000 then the monthly payment will increase.
 - c. The Housing Authority will record a second mortgage against your property for the balance of the actual costs of completing the site work, rehabilitation and other development costs. This mortgage will be termed a soft second mortgage, in that you will not have to pay monthly payments on this balance. It will accrue interest at the rate of 3% per year and will be added on to the balance. At resale of your house this second mortgage plus interest will be due and payable along with the first mortgage. In the event that you live in the house for more than 20 years, the second mortgage will begin to be retired beginning with the payment after the full payment of your first mortgage. Payments will remain at the same amount and it will be paid monthly until retired. The approximate amount of the second mortgage at this time is estimated to be \$40,000. This represents the costs that have been incurred by HOI for the development of each of the 15 sites for acquisition, streets, curbs, sewer and water and other development costs.
 - d. Consequently, at this point we can estimate that the total debt against your new property will be about \$121,000 (\$81,000 first mortgage and \$40,000 second mortgage). If you incur more costs for the rehabilitation or ask for additional work from your contractor that have to be paid this will increase the second mortgage cost by that amount. Under this scenario you will have approximately \$17,000 in equity in the house (\$138,000 purchase less recorded debt of \$121,000). Any additional costs that you authorize will reduce this \$17,000 figure.

- e. HOI has paid for or obligated all costs that we will sustain. Anything more that you wish to do will reduce your equity and you need to be aware of that. You also are being charged for your portion of the interest on construction loans until you are able to close and secure the permanent mortgage. This amounts to only a couple of hundred dollars per month but each month that the final completion and closing is delayed you will incur these costs against your equity.

I hope that this fairly summarizes the agreements that were made at the beginning of the project and restated throughout the development. It is important that you understand this clearly.

Sincerely,

A handwritten signature in black ink that reads "Scott Lancelot". The script is cursive and fluid, with the first letters of "Scott" and "Lancelot" being capitalized and prominent.

Scott Lancelot



October 4, 1999

Mr. Richard Tretheway
Attorney at Law
2018 Spring Oaks Dr.
Springville, UT 84663

3595 South Main Street
Salt Lake City, Utah 84115
Phone (801) 284-4400
Fax (801) 284-4406
TDD (801) 284-4407

Re: John Groberg

Dear Mr. Tretheway,

In response to your letter of Sept. 20, 1999 I can only restate that Housing Opportunities, Inc (HOI) made an agreement with Mr. Groberg in 1997 about the terms of the sale of his existing home and his purchase of the newly remodeled home on lot 13 at the Madison subdivision. We have operated under the assumption that these agreements are in effect and we are not willing to change them, especially since Groberg has been solely responsible for the costs of the rehabilitation of the house on lot 13. If he believes that it is not worth the cost that has been expended he has only himself to blame.

In regard to his rehabilitation efforts Groberg has caused our property to be lienied by McClellan Construction for \$12,980 for work authorized by him but not paid. The Housing Authority, as owner of the property, has been served notice by McClellan. The notice is attached. In order to protect our interests in the house we will pay the \$12,980 to McClellan within 10 days to remove the lien and add this cost to the debt on the property.

Groberg has two choices:

1. He may complete the contract as agreed by selling his existing house to the HOI for \$87,500 and purchase the house on lot 13 for the appraised value or the amount of indebtedness on the property, whichever is greater. The Housing Authority will provide a mortgage from Bank Pool funds and Salt Lake County to cover these costs. The exact payment will depend on the amount borrowed. Groberg has had complete control of all expenditures for the rehabilitation of the house and is solely responsible for the costs attached thereto. After payment of the lien to McClellan the total debt will be about \$156,000. A detailed listing of our expenses totaling \$143,552.72 is attached. Adding McClellan's payment of \$12,980 brings the current total to \$156,532.72.
2. He can terminate the deal and remain in his old house. We will take possession of the house on lot 13 and sell it for appraised value to another buyer. Groberg will not receive any reimbursement for any out of pocket costs that he might claim. We will lose about \$20,000 that he has overexpended on the house and he will lose any amounts that he has put in above and beyond what has already been paid. (You will

note on our detail that Groberg has been reimbursed \$15,763.32 for materials purchased for the house).

These are the only two options available. We will not renegotiate the terms of the original agreement that were well known to Groberg. He was warned on many occasions about the effect of his unrestrained spending on the house. My letter of November 11, 1998 is attached.

Groberg has until October 31, 1999 to close on the existing contracts or we will terminate the deal and take possession of the house and offer it for sale. In order to get closing documents ready we must have his decision to proceed in writing by October 22, 1999. If Groberg does not agree to proceed with the original contract by that date the Housing Authority and HOI will take possession of the house on lot 13, demand all keys and removal of any personal property belonging to Groberg and begin to market the house for sale. We will not delay this any further. Groberg has been promising to complete work and close the deal for nearly a year.

We can offer Groberg a mortgage from the bank pool for \$113,000 at 5.68% interest amortized over 20 years plus a second mortgage of \$25,000 from the County at 3% interest accrued but deferred until the first mortgage is paid. The additional costs on the house of about \$20,000 will have to be paid from the equity in Groberg's existing home. If there is not \$20,000 in equity remaining then the cost of the mortgage will have to be increased.

The monthly payment on the \$113,000 mortgage will be \$788.85 plus an approximate escrow payment for taxes and insurance of \$110, bringing the estimated monthly payment to \$898.85. Amount and approval of the mortgage is subject to review by the loan committee and an update of Groberg's income and credit report.

We reject the solutions advanced in your letter of September 20. Groberg wants to change the terms of the agreements by raising the sale price on his existing home and lowering the price on the house on lot 13. He also wants to be paid for labor and materials. We have already advanced \$15,763.32 in materials reimbursement to him. He wishes us to pay labor for himself and his sons as well as your attorney's fee. These are his costs not ours.

If Groberg terminates this deal we do not owe him anything for the easement. He signed over this easement to us in the original contract whether or not the deal ultimately closed.

The mediation process does not affect this situation since all rehabilitation work and costs have been controlled and authorized by Groberg. We will have the house reappraised for resale to another buyer but the mortgage that Groberg must pay will have to include all the debts against the property, most of which he incurred.

Please let us know your decision by October 22 or we will proceed as stated.

Sincerely,

Scott Lancelot

EXPENSES

Item #	Company	Date	Amount
1.	Crown Home Improvement	02/06/98	\$ 541.00
2.	Monroc (window well gravel)	04/20/98	\$ 10.00
3.	Salt Lake Valley Solid Waste (landfill dump fee)	05/01/98	\$ 8.00
4.	Colonial Building Supply	05/08/98	\$ 188.33
5.	Robert Fackrell (installation of coaxial cable, phone jacks & wiring)	06/18/98	\$ 1,000.00
6.	McClellan Construction (garage storage room)	06/18/98	\$ 1,500.00
7.	Marvin Heath (brick mason fireplace)	06/22/98	\$ 500.00
8.	Home Depot (electrical supplies)	08/15/98	\$ 1.15
9.	Rocky Mountain Stove & Fireplace	09/09/98	\$ 855.89
10.	Home Depot (linseed oil for perimeter fences)	09/29/98	\$ 9.54
11.	Home Depot (carpentry supplies)	09/29/98	\$ 13.35
12.	Rocky Mountain Stove & Fireplace	10/08/98	\$ 284.92
13.	Colonial Building Supply	10/12/98	\$ 50.50
14.	Colonial Building Supply	10/12/98	\$ 63.75
15.	Sam's Club (2 lights)	10/28/98	\$ 39.98
16.	V1 Propane (propane to heat house)	12/01/98	\$ 24.44
17.	Advance Architectural Products (AAP) (wall bond)	12/02/98	\$ 26.06
18.	Advance Foam Plastics	12/03/98	\$ 137.19
19.	Tile Traditions	12/08/98	\$ 11.95
20.	Home Depot (electrical supplies) [see #44 credit]	12/29/98	\$ 214.19
21.	Home Depot (electrical supplies)	12/29/98	\$ 32.82
22.	Flying J (propane to heat house)	01/02/99	\$ 20.56
23.	Home Depot (smoke detectors, bath fixtures) [see #45 credit]	01/05/99	\$ 191.94

Item #	Company	Date	Amount
24.	Home Depot (electrical supplies)	01/07/99	\$ 166.01
25.	Home Depot (gas log for fireplace)	01/08/99	\$ 53.15
26.	Home Depot (tile supplies)	01/11/99	\$ 25.93
27.	True Value Hardware (plumbing supplies)	01/11/99	\$ 12.74
28.	True Value Hardware (electrical supplies)	01/26/99	\$ 5.31
29.	Home Depot (tile supplies)	01/26/99	\$ 8.98
30.	Tile Traditions	01/30/99	\$ 53.47
31.	Home Depot (drywall supplies)	02/08/99	\$ 25.35
32.	Home Depot (electrical supplies)	02/08/99	\$ 80.53
33.	True Value Hardware (electrical supplies)	02/08/99	\$ 101.42
34.	Home Depot (electrical supplies)	02/15/99	\$ 199.09
35.	Duct Pros (to clean upstairs furnace vents)	02/17/99	\$ 119.95
36.	Home Depot (drywall supplies)	02/22/99	\$ 92.45
37.	Robert Kusnier (installation gutters, doors, windows)	02/22/99	\$ 576.00
38.	Tile Traditions	02/25/99	\$ 74.38
39.	Tile Traditions Return	02/26/99	\$ -37.61
40.	True Value Hardware (electrical supplies)	02/26/99	\$ 6.76
41.	True Value Hardware (electrical supplies)	02/26/99	\$ 2.68
42.	True Value Hardware (joint compound)	02/26/99	\$ 11.54
43.	Home Depot (electrical supplies)	03/03/99	\$ 257.66
44.	Home Depot (return) [see #20]	03/03/99	\$ -74.02
45.	Home Depot (return) [see #23]	03/03/99	\$ -83.78
46.	True Value Hardware (wood bit)	03/12/99	\$ 2.59
47.	Home Depot (electrical supplies) [see #54]	03/12/99	\$ 296.83
48.	Home Depot (plumbing supplies & window blinds)	03/13/99	\$ 226.02
49.	Home Depot (return)	03/13/99	\$ -191.66

Item #	Company	Date	Amount
50.	Home Depot (window blinds)	03/15/99	\$ 278.22
51.	Robert Kusnier (beam wrap patio, basement window wrap)	03/20/99	\$ 240.00
52.	M-One Specialist (plumbing materials)	04/18/99	\$ 8.36
53.	Home Depot (electrical supplies)	04/09/99	\$ 154.79
54.	Home Depot (return) [see #47]	04/09/99	\$ -133.58
55.	Auto Zone (fireplace paint)	04/20/99	\$ 9.25
56.	Colonial Building Supply	04/20/99	\$ 77.34
57.	Salt Lake Valley Solid Waste (landfill dump fee)	04/20/99	\$ 5.00
58.	True Value Hardware (plumbing supplies)	04/20/99	\$ 18.40
59.	True Value Hardware (propane)	04/22/99	\$ 5.99
60.	Home Depot (electrical supplies)	04/29/99	\$ 32.46
61.	RTI Railroad Materials	04/30/99	\$ 57.43
62.	Home Depot (nuts & bolts for handrail)	05/02/99	\$ 9.43
63.	Home Depot (return)	05/06/99	\$ -50.11
64.	Colonial Building Supply	05/24/99	\$ 79.08
65.	Closet King (closets, cabinets, counters)	06/10/99	\$ 1,650.00
	SECTION TOTAL:		\$ 10,179.39
66.	Utah Power & Light	02/25/99	\$ 12.56
67.	Utah Power & Light	03/25/99	\$ 16.11
68.	Utah Power & Light	04/25/99	\$ 7.69
69.	Utah Power & Light	05/26/99	\$ 7.06
70.	Utah Power & Light	06/24/99	\$ 7.22
71.	Utah Power & Light	07/23/99	\$ 7.29
72.	Utah Power & Light	08/23/99	\$ 17.28
73.	Magna Water Co.	03/25/99	\$ 11.10
74.	Magna Water Co.	04/25/99	\$ 45.44

Item #	Company	Date	Amount
75.	Magna Water Co.	05/25/99	\$ 22.20
76.	Magna Water Co.	06/25/99	\$ 111.59
77.	Magna Water Co.	07/25/99	\$ 22.20
78.	Magna Water Co.	08/25/99	\$ 22.94
79.	Magna Water Co.	09/25/00	\$ 22.94
79.	Questar	03/05/99	\$ 87.18
80.	Questar	04/01/99	\$ 69.24
81.	Questar	05/03/99	\$ 55.25
82.	Questar	06/02/99	\$ 39.05
83.	Questar	07/01/99	\$ 30.37
84.	12511.22	08/03/99	\$ 21.58
85.	Questar	09/01/99	\$ 27.93
86.	Questar	10/01/99	\$ 17.61
	SECTION TOTAL:		\$ 681.83
	GRAND TOTAL:		\$ 10,861.22

Backup documentation for expenses
omitted

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				
			HOI Dev Costs	HOI Admin Costs	HOI Loan Costs	108	Home Funds
Title Fee 10-033	07/31/1995	\$ 1 60	\$ 1 60				
Associated Title Co Purchase 10-022	08/30/1996	\$ 3 340 00					\$ 3,340 00
Larson & Malmquist Review 10-020	06/30/1996	\$ 436 00					\$ 436 00
Thomson Appraisal 10-032	07/10/1996	\$ 20 00					\$ 20 00
Magna Water Plan Check Fee 10 021	07/11/1996	\$ 50 00					\$ 50 00
Larson & Malmquist Review 10-020	09/04/1996	\$ 534 38	\$ 436 00				\$ 98 38
Salt Lake County Dev Service 10 020	10/23/1996	\$ 90 00					\$ 90 00
Salt Lake County Eng Street Sign 10-37	10/31/1996	\$ 6 67					\$ 6 67
Dick Welch Salary JE 12-016/10-023	12/31/1996	\$ 207 15		\$ 207 15			
Admin Expense JE 0-024/10-023	06/30/1997	\$ 420 74		\$ 420 74			
Admin Expense JE 6 025/10-023	06/30/1997	\$ 1 91		\$ 1 91			
Legal Expense 10 034	06/30/1997	\$ 13 01	\$ 13 01				
Old Republic Title Co Title Search 10-033	07/17/1997	\$ 13 33	\$ 13 33				
Salt Lake County Building Fees 10-021	08/20/1997	\$ 668 86	\$ 668 86				
Larson & Malmquist Review 10-020	08/26/1997	\$ 30 00	\$ 30 00				
Larson & Malmquist Review 10-020	08/26/1997	\$ 23 00	\$ 23 00				
Larson & Malmquist Review 10-020	09/30/1997	\$ 176 07	\$ 176 07				
Larson & Malmquist Review 10-020	09/30/1997	\$ 36 95	\$ 36 95				
Fred A Morton Insurance	10/03/1997	\$ 284 07	\$ 284 07				
Well's Robert Moving	10/16/1997	\$ 7,500 00	\$ 1 600 00				\$ 6 000 00
General Remodeling 10-029	10/31/1997	\$ 11,370 00					\$ 11 370 00
Fred A Morton Insurance 10-039	10/31/1997	\$ 111.50	\$ 111 50				
Herm Hughes & Sons 10-037	11/07/1997	\$ 3,633 33	\$ 3,633 33				
Larson & Malmquist Review 10-020	11/07/1997	\$ 410 94	\$ 410 94				
Magna Water Sub Fees 10-020	11/07/1997	\$ 304 60	\$ 304 60				
General Remodeling 10 029	11/07/1997	\$ 3,790 00	\$ 3,790 00				
Larson & Malmquist Review 10-020	11/30/1997	\$ 23 50	\$ 23 50				
Larson & Malmquist Review 10-020	11/30/1997	\$ 104 31	\$ 104.31				
Old Republic Title Co Title Search 10 033	11/30/1997	\$ 47.27	\$ 47 27				
Wells Fargo Loan Nov Int	11/30/1997	\$ 17 58			\$ 17.58		
Wells Fargo Loan Nov Fees	11/30/1997	\$ 266 66			\$ 266 66		
Joe Rhodes Consulting 10 031	12/31/1997	\$ 105 06					\$ 105 06
Fred A Morton Insurance	12/31/1997	\$ 109 00	\$ 109 00				
Wells Fargo Loan Dec Int	12/31/1997	\$ 109 10			\$ 109.10		
Admin Expenses JE 12-023/10-023	12/31/1997	\$ 367 57		\$ 367.57			
Larson & Malmquist Review	01/20/1998	\$ 45 00	\$ 45 00				
Herm Hughes & Sons 10-037	01/28/1998	\$ 4 653 88	\$ 4 653 88				
Wells Fargo Loan Jan Int 01 028	01/31/1998	\$ 109 98			\$ 109.98		
Utah Power & Light 10 037	02/04/1998	\$ 100 00	\$ 100 00				
Wells Fargo Loan Mar Int 03-035	03/31/1998	\$ 112 68			\$ 112 68		
Herm Hughes & Sons 10-037	04/22/1998	\$ 3,200 00	\$ 3 200 00				
Magna Water	05/11/1998	\$ 3 500 00				\$ 3 500 00	
McClellan Const	05/20/98	\$5 174 40				\$5 174 40	
McClellan Const	05/31/98	\$8 772 00				\$8 772 00	
Fred A Morton Insurance 10-029	06/20/1998	\$ 3 46	\$ 3 46				
Fred A Morton Insurance 10 029	06/20/1998	\$ 26 40	\$ 26.40				
McClellan Const	06/30/98	\$9 016 00				\$9 016 00	
Wells Construction Advertise 10-027	07/22/1998	\$ 157 34	\$ 157 34				
Insurance Settlement	08/30/1998	\$ (5 965 09)	\$ (5 965 09)				
Wells Fargo App Eng Fee	08/31/1998	\$ 118 10			\$ 118 10		
McClellan Const	09/03/98	\$11 000 00				\$11 000 00	
Federal Express 10 036	09/08/1998	\$ 0 49		\$ 0 49			
Heath Jackroll	09/24/98	\$3 158 02				\$3 158 02	
Herm Hughes & Sons 10-037	09/30/1998	\$ 7 128 71	\$ 7 128 71				
Salt Lake County Impact Fee	09/30/1998	\$ 1,151 00	\$ 1,151 00				
Sign A-Rama Advertising 10-027	09/30/1998	\$ 27 38	\$ 27 38				
Keyco Construction	10/29/1998	\$ 548 53	\$ 548 53				
Credit Reports JE 10-018	10/30/1998	\$ 10 92		\$ 10 92			
Admin Salaries JE 10 024	10/30/1998	\$ 851 94		\$ 851 94			
Admin f.mpl Ben JE 10 026	10/30/1998	\$ 47 25		\$ 47 25			
Copies JE 10 28	10/30/1998	\$ 0 40		\$ 0 40			
Admin P/R Taxes JE 10 030	10/30/1998	\$ 71 56		\$ 71.56			
Tax Settlement 10-035 *	10/30/1998	\$ 44 75					\$ 44 75
Conserve A Watt	10/31/1998	\$ 3 82	\$ 3 82				

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				
			HOI Dev Costs	HOI Admin Costs	HOI Loan Costs	108	Home Funds
Experion Credit Reports	10/31/1998	\$ 0 58		\$ 0 58			
First Security Bankcard	10/31/1998	\$ 18 93	\$ 18 93				
Larson & Malmquist	10/31/1998	\$ 33 35	\$ 33 35				
Plumbers Supply	10/31/1998	\$ 4 50	\$ 4 50				
Plumbers Supply	10/31/1998	\$ 2 11	\$ 2 11				
Plumbers Supply	10/31/1998	\$ (1 33)	\$ (1 33)				
Evelyn Tuddenham	10/31/1998	\$ 18 01	\$ 18 01				
United Rentals	10/31/1998	\$ 29 28	\$ 29 28				
United Rentals	10/31/1998	\$ 1 17	\$ 1 17				
Defa Construction	11/18/1998	\$ 386 53	\$ 386 53				
Eagle Hardware	11/24/1998	\$ 4 72	\$ 4 72				
Salt Lake County P tax	11/24/1998	\$ 167 46	\$ 167 46				
Defa Construction	11/25/1998	\$ 346 84	\$ 346 84				
Defa Construction	11/25/1998	\$ 1 296 00	\$ 1 296 00				
McClellan Const	11/30/1998	\$ 8 200 00	\$ 8 200 00				
Evelyn Tuddenham	11/30/1998	\$ 36 02	\$ 36 02				
Allocate Mileage Expense 11-03B	11/30/1998	\$ 63 59		\$ 63 59			
Allocate Copy Expense 11 040	11/30/1998	\$ 1 27		\$ 1 27			
Allocate Admin Salaries 11 041	11/30/1998	\$ 206 84		\$ 206 84			
Allocate Emp Benefits 11-039A	11/30/1998	\$ 28 40		\$ 28 40			
Allocate P/r Taxes 11 039B	11/30/1998	\$ 19 76		\$ 19 76			
Inventory Usage 11-021	11/30/1998	\$ 226 12	\$ 226 12				
John & Shauna Groberg - Materials	12/18/1998	\$ 2 616 19	\$ 2 616 19				
McClellan Const	12/18/1998	\$ 9 502 60	\$ 9 502 60				
Experion Credit Reports	12/22/1998	\$ 0 70		\$ 0 70			
Recluse Expenses Sold Lots 12-095	12/30/1998	\$ 266 06		\$ 266 06			
Strickly Hardwood Corp	12/31/1998	\$ 1 924 50	\$ 1 924 50				
Wells Fargo Interest 12-037	12/31/1998	\$ 1 414 35			\$ 1 414 35		
Wells Fargo Loan Fees 12-038	12/31/1998	\$ 15 43			\$ 15 43		
Allocate Copy Expense 12 030	12/31/1998	\$ 0 30		\$ 0 30			
Allocate Emp Benefits 12 040	12/31/1998	\$ 4 28		\$ 4 28			
Allocate Admin Salaries 12-042	12/31/1998	\$ 460 39		\$ 460 39			
Larson & Malmquist	01/15/1999	\$ 27 51	\$ 27 51				
Larson & Malmquist	01/15/1999	\$ 2 50	\$ 2 50				
Larson & Malmquist	01/15/1999	\$ 20 11	\$ 20 11				
Larson & Malmquist	01/15/1999	\$ 26 55	\$ 26 55				
Larson & Malmquist	01/15/1999	\$ 12 51	\$ 12 51				
Larson & Malmquist	01/15/1999	\$ 75 57	\$ 75 57				
Larson & Malmquist	01/15/1999	\$ 20 24	\$ 20 24				
Allocate P/r Taxes 01 027	01/30/1999	\$ 8 09		\$ 8 09			
Allocate Admin Salaries 01-027	01/30/1999	\$ 82 38		\$ 82 38			
Allocate Mileage Expense 01 027	01/30/1999	\$ 12 20		\$ 12 20			
Allocate Emp Ben 01 027	01/30/1999	\$ 8 22		\$ 8 22			
Allocate Copy Expense 01-027	01/30/1999	\$ 0 45		\$ 0 45			
Recluse Expenses Sold Lots 01 045	01/30/1999	\$ 54 86		\$ 54 86			
John & Shauna Groberg - Materials	01/31/1999	\$ 4 077 51	\$ 4 077 51				
Allocate Mileage 1 95	01/31/1999	\$ 7 72		\$ 7 72			
Wells Fargo Loan Rev Oct Nov Dec 1 98	01/31/1999	\$ (334 27)			\$ (334 27)		
Wells Fargo Interest 1-97	01/31/1999	\$ 365 94			\$ 365 94		
Federal Express	02/18/1999	\$ 0 48		\$ 0 48			
John & Shauna Groberg - Materials	02/18/1999	\$ 306 00	\$ 306 00				
John & Shauna Groberg - Materials	02/18/1999	\$ 1 924 50	\$ 1 924 50				
Classic Cabinets	02/24/1999	\$ 3 467 83	\$ 3 467 83				
Robert Kusner	02/24/1999	\$ 576 00	\$ 576 00				
New Age Plastering Inc	02/24/1999	\$ 2 300 00	\$ 2 300 00				
Newman Wood Systems	02/24/1999	\$ 325 00	\$ 325 00				
Allocate P/r Taxes 2-91A	02/28/1999	\$ 20 64		\$ 20 64			
Allocate Admin Salaries 2 91B	02/28/1999	\$ 216 51		\$ 216 51			
Allocate Mileage Expense 2-91C	02/28/1999	\$ (9 36)		\$ (9 36)			
Allocate Retirement 2-91D	02/28/1999	\$ 2 09		\$ 2 09			
Allocate Emp Ben 2 91E	02/28/1999	\$ 10 37		\$ 10 37			
Allocate Copy Expense 2-91F	02/28/1999	\$ 0 93		\$ 0 93			
Wells Fargo Loan Interest 2-91G	02/28/1999	\$ (244 04)			\$ (244 04)		
Allocate Credit Reports 2 92C	02/28/1999	\$ 0 18		\$ 0 18			

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				
			HOI Dev. Costs	HOI Admin Costs	HOI Loan Costs	108	Home Funds
Reclass Expenses Unsold Lots 2-92D	02/28/1999	\$ 0.24		\$ 0.24			
Bergon Distributing Inc	03/03/1999	\$ 3,584.82	\$ 3,584.82				
Stephen R. Voskell	03/12/1999	\$ 1,318.00	\$ 1,318.00				
John & Shauna Groberg - Materials	03/25/1999	\$ 3,621.06	\$ 3,621.06				
Richards Electrical	03/25/1999	\$ 1,300.00	\$ 1,300.00				
John & Shauna Groberg - Materials	03/26/1999	\$ 888.00	\$ 888.00				
John & Shauna Groberg - Materials	03/28/1999	\$ 2,022.58	\$ 2,022.58				
Allocate P/R Taxes 3-45A	03/31/1999	\$ 13.96		\$ 13.96			
Allocate Admin Salaries 3-45B	03/31/1999	\$ 144.35		\$ 144.35			
Allocate Mileage 3-45C	03/31/1999	\$ 30.49		\$ 30.49			
Allocate Emp Ben 3-45D	03/31/1999	\$ 7.55		\$ 7.55			
Allocate Emp Ben 3-45E	03/31/1999	\$ 7.62		\$ 7.62			
Allocate Copies 3-45F	03/31/1999	\$ 1.97		\$ 1.97			
Wells Fargo Loan Interest 3-45G	03/31/1999	\$ 709.20			\$ 709.20		
John & Shauna Groberg - Materials	04/08/1999	\$ 307.48	\$ 307.48				
Experian Credit Reports	04/29/1999	\$ 0.58		\$ 0.58			
Allocate P/R Taxes 4-54A	04/30/1999	\$ 17.87		\$ 17.87			
Allocate Admin Salaries 4-54B	04/30/1999	\$ 186.96		\$ 186.96			
Allocate Emp Ben 4-54E	04/30/1999	\$ 7.14		\$ 7.14			
Allocate Copies 4-54F	04/30/1999	\$ 0.64		\$ 0.64			
Wells Fargo Loan 4-54G	04/30/1999	\$ 312.50			\$ 312.50		
Allocate Credit Reports 4-54H	04/30/1999	\$ 0.49		\$ 0.49			
Allocate P/R Taxes 5-42A	05/30/1999	\$ 16.58		\$ 16.58			
Allocate Admin Salaries 5-42B	05/30/1999	\$ 178.82		\$ 178.82			
Allocate Mileage 5-42C	05/30/1999	\$ 8.08		\$ 8.08			
Allocate Emp Ben 5-42E	05/30/1999	\$ 5.67		\$ 5.67			
Allocate Copies 5-42F	05/30/1999	\$ 0.12		\$ 0.12			
Wells Fargo Loan Int 5-42G	05/30/1999	\$ 243.01			\$ 243.01		
Voided Check 5-43A	05/31/1999	\$ (500.00)	\$ (500.00)				
Allocate P/R Taxes 6-105A	06/30/1999	\$ 23.33		\$ 23.33			
Allocate Admin Salaries 6-105B	06/30/1999	\$ 245.64		\$ 245.64			
Allocate Mileage 6-105C	06/30/1999	\$ 16.15		\$ 16.15			
Allocate Emp Ben 6-105E	06/30/1999	\$ 11.85		\$ 11.85			
Allocate Copies 6-105F	06/30/1999	\$ 0.83		\$ 0.83			
Wells Fargo Loan Int 6-105G	06/30/1999	\$ 243.01			\$ 243.01		
Appraisal Professionals	07/15/1999	\$ 225.00	\$ 225.00				
Experian Credit Reports	07/15/1999	\$ 0.12		\$ 0.12			
Allocate Admin P/R Taxes 7-47A	07/31/1999	\$ 11.71		\$ 11.71			
Allocate Admin Salaries 7-47B	07/31/1999	\$ 125.56		\$ 125.56			
Allocate Admin Mileage 7-47C	07/31/1999	\$ 13.92		\$ 13.92			
Allocate Admin Medical 7-47D	07/31/1999	\$ 5.43		\$ 5.43			
Allocate Admin Interest 7-47G	07/31/1999	\$ 69.48			\$ 69.48		
Allocate Admin Credit Reports 7-47H	07/31/1999	\$ 0.07		\$ 0.07			
Allocate Admin Interest 7-49G	07/31/1999	\$ (138.96)			\$ (138.96)		
Allocate Admin P/R Taxes 8-49A	08/31/1999	\$ 8.07		\$ 8.07			
Allocate Admin Salaries 8-49B	08/31/1999	\$ 81.45		\$ 81.45			
Allocate Admin Mileage 8-49C	08/31/1999	\$ 11.19		\$ 11.19			
Allocate Admin Medical 8-49E	08/31/1999	\$ 7.01		\$ 7.01			
Allocate Admin Copies 8-49F	08/31/1999	\$ 0.83		\$ 0.83			
Allocate Admin Interest 8-49G	08/31/1999	\$ 280.01			\$ 280.01		
Allocate Admin P/R Taxes 9-42A	09/30/1999	\$ 12.10		\$ 12.10			
Allocate Admin Salaries 9-42B	09/30/1999	\$ 128.10		\$ 128.10			
Allocate Admin Mileage 9-42C	09/30/1999	\$ 6.54		\$ 6.54			
Allocate Admin Medical 9-42E	09/30/1999	\$ 3.85		\$ 3.85			
Allocate Admin Copies 9-42F	09/30/1999	\$ 2.34		\$ 2.34			
Allocate Admin Interest 9-42G	09/30/1999	\$ 161.80			\$ 161.80		
McClellan Const	10/07/1999	\$ 12,980.00	\$ 12,980.00				
Ari House Design	10/28/1999	\$ 28.12	\$ 28.12				
Herm Hugh	10/28/1999	\$ 487.50	\$ 487.50				
Newspaper Agency Corp.	10/28/1999	\$ 34.67	\$ 34.67				
Allocate Admin P/R Taxes 10-37A	10/31/1999	\$ 18.11		\$ 18.11			
Allocate Admin Salaries 10-37B	10/31/1999	\$ 191.99		\$ 191.99			
Allocate Admin Mileage 10-37C	10/31/1999	\$ 12.18		\$ 12.18			
Allocate Admin Medical 10-37E	10/31/1999	\$ 10.67		\$ 10.67			

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				
			HOI Dev. Costs	HOI Admin Costs	HOI Loan Costs	108	Home Funds
Allocate Admin Copies 10-37F	10/31/1999	\$ 1.71		\$ 1.71			
Allocate Admin Interest 10-37G	10/31/1999	\$ 472.84			\$ 472.84		
Allocate Madison Supplies 10-37H	10/31/1999	\$ 5.84		\$ 5.84			
Salt Lake County P-tax	11/08/1999	\$ 990.07	\$ 990.07				
Allocate Admin PR Taxes 11-28A	11/30/1999	\$ 22.63		\$ 22.63			
Allocate Admin Salaries 11-28B	11/30/1999	\$ 238.32		\$ 238.32			
Allocate Admin Mileage 11-28C	11/30/1999	\$ 16.86		\$ 16.86			
Allocate Admin Medical 11-28E	11/30/1999	\$ 11.67		\$ 11.67			
Allocate Admin Copies 11-28F	11/30/1999	\$ 0.78		\$ 0.78			
Allocate Admin Interest 11-28G	11/30/1999	\$ 243.43			\$ 243.43		
Magna Water	12/09/1999	\$ 22.94	\$ 22.94				
Utah Power & Light	12/09/1999	\$ 12.32	\$ 12.32				
Keveco Construction	12/30/1999	\$ 1,125.00	\$ 1,125.00				
Magna Water	12/30/1999	\$ 22.94	\$ 22.94				
Questar Gas	12/30/1999	\$ 55.67	\$ 55.67				
Scalley & Reading PC	12/30/1999	\$ 123.75		\$ 123.75			
Utah Power & Light	12/30/1999	\$ 14.52	\$ 14.52				
Allocate Admin PR Taxes 12-25A	12/31/1999	\$ 8.31		\$ 8.31			
Allocate Admin Salaries 12-25B	12/31/1999	\$ 89.86		\$ 89.86			
Allocate Admin Mileage 12-25C	12/31/1999	\$ 20.43		\$ 20.43			
Allocate Admin Medical 12-25E	12/31/1999	\$ 3.09		\$ 3.09			
Allocate Admin Copies 12-25F	12/31/1999	\$ 0.23		\$ 0.23			
Allocate Admin Interest 12-25G	12/31/1999	\$ 467.54			\$ 467.54		
Questar Gas	01/20/2000	\$ 115.78	\$ 115.78				
Olene Walker Interest	01/25/2000	\$ 496.08			\$ 496.08		
Commission	01/25/2000	\$ 9,135.00	\$ 9,135.00				
Closing Costs	01/25/2000	\$ 1,212.65	\$ 1,212.65				
Magna Water	01/28/2000	\$ 23.87	\$ 23.87				
Utah Power & Light	01/28/2000	\$ 17.21	\$ 17.21				
Allocate Admin PR Taxes 1-36A	01/31/2000	\$ 10.72		\$ 10.72			
Allocate Admin Salaries 1-36B	01/31/2000	\$ 115.00		\$ 115.00			
Allocate Admin Medical 1-36E	01/31/2000	\$ 6.33		\$ 6.33			
Allocate Admin Copies 1-36F	01/31/2000	\$ 0.28		\$ 0.28			
Allocate Admin Interest 1-36G	01/31/2000	\$ (233.77)			\$ (233.77)		
Questar Gas	02/03/2000	\$ 66.19	\$ 66.19				
Strike Force Construction	02/03/2000	\$ 1,378.00	\$ 1,378.00				
Christina Sweet	02/03/2000	\$ 350.00	\$ 350.00				
Utah Power & Light	02/10/2000	\$ 2.74	\$ 2.74				
Allocate Admin PR Taxes 2-25A	02/29/2000	\$ 6.15		\$ 6.15			
Allocate Admin Salaries 2-25B	02/29/2000	\$ 68.02		\$ 68.02			
Allocate Admin Mileage 2-25C	02/29/2000	\$ 12.71		\$ 12.71			
Allocate Admin Medical 2-25E	02/29/2000	\$ 3.29		\$ 3.29			
Allocate Admin Copies 2-25F	02/29/2000	\$ 0.08		\$ 0.08			
Allocate Admin Interest 2-25G	02/29/2000	\$ 355.44		\$ 355.44			
Magna Water	03/09/2000	\$ 44.40	\$ 44.40				
Strike Force Construction	03/31/2000	\$ 1,345.00	\$ 1,345.00				
Allocate Admin PR Taxes 3-41A	03/31/2000	\$ 8.05		\$ 8.05			
Allocate Admin Salaries 3-41B	03/31/2000	\$ 92.92		\$ 92.92			
Allocate Admin Mileage 3-41C	03/31/2000	\$ 17.69		\$ 17.69			
Allocate Admin Medical 3-41E	03/31/2000	\$ 6.21		\$ 6.21			
Allocate Admin Copies 3-41F	03/31/2000	\$ 2.23		\$ 2.23			
Total Expenses		\$ 176,735.28	\$ 103,004.02	\$ 6,272.50	\$ 5,277.48	\$ 40,620.42	\$ 21,560.86
G/L Balance		\$ 176,735.28					\$ 7.22
Variance		\$ -					
* Additional Shown By County							