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Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

JOHN GROBERG and SHAUNA GROBERG, Plaintiffs/Appellants, vs. HOUSING OPPORTUNITIES, INC., a Utah nonprofit corporation, MARGARET M. DAHLE, JOHN L. KRUEGER, and GRANITE CREDIT UNION, a Utah corporation, Defendants/Appellees.	:	Case No. 20010754 CA Civil No. 990912183 Third District Court, Salt Lake County ORAL ARGUMENT AND PUBLISHED DECISION REQUESTED

BRIEF OF APPELLANT

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

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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction over this case, as transferred from the Utah Supreme Court, pursuant to UTAH CODE ANNOTATED § 78-2a-3(2)(j).

STATEMENT OF ISSUES PRESENTED

1. **Issue:** Whether the district court erred in concluding the Grobergs were not entitled to assert a mechanic's lien for the value of the labor and materials they provided to improve Housing Opportunity, Inc.'s ("HOI's") real property.

   a. **Standard of Review:** Correction of error in determining whether a party is eligible to record a mechanic's lien. *A. K. & R. Whipple Plumbing & Heating v. Aspen Constr.*, 1999 UT App 87, ¶ 11, 977 P.2d 518.

   b. **Record Citation:** This issue was raised in Plaintiff's Complaint (Record on Appeal [hereafter "R."] 6, 47-48) and at trial (Transcript of Trial [hereafter "Tr."] 14, 518-25.)

2. **Issue:** Whether the district court erred in concluding that HOI's conduct did not breach the terms of the Real Estate Purchase Contract.

   a. **Standard of Review.** To the extent the facts relating to HOI's conduct are uncontroverted, this is an issue of law and the standard of review is correction of error. *Cobabe v. Stanger*, 844 P.2d 298, 302 (Utah 1992). To the extent there is a factual dispute as to HOI's conduct, or to the extent the trial court

based its construction on extrinsic evidence of intent, the standard of review is clear error. *Edward & Daniels Architects, Inc. v. Farmer's Properties, Inc.*, 865 P.2d 1382, 1385 (Utah Ct. App. 1993).

b. **Record Citation:** This issue was raised in Plaintiff's Complaint (R. 6-7, 48-49) and at trial (Tr. 14, 525-535).

3. **Issue:** Whether the district court erred in concluding that the Grobergs were not entitled to recover under their unjust enrichment claim.

a. **Standard of Review:** Because this is a mixed question of law and fact, factual findings will be reviewed under the clear error standard, legal conclusions will be reviewed under the correction of error standard, and the trial court's application of unjust enrichment law to the facts will be reviewed under the abuse of discretion standard. *Jeffs v. Stubbs*, 970 P.2d 1234, 1244 (Utah 1998); *Desert Miriah, Inc. v. B&L Auto, Inc.*, 2000 UT 83, ¶¶ 10-12, 12 P.3d 580.

b. **Record Citation:** This issue was raised in Plaintiff's Complaint (R. 7-8, 49-50) and at trial (Tr. 536-38).

DETERMINATIVE LEGAL PROVISIONS

The Grobergs' mechanic's lien claim is governed by UTAH CODE ANN. § 38-1-3, a section contained in Utah's Mechanic's Lien statute, which is set forth in full in the Addendum (hereafter, "Add.") at 70. The Grobergs' breach of contract claim is

governed by the interpretation of a written agreement between the parties, which is set forth in full in the Addendum. (Pl. Exh. 10, Add. 23-26).

STATEMENT OF THE CASE

I. NATURE OF THE CASE

In order to obtain an easement across property owned by John and Shauna Groberg (the "Grobergs"), Housing Opportunities, Inc. ("HOI") offered to purchase the Grobergs' home, to sell a lot owned by HOI to the Grobergs, and to assist the Grobergs in moving an existing house to that lot and renovating that house. Based upon HOI's promises, the Grobergs agreed to this house-swapping transaction. When a HOI representative suggested that the Grobergs could save money by doing some of the renovation work themselves, the Grobergs began providing labor and materials toward the renovation of the house. When the house was nearing completion, HOI informed the Grobergs that the cost of purchasing the renovated house would be substantially more than HOI had agreed upon. When HOI demanded that the Grobergs either pay the increased price or vacate the renovated house, the Grobergs turned the house over to HOI. In order to recover the value of the labor and materials they provided for the renovated house, the Grobergs recorded a mechanic's lien against HOI's property. HOI subsequently sold the property to Appellees Margaret M. Dahle ("Dahle") and John L. Krueger ("Krueger").

II. COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

The Grobergs asserted their claims for a mechanic's lien, breach of contract, and unjust enrichment in a Complaint filed against HOI, Dahle, and Krueger. (R. 42-51.) A trial was held on this matter on April 11 and 12, 2001 before district court Judge Tyrone E. Medley. After the conclusion of the trial, the district court entered Findings of Fact and Conclusions of Law (hereafter, "Findings") and a Judgment and Order (hereafter, "Judgment"), holding that the Grobergs were not entitled to a mechanic's lien against the property, that HOI had not breached its contract with the Grobergs, and that the Grobergs were not entitled to recover for unjust enrichment. (Findings, Add. 6-10; Judgment, Add. 15-18.) The Grobergs filed the present appeal for review of the district court's ruling. (R. 350.) HOI has filed a cross-appeal relating to the district court's award of attorney's fees. (R. 356.)

III. STATEMENT OF FACTS

In 1995, Housing Opportunities, Inc. ("HOI") began to develop certain property it had purchased in Magna, Utah which ultimately became known as the West Madison Subdivision (the "Subdivision"). (Findings, Add. 2.) At that time, John and Shauna Groberg lived at 7395 West 3100 South in Magna, Utah (the "Groberg Property") — just north of and adjacent to the Subdivision. (Tr. 23-25.)

To develop the Subdivision, HOI was required to obtain an easement[1] across the Groberg Property in order to run and connect water, sewer, and other utility lines to existing lines located at 3100 South Street. (Findings, Add. 2; Tr. 307-08.) Before ever discussing an easement with the Grobergs, HOI prepared a plat map proposing a 20-foot wide utility easement running across the west side of the Grobergs' yard. (Tr. 32-33; Pl. Exh. 2, Add. 20-21.) John Groberg first learned of this proposed easement when HOI presented the plat map at a planning and zoning meeting which Mr. Groberg happened to attend in June of 1995. (Tr. 32-33.)

Subsequently, Dick Welch, HOI's agent, approached the Grobergs about granting an easement across the west side of the Groberg Property (Tr. 307-08). The Grobergs were the only adjacent property owners HOI approached about granting the necessary easement. (Tr. 314-15.) In response to Mr. Welch's request, the Grobergs indicated that they would not grant an easement across their yard unless they were compensated. (Tr. 34, 422.) When Mr. Welch indicated that HOI could not pay for the easement, the Grobergs terminated the negotiations. (Tr. 34, 421-22.)

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[1]The Groberg Property actually consisted of two parcels: the north parcel where the Grobergs' house is located and the south parcel which is a small, adjacent garden lot. (Tr. 24-25.) Therefore, to connect to utility lines at 3100 South Street, HOI was required to obtain two easements — one easement across each of these parcels. For simplicity's sake and because the Grobergs treated these two lots as a single residential lot, this Brief will refer to HOI's easements across the Groberg Property as a single "easement."

When the Grobergs refused to give the easement to HOI for free, Mr. Welch tried a different approach. To induce the Grobergs to grant the easement, Mr. Welch presented an offer to the Grobergs which involved the following: (1) the Grobergs immediately granting an easement across their property; (2) HOI assisting the Grobergs in moving an existing house to Lot 13 in the Subdivision ("Lot 13")[2] and renovating that home; (3) HOI purchasing the Groberg Property; and (4) HOI selling Lot 13 and the renovated home to the Grobergs. (Tr. 37-38, 315-316.) In his negotiations with the Grobergs, Mr. Welch gave the Grobergs a written estimate indicating that the costs of moving and renovating the house on Lot 13 would be approximately $71,500. (Pl. Exh. 7, Add. 22; Tr. 317-21, 439-40.) Mr. Welch told the Grobergs that after applying the $49,000 of equity they had in their old home, the Grobergs could purchase the newly renovated house on Lot 13 for approximately the same size mortgage they had on their old house. (Tr. 38, 321; Pl. Exh. 7, Add. 14.) At the time, the Grobergs' mortgage on their old house was approximately $38,000. (Tr. 321; Pl. Exh. 7, Add. 22.)

Mr. Welch also indicated that if the Grobergs did not end up purchasing Lot 13, HOI would compensate the Grobergs for the easement, restore the landscaping across the

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[2]The street address for Lot 13 is 3138 South Old Glory Circle, Magna, Utah. The legal description of this parcel, which is located in Salt Lake County, is as follows: Lot 13, West Madison Subdivision.

easement, and make certain repairs to the electrical and plumbing in the Grobergs' old home without cost to the Grobergs. (Tr. 47.)

Thrilled at the prospect of moving into a newer, bigger home for the same mortgage, the Grobergs decided to accept HOI's offer. In July of 1996, Mr. Welch drafted a Real Estate Purchase Contract (the "Contract") for the Grobergs to sign. (Pl. Exh. 10, Add. 23-26.) Because Mr. Groberg has a reading disability (Tr. 27-29, 185) and Mrs. Groberg had difficulty understanding the transaction (Tr. 41, 185), the Grobergs were concerned about signing the agreement. However, upon Mr. Welch's representations that all of the necessary terms were included in the Contract (Tr. 56), the Grobergs signed the Contract on July 15, 1996 (Pl. Exh. 10, Add. 23-26). Scott Lancelot, the executive director of HOI, signed the Contract on behalf of HOI. (Pl. Exh. 10, Add. 23-26.)

The Contract provided that: (1) the Grobergs would grant to HOI a 24-foot wide easement across the west side of the Groberg Property; (2) HOI would assist the Grobergs in financing the renovations to the house on Lot 13; (3) HOI would purchase the Groberg Property for $87,500; and (4) the Grobergs would purchase the home on Lot 13 once the renovations were complete. (Pl. Exh. 10, Add. 23-26.) The Contract indicated HOI's intent to place the Grobergs "in an equal or better house with the same debt that now exists" on the Grobergs' current residence. (Pl. Exh. 10, Add. 26.)

However, the Contract did not specify the price the Grobergs would pay for Lot 13. (Findings, Add. 7; Pl. Exh. 10, Add. 23-26.) Based upon HOI's representations and the estimate they received from HOI, the Grobergs believed they would be entitled to purchase Lot 13 for the cost of renovations, which HOI had estimated at approximately $70,000. (Tr. 44.) The Contract also stated that if the Grobergs did not purchase Lot 13, any improvements made by HOI on the Grobergs' old house would revert back to the Grobergs. (Pl. Exh. 10, Add. 26.)

After the Contract was signed, Mr. Welch contacted the Grobergs and suggested that they start doing some renovation work on the home themselves in order to save money on the purchase of Lot 13. (Tr. 60, 333.) At Mr. Welch's suggestion, and with his knowledge, the Grobergs began working to safeguard and prepare the home which was scheduled to be moved to Lot 13. (Tr. 60-63, 336.)

In order to develop the subdivision, HOI was required to cover an irrigation ditch along the Subdivision. In August of 1997, Dick Welch asked John Groberg to assist HOI in obtaining written approval from the affected neighbors for HOI to cover this irrigation ditch. (Tr. 64-65.) Mr. Welch indicated that HOI would give Mr. Groberg an additional discount on the purchase price of Lot 13 if Mr. Groberg obtained these neighbors' signatures. (Tr. 65.) Relying upon this representation, Mr. Groberg obtained

the neighbors' signatures on forms provided by Mr. Welch and returned the completed forms to Mr. Welch. (Tr. 63-65; Pl. Exh. 13, Add. 27-31.)

Before the home was moved to Lot 13, HOI obtained an appraisal which estimated that the value of the home, once it was moved to Lot 13 and renovated, would be $138,000. (Tr. 247-48.) After the house was moved to Lot 13, the Grobergs retained a contractor, McClelland Construction, to complete the majority of the renovation work. (Findings, Add. 4; Tr. 69.) Consistent with Mr. Welch's suggestion, the Grobergs, along with family members and friends, also did some of the renovation work themselves, putting in approximately 416 hours of labor toward the renovation of Lot 13. (Pl. Exh. 46, Add. 68-69; Tr. 103-04, 517.) HOI gave the Grobergs substantial control over the extent of the improvements made to Lot 13. (Findings, Add. 5, 8.)

In November of 1998, the Grobergs and HOI orally agreed to supplement or amend the terms of the Contract to provide that the purchase price for Lot 13 under the Contract would be $138,000. (Findings, Add. 8.)[3]

The Grobergs signed an easement across their property which provided, among other things, that the property would "be restored in as good of condition as when the

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[3]Although the Grobergs claim they never agreed to pay $138,000 for Lot 13 and that they never ratified any such amendment to the Contract, the district court found that the parties had entered into this oral agreement or ratification. (Findings, Add. 8.) The Grobergs have chosen not to appeal this factual finding, and therefore accept the district court's finding for purposes of this appeal.

same was entered upon by the Grantee . . . ." (Pl. Exh. 14, Add. 32-37.) Once the Grobergs granted the easement across their property, HOI's contractor began excavating a 24-foot wide trench across the Grobergs' yard. (Tr. 67.) Upon completion of the work, HOI's contractor filled the trench where the lines were laid across the easement and leveled it to a rough grade. (Tr. 94; Pl. Exh. 41, Add. 61-64; Pl. Exh. 42, Add. 65-67.)

At HOI's suggestion, the Grobergs terminated the poorly performing general contractor in December of 1998 and began acting as their own general contractor with respect to the Lot 13 renovations. (Findings, Add. 5; Tr. 82, 487-89.) Subsequently, Dean Maltsberger, who had taken over Mr. Welch's position with HOI, berated the Grobergs for taking so long and pressured them to quickly complete the renovation work. (Tr. 456-57, 490.)

On October 4, 1999, HOI indicated that it would not sell Lot 13 to the Grobergs for less $156,532.72, despite its agreement to sell Lot 13 for $138,000. (Pl. Exh. 29, Add. 53-55; Findings, Add. 8.) When the Grobergs responded that this was not the purchase price they had agreed to and that they could not afford to pay that price for Lot 13, HOI demanded that the Grobergs cease their renovation work and turn over the keys to the renovated house. (Findings, Add. 5.; Tr. 88.) A few days later, the Grobergs vacated Lot 13 and turned over the keys. (Tr. 88.)

Although the easement provided that the Groberg Property would be restored to its pre-construction condition (Pl. Exh. 14, Add. 33, 36), and although Mr. Lancelot understood that HOI was obligated to replace the landscaping if the Grobergs did not purchase Lot 13 (Tr. 360-61), HOI never replaced the landscaping which had been destroyed across the easement in the Grobergs' yard. (Tr. 94; Pl. Exh. 41, Add. 61-64; Pl. Exh. 42, Add. 65-67.)

Over the course of their work on the house on Lot 13, the Grobergs spent $10,285.22 of their own funds toward materials, equipment, and utilities for the renovation of the home. (Findings, Add. 6.) In addition, the Grobergs and their family members spent approximately 416 hours working on the renovated home. (Tr. 103; Pl. Exh. 46, Add. 68-69.) HOI never paid the Grobergs anything for the labor and materials which benefitted the house. (Findings, Add. 6; Tr. 102, 105.)

The Grobergs recorded a mechanic's lien against Lot 13 and later brought an action against HOI which asserted claims of mechanic's lien foreclosure, breach of contract, and unjust enrichment. (R. 42-51.) HOI subsequently sold Lot 13 on January 25, 2000 to Appellees Margaret M. Dahle ("Dahle") and John L. Krueger ("Krueger") for $149,000. (Findings, Add. 6.)

At the trial of this matter, the district court rejected the mechanic's lien claim, holding that the Grobergs' equitable ownership of the property precluded them from

asserting a mechanic's lien, that the Grobergs had not provided labor and materials "at the instance" of HOI or its agent, and that the Grobergs had waived their right to assert a mechanic's lien against Lot 13 when they signed the Real Estate Purchase Contract. (Findings, Add. 7-8.) The court denied the Grobergs' breach of contract claim, holding that HOI had not breached the Contract. (Findings, Add. 8-9.) The district court denied the Grobergs' unjust enrichment claim, holding that HOI had not requested the Grobergs' work and had not been guilty of misleading conduct. (Findings, Add. 9-10.)

As a result of the trial court's ruling, HOI obtained the benefit of the Grobergs' oversight of the renovation of Lot 13, including materials and labor provided directly by the Grobergs, without ever paying for this benefit. HOI received a free easement across the Grobergs' yard. HOI even avoided paying to replace the landscaping on the Groberg Property which had been destroyed when the lines were laid across the easement.

The Grobergs, on the other hand, did not benefit from their relationship with HOI and the trial court's ruling. The Grobergs were left with no reasonable opportunity to purchase the home they had spent several years renovating, no reimbursement for their out-of-pocket materials expenditures of $10,285.22 which had been used to improve Lot 13, no remuneration for approximately 416 hours of labor on the house on Lot 13, and no repairs to the electrical and plumbing in the Grobergs' old house where they still reside today. The Grobergs were left with a 24-foot wide easement across the west side of their

yard for which they received no compensation. To make matters worse, the Grobergs received no compensation for the landscaping in their yard which had been destroyed across the easement. The Grobergs appeal the district court's ruling.

SUMMARY OF ARGUMENT

The fact that the Grobergs entered into a contract to purchase Lot 13 did not preclude them from recording a mechanic's lien to recover the value of the labor and materials they furnished toward the improvement of that property. The Grobergs' equitable interest in the property was repudiated by HOI by the time the Grobergs sought to enforce their lien. In any event, Utah law does not preclude a former equitable owner from asserting a mechanic's lien against property he or she never actually acquires. The uncontroverted facts at trial showed that HOI influenced, suggested, solicited, and authorized the Grobergs' work on Lot 13. Thus, the Grobergs' work was performed "at the instance" of HOI as required by Utah's mechanic's lien statute. The language in the contract signed by the Grobergs does not constitute an unambiguous waiver of the Grobergs' right to assert a mechanic's lien.

As an alternative to the Grobergs' mechanic's lien claim, the Grobergs are entitled to judgment on their breach of contract claim. Although the district court ruled that HOI was contractually obligated to sell Lot 13 to the Grobergs for $138,000, HOI refused to

sell Lot 13 to the Grobergs for less than $156,532.72. The district court erred in holding that HOI did not breach its contract with the Grobergs.

The district court held that a claim under the contract-implied-in-law prong of unjust enrichment requires a showing of a misleading act or request for services by the defendant. Although there was ample evidence of HOI's misleading conduct and requests for the Grobergs to perform work on Lot 13, the implied-in-law arm of unjust enrichment requires no such showing.

ARGUMENT

I. THE GROBERGS ARE ENTITLED TO A MECHANIC'S LIEN AGAINST LOT 13

The district court gave three reasons for rejecting the Grobergs' mechanic's lien claim: (1) the Grobergs' equitable ownership of Lot 13 precluded them from asserting a mechanic's lien; (2) the Grobergs' improvements to Lot 13 were not provided "at the instance of the owner" as required by UTAH CODE ANN. § 38-1-3; and (3) the Grobergs waived their right to assert a mechanic's lien when they signed the Contract. None of these bases are valid reasons for denying the Grobergs' mechanic's lien.

A. The Grobergs' Mechanic's Lien Is Not Precluded by Their Equitable Interest in Lot 13

The district court ruled that the Grobergs' equitable ownership of Lot 13 precluded them from pursuing a mechanic's lien against that property. (Findings, Add.

7-8.) There are two serious problems with this legal conclusion. First, any equitable interest the Grobergs may have had in Lot 13 had been surrendered by the Grobergs and repudiated by HOI by the time the Grobergs asserted their mechanic's lien. Second, even if the Grobergs were considered equitable owners at the time they asserted their mechanic's lien, there is no statute or reported case in Utah which suggests that such equitable ownership precludes the filing of a mechanic's lien.

1. *Any Equitable Interest the Grobergs May Have Had in Lot 13 Was Surrendered by the Grobergs and Repudiated by HOI Before the Grobergs Filed Their Mechanic's Lien*

The district court did not explain why equitable ownership would preclude a mechanic's lien. This issue was not raised as an affirmative defense in HOI's Answer (R. 85-86) or at any other time prior to trial. HOI's counsel first raised the issue of equitable ownership as a bar to a mechanic's lien in his closing statement at trial. (Tr. 538.) HOI's counsel contended the Grobergs "can't be both the owner[s] and be a protected party [under the Mechanic's Lien statute]." (Tr. 540.) Thus, HOI seems to be arguing that a party cannot claim a mechanic's lien against property and have an ownership interest in that property at the same time. Assuming for the sake of argument that this is a correct statement of the law in Utah, this concept would not be applicable to the present case because any equitable interest the Grobergs may have had in Lot 13 was

surrendered by the Grobergs and repudiated by HOI long before the Grobergs asserted their mechanic's lien.

The vendee under an executory land contract is considered an equitable owner of that property:

> In such an executory contract [for the sale of land] the vendee . . . acquires all the incidents of ownership except legal title. He is therefore in equity properly regarded as the owner of the property.

See, e.g., Jelco, Inc. v. Third Judicial Dist. Court, 511 P.2d 739, 741 (Utah 1973). The Grobergs entered into a written contract for the purchase of the house which was to be moved to and renovated on Lot 13. Under the Contract, HOI would sell and the Grobergs would purchase the house on Lot 13 once the renovations were completed. (Pl. Exh. 10, Add. 25.) Based upon that agreement, the Grobergs took possession of Lot 13 and performed renovation on the house which was moved to that site. While the Grobergs had possession of Lot 13 and HOI recognized the Grobergs' right to purchase the property under the Contract, the Grobergs were properly considered "equitable owners" of Lot 13. The Grobergs enjoyed "all the incidents of ownership except legal title" and they possessed the property under rights granted by an executory contract.

However, HOI later demanded that the Grobergs purchase Lot 13 for substantially more than the Contract required or else HOI would "terminate the deal and take possession of the house and offer it for sale." (Pl. Exh. 10, Add. 54.) When the

Grobergs were unwilling and unable to purchase Lot 13 for the price demanded by HOI, HOI re-took possession of Lot 13.

From the time that it re-took possession of Lot 13, HOI acted in every respect as if the Grobergs' contractual rights to Lot 13 had been terminated. HOI ultimately sold Lot 13 to Dahle and Krueger without obtaining any type of release from the Grobergs. HOI's actions in selling Lot 13 to a third party are completely inconsistent with its claim at trial that the Grobergs were equitable owners of the property who enjoyed "all the incidents of ownership . . . ." Clearly, once the Grobergs gave up possession of Lot 13 and HOI reasserted full ownership of that parcel and purported to terminate the Contract, the Grobergs were no longer equitable owners of the property.[4]

HOI re-took possession of Lot 13 within a few days after October 7, 1999. (Findings, Add. 5.) The Grobergs did not record their Notice of Mechanic's Lien until almost two months later, on December 2, 1999. Thus, at the time the Grobergs recorded their mechanic's lien, they were no longer equitable owners of Lot 13. Accordingly, any doctrine suggesting that equitable owners are barred from asserting mechanic's liens would not apply to the Grobergs in this case. The district court erred in holding otherwise.

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[4]While the Grobergs' surrender of possession relinquished their equitable ownership to Lot 13, it did not affect their rights to seek damages from HOI for breach of contract.

2. *Utah Law Does Not Preclude an Equitable Interest Holder From Pursuing a Mechanic's Lien*

Even if the Grobergs were considered equitable owners of Lot 13 at the time they asserted their mechanic's lien, Utah law does not preclude equitable owners from pursuing mechanic's liens. The district court's holding in this regard is erroneous.

The Findings of Fact and Conclusions of Law entered by the district court cited no cases or other authorities on the issue of an equitable owner being precluding from filing a mechanic's lien. (Findings, Add. 1-12.) However, in his closing argument, HOI's counsel referred the trial court to *Roberts v. Hansen*, 479 P.2d 345 (Utah 1971), and argued that since the Grobergs were equitable owners, they could not be both the owners of Lot 13 and mechanic's lien claimants. (Tr. 538-40.)

Roberts does not address the issue of whether an equitable owner can file a mechanic's lien against the legal owner. Instead, *Roberts* involved a contractor's claim against a purchaser (vendee) under a land sale contract and the commencement of the limitations period for enforcing a mechanic's lien. Under the statute at issue in *Roberts*, the one-year limitations period started running upon the completion or suspension of the "original contract." The statute defined an "original contract" as the contract with the "owner." Thus, if the purchaser in a land sale contract were considered the "owner" under the mechanic's lien statute, the limitations period would begin to run upon the completion or suspension of the contract between the purchaser and the contractor.

The court in *Roberts* held that the purchaser was deemed an equitable owner and was "regarded as the owner, within the provisions of mechanics lien statutes confining such liens to claims for labor or materials furnished for improvements made under contract with the owner." *Id.* at 346. Thus, the court held that, for purposes of considering the contractor's lien claim, the purchaser was considered an "owner," the contract with the purchaser was an "original contract," and the contractor's lien claim fell outside the statute of limitations. The Court did not comment on whether the purchaser could have asserted a mechanic's lien against the legal owner for any work the purchaser performed on the property.

Appellants' search of Utah case law has revealed no reported decision suggesting that a party who enters into a land purchase contract and provides improvements to the land is precluded from asserting a mechanic's lien against the property. However, several reported decisions, including *Roberts*, do address the related doctrine that a mechanic's lien attaches against the interest of the person who requested the work. The Utah Court of Appeals explained this concept as follows:

> It is well established that the holder of an interest in realty which is less than fee title in the soil may be considered an owner for purposes of the Mechanic's Lien Statute. A mechanic's lien may attach to a leasehold estate . . . or an equitable interest pursuant to a real estate contract . . . or a building which has been removed from the land upon which it was constructed . . . .

John Wagner Associates v. Hercules, Inc., 797 P.2d 1123, 1130-31 n.6 (Utah Ct. App. 1990) (citations omitted). This is consistent with the direction in the Mechanic's Lien statute that the lien "shall attach only to such interest as the owner may have in the property." UTAH CODE ANN. § 38-1-3.

Therefore, in *Roberts*, the contractor who was hired by the purchaser could assert a lien against the equitable interest of that owner (assuming the contractor complied with the other requirements of the mechanic's lien statute). Similarly, a contractor hired by the Grobergs could have asserted a mechanic's lien which would attach against the Grobergs' equitable interest in Lot 13. By the same logic, the Grobergs can pursue a mechanic's lien which will attach against HOI's interest in Lot 13. Accordingly, the decision in *Roberts* actually supports the argument that the Grobergs can pursue a mechanic's lien against HOI's interest in Lot 13.

3. *The Colorado Supreme Court Has Held That Equitable Owners May Pursue Mechanic's Liens*

Although the circumstances of the present case are somewhat unique, the issue of whether a purchaser of property is entitled to enforce a mechanic's lien has been considered by the Colorado Supreme Court. In *Columbia Savings and Loan Association v. Counce*, 446 P.2d 977 (Colo. 1968) (a copy of which is attached at Add. 71-72), Mr. Counce entered into an agreement giving him the right to purchase certain property once a house had been constructed on the lot. *Id.* at 977. Columbia Savings loaned the money

for the construction of the home and held a trust deed against the property. *Id.* The court noted that "the building contractor permitted Counce to do some of the work on the house . . . ." *Id.* When Counce was not paid for his work and did not exercise his option to purchase the property, he filed a mechanic's lien for the value of his labor and materials. *Id.* The trial court held that Counce's mechanic's lien was valid and enforceable. *Id.* at 978.

On appeal, Columbia Savings argued that Counce was the equitable owner of the property and therefore could not claim a mechanic's lien against the property. *Id.* The Colorado Supreme Court disagreed. The court noted that the purchase agreement simply gave Counce an option to purchase the property, but he was not obligated to do so. *Id.* The Court held as follows:

> Although the record clearly supports the inference that Counce intended to live in the house when it was completed, he owned no interest in it which would preclude him from claiming a mechanic's lien under the statute. Until he exercised the option, he stood as any other person supplying labor and materials, and was therefore entitled to claim a lien under the provisions of C.R.S. 1963 86-3-1.

Id. at 978. The circumstances in the present case are strikingly similar. The Grobergs entered into an agreement which gave them the option, but not the obligation, to purchase the residence on Lot 13 once renovations were complete. (Findings, Add. 3; Pl. Exh. 10, Add. 26.) Ultimately, HOI re-took the property and never gave the Grobergs the opportunity to purchase the property at the price provided in the Contract. Thus, HOI

precluded the Grobergs from exercising their option to become (or to continue as) equitable owners of Lot 13. Although the Grobergs intended to live in the refurbished house on Lot 13 when it was completed, this intention did not preclude them from claiming a mechanic's lien against the property after the deal fell through.

In short, the Grobergs' equitable interest in Lot 13 was relinquished by the Grobergs and repudiated by HOI prior to the Grobergs recording their Notice of Mechanic's Lien. Even if the Grobergs were still considered equitable owners, there is no reported Utah case which supports HOI's argument that a claimant is precluded from pursuing a mechanic's lien against property in which it has an equitable interest. To the contrary, Utah case law suggests that a person who provides labor and materials can assert a lien against the ownership interest of the entity who requested the improvements. And in a case with very similar facts, the Supreme Court of Colorado affirmed a trial court holding that an equitable owner who did not ultimately purchase the property in question could pursue a mechanic's lien to recover the value of work he performed on that property.

B. The Uncontroverted Facts Show That the Grobergs Provided Labor and Materials "At the Instance" of HOI

To assert a mechanic's lien, a claimant is required to have provided the work "at the instance of the owner or of any other person acting by his authority as agent, contractor, or otherwise . . . ." UTAH CODE ANN. § 38-1-3. The district court's second

reason for rejecting the Grobergs' mechanic's lien claim was that the Grobergs' improvements were not provided "at the instance" of HOI or its agents. (Findings, Add. 8; Judgment, Add. 15.)

In construing the mechanic's lien statute, the Utah Supreme Court has recognized that "[t]he purpose of the mechanic's lien act is remedial in nature and seeks to provide protection to laborers and materialmen who have added directly to the value of the property of another by their materials or labor." *Calder Bros. Co. v. Anderson*, 652 P.2d 922, 924 (Utah 1982). The Utah Court of Appeals has noted that "[w]e liberally construe lien statutes to implement their protective purpose." *Interiors Contracting, Inc. v. Smith*, 827 P.2d 963, 965 (Utah Ct. App. 1992). Accordingly, the Court must liberally construe the "at the instance of the owner" requirement to implement the purpose of protecting persons like the Grobergs who add value to property by furnishing labor and materials.

In examining the "at the instance of the owner" requirement of the Mechanic's Lien statute, the Utah Supreme Court has noted that "[t]he word 'instance' denotes an impelling motive, ***influence***, or cause; ***at the solicitation or suggestion of***." *Davis v. Barrett*, 467 P.2d 603, 605 (Utah 1970) (*quoting Prows v. Hawley*, 261 P. 31, 35 (Utah 1928) (emphasis added)). The Utah Court of Appeals has noted that "the owner consent required by a mechanics' lien statute is merely ***authority to commence work on improvements***." *Bailey v. Call*, 767 P.2d 138, 140-41 (Utah Ct. App. 1989) (emphasis

added). Thus, if the Grobergs' work was "influenced" by HOI, if the Grobergs' work was performed at the "solicitation or suggestion of" HOI, or if HOI gave the Grobergs "authority to commence work on improvements," the Grobergs' work was performed "at the instance" of HOI.

The uncontroverted facts presented at trial show that HOI "influenced" and "solicited" the Grobergs' work, that HOI "suggested" that the Grobergs perform work on Lot 13, and that HOI "authorized [the Grobergs] to commence work on the improvements." Several examples are noteworthy.

Exhibit A to the Contract between the Grobergs and HOI states that "[t]he Grobergs ***will*** move a house [to Lot 13] and rehabilitate the house . . . ." (Pl. Exh. 10, Add. 26 (emphasis added.)) This language not only *suggests* that the Grobergs rehabilitate the house to be moved on Lot 13, it contractually *requires* the Grobergs to do so. In addition, Dick Welch, an undisputed agent of HOI, admitted at trial that he suggested that the Grobergs perform work on the house:

> Q: [Grobergs' counsel] Did you tell the Grobergs that they could save money by doing work on the house themselves?
>
> A: [Dick Welch] Absolutely. That was a foregone conclusion.
>
> . . . .
>
> Q: Did you recommend that Mr. Groberg go and secure the house before it was moved, by putting locks on it?

A: Yes.

(Tr. 333.) The Grobergs retained McClelland Construction to act as the general contractor for the renovations on Lot 13. (Findings, Add. 4; Tr. 69.) Nonetheless, Mr. Welch testified that HOI's renovation documents contemplated that the Grobergs would install "upgrades" outside the scope of McClelland's contract.

> Q: [Grobergs' counsel] What are these "owner to do" funds [listed in the loan application]?
>
> A: [Dick Welch] Those were things like refrigerators, appliances of all types, some contingency money that we'd put in there for [the Grobergs] to draw from so they could do extra little upgrades they may want to put in the house.
>
> Q: So, these were things that the owners were – that the Grobergs were going to take care of outside of the McClelland contract?
>
> A: That's correct.
>
> Q: And it was understood that they would be doing at least $12,000 worth of this in conjunction with this renovation?
>
> A: That's what was proposed, yes.

(Tr. 337-38.) Clearly, Mr. Welch "influenced" the Grobergs to begin doing renovation work themselves by suggesting that they could save money by doing so. Mr. Welch also contemplated that the Grobergs would provide materials and "extra little upgrades" for the house renovation outside the contract with the general contractor.

Third, Dean Maltsberger, another agent of HOI, admitted that there were certain items to be performed by the Grobergs outside the McClelland contract: "Well, McClelland had a contract and then there were items that were to be done by the owner, some of which were bid by subcontractors which were not included in the McClelland contract." (Tr. 449.) Mr. Maltsberger also admitted that, after the Grobergs terminated McClelland Construction, he pressured the Grobergs to finish the house quickly:

> I told [the Grobergs] I thought it would be a really good idea if they would try to finish the house as quickly as they could, get the loan and everything settled, move in, and then do the projects that they wanted to do beyond what had been done at a later time.

(Tr. 458.) Shauna Groberg's recollection of the meeting with Mr. Maltsberger is more detailed:

> [Mr. Maltsberger] came in very angry. We were working on the house, it was after dark. He came in yelling at me, he swore at me, he says, When are we going to get this house finished, when are you going to get this house done.

(Tr. 195.) Mr. Maltsberger admitted that he used "strong words" and probably even foul language in berating Mrs. Groberg for not finishing the house quickly enough. (Tr. 456-57, 490.)

Finally, the district court found that HOI had given the Grobergs "substantial control as to the construction that was pursued and the costs associated with the renovation" of Lot 13. (Findings, Add. 5, 8.) By giving the Grobergs "substantial

control" over the renovation, HOI clearly authorized the Grobergs to "commence work on improvements." This authorization constitutes "the owner consent required by [the] mechanics' lien statute . . . ." *Bailey*, 767 P.2d at 140-41.

In short, the Contract obligated the Grobergs to renovate Lot 13. Dick Welch recommended that the Grobergs do some of the renovation work themselves to save money. HOI's representatives acknowledged that HOI expected the Grobergs to do some work outside the contract of the general contractor. HOI's representative pressured the Grobergs to finish the house after the general contractor had been terminated. And the district court found that HOI had given the Grobergs "substantial control" over the renovation work. This uncontroverted evidence, taken from the Contract, from the testimony of HOI's agents, and from the district court's findings, clearly establishes that HOI "influenced" the Grobergs to perform work themselves on Lot 13, "suggested" that the Grobergs perform the work, "solicited" the Grobergs' work, and "authorized [the Grobergs] to commence work on the improvements." Under the definitions provided by the Utah appellate courts, the Grobergs' work was clearly performed "at the instance" of HOI, and the district court erred in holding to the contrary.

C. The Provisions of the Contract Did Not Constitute a Waiver of the Grobergs' Right to a Mechanic's Lien

The district court held that the Grobergs "waived, released, surrendered, or contracted away their lien rights when they signed the Real Estate Purchase Agreement

with its provision that the Grobergs could opt to have each party 'returned to its former estate as to ownership of properties and debt.'" (Findings, Add. 8.) The district court erred in construing the language in the Contract as a waiver of the Grobergs' mechanic's lien rights.

Under the law applicable when the Grobergs signed the Contract,[5] a party was allowed to waive his or her right to a mechanic's lien, but only under certain circumstances. The Utah Supreme Court allowed a written waiver of lien rights only if the language was unambiguous (i.e., susceptible of only one interpretation) and supported by valuable consideration. *Holbrook v. Webster's, Inc.*, 320 P.2d 661, 663 (Utah 1958).

Brimwood Homes, Inc. v. Knudsen Builders Supply Co., 385 P.2d 982, 984 (Utah 1963), provides an example of the Utah Supreme Court's careful scrutiny of language purporting to waive mechanic's liens for future work. In *Brimwood Homes*, the contractor signed a document containing the following provision: "[T]he undersigned hereby waives, releases and discharges any lien or right to lien the undersigned has or may hereafter acquire against such real property." *Id.* at 984. The Utah Supreme Court held that this language did not waive a mechanic's lien on future work:

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[5]The current mechanic's lien law, which became effective on April 30, 2001, provides that a party may not waive its lien rights by agreement. UTAH CODE ANN. § 38-1-29.

> Under the circumstances of this case we do not believe that the defendant, nor the plaintiff, intended that the release and waiver agreement would relate to any future lien rights which the defendant might acquire. The executed documents, designated as a "release and waiver" related only to the particular debt paid and receipted for in the particular transaction encompassed by that particular instrument. This included any lien the defendant "has or may hereafter acquire against said property" in regard only to that particular debt.

Id. at 984.

In the present case, the district court held that the following language constituted a waiver of the Grobergs' lien rights:

> [I]f John and Shauna Groberg do not complete the dwelling located on lot #13, Madison Subdivision, or they do not feel the new house on Lot 13, Madison Subdivision has equal value to the former home at 7395 West 3100 South, then Housing Opportunities, Inc. ***will exchange Lot #13 for the property at 7395 West 3100 South, returning each to its former estate as to ownership of properties and debt.***

(Pl. Exh. 10, Add. 26 (emphasis added.)) It should be noted that neither the Contract nor its attachments make any mention of mechanic's liens. (Pl. Exh. 10, Add. 23-26.) The Contract contemplates that the Grobergs will sell their residence at 7395 West 3100 South to HOI and that HOI will sell the renovated home on Lot 13 to the Grobergs. The language quoted above referring to restoring the status quo as to "ownership" and "debt" clearly relates to the contemplated "exchange" of Lot 13 for the property at 7395 West 3100 South. (Pl. Exh. 10, Add. 26.) Nothing in this provision suggests that the Grobergs waive their right to mechanic's liens for labor and materials they provide on

Lot 13. In fact, HOI did not even suggest that the Grobergs perform renovation work themselves until *after* the Contract had been executed. (Tr. 60.) It defies reason to suggest that the Grobergs clearly intended to waive a right they had not yet thought about acquiring. The language quoted above certainly is not a clear and unambiguous waiver of the Grobergs' mechanic's lien rights. Given the Utah Supreme Court's rejection of the much more specific release language in *Brimwood Homes*, the language quoted above cannot be construed as an unambiguous waiver of the Grobergs' future mechanic's lien rights.

In summary, there is no basis in Utah law for holding that the Grobergs' equitable interest in Lot 13 precluded them from pursuing a mechanic's lien against that property. The uncontroverted facts show that the Grobergs performed work on Lot 13 "at the instance" of HOI or its agents. And the language in the Contract does not constitute an unambiguous waiver of the Grobergs' right to pursue a mechanic's lien for future work performed.

The district court's ruling with respect to the Grobergs' mechanic's lien claim should be reversed because each of the three bases relied upon by the district court in denying the Grobergs' mechanic's lien claim is erroneous. Because the district court found that the Grobergs provided $10,285.22 worth of materials, equipment, and utilities for the renovation of the home, the Court should hold that the Grobergs have a valid

mechanic's lien against Lot 13 for at least this amount. In addition, the Court should remand to the district court the issue of the value of the labor provided by the Grobergs, which value shall be added to the amount of the mechanic's lien. Finally, the award of attorney's fees to HOI for prevailing on a mechanic's lien claim should be reversed, and the Grobergs should be allowed to recover their attorney's fees for pursuing the mechanic's lien claim at trial and on appeal.

II. IN THE ALTERNATIVE, THE GROBERGS ARE ENTITLED TO RECOVER DAMAGES RESULTING FROM HOI'S BREACH OF CONTRACT

If the Court finds that the Grobergs are not entitled to a mechanic's lien for the value of the labor and material they furnished on Lot 13, the Grobergs would clearly be entitled to damages resulting from HOI's breach of its Contract with the Grobergs.

A. HOI Was Contractually Obligated to Sell Lot 13 to the Grobergs for $138,000

Although the Contract between HOI and the Grobergs did not specify the price at which the Grobergs would be entitled to purchase the renovated house on Lot 13 (Findings, Add. 7; Pl. Exh. 10, Add. 23-26), the district court concluded that HOI was obligated under the Contract to sell the renovated house on Lot 13 to the Grobergs for $138,000.00. (Findings, Add. 8; Judgment, Add. 15.)

B. HOI Never Offered to Sell Lot 13 to the Grobergs for $138,000

The district court's findings established that once the renovations on Lot 13 were nearing completion, *HOI never offered to sell the house to the Grobergs for $138,000.00.* In correspondence dated October 4, 1999, HOI indicated that it would not sell Lot 13 to the Grobergs for less than $156,532.72. (Findings, Add. 5.; Pl. Exh. 29, Add. 53-55.) In a letter dated October 5, 1999, HOI indicated that if the Grobergs did not agree to purchase Lot 13 for $156,532.72, HOI would take possession of Lot 13 and market it for sale. (Findings, Add. 5; Pl. Exh. 30, Add. 56-58.) When the Grobergs indicated their inability and unwillingness to pay $156,532.72 for the property, HOI retook possession shortly after October 7, 1999. (Findings, Add. 5.) HOI subsequently sold the home to Dahle and Krueger for $149,000.00. (Findings, Add. 6.)

C. The Grobergs' Damages Resulting From HOI's Breach of Contract Were Clearly Established at Trial

The Utah Supreme Court has noted that "[t]he measure of damages for breach of contract for the conveyance of land is the difference between the contract price and the market value at the time of the breach." *Terry v. Panek*, 631 P.2d 896, 897 (Utah 1981). The evidence at trial established that in June of 1999, HOI's appraiser estimated the value of the house on Lot 13 at $155,000.00. (Pl. Exh. 25, Add. 38-52.) HOI presented no argument or evidence to contest this value. Accordingly, the Grobergs' damages from

HOI's breach of contract are $17,000 — the difference between the sale price required by the Contract ($138,000) and the undisputed value of Lot 13 ($155,000).

Although its findings clearly indicated that HOI was contractually obligated to sell Lot 13 for $138,000.00 and that HOI's last offer to the Grobergs was a sale price of $156,532.72, the district court inexplicably and erroneously concluded that "the Plaintiff[s] did not meet [their] burden of proof as to a breach of contract in this matter." (Findings, Add. 9.) To remedy this error, this Court should reverse the district court's ruling as to the Grobergs' breach of contract claim. The Court should award $17,000.00 in damages to the Grobergs, constituting the difference between the $155,000.00 appraised value and the $138,000 sales price. Because the Contract contains an attorney's fees clause (Pl. Exh. 10, Add. 24 at ¶ 17), the Court should also reverse the award of attorney's fees against the Grobergs on the breach of contract claim and award the Grobergs their attorney's fees on this claim at trial and on appeal.

III. THE GROBERGS ARE ENTITLED TO RECOVER DAMAGES UNDER THEIR CLAIM OF UNJUST ENRICHMENT

In considering the Grobergs' unjust enrichment claim, the district court noted three requirements for the contract-implied-in-law prong of unjust enrichment: (1) the plaintiffs conferred a benefit upon the defendant; (2) the defendant was aware of the benefit; and (3) the defendant's retention of the benefit without payment would be inequitable under the circumstances. (Findings, Add. 9.) The district court ruled that the

Grobergs failed to establish that HOI's retention of the labor and materials would be inequitable under the circumstances. Relying upon *Knight v. Post*, 748 P.2d 1097 (Utah Ct. App. 1988), the district court held that HOI's retention of the benefit provided by the Grobergs "is not considered inequitable absent some misleading act, request for services, or the like by the party who retained the benefit." (Findings, Add. 9-10.) This conclusion was erroneous.

A. The Grobergs Were Not Required to Establish a Misleading Act or Request for Services to Recover Under Unjust Enrichment

In *Knight*, the Utah Court of Appeals quoted the following language from *Commercial Fixtures and Furnishings, Inc. v. Adams*, 564 P.2d 773 (Utah 1977):

> The mere fact that a third person benefits from a contract between two others does not make such third person liable in quasi-contract, unjust enrichment, or restitution. There must be some misleading act, request for services, or the like, to support such an action. Mere failure of performance by one of the contracting parties does not give rise to a right of restitution.

Knight, 748 P.2d at 1101 (*quoting Commercial Fixtures*, 564 P.2d at 774). Both *Knight* and *Commercial Fixtures* involved an unjust enrichment claim by a person who had no contractual privity with the defendant – i.e., a case involving a third person seeking to recover for the "benefit from a contract between two others . . . ." *Knight*, 748 P.2d at 1101. In the present case, the Grobergs did not seek to recover benefits from a contract between two other parties, so this rationale is inapplicable.

In *Knight*, the Utah Court of Appeals noted that Mr. Knight introduced no evidence that Post requested services of Knight or deliberately misled him. The court also noted that Knight "failed to show that there is either an express or implied contract between himself and Post . . . ." *Id.* In the present case, the Grobergs presented substantial evidence that HOI requested them to perform services: (1) the Real Estate Purchase Contract states that the Grobergs "will" move a house to Lot 13 and then rehabilitate that house (Pl. Exh. 10, Add. 26.); (2) Dick Welch suggested that the Grobergs should do work on the house themselves to save money (Tr. 333, 337-38); (3) Dick Welch and Dean Maltsberger admitted that the Grobergs were expected to do some work outside the McClelland contract (Tr. 337-38, 449); and (4) Dean Maltsberger pressured the Grobergs to finish the house after McClelland had been terminated (Tr. 195, 456-58, 490).

B. In Any Event, the Uncontroverted Evidence at Trial Established That HOI Misled the Grobergs and Requested the Grobergs' Services

Even if unjust enrichment required a misleading act or a request for services, the Grobergs presented ample and uncontested evidence that HOI misled them. At trial, the Grobergs established the following: (1) Dick Welch originally indicated that the renovation costs would be $71,500 and asked the Grobergs, "Do you think you can afford that . . . ?" but later insisted that the purchase price was $138,000 (Tr. 440); (2) Dick Welch told the Grobergs that their work on the house would "save them money"

(Tr. 333), but HOI gave no discount to the Grobergs for their work (Tr. 276); and (3) HOI indicated that it would sell the house to the Grobergs for $138,000, but then refused to sell the house for that amount (Findings, Add. 5.; Pl. Exh. 29, Add. 53-55). Clearly, the facts before the Court in the present case differ significantly from the facts in *Knight*.

C. The Utah Supreme Court Allowed Recovery Under Unjust Enrichment in a Factually Similar Case

The Utah Supreme Court has held in a similar case that parties who make improvements to property under the expectation that they will reside on the property are entitled to recover under unjust enrichment. In *Jeffs v. Stubbs*, certain members of a religious organization purchased land and deeded it to an entity known as the United Effort Plan Trust ("UEP"). *Jeffs*, 970 P.2d at 1239. UEP invited and encouraged its members to build their homes on UEP land and represented to the members that they could live on the land permanently. *Id.* at 1239-40. Subsequently, there was a dissension in the religious organization, and the group split into two factions. One faction declared that all those living on UEP land were tenants at will and sought to evict those residents. *Id.* at 1240. The other faction (the "claimants"), individuals who had constructed homes on the UEP land, filed an action claiming that UEP had been unjustly enriched by their improvements to the land. The trial court granted the claimants relief on their unjust enrichment claim. *Id.* On appeal, the Utah Supreme Court upheld the trial court and ruled that the claimants had an equitable right either to remain on the land for their

lifetime or to receive compensation for the benefit UEP received from the claimants' improvements. The Court explained as follows:

> A party may prevail on an unjust enrichment theory by proving three elements:
>
> > "(1) a benefit conferred on one person by another; (2) an appreciation or knowledge by the conferee of the benefit; and (3) the acceptance or retention by the conferee of the benefit under such circumstances as to make it inequitable for the conferee to retain the benefit without payment of its value."
>
> *American Towers Owners*, 930 P.2d at 1192 (citations omitted). . . .
>
> Regarding the first two elements, the trial court, as discussed above, found that claimants conferred a benefit by improving the property and that the UEP knew about, and, indeed, encouraged the improvements.
>
> We addressed the third element in *Baugh v. Darley*, 112 Utah 1, 184 P.2d 335 (Utah 1947). This court stated:
>
> > Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. The benefit may be . . . beneficial services conferred . . . .
> >
> > . . . .
> >
> > Services officiously or gratuitously furnished are not recoverable. Nor are services performed by the plaintiff for his own advantage, and from which the defendant benefits incidentally, recoverable.
>
> 184 P.2d at 337 (internal citations omitted). Here, the claimants improved the land in reliance upon the UEP's representations that they could live on the land for the rest of their lives. Even though the claimants intended to benefit from the improvements by occupying them during their lifetimes,

> the claimants' services still conferred a direct, not incidental, benefit on the UEP. Thus, we uphold the trial court's equitable remedy for all claimants, both those occupying land in Arizona and Utah.

Jeffs, 970 P.2d at 1247-48. It should be noted that the Utah Supreme Court did not require a misleading act or request for services as an element of unjust enrichment.

The relevant facts in *Jeffs* are very similar to the facts in the present case. Like the claimants in *Jeffs*, the Grobergs were encouraged by Mr. Welch to do work on Lot 13, supposedly for their own benefit. The Grobergs provided materials and services at Dick Welch's suggestion and in reliance upon his representations that the Grobergs' work would result in a lower purchase price for Lot 13. In the end, however, HOI did not give the Grobergs any discount for the work they did on Lot 13. (Tr. 276.) The Grobergs, like the plaintiffs in *Jeffs*, intended to benefit from the improvements by ultimately occupying the property they improved. Nonetheless, under the rationale in *Jeffs*, the labor and materials provided by the Grobergs conferred a direct, not incidental, benefit on HOI.

In addition, it is undisputed that HOI installed water and other utility lines across the Grobergs' property without ever replacing the landscaping in the Grobergs' yard. (Tr. 94; Pl. Exh. 41, Add. 61-64; Pl. Exh. 42, Add.65-67.) At trial, the Grobergs presented an estimate that the cost to restore the landscaping over the easement would be $5,933.00. This evidence was never disputed.

Under the circumstances of the present case, it would be unjust for HOI to retain the benefit of the labor and material the Grobergs provided without paying for that benefit. Similarly, it would be unjust to allow HOI to run pipes across the Grobergs' yard without paying to replace the landscaping which was in place prior to the grant of the easement. Although the Grobergs' claim for unjust enrichment does not require proof of a misleading act or a request for services, there was certainly proof of both in this case. Accordingly, the district court's ruling on the Grobergs' unjust enrichment claim should be reversed, and the matter should be remanded for a determination of the amount of damages to be awarded under this claim.

CONCLUSION

For the foregoing reasons, the Grobergs respectfully request the following:

1. With respect to the mechanic's lien claim:

   a. That the district court's decision denying the Grobergs' mechanic's lien claim be reversed;

   b. That the order awarding attorney's fees on the mechanic's lien claim against the Grobergs and in favor of HOI be reversed;

   c. That the mechanic's lien claim be remanded to the district court for entry of an order stating that the Grobergs have a valid mechanic's lien against Lot 13 for the following amounts: (1) the $10,285.22 worth of materials,

equipment, and utilities the district court found had been provided by the Grobergs for the renovation of Lot 13; (2) the value of the labor provided by the Grobergs, which shall be determined by the district court; (3) the reasonable attorney's fees incurred by the Grobergs in pursuing their mechanic's lien claim at trial and on appeal.

2. In the alternative, with respect to the breach of contract claim:

   a. That the district court's ruling on the breach of contract claim be reversed;

   b. That the order awarding attorney's fees on the breach of contract claim against the Grobergs and in favor of HOI be reversed;

   c. That judgment on the contract claim be entered in the amount of $17,000.00 (constituting the difference between the $155,000.00 appraised value and the $138,000 sales price) plus the reasonable attorney's fees incurred by the Grobergs in pursuing their breach of contract claim at trial and on appeal.

3. In the alternative, with respect to the unjust enrichment claim:

   a. That the district court's ruling on the Grobergs' unjust enrichment claim be reversed;

   b. That the district court determine the amount of damages to be awarded to the Grobergs under their unjust enrichment claim.

DATED this 17TH day of April, 2002.

KIRTON & McCONKIE

Bryan H. Booth

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2002, I caused ~~a~~ 2 true and correct copy~~y~~ies of the foregoing **BRIEF OF APPELLANT** to be mailed by United States mail, postage prepaid, to the following:

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Wendy Huffman

6356-3 611485 3

Tab A

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOHN GROBERG and SHAUNA GROBERG, Plaintiffs, vs. HOUSING OPPORTUNITIES, INC., a Utah nonprofit corporation, MARGARET M. DAHLE, JOHN L. KRUEGER, and GRANITE CREDIT UNION, a Utah corporation, Defendants.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 990912183 Judge Tyrone E. Medley

THE ABOVE-ENTITLED MATTER was brought on for trial before the Honorable Tyrone Medley, judge of the above-entitled court, on April 11 and 12, 2001. The Plaintiffs appeared in person with their attorney of record, Bryan H. Booth. Defendant Housing Opportunities, Inc., appeared through its authorized representative and it attorney of record, J. Bruce Reading. Defendants, Margaret M. Dahle and John L. Krueger and Granite Credit Union, did not appear but entered into a stipulation with Housing Opportunities, Inc. wherein Housing Opportunities, Inc. would indemnify and hold harmless these co-defendants on any judgment that may be entered against them. The presence of Ms. Dahle and Mr. Krueger was excused by stipulation of the parties and by approval of the Court. Having heard testimony and argument of the parties and being fully advised in the premises, the Court enters the following

FINDINGS OF FACT

1. The Plaintiffs, John Groberg and Shauna Groberg, ("Grobergs") are residents of Salt Lake County, State of Utah.

2. The Defendant, Housing Opportunities, Inc., ("HOI") is a Utah non-profit corporation, with its principal place of business in Salt Lake County, State of Utah.

3. The Defendants, Margaret M. Dahle and John L. Krueger, ("Dahle & Krueger") are residents of Salt Lake County, State of Utah.

4. The Defendant, Granite Credit Union ("Granite") is doing business within Salt Lake County, State of Utah.

5. The Plaintiffs own residential real property located at 7395 West 3100 South in Magna, Utah ("The Groberg Property").

6. In 1996 Housing Opportunities, Inc. began to develop the West Madison Subdivision (the "Subdivision") on property adjacent to the Groberg Property.

7. In order to develop the Subdivision, HOI required two easements across the Groberg Property for water, irrigation, and/or sewer lines.

8. HOI entered into negotiations with the Grobergs for the grant of the easements, HOI's purchase of the Groberg Property, and the Grobergs' purchase of one of the renovated houses in the Subdivision.

9. At some point between June 17, 1996 and July 15, 1996, Dick Welch, a representative of HOI, drafted a rough estimate of the costs of renovating a home in the Subdivision. Mr. Welch gave this estimate to the Grobergs.

10 The document drafted by Mr Welch estimated that the renovation costs for a home in the Subdivision would be approximately $71,500 (Plaintiffs' Exhibit 7)

11 On July 15, 1996, the Grobergs and HOI entered into a Real Estate Purchase Contract (Plaintiffs' Exhibit 10) which included terms addressing the following·

a. HOI would purchase the Groberg Property for $87,500 00

b. The Grobergs would purchase a house on Lot 13 of the Subdivision from HOI.

c. If necessary, HOI would assist the Grobergs in obtaining a mortgage from a bank pool fund or other banking sources to cover the costs of rehabilitating the house on Lot 13

d. The Grobergs would sign a utility easement across the west side of the Groberg Property.

e. If the Grobergs did not complete the house on Lot 13 or did not believe that the new house on Lot 13 had equal value to the Groberg Property, the Grobergs had the option to retain the Groberg Residence and would not be required to purchase the house on Lot 13.

f. If the Grobergs exercised this option, each of the parties would be returned to their former estate as to ownership of properties and debt.

g. Any improvements made by HOI to the Groberg Property would remain if the Grobergs opted not to buy the house on Lot 13

h. HOI intended to place the Grobergs in an equal or better house for the same mortgage which the Grobergs currently had on the Groberg Property

12. At the trial in this matter, counsel for the Defendants objected to any parol evidence being admitted to explain any of the integrated portions of the contract. The Court took the objection under advisement.

13 The Grobergs after signing the contract executed a promissory note on the 1st day of April, 1998, in the amount of $83,770 00 at zero percent (0%) interest (Plaintiffs' Exhibit 17)

14 On April 1, 1998, the Grobergs entered into a home repair contract with McClellan Construction as their contractor to rehabilitate the premises on Lot 13 of the Subdivision (Plaintiffs' Exhibit 21).

15. In May of 1998, before the house had been moved to Lot 13, an appraisal was done based upon Lot 13, the home and projected renovation of the home anticipated by the Rehabilitation Contract (Plaintiffs' Exhibit 21). This appraisal estimated the value of the house and lot at $138,000.00.

16 After the May 1998 appraisal was completed, HOI told the Grobergs that the purchase price for the home on Lot 13 of the Subdivision would be for the appraised price of $138,000.00.

17 On November 11, 1998, HOI sent a letter to the Grobergs stating that the purchase price of the home on Lot 13 was set at the appraised price of $138,000.00. (Plaintiffs' Exhibit 27) HOI stated that it would arrange financing for the Grobergs to purchase the home on Lot 13 for a "sales price" of $138,000 plus approximately $40,000 to reimburse HOI for development and rehabilitation costs.

18 After receipt of the November 11, 1998 letter, the Grobergs continued to rehabilitate the home on Lot 13 using their contractor, McClellan Construction.

19 After consulting with HOI, the Grobergs terminated McClellan Construction in December of 1998.

20. After December of 1998, the Grobergs acted as their own contractor and continued to pursue the repair and the rehabilitation of the home on Lot 13.

21. On October 4, 1999, HOI sent a letter to the Grobergs' attorney. (Plaintiffs' Exhibit 29) In that letter, HOI stated that it would not sell the house on Lot 13 to the Grobergs for less than $156,532.72.

22. On October 5, 1999, HOI sent another letter to the Grobergs' attorney indicating that if the Grobergs did not agree in writing to purchase the house on Lot 13 for the price mentioned in the October 4, 1999 letter, "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." (Plaintiffs' Exhibit 29.)

23. The Grobergs informed HOI that the Grobergs could not afford to purchase the house on Lot 13 for the price demanded by HOI.

24. On October 7, 1999, HOI sent a letter to the Grobergs' attorney which states: "Please instruct the Groberg's [sic] to immediately remove any personal property from the premises and to turn over all keys to Dean Maltsberger at our offices." (Plaintiffs' Exhibit 32.)

25. Shortly thereafter, the Grobergs removed their personal property from the home and turned over the keys to HOI.

26. Prior to turning over the keys, the Grobergs had substantial control as to the construction that was pursued and the costs associated with the renovation.

27. Prior to making payments to McClellan Construction or the Grobergs, HOI inspected the renovation work on the house on Lot 13 in order to confirm the amount of work completed. HOI did not request that the renovation work be done on the house on Lot 13.

28. During the renovation process, the Grobergs used their own funds to pay $10,285.22 toward materials, equipment, and utilities for the house on Lot 13. HOI never reimbursed the Grobergs for this amount.

29. On December 2, 1999, the Grobergs recorded a Mechanics Lien against Lot 13 (Plaintiffs' Exhibit 33).

30. Prior to the contract being signed, Plaintiffs' Exhibit 7 was prepared by Mr. Dick Welch, which was a rough estimate and not a complete contract.

31. The home and Lot 13 was sold to Dahle & Krueger on January 25, 2000, for $149,000.00.

32. At the time of sale HOI had paid $173,034.52 in costs to develop, administer and rehabilitate Lot 13 and the home on Lot 13.

CONCLUSIONS OF LAW

1. The Court finds that the contract (Plaintiffs' Exhibit 10) is an integrated contract as to the following issues:

a. HOI would purchase the Groberg Property for $87,500.00.

b. The Grobergs would purchase a house on Lot 13 of the Subdivision from HOI.

c. If necessary, HOI would assist the Grobergs in obtaining a mortgage from a bank pool fund or other banking sources to cover the costs of rehabilitating the house on Lot 13.

d. The Grobergs would sign a utility easement across the west side of the Groberg Property

e. If the Grobergs did not complete the house on Lot 13 or did not believe that the new house on Lot 13 had equal value to the Groberg Property, the Grobergs had the option to retain the Groberg Residence and would not be required to purchase the house on Lot 13.

f. If the Grobergs exercised this option, each of the parties would be returned to their former estate as to ownership of properties and debt.

g. Any improvements made by HOI to the Groberg Property would remain if the Grobergs opted not to buy the house on Lot 13

h. HOI intended to place the Grobergs in an equal or better house for the same mortgage which existed at that time on the Groberg Property.

2. Based upon this Conclusion, Defendants' continuing objection as to the admission of parol evidence as to these issues is sustained and all such evidence is deemed inadmissible and has not been considered by the Court.

3. The contract is not integrated as to the purchase price of Lot 13 and the house on Lot 13 and parol evidence is admitted as to this issue only.

4. The Plaintiffs did not sustain their burden of proof on their claim for foreclosure of the Mechanics Lien for the following reasons:

a. The purpose of the lien statute is to ensure payment to parties who supply material or labor to property

b. The Grobergs were equitable owners of the property and had substantial control over the extent and cost of improvements on Lot 13.

c. The Court finds that HOI is the record owner of Lot 13, but the improvements to the property were not requested by HOI or provided at the instance of HOI.

d. Finally, the Grobergs waived, released, surrendered or contracted away their lien rights when they signed the Real Estate Purchase Agreement with its provision that the Grobergs could opt to have each party "returned to its former estate as to ownership of properties and debt."

e. Consideration for both the labor and the materials requested by the Grobergs is found in the original contract signed by the parties.

5. The Court finds by a preponderance of the evidence that the parties orally agreed that the purchase price of Lot 13 would be the appraised value which was later determined to be $138,000.00. In the alternative, the court concludes that HOI's November 11, 1998 letter (Plaintiffs' Exhibit 27) constituted an amendment to the Real Estate Purchase contract and that the Grobergs ratified this amendment by continuing renovation work on Lot 13 after receiving the November 11, 1998 letter.

6. The Plaintiffs have failed to establish that there was an oral agreement that the purchase price of the house on Lot 13 would be the cost of the renovation.

7 For the foregoing reasons the Plaintiff did not meet its burden of proof as to a breach of contract in this matter

8 Based upon the integrated nature of the contract as previously found, the consideration for the easement set forth in the contract was the fencing placed on the Groberg Property, irrigation, improvements, the Grobergs' option to be returned to their former estate as to debt and property, the right of the Grobergs to utilize loan proceeds with no interest, and the opportunity to end up with a new home in a new subdivision with the same mortgage

9 Evidence from the Plaintiffs as to additional compensation being promised for the easement in the form of $20,000 00 or discounts on the purchase price of the home on Lot 13 was contradicted by equal evidence on the part of the Defendant that no such agreement was ever made Based upon this fact, the Plaintiffs did not prove, by a preponderance of the evidence, that any such agreement existed

10 Based upon the foregoing, the Plaintiffs have not met their burden of proof in establishing that additional compensation should have been paid for the easement.

11 In order for the Plaintiffs to prevail under their unjust enrichment claim, they must establish under a contract implied in law that the Plaintiffs conferred a benefit upon the Defendant, the Defendant was aware of the benefit, and the Defendant's retention of the benefit without payment would be inequitable under the circumstances Plaintiffs' claim for a contract implied in law fails on the third prong of this test

12 In *Knight v. Post*, 748 P 2d 1097 (Utah Ct App 1988), the Utah Supreme Court gave guidelines as to how to determine whether the retention of the benefit would be inequitable The Court held that retention of a benefit without payment is not considered inequitable absent some

misleading act, request for services, or the like by the party who retained the benefit. The Court finds that HOI did not request the improvements to the house on Lot 13 The Court further finds no misleading conduct on the part of HOI Thus, the Court is unable to conclude that it would be inequitable for HOI to retain the benefits provided by the Grobergs without paying for those benefits

13. As to unjust enrichment imposed by a contract implied in fact, the elements are that the Defendants requested the Plaintiffs to perform the work, the Plaintiffs expected to be compensated and the Defendants knew or should have known the Plaintiffs expected to be compensated.

14. The Court has already found that Defendants did not request Plaintiffs to do the work.

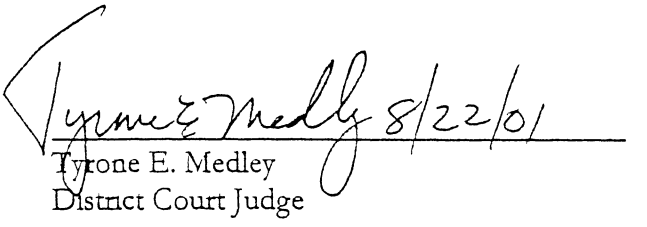
15. The testimony is clear that at the time the work was done the Grobergs knew that they were going to live in the home and did not expect to be compensated and for this and the foregoing reason unjust enrichment based upon a contract implied in fact must fail.

16. With respect to HOI's counterclaim, the evidence established that the Grobergs had no contractual obligation to repay HOI for excess renovation costs The Grobergs did not breach any duty of good faith and fair dealing inherent in their contract with HOI. Finally, HOI's negligence claim was not included in its pleadings and is not well taken.

17. HOI failed to meet its burden to establish that the Grobergs breached any contract or any standard of good faith or fair dealing Accordingly, Defendants' Counterclaim must fail as no cause of action.

DATED this _____ day of May 2001.

BY THE COURT:



Tyrone E. Medley
District Court Judge

Approved as to form:

_____
Bryan H. Booth
Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a true and exact copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to the following party on the 23d day of May 2001.

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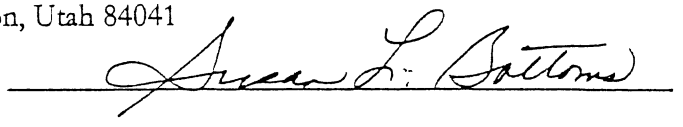

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JOHN GROBERG and SHAUNA GROBERG, Plaintiffs, vs. HOUSING OPPORTUNITIES, INC., a Utah nonprofit corporation, MARGARET M. DAHLE, JOHN L. KRUEGER, and GRANITE CREDIT UNION, a Utah corporation, Defendants.	ORDER AND JUDGMENT Civil No. 990912183 Judge Tyrone E. Medley

THE ABOVE-ENTITLED MATTER was brought on for trial before the Honorable Tyrone Medley, judge of the above-entitled court, on April 11 and 12, 2001. The Plaintiffs appeared in person with their attorney of record, Bryan H. Booth. Defendant Housing Opportunities, Inc., appeared through its authorized representative and it attorney of record, J. Bruce Reading. Defendants, Margaret M. Dahle and John L. Krueger and Granite Credit Union, did not appear but entered into a stipulation with Housing Opportunities, Inc. wherein Housing Opportunities, Inc. would indemnify and hold harmless these co-defendants on any judgment that may be entered against them. The presence of Ms. Dahle and Mr. Krueger was excused by stipulation of the parties and by approval of the Court. The Court having heretofore entered its Findings of Fact and Conclusions of Law, and being fully advised in the premises, now therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The contract (Plaintiffs' Exhibit 10) is an integrated contract as to the following issues:

a. HOI would purchase the Groberg Property for $87,500.00.

b. The Grobergs would purchase a house on Lot 13 of the Subdivision from HOI.

c. If necessary, HOI would assist the Grobergs in obtaining a mortgage from a bank pool fund or other banking sources to cover the costs of rehabilitating the house on Lot 13.

d. The Grobergs would sign a utility easement across the west side of the Groberg Property.

e. If the Grobergs did not complete the house on Lot 13 or did not believe that the new house on Lot 13 had equal value to the Groberg Property, the Grobergs had the option to retain the Groberg Residence and would not be required to purchase the house on Lot 13.

f. If the Grobergs exercised this option, each of the parties would be returned to their former estate as to ownership of properties and debt.

g. Any improvements made by HOI to the Groberg Property would remain if the Grobergs opted not to buy the house on Lot 13.

h. HOI intended to place the Grobergs in an equal or better house for the same mortgage which existed at that time on the Groberg Property.

2. Based upon this Conclusion, Defendants' continuing objection as to the admission of parol evidence as to these issues is sustained and all such evidence is deemed inadmissible and has not been considered by the Court.

3. The contract is not integrated as to the purchase price of Lot 13 and the house on Lot 13 and parol evidence is admitted as to this issue only.

4. The Plaintiffs did not sustain their burden of proof on their claim for foreclosure of the Mechanics Lien for the following reasons:

a. The purpose of the lien statute is to ensure payment to parties who supply material or labor to property.

b. The Grobergs were equitable owners of the property and had substantial control over the extent and cost of improvements on Lot 13.

c. The Court finds that HOI is the record owner of Lot 13, but the improvements to the property were not requested by HOI or provided at the instance of HOI.

d. Finally, the Grobergs waived, released, surrendered or contracted away their lien rights when they signed the Real Estate Purchase Agreement with its provision that the Grobergs could opt to have each party "returned to its former estate as to ownership of properties and debt."

e. Consideration for both the labor and the materials requested by the Grobergs is found in the original contract signed by the parties.

5. The parties orally agreed that the purchase price of Lot 13 would be the appraised value which was later determined to be $138,000.00. In the alternative, the court concludes that

HOI's November 11, 1998 letter (Plaintiffs' Exhibit 27) constituted an amendment to the Real Estate Purchase contract and that the Grobergs ratified this amendment by continuing renovation work on Lot 13 after receiving the November 11, 1998 letter.

6. The Plaintiffs have failed to establish that there was an oral agreement that the purchase price of the house on Lot 13 would be the cost of the renovation.

7. For the foregoing reasons the Plaintiff did not meet its burden of proof as to a breach of contract in this matter.

8. Based upon the integrated nature of the contract as previously found, the consideration for the easement set forth in the contract was the fencing placed on the Groberg Property, irrigation, improvements, the Grobergs' option to be returned to their former estate as to debt and property, the right of the Grobergs to utilize loan proceeds with no interest, and the opportunity to end up with a new home in a new subdivision with the same mortgage.

9. Evidence from the Plaintiffs as to additional compensation being promised for the easement in the form of $20,000.00 or discounts on the purchase price of the home on Lot 13 was contradicted by equal evidence on the part of the Defendant that no such agreement was ever made. Based upon this fact, the Plaintiffs did not prove, by a preponderance of the evidence, that any such agreement existed.

10. Based upon the foregoing, the Plaintiffs have not met their burden of proof in establishing that additional compensation should have been paid for the easement.

11. In order for the Plaintiffs to prevail under their unjust enrichment claim, they must establish under a contract implied in law that the Plaintiffs conferred a benefit upon the Defendant, the Defendant was aware of the benefit, and the Defendant's retention of the benefit without

payment would be inequitable under the circumstances. Plaintiffs' claim for a contract implied in law fails on the third prong of this test.

12. In *Knight v. Post*, 748 P.2d 1097 (Utah Ct. App. 1988), the Utah Supreme Court gave guidelines as to how to determine whether the retention of the benefit would be inequitable. The Court held that retention of a benefit without payment is not considered inequitable absent some misleading act, request for services, or the like by the party who retained the benefit. The Court finds that HOI did not request the improvements to the house on Lot 13. The Court further finds no misleading conduct on the part of HOI. Thus, the Court is unable to conclude that it would be inequitable for HOI to retain the benefits provided by the Grobergs without paying for those benefits.

13. As to unjust enrichment imposed by a contract implied in-fact, the elements are that the Defendants requested the Plaintiffs to perform the work, the Plaintiffs expected to be compensated and the Defendants knew or should have known the Plaintiffs expected to be compensated.

14. The Court has already found that Defendants did not request Plaintiffs to do the work.

15. The testimony is clear that at the time the work was done the Grobergs knew that they were going to live in the home and did not expect to be compensated and for this and the foregoing reason unjust enrichment based upon a contract implied in fact must fail.

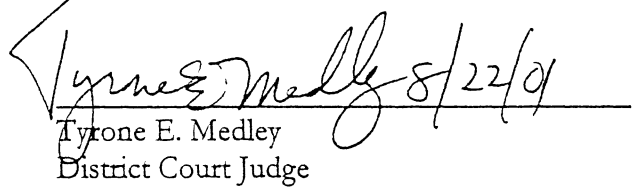
16. With respect to HOI's counterclaim, the evidence established that the Grobergs had no contractual obligation to repay HOI for excess renovation costs. The Grobergs did not breach

ny duty of good faith and fair dealing inherent in their contract with HOI. Finally, HOI's ıegligence claim was not included in its pleadings and is not well taken.

17. HOI failed to meet its burden to establish that the Grobergs breached any contract ›r any standard of good faith or fair dealing. Accordingly, Defendants' Counterclaim must fail as no :ause of action.

DATED this _____ day of May 2001.

BY THE COURT:



Tyrone E. Medley
District Court Judge

Approved as to form:

_____
Bryan H. Booth
Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a true and exact copy of the foregoing ORDER AND JUDGMENT to the following party on the 23d day of May 2001.

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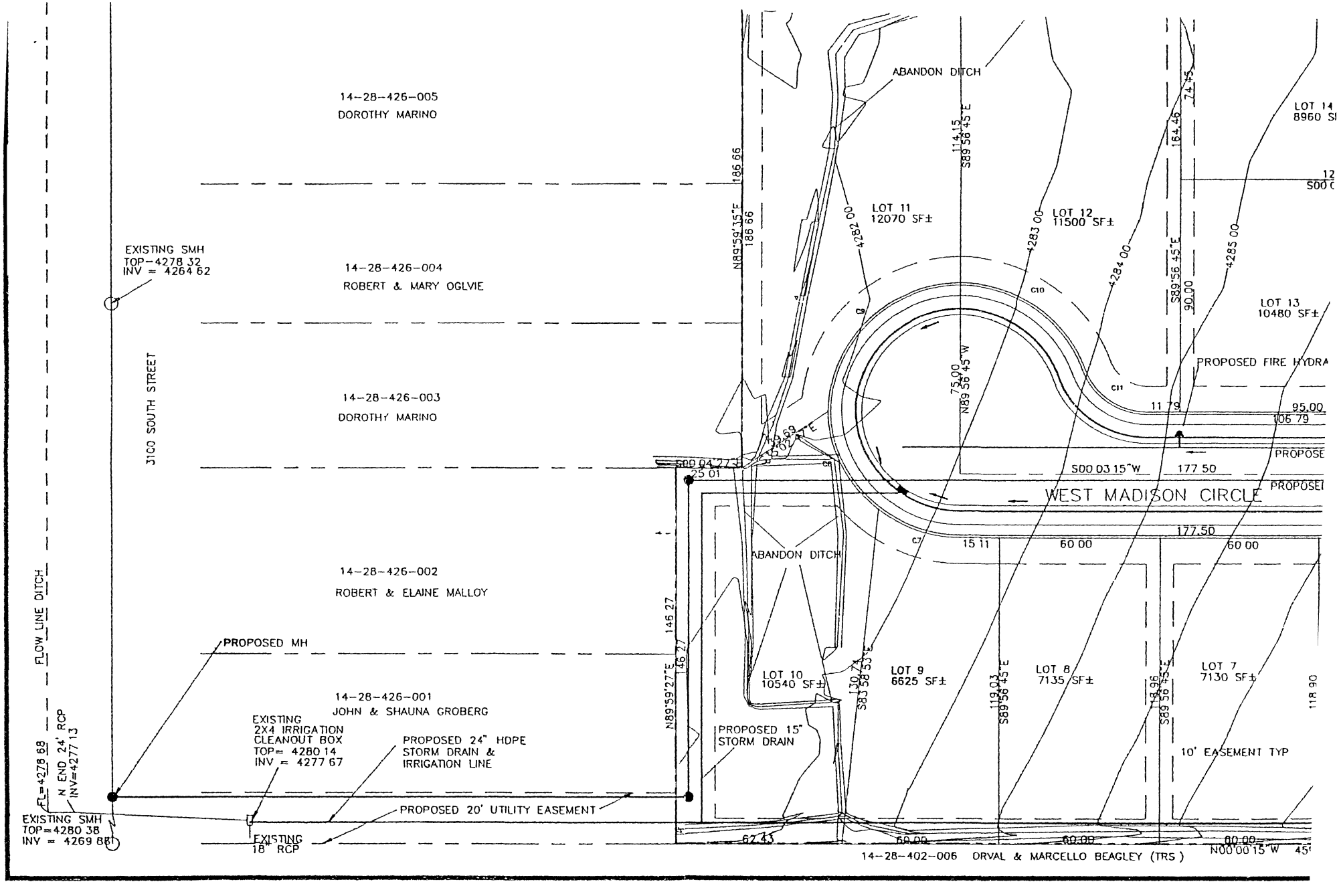
Susan L. Bettons


14-28-426-005
DOROTHY MARINO
14-28-426-004
ROBERT & MARY OGLVIE
14-28-426-003
DOROTHY MARINO
14-28-426-002
ROBERT & ELAINE MALLOY
14-28-426-001
JOHN & SHAUNA GROBERG
14-28-402-006 ORVAL & MARCELLO BEAGLEY (TRS)
3100 SOUTH STREET
FLOW LINE DITCH
EXISTING SMH
TOP=4278 32
INV = 4264 62
EXISTING SMH
TOP=4280 38
INV = 4269 88
FL=4278 68
N END 24" RCP
INV=4277 13
PROPOSED MH
EXISTING
2X4 IRRIGATION
CLEANOUT BOX
TOP= 4280 14
INV = 4277 67
PROPOSED 24" HDPE
STORM DRAIN &
IRRIGATION LINE
PROPOSED 20' UTILITY EASEMENT
EXISTING
18" RCP
ABANDON DITCH
ABANDON DITCH
LOT 11
12070 SF±
LOT 12
11500 SF±
LOT 13
10480 SF±
LOT 14
8960 SF
LOT 10
10540 SF±
LOT 9
6625 SF±
LOT 8
7135 SF±
LOT 7
7130 SF±
WEST MADISON CIRCLE
PROPOSED FIRE HYDRA
PROPOSED 15"
STORM DRAIN
10' EASEMENT TYP
S00 03 15"W
177 50
177.50
60 00
60 00
15 11
95.00
106 79
11 79
186 66
186 66
N89°59'35"E
114.15
S89 58 45"E
164.46
74 45
90.00
S89°56 45"E
75.00
N89 58 45"W
146 27
146 27
N89°59'27"E
130 74
S83 58 53"E
119.03
S89 58 45"E
118 96
S89 58 45"E
118 90
S00 04 27"E
23 01
62 43
60.00
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4282 00
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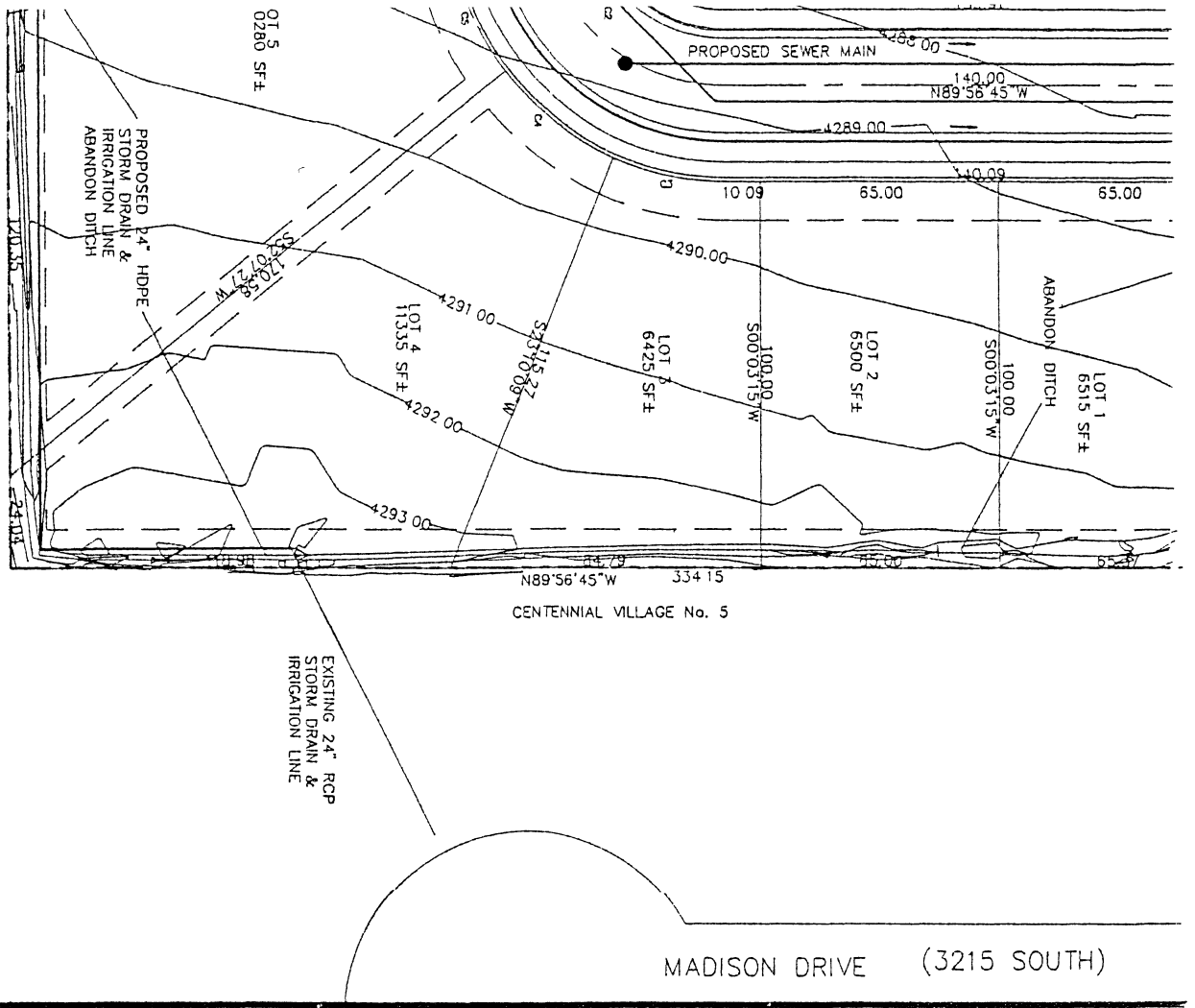

PRELIMINARY PLAT

WEST MADISON SUBDIVISION

SHEET	PREPARED FOR : LEE TALBOT ADL DEVELOPMENT COMPANY 5263 SOUTH 300 WEST MURRAY UTAH
1 OF 1	LOCATION : SEC 28, T1S, R2W SLB&M

LARSEN & MALMG
CONSULTING ENGINEERS AND LA
2736 SOUTH 2700 W
WEST VALLEY CITY, UTAI
PHONE (801) 972-2634

5-5-95

87,500 SALE

-38,000 LOAN

49,500 CREDIT

0,000	37,500			
		Footing / Basement	12,000	
		✓ Finish Bmt	6000	
		✓ GARAGE	10500	
		✓ WATER/SEWER	2500	
		✓ Floor Covering	3500	
		✓ Lot	15,000	89,5
200	Roof	✓ Paint		2000
1000	misc cost kitchen cabs	SPRINKLER		1000
200		SOD		800
	58,700	✓ Siding		3,200
		✓ windows		800
		✓ Doors-3		900
				58,200

✓ 2300 FURNACE

✓ 400 WATER HEATER

✓ 2500 ~~DEMO-PRE MOVE~~

✓ 6000 MOVING COST

	11,200			*69,400
			Round up	70,000
			CREDIT	(49,500)
				-20,500
		* Window Covering	750	
71,500	2100	✓ Stove 410	350	22,600
		✓ Ref	600 600	
	14,900	✓ Dishwasher	400	

REAL ESTATE PURCHASE CONTRACT

REALTOR®

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

EQUAL HOUSING OPPORTUNITY

EARNEST MONEY RECEIPT *organization)

The Buyer Housing Opportunities, Inc. (a non-profit * offers to purchase the Property described below and delivers to Brokerage as Earnest Money Deposit $ 500.00 in the form of check to be deposited within three business days after Acceptance of this offer to purchase by all parties in a Title Company

_____ Received by _____ on _____ (Date)

Brokerage Phone Number

OFFER TO PURCHASE

1 PROPERTY 7395 West 3100 South, Magna, Utah

City Magna County Salt Lake Utah

1 1 Included Items Unless excluded herein this sale shall include all fixtures presently attached to the Property plumbing heating air conditioning and venting fixtures and equipment water heater built in appliances light fixtures and bulbs bathroom fixtures curtains and draperies and rods window and door screens storm doors window blinds awnings installed elevision antenna satellite dishes and system wall to wall carpets automatic garage door opener and transmitter(s) fencing trees and shrubs The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title _____

1 2 Excluded Items The following items are excluded from this sale _____

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

$ 500.00 Earnest Money Deposit

$ -0- Existing Loan Buyer agrees to assume and pay an existing loan in this approximate amount presently payable at $ _____ per month including principal interest (presently at ____ % per annum) ☐ real estate taxes ☐ property insurance premium and ☐ mortgage insurance premium Buyer agrees to pay any transfer and assumption fees Seller ☐ shall ☐ shall not be released from liability on said loan Any net differences between the approximate balance of the loan shown above and the actual balance at Closing shall be adjusted in ☐ Cash ☐ Other _____

$ -0- Proceeds from New Loan Buyer reserves the right to apply for any of the following loans under the terms described below

☐ Conventional ☐ FHA ☐ VA ☐ Other _____ Seller agrees to pay $ _____ toward Discount Points and Buyer s other loan and closing costs to be allocated at Buyer s discretion

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

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

$ -0- Seller Financing (See attached Seller Financing Addendum)

$ _____ Other See attached Exhibit A

$ 87,000. Balance of Purchase Price in Cash at Closing

$ 87,500.00* Total Purchase Price *Subject to conditions outlined on attached Exhibit A

2 1 Existing/New Loan Application Buyer agrees to make application for a loan specified above within ____ calendar days (Application Date) after Acceptance Buyer will have made Loan Application only when Buyer has (a) completed signed and delivered to the Lender the initial loan application and documentation required by the Lender and (b) paid all loan application fees as required by the Lender Buyer will continue to provide the Lender with any additional documentation as required by the Lender If within seven calendar days after receipt of written request from Seller Buyer fails to provide to Seller written evidence that Buyer has made Loan Application by the Application Date then Seller may prior to the Qualification Date below cancel this Contract by providing written notice to Buyer The Brokerage upon receipt of a copy of such written notice shall release to Seller and Seller agrees to accept as Seller s exclusive remedy the Earnest Money Deposit without the requirement of any further written authorization from Buyer

2 2 Qualification Buyer and the Property must qualify for a loan for which application has been made under section 2 1 within ____ calendar days (Qualification Date) after Acceptance The Property is deemed qualified if on or before the Qualification Date the Property in its current condition and for the Buyer s intended use has appraised at a value not less than the Total Purchase Price Buyer is deemed qualified if on or before the Qualification Date the Lender verifies in writing that Buyer has been approved as of the verification date

2 3 Qualification Contingency If Seller has not previously voided this Contract as provided in Section 2 1 and either the Property or Buyer has failed to qualify on or before the Qualification Date either party may cancel this Contract by providing written notice to the other party within three calendar days after the Qualification Date otherwise Buyer and the Property are deemed qualified The Brokerage upon receipt of a copy of such written notice shall return to Buyer the Earnest Money Deposit without the requirement of any further written authorization of Seller

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

4 POSSESSION Unless otherwise agreed in writing by the parties Seller shall deliver possession to Buyer within 2 WEEK ~~hours~~ after Closing

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

6 TITLE TO PROPERTY AND TITLE INSURANCE (a) Seller has or shall have at Closing fee title to the Property and agrees to convey such title to Buyer by general warranty deed free of financial encumbrances as warranted under Section 10 6 (b) Seller agrees to pay for and furnish Buyer at Closing with a current standard form owner s policy of title insurance in the amount of the Total Purchase Price (c) the title policy shall conform with Seller s obligations under subsections (a) and (b) above Unless otherwise agreed under subsection 8 4 the commitment shall conform with the title insurance commitment provided under Section 7

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

8 GENERAL CONTINGENCIES In addition to Qualification under Section 2 2 this offer is (a) subject to Buyer s approval of the content of each of the items referenced in Section 7 above and (b) ☐ is ☐ is not subject to Buyer s approval of an inspection of the Property The inspection shall be paid for by Buyer and shall be conducted by an individual/company of Buyer s choice Seller agrees to fully cooperate with such inspection and a walk through inspection under Section 11 and to make the Property available for the same

8 1 Buyer shall have NA calendar days after Acceptance in which to review the content of Seller Disclosures and if the inspection contingency applies to complete and evaluate the inspection of the Property and to determine in Buyer s sole discretion the content of all Seller Disclosures (including the Property Inspection) is acceptable

8 2 If Buyer does not deliver a written objection to Seller regarding a Seller Disclosure or the Property Inspection within the time provided in subsection 8 1 above that document or inspection will be deemed approved or waived by Buyer

8 3 If Buyer objects Buyer and Seller shall have seven calendar days after receipt of the objections to resolve Buyer s objections Seller may but shall not be required to resolve Buyer s objections If Buyer s objections are not resolved within the seven calendar days Buyer may void this Contract by providing written notice to Seller within the same seven calendar days The Brokerage upon receipt of a copy of [illegible]

esolution of Buyer s objections unde on 8 3 shall be in writing and shall be specificall ceable as covenants of this Contract

ECIAL CONTINGENCIES This offer is made subject to See attached Exhibit A

e terms of attached Addendum # 1 are incorporated into this Contract by this reference

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

10 1 When seller delivers possession of the Property to Buyer it will be broom clean and free of debris and personal belongings

10 2 Seller will deliver possession of the Property to Buyer with the plumbing plumbed fixtures heating cooling ventilating electrical and sprinkler systems appliances and fireplaces in working order

10 3 Seller will deliver possession of the Property to Buyer with the roof and foundation free of leaks known to Seller

10 4 Seller will deliver possession of the Property to Buyer with any private well or septic tank serving the Property in working order and in compliance with governmental regulations

10 5 Seller will be responsible for repairing any of Seller s moving related damage to the Property

10 6 At Closing Seller will bring current all financial obligations encumbering the Property which are assumed in writing by Buyer and will discharge all such obligations which Buyer has not so assumed and

10 7 As of Closing Seller has no knowledge of any claim or notice of an environmental building or zoning code violation regarding the Property which has not been resolved

11 VERIFICATION OF WARRANTED AND INCLUDED ITEMS Before Closing Buyer may conduct a walk through inspection of the Property to determine whether or not items warranted by Seller in Section 10 1 10 2 10 3 and 10 4 are in the warranted condition and to verify items included in Section 1 1 are presently on the Property If any item is not in the warranted condition Seller will correct repair or replace it as necessary or with the consent of Buyer escrow an amount at Closing to provide for such repair or replacement The Buyer s failure to conduct a walk through inspection or to claim during the walk through inspection that the Property does not include all items referenced in Section 1 1 or is not in the condition warranted in Section 10 shall not constitute a waiver by Buyer of Buyer s rights under Section 1 1 or of the warranties contained in Section 10

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

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

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

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

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

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

18 DISPOSITION OF EARNEST MONEY The Earnest Money Deposit shall not be released unless it is authorized by (a) Section 2 Section 8 3 or Section 15 (b) separate written agreement of the parties or (c) court order

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

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

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

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

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

24 OFFER AND TIME FOR ACCEPTANCE Buyer offers to purchase the Property on the above terms and conditions If Seller does not accept this offer by 5 00 ☐ AM ☒ PM Mountain Time July Monday 15 19 96 this offer shall lapse and the Brokerage shall return the Earnest Money Deposit to Buyer

Housing Opportunities, Inc.
by: Scott Sanchez

(Buyer s Signature) (Offer Date) (Buyer s Signature) (Offer Date)

The above date shall be the Offer Reference Date

(Notice Address) (Phone) (Notice Address) (Phone)

ACCEPTANCE/REJECTION/COUNTER OFFER

CHECK ONE

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

John Groberg 7-15-96 3:35 Shauna Groberg 7-14-96 3 35

(Seller s Signature) John Groberg (Date) (Time) (Seller s Signature) Shauna Groberg (Date) (Time)

(Notice Address) (Notice Address)

☐ Rejection Seller Rejects the foregoing offer _____ (Seller s Initials) _____ (Date) _____ (Time)

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

DOCUMENT RECEIPT

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

A ☐ I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures

SIGNATURE OF SELLER SIGNATURE OF BUYER

Date Date

Date Date

B ☐ I personally caused a final copy of the foregoing Contract bearing all signatures to be mailed on _____ 19 _____ by

AL..NDUM # 1 / COUNTER OFFER #
TO
REAL ESTATE PURCHASE CONTRACT

This is an ADDENDUM / COUNTER OFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of July 10, 1996, including all addenda and counter offers, between Housing opportunities Inc., as Buyer, and John & Shauna Grobberg, as Seller
The following terms are hereby incorporated as part of the REPC, and to the extent these terms modify or conflict with any provisions of the REPC, these terms shall control. All other terms of the REPC not modified shall remain the same

10.2 Exmpt Buyer is Buying AS-IS.
THRU
10-5

3. Closing to be after Grobberg have completed Home on Lot #13 described in Exhibit "A"

Any improvements made on the property at 7395 West 3100 So. By Housing opportunities Inc. will revert back to the Grobbers in the event of option paragraph 6 of Exhibit A.

[ ] Seller [ ] Buyer shall have until ~~July~~ 8:00 [ ] A.M. [ ] P.M. Mountain Time, July 15, 1996, to accept these terms in accordance with Section 23 of the REPC. Unless so accepted, this offer shall lapse.

[ ] Buyer [ ] Seller Signature — Date 7-15-96

[ ] Buyer [ ] Seller Signature — Date 7-15-96

ACCEPTANCE / REJECTION / COUNTER OFFER

CHECK ONE.
[ ] Acceptance: [ ] Seller [ ] Buyer hereby accepts these terms.

[ ] Buyer [ ] Seller Signature — Date — Time

[ ] Buyer [ ] Seller Signature — Date — Time

[ ] Rejection. [ ] Seller [ ] Buyer rejects these terms.

_____ (Initials) _____ (Date) _____ (Time)

[ ] Counter Offer [ ] Seller [ ] Buyer presents as a counter offer the terms set forth on the attached Counter Offer # ____

EXHIBIT A

Housing Opportunities, Inc. is developing a Subdivision called West Madison Circle, approximately 7358 West Madison Avenue, Magna, Utah.

Housing Opportunities, Inc. agrees to purchase the dwelling located at 7395 West 3100 South, Magna, from John and Shauna Groberg for the appraised price of $87,500.00 with the following conditions

Housing Opportunities, Inc. will pay off the existing mortgage on the Groberg property and provide an escrow account for the difference between the $87,500.00 and mortgage payoff. The escrow account will be utilized by the Grobergs to purchase the adjacent Lot #13 in the Madison Subdivsion with the assistance of Housing Opportunities, Inc. The Grobergs will move a house and rehabilitate the house utilizing the escrow funds.

If the rehab costs exceed the escrow account, Housing Opportunities, Inc. will assist the Grobergs in obtaining a mortgage from a bank pool fund or other banking sources. It is the goal of Housing Opportunities, Inc. to place the Grobergs in an equal or better house with the same debt that now exists on the dwelling at 7395 West 3100 South. If the Grobergs wish to exceed the existing mortgage amount, they may do so up to 90% of the appraised value of the new home located on Lot #13.

In consideration for the above assistance, John and Shauna Groberg agree to sell and transfer title to property at 7395 West 3100 South, Magna, Utah to Housing Opportunities, Inc. Additionally, the Grobergs will assign a utility easement across the west side of adjacent property north of Lot #13, more properly described as Sidwell Parcel 14-28-426-035 Said easement will be surveyed by Housing Opportunity, Inc and properly recorded with Salt Lake County.

As a further cooperative effort, if John and Shauna Groberg do not complete the dwelling located on lot #13, Madison Subdivision, or they do not feel the new house on Lot 13, Madison Subdivision has equal value to the former home at 7395 West 3100 South, then Housing Opportunities, Inc. will exchange Lot #13 for the property at 7395 West 3100 South, returning each to its former estate as to ownership of properties and debt However, the recorded easements across the west side of 7395 West 3100 South and Sidwell Parcel 14-28-426-035 shall be and forever remain in place.

Scott Barnhart

John Grobird G.-

One Copy for
Each And

One for me!

Ray Wilsch

last

HOUSING OPPORTUNITIES, INC. (HOI)
3595 South Main Street
Salt Lake City, Utah 84115
801/284-4400

August 26, 1997

Housing Opportunities, Inc. (HOI) is the owner of 3.4 acres of land located at 7358 West Madison Avenue, Magna, Utah 84044. On the west side of said land is an open ditch that periodically has water diverted into it for the purpose of irrigating land.

Housing Opportunities, Inc. (HOI) intends to enclose the ditch and divert the water into a 24" pipe along the west side of the property line. To supply the water users with water, Housing Opportunities, Inc. (HOI) will install two "bubble up" type concrete boxes and 15" supply pipe. The pipe and boxes will be installed in the southwest corner of the lots of water users. This construction will be mutually agreed for and supervised by Mr. James Langford of 7330 West 3100 South. Mr. Langford's position is Water Master of the area where the ditch is located.

We, the undersigned water users and Water Master, agree to the enclosure of the ditch and will work together for the mutual benefit of all water users within this system.

John Groberg, 7395 West 3100 South

Robert Malloy, 7315 West 3100 South

Robert Oglvie, 7309 West 3100 South

James Langford, 7330 West 3100 South
Water Master

HOUSING OPPORTUNITIES, INC. (HOI)
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Robert Malloy, 7315 West 3100 South

Robert Oglvie, 7309 West 3100 South

James Langford, 7330 West 3100 South
Water Master

WHEN RECORDED, MAIL TO:
Magna Water Company,
an improvement district
2711 South 8600 West,
Magna, Utah 84044

Easement

Correction Instrument

JOHN A. AND SHAUNA GROBERG (JT), Grantors, of MAGNA, County of SALT LAKE, State of UTAH, hereby GRANT AND CONVEY to the MAGNA WATER COMPANY, an improvement district, at 2711 South 8600 West, Magna, Utah 84044, Grantee, for the sum of Ten Dollars ($10.00) and other valuable consideration, the following described tract of land in Salt Lake County, State of Utah, to-wit:

Legal Description
24' Easement
Groberg South Parcel

BEGINNING at a point 80 Rods West and 150.0 feet South of the Northwest corner of the Southeast quarter of Section 28, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South 50.0 feet; thence East 24.0 feet; thence North 50.0 feet; thence West 24.0 feet to the point of BEGINNING.

Grantors hereby agree that **MAGNA WATER COMPANY**, their officers, employees, agents, representatives, contractors, and assigns shall have the right of ingress to and egress from the above described strip of property with such equipment as is necessary to install, maintain, operate, repair, inspect, protect, install and connect other transmission mains and laterals, remove and replace said facilities as may be required from time to time by Grantee.

Grantors shall have the right to use said premises except for the purpose for which these rights-of-way and easements are granted provided such use shall not interfere with said facilities or with the discharge or the conveyance of water and sewer through any pipelines installed by Grantee. Grantee shall have the right to clear and remove all trees and obstructions within the easements which may interfere with the use of the easements by the Grantee. Grantee shall have the right to excavate and refill ditches and/or trenches for the installation of said pipelines and appurtenant parts thereof.

Continued on Page 2

BK 7754 PG 0478

Grantors shall not build or construct or permit to be built or constructed any building, or permanent structure over or across said easement or lower the contour thereof greater than two feet without the prior written consent of Grantee. This right-of-way and easement grant shall be binding upon and inure to the benefit of, the heirs, representatives, successors-in-interest and assigns of Grantors and the successors and assigns of Grantee and may be assigned in whole or in part by Grantee.

The property of Grantors shall be restored in as good of condition as when the same was entered upon by the Grantee or its agents. The Grantee agrees that the pipe will be structurally strong enough to facilitate construction future roads by Grantors over said easement.

(Note: This instrument is given to correct that certain Easement recorded as Entry No. 6411622, in Book 7449, at Page 149, dated 15 July 1996, recorded 7/23/96, in the office of the Salt Lake County Recorder, Utah.)

WITNESS, the hand_ of said Grantor_, this 8th day of Sept, A.D. 1997.

Signed in the presence of:

STATE OF)
) ss.
COUNTY OF)

On the date first above written personally appeared before me, _____, the signer_ of the within and foregoing instrument, who duly acknowledged to me that _he_ executed the same.

Pamela S. Olsen
Notary Public

NOTARY PUBLIC
PAMELA S. OLSEN
5291 Peggy Ln.
West Valley, Utah 84120
My Commission Expires
April 11, 1999
STATE OF UTAH

BK 7754 PG 0479

Prepared by blp 9/96

6735113
09/09/97 3:44 PM**NO FEE**
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
SL CO HOUSING AUTHORITY
3595 S MAIN ST
SLC, UT 84115
REC BY:J FERGUSON ,DEPUTY UT

BK7754PG0480

WHEN RECORDED, MAIL TO:
Magna Water Company,
an improvement district
2711 South 8600 West,
Magna, Utah 84044

Easement

Correction Instrument

JOHN A. AND SHAUNA GROBERG (JT), Grantors, of MAGNA, County of SALT LAKE, State of UTAH, hereby GRANT AND CONVEY to the MAGNA WATER COMPANY, an improvement district, at 2711 South 8600 West, Magna, Utah 84044, Grantee, for the sum of Ten Dollars ($10.00) and other valuable consideration, the following described tract of land in Salt Lake County, State of Utah, to-wit:

Legal Description
24' Easement
Groberg North Parcel

BEGINNING at a point 80 Rods West and 2 Rods South of the Northeast corner of the Southeast quarter of Section 28, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South 117.0 feet; thence East 24.0 feet; thence North 117.00 feet; thence West 24.0 feet to the point of BEGINNING.

Grantors hereby agree that MAGNA WATER COMPANY, their officers, employees, agents, representatives, contractors, and assigns shall have the right of ingress to and egress from the above described strip of property with such equipment as is necessary to install, maintain, operate, repair, inspect, protect, install and connect other transmission mains and laterals, remove and replace said facilities as may be required from time to time by Grantee.

Grantors shall have the right to use said premises except for the purpose for which these rights-of-way and easements are granted provided such use shall not interfere with said facilities or with the discharge or the conveyance of water and sewer through any pipelines installed by Grantee. Grantee shall have the right to clear and remove all trees and obstructions within the easements which may interfere with the use of the easements by the Grantee. Grantee shall have the right to excavate and refill ditches and/or trenches for the installation of said pipelines and appurtenant parts thereof.

Continued on Page 2

BK7754PG0481

Grantors shall not build or construct or permit to be built or constructed any building, or permanent structure over or across said easement or lower the contour thereof greater than two feet without the prior written consent of Grantee. This right-of-way and easement grant shall be binding upon and inure to the benefit of, the heirs, representatives, successors-in-interest and assigns of Grantors and the successors and assigns of Grantee and may be assigned in whole or in part by Grantee.

The property of Grantors shall be restored in as good of condition as when the same was entered upon by the Grantee or its agents. The Grantee agrees that the pipe will be structurally strong enough to facilitate construction future roads by Grantors over said easement.

(Note: This instrument is given to correct that certain Easement recorded as Entry No. 6411621, in Book 7449, at Page 148, dated 15 July 1996, recorded 7/23/96, in the office of the Salt Lake County Recorder, Utah.)

WITNESS, the hand_ of said Grantor_, this 8th day of Sept, A.D. 1997.

Signed in the presence of:

STATE OF)
) ss.
COUNTY OF)

On the date first above written personally appeared before me, _____, the signer_ of the within and foregoing instrument, who duly acknowledged to me that _he_ executed the same.

Pamela S. Olsen
Notary Public

NOTARY PUBLIC
PAMELA S. OLSEN
5201 Peggy Ln.
West Valley, Utah 84120
My Commission Expires
April 11, 1999
STATE OF UTAH

3K7754PG0482

6735114
09/09/97 3:44 PM**NO FEE**
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
SL CO HOUSING AUTHORITY
3595 S MAIN ST
SLC, UT 84115
REC BY:J FERGUSON ,DEPUTY - WI

BK7754PG0483

Borrower/Client N A			File No 906833CN
Property Address			
City	County	State	Zip Code
Lender			

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PROFESSIONALS
LLC

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APPRAISAL
PROFESSIONALS
LLC
P O. Box 902218
Sandy, Utah 84090
801-942-0699 / FAX 801-942-2998

Appraisal Professionals, LLC
P O Box 902218
Sandy, Utah 84093

22 JUNE 1999

HOUSING AUTHORITY
3595 SOUTH MAIN STREET, SALT LAKE CITY, UT 84115
SALT LAKE CITY, UT 84115

Re	Property	3138 OLD GLORY CIRCLE MAGNA, UTAH 84044
	Borrower	N/A
	File No	906833CN

In accordance with your request, I have appraised the above referenced property The report of that appraisal is attached This report is intended for use only by the client and no other users, unless granted use by the client Use of this report by others is not intended by the appraiser The purpose of this appraisal is to give an opinion of value for the property described in this appraisal report, as improved in unencumbered fee simple title of ownership for use in a mortgage refinance
This is a Complete Summary Appraisal Report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice for a Complete Summary Appraisal Report As such it presents only summary discussions of the data reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value This report is based on a physical analysis of the site and improvements, a locational analysis of the neighborhood and city, and an economic analysis of the market for properties such as the subject The appraisal was developed and the report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice, revised and effective March 31, 1999
The value conclusions reported are as of the effective date stated in the body of the report and contingent upon the certification and limiting conditions attached It is not based on a predetermined value

It has been a pleasure to assist you Please do not hesitate to contact me or any of my staff if we can be of additional service to you We pride ourselves on servicing your appraisal needs before, during and after the report is delivered

Sincerely,

Cathleene D Nilsson
Partner
State Certified Residential Appraiser CR42267

SUMMARY OF SALIENT FEATURES

SUBJECT INFORMATION	Subject Address	3138 OLD GLORY CIRCLE
	Legal Description	LOT 13 WEST MADISON SUB
	City	MAGNA
	County	SALT LAKE
	State	UTAH
	Zip Code	84044
	Census Tract	1139 04
	Map Reference	SALT 4
SALES PRICE	Sale Price	$ N/A
	Date of Sale	N/A
CLIENT	Borrower / Client	N/A
	Lender	HOUSING AUTHORITY
DESCRIPTION OF IMPROVEMENTS	Size (Square Feet)	1,376
	Price per Square Foot	$
	Location	AVERAGE
	Age	25A/2-3 EFF
	Condition	GOOD/TOT REM
	Total Rooms	6
	Bedrooms	3
	Baths	2
APPRAISER	Appraiser	Cathleene D Nilsson
	Date of Appraised Value	
VALUE	Final Estimate of Value	$

Complete Summary Appraisal Report

906833CN

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No 906833CN

SUBJECT

Property Description

Property Address 3138 OLD GLORY CIRCLE | City MAGNA | State UTAH | Zip Code 84044

Legal Description LOT 13 WEST MADISON SUB | County SALT LAKE

Assessor's Parcel No 14-28-426-037 | Tax Year 1998 | R E Taxes $ 167 46 | Special Assessments $ 0 00

Borrower N/A | Current Owner HOUSING AUTHORITY | Occupant [ ] Owner [ ] Tenant [X] Vacant

Property rights appraised [X] Fee Simple [ ] Leasehold | Project Type [ ] PUD [ ] Condominium (HUD/VA only) | HOA $ /Mo

Neighborhood or Project Name WEST MADISON | Map Reference SALT 4 | Census Tract 1139 04

Sale Price $ N/A | Date of Sale N/A | Description and $ amount of loan charges/concessions to be paid by seller N/A

Lender/Client HOUSING AUTHORITY | Address 3595 SOUTH MAIN STREET, SALT LAKE CITY, UT 84115

Appraiser Cathleene D Nilsson | Address Appraisal Professionals LLC P O Box 902218 Sandy UT 84090

NEIGHBORHOOD

Location	[ ] Urban	[X] Suburban	[ ] Rural	Predominant occupancy	Single family housing PRICE $(000)		AGE (yrs)	Present land use %		Land use change	
Built up	[X] Over 75%	[ ] 25-75%	[ ] Under 25%					One family	79	[ ] Not likely	[ ] Likely
Growth rate	[ ] Rapid	[X] Stable	[ ] Slow	[X] Owner	80	Low	NEW	2-4 family	1	[X] In process	
Property values	[ ] Increasing	[X] Stable	[ ] Declining	[ ] Tenant	200	High	75+	Multi-family	2	To VACANT TO SINGLE	
Demand/supply	[ ] Shortage	[X] In balance	[ ] Over supply	[X] Vacant (0 5%)	Predominant			Commercial	3	FAMILY RESIDENCE	
Marketing time	[ ] Under 3 mos	[X] 3-6 mos	[ ] Over 6 mos	[ ] Vac (over 5%)	110-120		20-25	VACANT	15		

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood boundaries and characteristics THE NEIGHBORHOOD EXTENDS FROM 7200 WEST TO 8000 WEST AND FROM 2900 SOUTH TO 3500 SOUTH

Factors that affect the marketability of the properties in the neighborhood (proximity to employment and amenities employment stability, appeal to market etc)
THE SUBJECT IS LOCATED APPROXIMATELY 20 MILES SOUTHWEST OF THE DOWNTOWN SALT LAKE CITY AREA IT IS CLOSE TO SCHOOLS, SHOPPING, PARKS, RECREATIONAL AREAS, AND EMPLOYMENT CENTERS POLICE AND FIRE PROTECTION ARE ADEQUATE PUBLIC TRANSPORTATION ROUTES ARE AVAILABLE THE AREA IS COMPRISED PREDOMINANTLY OF SINGLE FAMILY RESIDENCES EMPLOYMENT IN THE GREATER SALT LAKE CITY AREA IS STABLE WITH ALL INDICATORS POINTING TO CONTINUED STABILITY THE AREA HAS AVERAGE APPEAL TO MARKET NO ADVERSE FACTORS NOTED IN THE MARKET FOR THE AREA

Market conditions in the subject neighborhood (including support for the above conclusions related to the trend of property values demand/supply and marketing time -- such as data on competitive properties for sale in the neighborhood description of the prevalence of sales and financing concessions, etc)
THE WASATCH FRONT REAL ESTATE MARKETS HAVE BEEN GOOD OVER THE PAST FEW YEARS BUT HAVE STABILIZED OVER THE PAST YEAR WITH SOME AREAS OF SALT LAKE COUNTY SHOWING A SLIGHT DECLINE MOST HOMES SELL WITHIN 60-90 DAYS WHEN PRICED ACCORDINGLY SELLER CONCESSIONS ARE BECOMING MORE ACCEPTABLE, THOUGH NOT PREVALENT INTEREST RATES ARE CURRENTLY AT ABOUT 7 0% - 8 0% FOR A 30 YEAR FIXED CONVENTIONAL MORTGAGE

PUD

Project Information for PUDs (if applicable) - - Is the developer/builder in control of the Home Owners Association (HOA)? [ ] Yes [ ] No

Approximate total number of units in the subject project N/A | Approximate total number of units for sale in the subject project N/A

Describe common elements and recreational facilities N/A

SITE

Dimensions SEE ATTACHED PLAT MAP | Topography MOSTLY LEVEL

Site area 12,196 SQ FT OR 28 ACRES | Corner Lot [ ] Yes [X] No | Size 28 ACRES

Specific zoning classification and description SINGLE FAMILY RESIDENCE (R-2 6 5) | Shape IRREGULAR

Zoning compliance [X] Legal [ ] Legal nonconforming (Grandfathered use) [ ] Illegal [ ] No zoning | Drainage APPEARS ADEQUATE

Highest & best use as Improved [X] Present use [ ] Other use (explain) | View MOUNTAINS / TYPICAL

Utilities	Public	Other	Off-site Improvements	Type	Public	Private
Electricity	[X]		Street	ASPHALT	[X]	[ ]
Gas	[X]		Curb/gutter	CONCRETE	[X]	[ ]
Water	[X]		Sidewalk	CONCRETE	[X]	[ ]
Sanitary sewer	[X]		Street lights	YES	[X]	[ ]
Storm sewer	[X]		Alley	NONE	[ ]	[ ]

Landscaping PART
Driveway Surface CONCRETE
Apparent easements TYPICAL UTILITY
FEMA Special Flood Hazard Area [ ] Yes [X] No
FEMA Zone ZONE C | Map Date 12/18/85
FEMA Map No 490102 0275B

Comments (apparent adverse easements, encroachments, special assessments slide areas illegal or legal nonconforming zoning use, etc) NO APPARENT ADVERSE OR UNFAVORABLE EASEMENTS OR ENCROACHMENTS NOTED TYPICAL UTILITY EASEMENTS THE APPRAISER HAS NOT REVIEWED THE TITLE DOCUMENTS FOR THE SUBJECT

DESCRIPTION OF IMPROVEMENTS

GENERAL DESCRIPTION		EXTERIOR DESCRIPTION		FOUNDATION		BASEMENT		INSULATION	
No of Units	ONE	Foundation	CONCRETE	Slab	NO	Area Sq Ft	1,349	Roof	[ ]
No of Stories	ONE	Exterior Walls	STUC/VINYL	Crawl Space	NO	% Finished	100% FIN	Ceiling	[ ]
Type (Det./Att)	DETACHED	Roof Surface	ASPHALT	Basement	FULL/CONC	Ceiling	DRYWALL	Walls	[ ]
Design (Style)	RANCH	Gutters & Dwnspts	ALUMINUM	Sump Pump	NO	Walls	DRYWALL	Floor	[ ]
Existing/Proposed	EXISTING	Window Type	STORM WINDW	Dampness	NONE NOTED	Floor	CPT/TILE	None	[ ]
Age (Yrs)	25 (1974)	Storm/Screens	YES/PART	Settlement	NONE NOTED	Outside Entry	YES/REAR	Unknown *	[X]
Effective Age (Yrs)	2 3	Manufactured House	NO	Infestation	NONE NOTED			* CONCEALED	

ROOMS	Foyer	Living	Dining	Kitchen	Den	Family Rm	Rec Rm	Bedrooms	# Baths	Laundry	Other	Area Sq Ft
Basement				1		1		1	1	AREA		1 349
Level 1		1	1	1				3	2			1 376
Level 2												

Finished area above grade contains 6 Rooms, 3 Bedroom(s), 2 Bath(s), 1 376 Square Feet of Gross Living Area

INTERIOR	Materials/Condition	HEATING		KITCHEN EQUIP		AIR CONDITIONING		AMENITIES		CAR STORAGE GOOD	
Floors	CPT/TILE/GOOD	Type	FWA	Refrigerator	[ ]	None	[ ]	Fireplace(s) # 2	[X]	None	[ ]
Walls	DRYWALL/GOOD	Fuel	GAS	Range/Oven	[X]	Stairs	[ ]	Patio LARGE COV	[X]	Garage	# of cars
Trim/Finish	WOOD/GOOD	Condition	GD/NEW	Disposal	[X]	Drop Stair	[ ]	Deck NONE	[ ]	Attached	2 CAR
Bath Floor	TILE/GOOD	COOLING		Dishwasher	[X]	Scuttle	[X]	Porch FRONT/COV	[X]	Detached	NONE
Bath Wainscot	TILE/GOOD	Central	YES	Fan/Hood	[X]	Floor	[ ]	Fence P-WOOD	[X]	Built-In	NONE
Doors	WOOD/GOOD	Other	NONE	Microwave	[ ]	Heated	[ ]	Pool NONE	[ ]	Carport	NONE
		Condition	GOOD	Washer/Dryer	[ ]	Finished	[ ]			Driveway	CONCRETE

COMMENTS

Additional features (special energy efficient items, etc) THE SUBJECT HAS BEEN TOTALLY REMODELED WITH TILE FLOORS JETTED TUB NEW FLOORS, LARGE COVERED PATIO, PARTIAL LANDSCAPING AND FENCE, CENTRAL AIR AND MORE

Condition of the improvements depreciation (physical functional and external) repairs needed quality of construction remodeling/additions, etc THE SUBJECT HOME WAS RECENTLY MOVED TO ITS PRESENT LOCATION AND PLACED ON A PERMANENT FOUNDATION THE INTERIOR HAS BEEN TOTALLY REMODELED (SEE ADDENDUM) THE PHYSICAL DEPRECIATION WAS REDUCED DUE TO THE RENOVATION AND REMODELING NO FUNCTIONAL OR EXTERNAL OBSOLESCENCE NOTED

Adverse environmental conditions (such as but not limited to hazardous wastes toxic substances etc) present in the improvements, on the site, or in the immediate vicinity of the subject property NONE NOTED OR OBSERVED NO EXPERTISE IMPLIED

906833CN

Valuation Section

UNIFORM RESIDENTIAL APPRAISAL REPORT

File No 906833CN

COST APPROACH

ESTIMATED SITE VALUE	= $ 30,000	Comments on Cost Approach (such as source of cost estimate site value square foot calculation and for HUD VA and FmHA the estimated remaining economic life of the property)
ESTIMATED REPRODUCTION COST NEW OF IMPROVEMENTS		
Dwelling 1,376 Sq Ft @$ 55 67	= $ 76,602	
1,349 Sq Ft @$ 17 00	= 22,933	SEE ATTACHED SKETCH ADDENDUM
APL,FWA,THRMP,CV PTO,CNTRL,UPGRD	= 10,000	COST FIGURES ARE DERIVED FROM
Garage/Carport 887 Sq Ft @$ 16 00	= 14,192	THE MARSHALL & SWIFT RESIDENTIAL COST HANDBOOK
Total Estimated Cost New	= $ 123,727	AND LOCAL BUILDERS
Less Physical Functional External		
Depreciation 3,304	= $ 3,304	LAND TO VALUE RATIO 20%
ciated Value of mprovements	= $ 120,423	WHICH IS TYPICAL FOR THIS AREA
s' Value of Site Improvements	= $ 5,000	REMAINING ECONOMIC LIFE 72 73 YEARS
CATED VALUE BY COST APPROACH	= $ 155 423	

SALES COMPARISON ANALYSIS

ITEM	SUBJECT	COMPARABLE NO 1		COMPARABLE NO 2		COMPARABLE NO 3	
dress	3138 OLD GLORY CIRCLE MAGNA (7300 WEST)	3453 S OVATION DRIVE MAGNA (6620 WEST)		6668 W MILLEN CIRCLE MAGNA (3605 SOUTH)		2944 SOUTH 6425 WEST MAGNA	
Proximity to Subject		7 BLOCKS SOUTHEAST		10 BLOCKS SOUTHEAST		10 BLOCKS EAST	
Sales Price	$ N/A		$ 143 900		$ 153 900		$ 138 400
Price/Gross Living Area	$ ⌀	$ 98 49 ⌀		$ 111 20 ⌀		$ 117 79 ⌀	
Data and/or Verification Source	INSPECTION OWNERS	MLS#63896 / CLOSED EXTERIOR INSPECTION		MLS#66438 / CLOSED EXTERIOR INSPECTION		MLS#17613 / CLOSED EXTERIOR INSPECTION	
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	+(−)$ Adjust	DESCRIPTION	+(−)$ Adjust	DESCRIPTION	+(−)$ Adjust
Sales or Financing Concessions		FHA NONE		VA PAID	1 539	CONVENTIONAL NONE	
Date of Sale/Time		03/99 DOM 15		04/99 DOM 30		12/98 DOM 95	
Location	AVERAGE	GOOD	4,317	GOOD	4,617	GOOD	4,152
Leasehold/Fee Simple	FEE SIMPLE	FEE SIMPLE		FEE SIMPLE		FEE SIMPLE	
Site	28 ACRES	18 ACRES	+1,500	12 ACRES	+1,000	26 ACRES	
View	MOUNTAINS/AVG	MOUNTAINS/AVG		MOUNTAINS/AVG		MOUNTAINS/AVG	
Design and Appeal	RAMBLER	RAMBLER		RAMBLER		RAMBLER	
Quality of Construction	STUC/VINYL	BRK/ALUM		BRK/ALUM		BRK/ALUM	
Age	25A/2 3 EFF	3A/1 2 EFF	2 000	3A/1 2 EFF	2 000	NEW	4 000
Condition	GOOD/TOT REM	GOOD		GOOD		GOOD	
Above Grade Room Count (Total, Bdrms, Baths)	6 3 2	6 3 2		6 3 2		6 3 2	
Gross Liv ng Area	1,376 Sq Ft	1,461 Sq Ft	0	1,384 Sq Ft	0	1,175 Sq Ft	+4,422
Basement & Finished Rooms Below Grade	1 349 100% FIN FM,KIT,BD,BTH	1461 0% FIN NONE	662 +9,443	1300 50% FIN 2BD,BTH	+4,893	1150 25% FIN FM,LNDY	+1 194 +7,430
Functional Utility	GOOD	GOOD		GOOD		GOOD	
Heating/Cooling	FWA/CENTRAL	FWA/NONE	+1,500	FWA/CENTRAL		FWA/NONE	+1,500
Energy Efficient Items	THERMOPANES	THERMOPANES		THERMOPANES		THERMOPANES	
Garage/Carport	2 CAR GARAGE	2 CAR GARAGE		2 CAR GARAGE		2 CAR GARAGE	
Porch Patio Deck	LRG CV PATIO	NONE	+1 500	DECK	+500	DECK	+500
Fireplace(s), etc	2 FIREPLACES	NONE	+2,000	1 FIREPLACE	+1,000	NONE	+2,000
Fence, Pool, etc	P LNDS	LNDS,SPK,FNC	2,500	P LNDS,SPK,FNC	2,000	NONE	+500
UPGRDS/XTRS	JT TB,TL,2 KIT HR	TILE	+5,000	TILE,	4,000	JTTB,TL,	3 000
Net Adj (total)		☒ + ☐ − $	11,464	☒ + ☐ − $	1,237	☒ + ☐ − $	12,394
Adjusted Sales Price of Comparable		Net 8 0 % Gross 21 1 %	$ 155,364	Net 0.8 % Gross 14 0 %	$ 155 137	Net 9.0 % Gross 20 7 %	$ 150 794

Comments on Sales Comparison (including the subject property s compatibility to the neighborhood etc) ALL OF THE COMPARABLES ARE SIMILAR TO THE SUBJECT IN STYLE, AGE, FUNCATION AND TUILITY ALL OF THE COMPARABLES HAVE SOLD IN THE PAST 6 MONTHS AND ARE LOCATED WITHIN 1 MILE OF THE SUBJECT THE COMPARABLES NET GROSS ADJUSTMENT PERCENTAGES ARE LOCATED AT THE BOTTOM OF EACH ADUSTMENT LINE ALL OF THE COMPS WERE WEIGHTED EQUALLY IN THE FINAL DETERMINATION OF VALUE FOR THE SUBJECT PROPERTY OPINION OF VALUE IS BASED ON A 60 90 DAYS MARKETING TIME

ITEM	SUBJECT	COMPARABLE NO 1	COMPARABLE NO 2	COMPARABLE NO 3
Date Price and Data Source for prior sales within year of appraisal	MLS NO SALE OR LIST PRIOR 12 MONTH	MLS NO SALE OR LISTING PRIOR 12 MONTH	MLS NO SALE OR LISTING PRIOR 12 MONTH	MLS NO SALE OR LISTING PRIOR 12 MONTH

Analysis of any current agreement of sale option or listing of subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal NO PRIOR SALE OR LISTING FOUND WITHIN THE PAST 12 MONTHS OPION OF VALUE BASED ON A 60 90 DAYS MARKETING TIME

INDICATED VALUE BY SALES COMPARISON APPROACH $ 155 000

INDICATED VALUE BY INCOME APPROACH (if Applicable) Estimated Market Rent $ N/A /Mo x Gross Rent Multiplier N/A = $

RECONCILIATION

This appraisal is made ☐ "as is" ☐ subject to the repairs alterations inspections or conditions listed below ☒ subject to completion per plans & specifications

Conditions of Appraisal THIS FULL APPRAISAL IS MADE SUBJECT TO THE COMPLETION OF THE HOME AS PER PLANS ALL DEFICIENCIES OR VARIATIONS ARE ACCOUNTED FOR IN ADJUSTMENTS TO THE COST AND SALES APPROACH

Final Reconciliation THE COST APPROACH SUPPORTS THE SALES COMPARISON APPROACH, WHICH IS THE BEST INDICATOR OF VALUE SINCE T REFLECTS THE ACTIONS OF INFORMED BUYERS AND SELLERS IN TODAY'S REAL ESTATE MARKETPLACE THE NCOME APPROACH WAS NOT USED DUE TO NSUFFICIENT DATA

The purpose of this appraisal is to estimate the market value of the real property that is the subject of this report based on the above conditions and the certification contingent and limiting conditions and market value definition that are stated n the attached Freddie Mac "orm 439/FNMA form 1004B (Revised 06/93)

I (WE) ESTIMATE THE MARKET VALUE AS DEFINED, OF THE REAL PROPERTY THAT IS THE SUBJECT OF "HIS REPORT, AS OF 22 JUNE 1999 (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE $ 155 000

APPRAISER	SUPERVISORY APPRAISER (ONLY IF REQUIRED) EXTERIOR ONLY
Signature Cathleene D Nilsson	Signature Phillip A Snell Jr ☒ Did ☐ Did Not Inspect Property
Name Cathleene D Nilsson	Name PHILLIP A SNELL JR MAI
Date Report Signed 30 JUNE 1999	Date Report Signed 30 JUNE 1999
State Certification # CR42267 State UT	State Certification # CG38585 State UT
Or State License # State	Or State License # State

Fannie Mae Form 1004 6 93

Supplemental Addendum

File No 906833CN

Borrower/Client			
Property Address			
City	County	State	Zip Code
Lender			

COMMENTS ON THE SUBJECT:

THE SUBJECT IS A RAMBLER HOME ORIGINAL BUILT IN 1974 AND WAS MOVED ONTO CURRENT SITE APPROXIMATELY 1 YEAR AGO. THE SUBJECT HAS A FULLY FINISHED (NEW) BASEMENT WITH TILE AND CARPET FLOORS; KITCHEN AREA; WALK OUT BASEMENT TO THE REAR WITH A LARGE COVERED PATIO AREA; ROCK RETAINING WALLS; PARTIAL LANDSCAPING. THE SUBJECTS' MAIN FLOOR HAS NEW DRYWALL; NEW CARPET AND TILE FLOORS; CUSTOM OAK KITCHEN WITH NEW APPLIANCES; HARDWOOD FLOORS; VAULTED CEILINGS IN THE LIVING ROOM, DINING AREA AND KITCHEN ; BUILT IN MICROWAVE; CEILING FANS; TILE AND OAK IN THE BATHROOMS; CARPET FLOORS IN THE BEDROOMS WITH OAK TRIM AND CEILING FANS. THE BASEMENT HAS A JETTED TUB WITH TILE; OAK VANITY; AND CEILING FANS. THE SUBJECT HAS NEW STUCCO AND VINYL SIDING; NEW ROOF; NEW INTERIOR FLOOR COVERINGS THROUGHOUT; NEW FURNACE; NEW EXTERIOR DOORS; NEW TRIM THROUGHOUT. THE SUBJECT HAS 3 BEDROOM WITH 2 BATHROOMS ON THE MAIN FLOOR, WITH FAMILY ROOM, DINING AREA; KITCHEN WITH A SEPARATE BEDROOM AND 1 1/2 BATHROOMS IN THE BASEMENT. THE SUBJECT HAS NEW THERMOPANE WINDOWS AND CENTRAL AIR. THE SUBJECT HAS AN OVERSIZED 2 CAR GARAGE AND A FRONT PORCH.

DUE TO THE EXTENSIVE REMODELING AS WELL AS THE BASEMENT AREA OF THE HOME BEING NEW AN OVERALL EFFECTIVE AGE OF 2-3 YEARS WAS GIVEN AND NEW HOMES WERE USED FOR COMPARABLE PROPERTIES.

COMMENTS ON ADJUSTMENTS.

ALL OF THE COMPARABLES ARE LOCATED IN SLIGHTLY BETTER LOCATIONS BEING LOCATED WITH LIKE SIMILAR HOMES OF NEW CONSTRUCTION. THE SUBJECT IS LOCATED WITH OLDER HOMES AND THEREFORE REQUIRED AN ADJUSTMENT FOR LOCATION OF 3%. ALL OF THE COMPS WERE ADJUSTED FOR AGE. ALL OF THE COMPARABLES WERE ADJUSTED FOR GLA DIFFERENCES AT $22.00 PER SQ FT, BASEMENT SIZE AT $6.00 PER SQ FT, PLUS AN ADDITIONAL $7 00 PER SQ FT FOR FINISHED BASEMENT AREA. OTHER ADJUSTMENTS WERE MADE FOR DECK/PATIO AREAS, FIREPLACES, LANDSCAPING ITEMS, AND UPGRADES.

ALL OF THE ADJUSTMENTS ARE SELF EXPLANATORY OR ARE EXPLAINED ABOVE AND CONFORM TO THE GENERAL ADJUSTMENT GUIDELINES INCLUDED IN THE THREE PAGE FIRREA ADDENDUM INCORPORATED INTO THIS APPRAISAL REPORT ALL OF THE COMPARABLES WERE WEIGHTED EQUALLY IN THE FINAL DETERMINATION OF VALUE

WE BELIEVE THAT THE THREE COMPARABLES PROVIDE A CLEAR PICTURE OF THE NEIGHBORHOOD VALUES, AND ENABLE US TO DETERMINE A REASONABLE AND REALISTIC VALUE FOR THE SUBJECT PROPERTY. THERE IS NO QUESTION THAT THE THREE COMPARABLES PROVIDE SUFFICIENT INFORMATION FOR A VALUE CONCLUSION.

A COPY OF OUR CERTIFICATES AND QUALIFICATION SHEETS ARE INCLUDED AS PART OF THIS APPRAISAL REPORT. A FIRREA ADDENDUM IS ALSO ATTACHED WITH INFORMATION ON ADJUSTMENT GUIDELINES. NO PERSONAL PROPERTY WAS USED IN THE FINAL ESTIMATE OF VALUE FOR THE SUBJECT PROPERTY.

DIGITAL PHOTOS HAVE NOT BEEN ALTERED

THE SUPERVISORY APPRAISER INSPECTED THE EXTERIOR OF THE SUBJECT PROPERTY AND WAS SIGNIFICANTLY INVOLVED IN THE APPRAISAL REPORT.

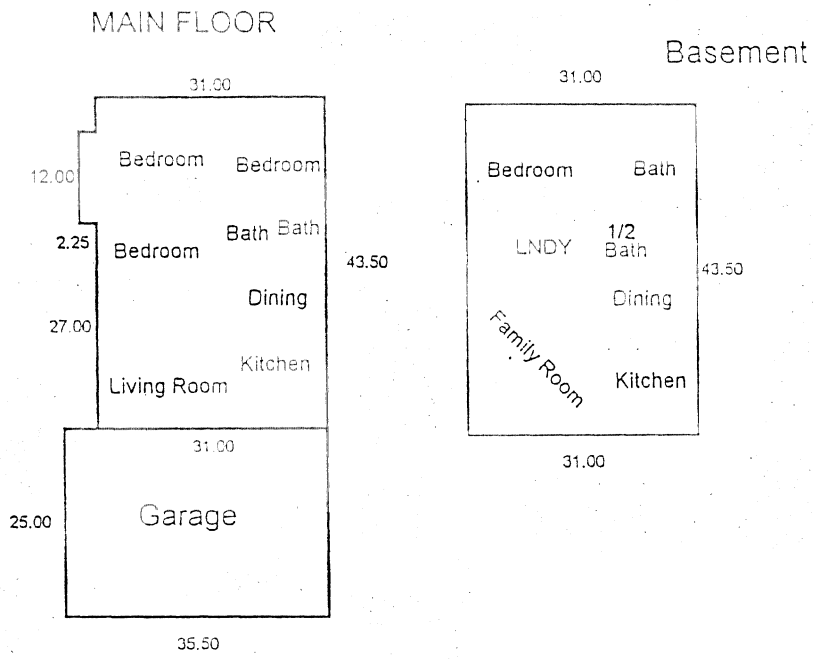
SKETCH AREA/TABLE ADDENDA

File No.

SUBJECT

Property Address		
City	State	Zip Code
Borrower		
Lender/Client		
Appraiser		

IMPROVEMENTS SKETCH



Comments:

AREA CALCULATIONS

Scale: 1 = 20

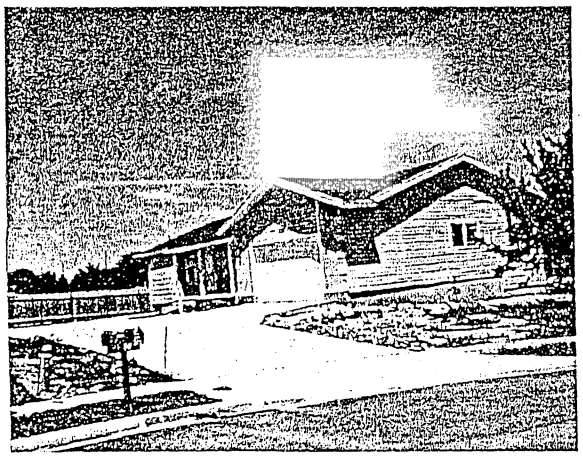
AREA CALCULATIONS SUMMARY

Area	Name of Area	Size	Totals
GLA1	First Floor	1375.50	1375.50
BSMT	Basement	1348.50	1348.50
GAR	Garage	887.50	887.50
TOTAL LIVABLE (rounded)			1376

LIVING AREA BREAKDOWN

Breakdown			Subtotals
First Floor			
2.25	x	12.00	27.00
31.00	x	43.50	1348.50
2 Areas Total (rounded)			1376

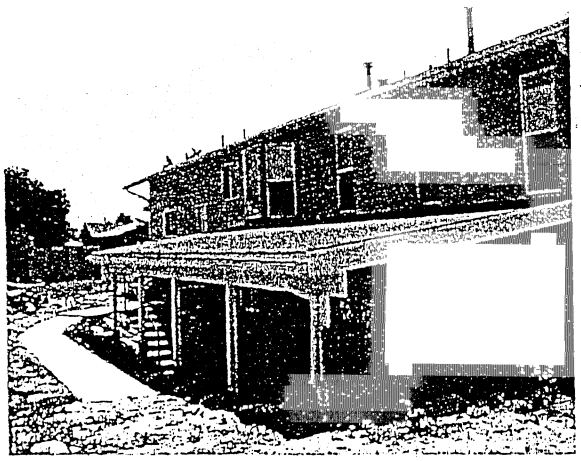
Borrower/Client N/A			
Property Address			
City	County	State UTAH	Zip Code
Lender			



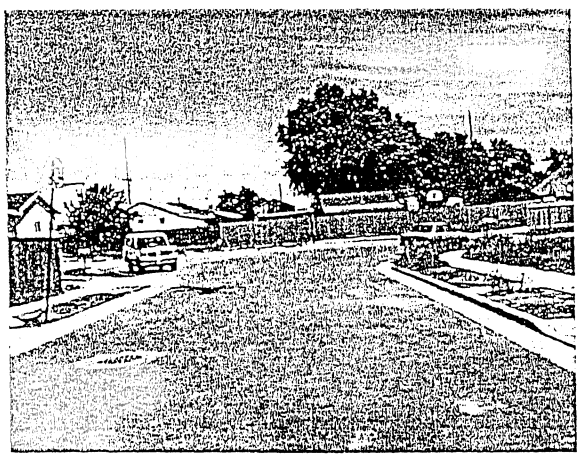
Subject Front

3138 OLD GLORY CIRCLE

Sales Price	N/A
Gross Living Area	1,376
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	AVERAGE
View	MOUNTAINS/AVG
Site	.28 ACRES
Quality	STUC/VINYL
Age	25A/2-3 EFF

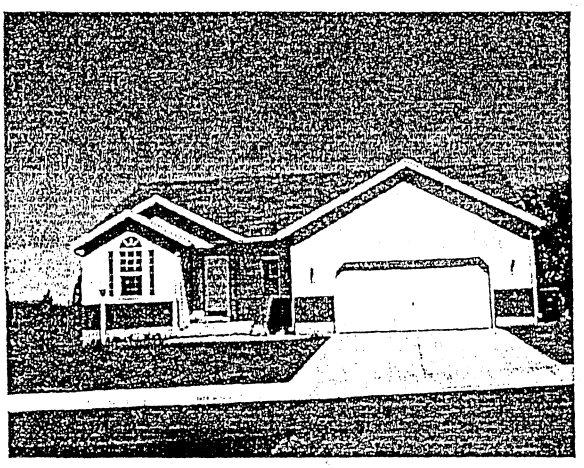


Subject Rear



Subject Street

Borrower/Client N/A			
Property Address			
City	County	State UTAH	Zip Code
Lender			



Comparable 1

3453 S OVATION DRIVE

Prox. to Subject	7 BLOCKS SOUTHEAST
Sale Price	143,900
Gross Living Area	1,461
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	GOOD
View	MOUNTAINS/AVG
Site	.18 ACRES
Quality	BRK/ALUM
Age	3A/1-2 EFF

Comparable 2

6668 W MILLEN CIRCLE

Prox. to Subject	10 BLOCKS SOUTHEAST
Sale Price	153,900
Gross Living Area	1,384
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	GOOD
View	MOUNTAINS/AVG
Site	.12 ACRES
Quality	BRK/ALUM
Age	3A/1-2 EFF

Comparable 3

2944 SOUTH 6425 WEST

Prox. to Subject	10 BLOCKS EAST
Sale Price	138,400
Gross Living Area	1,175
Total Rooms	6
Total Bedrooms	3
Total Bathrooms	2
Location	GOOD
View	MOUNTAINS/AVG
Site	.26 ACRES
Quality	BRK/ALUM
Age	NEW

FIRREA / USPAP Addendum

Borrower N/A

Property Address 3138 OLD GLORY CIRCLE

City MAGNA County SALT LAKE State UTAH Zip Code 84044

Lender/Client HOUSING AUTHORITY

Purpose

The purpose of this appraisal is to estimate the market value of the subject property, as defined on the Limiting Conditions pages (FNMA for 1004B) dated June 1993, which is incorporated in this report, for use in a mortgage loan transaction

Scope

After receiving the assignment, a preliminary search of all available resources was made to determine market trends, influences, and other significant factors pertaining to the subject property A physical inspection of the subject property was performed Although due diligence was exercised while at the site, the appraiser is not an expert in such matters as pest control, structural engineering, hazardous waste, et , and no warranty is given as to these elements As needed inspections by various professionals within these fields might be recommended with the final value estimate subject to thier findings An additional review of the data was then performed, with the most relevant factors extracted and considered Sales were examined and discussed with the parties involved in the transaction whenever possible Market factors were weighted and their influences on the subject property were determined The appraisal report was then completed in accordance with the standards dictated by The Appraisal Foundation The appraisal report was then delivered to the Client, which constituted the completion of the assignment

Intended Use / Intended User

The intended use of the appraisal report, as described to the appraiser, is to determine market value for Housing Authority The intended user, as stated to the appraiser, is the Client stated on page one of the URAR report This report may only be used by the intended user for the intended use described Any other use of the appraisal report is prohibited This appraisal is not for mortgage lending purposes

History of Property

Current listing information See page 2 of the URAR report for additional information

Prior sale See page 2 of the URAR report for additional information

Exposure Time / Marketing Time

See the URAR report or supplemental addenda for comments on exposure/marketing time

Personalty (non realty) Transfers

Personal property has been excluded from the valuation of the real property

Additional Comments

Comparables were provided using the Wasatch Front Regional Multiple Listing Service and are considered the best available at the time of inspection

Certification Supplement

1 This appraisal assignment was not based on a requested minimum valuation a specific valuation or an approval of a loan

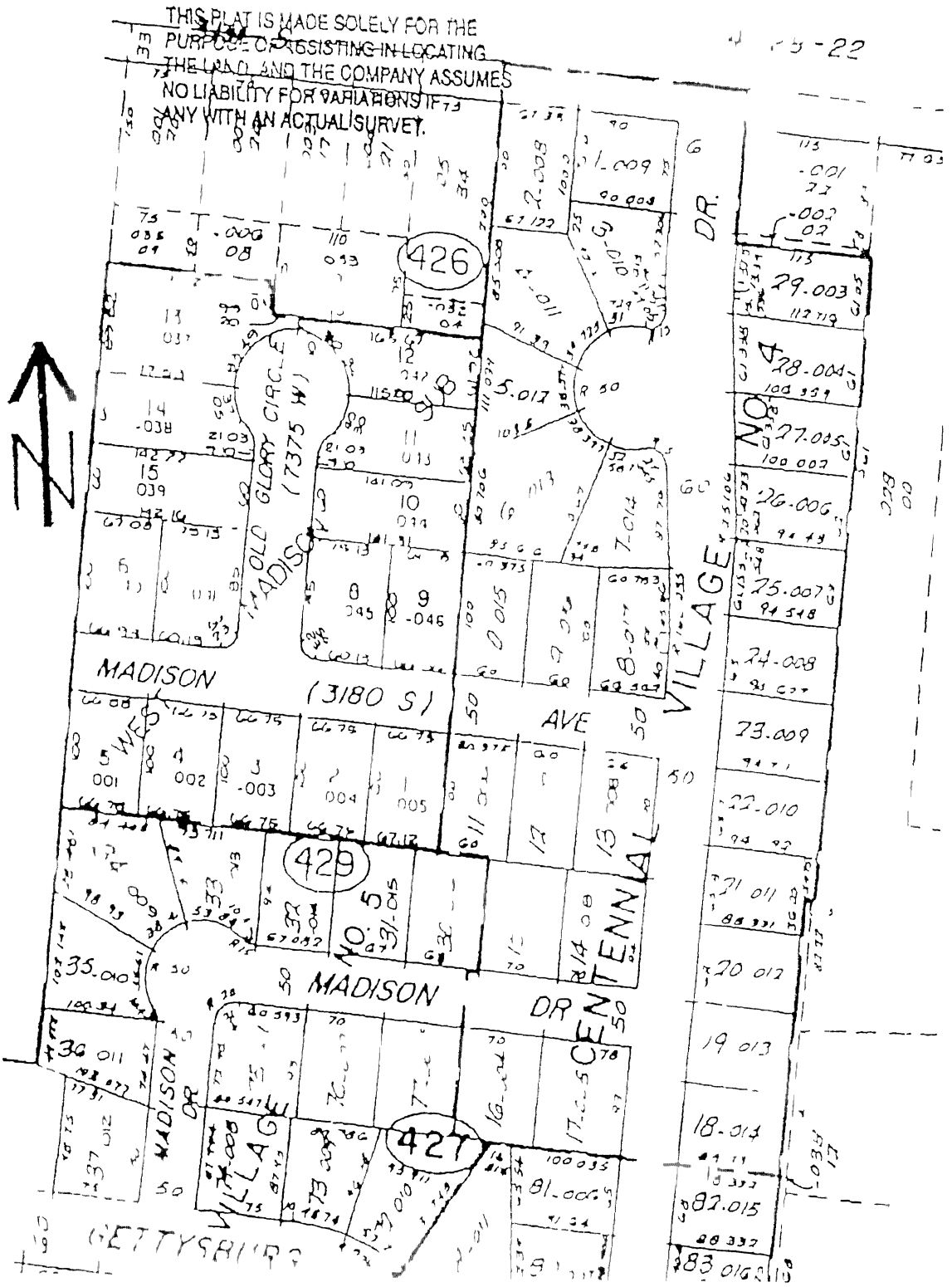
2 My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client the amount of the value estimate the attainment of a stipulated result or the occurrence of a subsequent event

Appraiser(s) Cathleene D Nilsson Effective date / Report date 22 JUNE 1999

Supervisory Appraiser(s) PHILLIP A SNELL JR Effective date / Report date 22 JUNE 1999

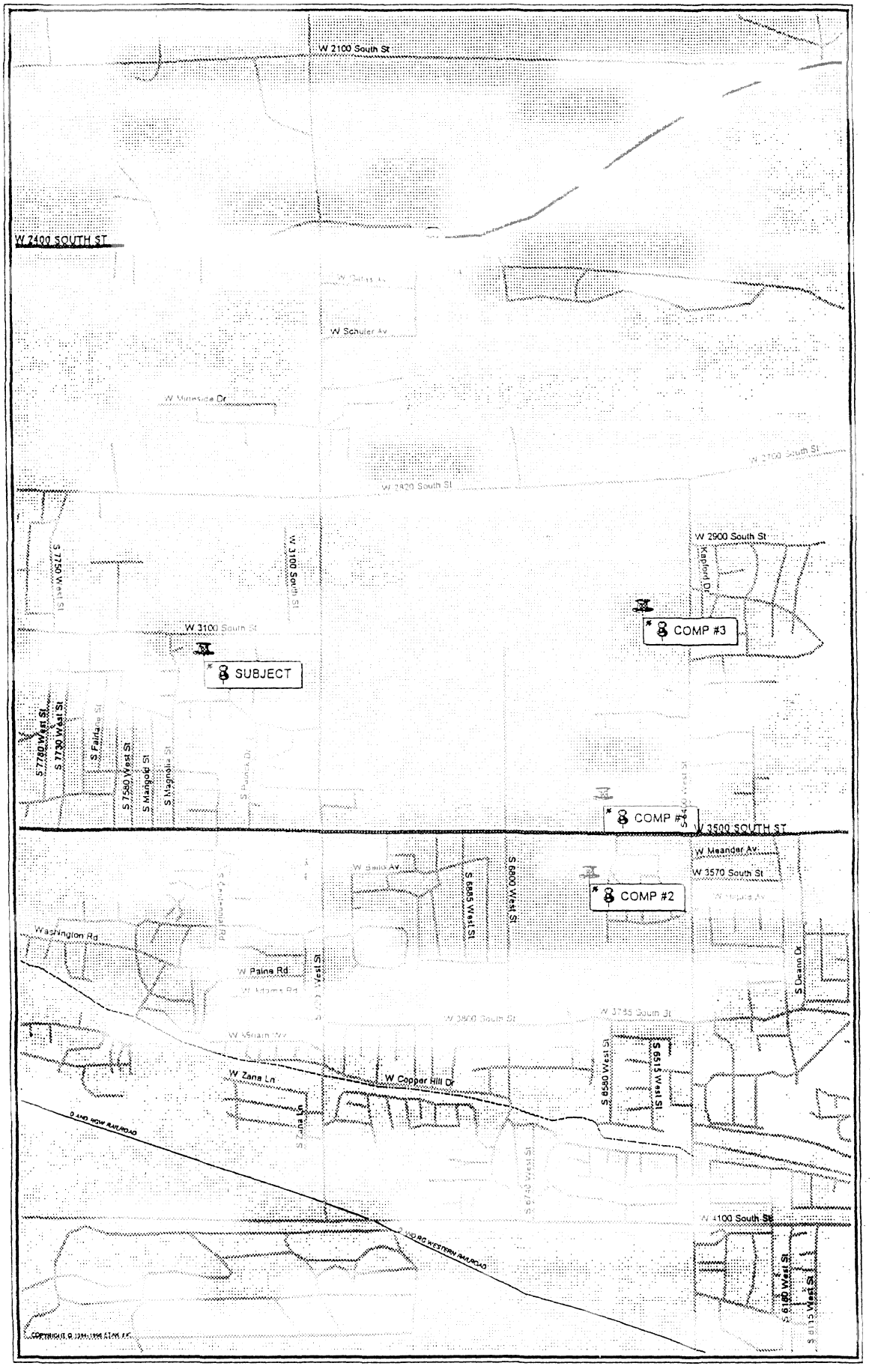
Plat Map

Borrower/Client			
Property Address			
City	County	State	Zip Code
Lender			



Add 1

Current Map


W 2100 South St
W 2400 SOUTH ST
W Schuler Av
W Mineside Dr
W 2700 South St
W 2820 South St
W 2900 South St
Kapford Dr
W 3100 South St
S 7750 West St
SUBJECT
COMP #3
S 7780 West St
S 7730 West St
S Fairfax St
S 7580 West St
S Marigold St
S Magnolia St
S Palma Dr
COMP #4
W 3500 SOUTH ST
W Meander Av
W 3570 South St
W Gallix Av
S 6895 West St
S 6800 West St
COMP #2
Washington Rd
W Paine Rd
W Adams Rd
S 6700 West St
W 3800 South St
W 3735 South St
S Deann Dr
W Strain Av
W Zana Ln
W Copper Hill Dr
S 6580 West St
S 6515 West St
D AND RGW RAILROAD
S 6740 West St
W 4100 South St
D AND RG WESTERN RAILROAD
S 6180 West St
S 6150 West St

Qualification Sheet
For
Cathleene D Nilsson
1050 East 1425 North
Layton, Utah 84040
Office (801) 497-9348 Fax (801) 497-9248

Licensing

Utah State- Certified Appraiser CR42267 Exp 06/30/00

Real Estate Education

1998	Manufactured Housing Valuation Sponsor Lincoln Graduate School
1998	Uniform Standards of Professional Appraisal Practice Sponer O'Brien Schools #RA103
1996	FHA/HUD Training
1995	Residential Cost & URAR Sponsor O'Brien Schools #CA201
1995	Small Residential Income Property Sponsor O Brien Schools #CA203
1994	Direct Capitalization of Income Property Sponsor Lincoln Graduate Schools #LG686
1993	Uniform Standards of Professional Appraisal Practice Sponsor O'Brien Schools #RA103
1993	Appraising Residences Sponsor O'Bbrien Schools #RA102
1993	Fundamentals of Appraising Sponsor O'Brien Schools #RA101

Partial Client List

Countrywide Home Mortgage	Equity Direct	New World Mortgage
Countrywide Wholesale	First Security Bank	Olympus Mortgage
Crossland Mortgage	G E Capital	Sun Valley Financial
Cyprus Credit Union	Mountain American C U	Sun Valley Mortgage Plus
Equicredit Corporation	Money Store	Western Capital Mortgage

DISPLAY THIS CERTIFICATE PROMINENTLY

STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE

License Number	Expiration Date
CR00042267	06-30-00

THIS IS TO CERTIFY THAT

CATHLEENE D NILSSON
1050 E 1425 NORTH
LAYTON UT 84040

IS A STATE-CERTIFIED RESIDENTIAL APPRAISER UNTIL THE EXPIRATION DATE ABOVE UNLESS SOONER REVOKED SUSPENDED CANCELED OR RESTRICTED

06-22-98
SEALED AND ATTESTED

DEFINITION OF MARKET VALUE The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale the buyer and seller each acting prudently knowledgeably and assuming the price is not affected by undue stimulus Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby (1) buyer and seller are typically motivated (2) both parties are well informed or well advised and each acting in what he considers his own best interest (3) a reasonable time is allowed for exposure in the open market (4) payment is made in terms of cash in U S dollars or in terms of financial arrangements comparable thereto and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale

* Adjustments to the comparables must be made for special or creative financing or sales concessions No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area these costs are readily identifiable since the seller pays these costs in virtually all sales transactions Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market s reaction to the financing or concessions based on the appraiser s judgement

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS The appraiser s certification that appears in the appraisal report is subject to the following conditions

1 The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it The appraiser assumes that the title is good and marketable and therefore will not render any opinions about the title The property is appraised on the basis of it being under responsible ownership

2 The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser s determination of its size

3 The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area Because the appraiser is not a surveyor he or she makes no guarantees express or implied regarding this determination

4 The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question unless specific arrangements to do so have been made beforehand

5 The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used

6 The appraiser has noted in the appraisal report any adverse conditions (such as needed repairs depreciation the presence of hazardous wastes toxic substances etc) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal Unless otherwise stated in the appraisal report the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes toxic substances etc) that would make the property more or less valuable and has assumed that there are no such conditions and makes no guarantees or warranties express or implied regarding the condition of the property The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist Because the appraiser is not an expert in the field of environmental hazards the appraisal report must not be considered as an environmental assessment of the property

7 The appraiser obtained the information estimates and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties

8 The appraiser will not disclose the contents of the appraisal report except as provided for in [illegible] of Professional Appraisal Practice

9 The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion repairs or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner

10 The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value the appraiser s identity and professional designations and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower the mortgagee or its successors and assigns the mortgage insurer consultants professional appraisal organizations any state or federally approved financial institution or any department agency or instrumentality of the United States or any state or the District of Columbia except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser s prior written consent The appraiser s written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising public relations news sales or other media

APPRAISAL PROFESSIONALS LLC (801) 942 0699

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that

1 I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation If a significant item in a comparable property is superior to or more favorable than the subject property I have made a negative adjustment to reduce the adjusted sales price of the comparable and if a significant item in a comparable property is inferior to or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable

2 I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge that all statements and information in the appraisal report are true and correct

3 I stated in the appraisal report only my own personal unbiased and professional analysis, opinions, and conclusions which are subject only to the contingent and limiting conditions specified in this form

4 I have no present or prospective interest in the property that is the subject to this report and I have no present or prospective personal interest or bias with respect to the participants in the transaction I did not base either partially or completely my analysis and/or the estimate of market value in the appraisal report on the race color religion sex, handicap, familial status or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property

5 I have no present or contemplated future interest in the subject property and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property

6 I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party the amount of the value estimate the attainment of a specific result or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal I did not base the appraisal report on a requested minimum valuation a specific valuation or the need to approve a specific mortgage loan

7 I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal with the exception of the departure provision of those Standards which does not apply I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report unless I have otherwise stated in the reconciliation section

8 I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report I further certify that I have noted any apparent or known adverse conditions in the subject improvements on the subject site or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them I have also commented about the effect of the adverse conditions on the marketability of the subject property

9 I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report I certify that any individual so named is qualified to perform the tasks I have not authorized anyone to make a change to any item in the report, therefore, if an unauthorized change is made to the appraisal report I will take no responsibility for it

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report he or she certifies and agrees that I directly supervise the appraiser who prepared the appraisal report have reviewed the appraisal report agree with the statements and conclusions of the appraiser agree to be bound by the appraiser's certifications numbered 4 through 7 above and am taking full responsibility for the appraisal and the appraisal report

ADDRESS OF PROPERTY APPRAISED. _____

APPRAISER:	**SUPERVISORY APPRAISER (only if required):**
Signature	Signature
Name CATHLEENE D NILSSON	Name PHILLIP A SNELL JR MAI
Date Signed 30 JUNE 1999	Date Signed 30 JUNE 1999
State Certification # CR42267	State Certification # CG38585
or State License #	or State License #
State UTAH	State UTAH
Expiration Date of Certification or License 6/30/00	Expiration Date of Certification or License 06/30/99

State Certified Residential Appr
ate CR12267 Expires 6 30 00

☐ Did ☐ Did Not Inspect Property

Housing Opportunities Inc.

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

October 4, 1999

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

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 liened 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

Housing Opportunities Inc.

3595 South Main Street
Salt Lake City, Utah 84115
Phone (801) 284-4400
Fax (801) 284-4406
TDD (801) 284-4107

October 5, 1999

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

Delivered by Fax

Dear Mr. Tretheway:

In reply to your fax of October 5 I am enclosing the appraisal on lot 13 that was completed in May, 1998. This is the basis for the sale of the house at lot 13 and the Groberg's knew the price. As you know from our first meeting there is not a signed sales contract for that house.

Enclosed also is attachment A to the sales contract that was signed to purchase the Groberg's existing home. It states in the last paragraph that if the Groberg's are not satisfied with the home on lot 13 that the deal will be terminated and they will maintain their existing home. The easement, however, will remain in place.

We will sell the home to the Groberg's on the terms initially agreed to. They had complete control of all the rehabilitation expenditures at the home. The lot and site costs and moving costs were charged to each home. They wanted a basement and so extra costs were incurred in the foundation work. Mr. Groberg hired contractors and signed for each payment to them. He submitted bills for materials that he wanted paid. We warned him repeatedly that he was not managing his costs and it would reduce any equity that they might have in the home and raise their mortgage cost. They built the home to their desires with all the amenities that they wanted. They caused the lien to be filed by McClellan and hired another contractor to duplicate the work. Now that the costs are much higher the Groberg's want to buy the house but not pay for all the work that they chose and authorized.

This is their dream home that they envisioned and had finished so that they could live there the rest of their lives. It's a beautiful home and they should be happy with it. But the Groberg's have to pay the costs that they incurred. It is unreasonable for them to expect us to pay costs that they authorized. They want us to absorb $20,000 or more of costs that they incurred so that they can enjoy their dream house. I would point out to you that none of the other homes where we controlled the rehab had costs that exceeded the value of the home.

Some of the work that they contracted is well beyond the scope of normal affordable housing and corresponded to their desires and not decisions that were made or influenced by HOI. This is why costs are so high. If the house is overimproved it is due solely to decisions and authorizations made by the Groberg's since they were intending to live in the house. This is the only home in the subdivision that has a basement. They installed sliding doors with a bay window, a jetted tub for the basement bath, French style exterior doors leading to sunken patio, two fireplaces (one gas and one woodburning), an awning

over the rear patio, mirrored closet doors in the bedroom, hardwood floors, air conditioning, expensive carpet upstairs and in the basements, ceramic tile floors in all baths and basement kitchen, solid oak stair rails and handrails, cabinets in the basement, and expensive kitchen cabinets and vanities The Groberg s have essentially turned this into a duplex with full kitchens on both floors with two sets of appliances It is no Wonder that the costs are high because it is everything that they wanted but now they do not want to pay for it You should inspect the house and compare it with the other unsold houses in the subdivision before you proceed None of the extra work expensive finishes and amenities or basement would have been done by HOI if we had completed the job This is why their house is so much more expensive than the others are and it cost so much more

We have been waiting for a year for the Groberg s to finish the house solve their problems with McClellan and occupy the house We have been very patient and reasonable in waiting and giving them full control They have treated this home as if it was already theirs and they knew the terms of the agreement and sale We are prepared to close under the terms originally agreed to as outlined in my letter of Oct 4 We will pay McClellan to remove the lien If the Groberg's do not wish to complete the purchase as agreed please advise them to vacate the home and turn over keys We will formally rescind our offer to purchase their existing house

I must also inform you that the commitment that we have for mortgage funds from Bank Pool and Salt Lake County has limited funds In January the Bank Pool agreement will expire If it is renewed the interest rate will be higher than 5 68% Funds for the second mortgage from the County at 3% are limited and once expended on other buyers, will no longer be available There are buyers from other developer's accessing these funds If the Groberg's do not close by October 31 we cannot guarantee that funds will be available under the program for their mortgage The terms that were quoted in my letter of Oct 4 are not guaranteed after Oct 31 nor is our ability to fund this mortgage after that date In that event they are welcome to seek a private mortgage for the costs of purchase They will need nearly a 100% mortgage since it does not appear that there will be any equity from the sale of their current home to us

We have had many meetings and conversations with the Groberg's and you about the situation and it is clear to me that we will not be able to resolve it with more meetings Either the Groberg's live up to the original agreement or it is terminated It was an equitable agreement in the beginning that the Groberg's were aware of and agreed to Now, they have spent more than they want to pay for but the responsibility rests solely with them and their actions We feel the house has the indicated value and is certainly justified by the amenities that they have authorized and installed A more recent appraisal established the value at $152,000

If this cannot be resolved for an October 31 closing we will reassert possession and control of the home on lot 13 since we own it and the Groberg s refuse to complete the agreed upon transaction We will sell it on the open market at the best price obtainable

If there is money remaining after all expenses have been paid we will remit the balance to the Groberg's as final payment for any personal costs that they may have spent.

Please let me know how you would like to proceed. Our position is clear and, more importantly, has not changed from the beginning: it is the Groberg's who want to make changes solely for their benefit. It makes no sense to drag this out any further if we cannot agree. We are prepared to defend our actions in court and we are confident that we will prevail.

Sincerely,

Scott Lancelot

Scott Lancelot

BRÄTT, INC.
Landscaping, Design, Excavation
915 SOUTH STATE STREET
PLEASANT GROVE, UTAH 84062
(801)785-8011 SLC# (801) 562-2677
FAX (801)785-8012

To:	John Groberg	**Date:**	October 6, 1999
Phone:	1-801-250-3865	**Fax:**	
From:	Timothy Waterlyn/ Estimator	**Pages:**	One, (including this page)
Subject:			

Landscape Proposal per plans and specifications
Restoration of existing landscape due to construction right of way to subdivision

BASE BID: **$5,933.00**

1. Sub Grade will have to be regraded and add top soil
2. Topsoil spread from import to all landscape areas
3. Bid includes sod, concrete mow curb (4x6 extruded),
4. Bid includes one 2" caliper tree to replace a 12" tree removed by construction of right of way
5. Moving of fence and concrete strip will be by others

Housing Opportunities Inc.

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

October 7, 1999

To: Richard Tretheway

Delivered via fax

From: Scott Lancelot

Re: Groberg

Pursuant to our communications you have advised me that the Groberg's do not wish to complete the original agreement for the sale of their existing home and the purchase of the new home at lot 13 in the Madison subdivision.

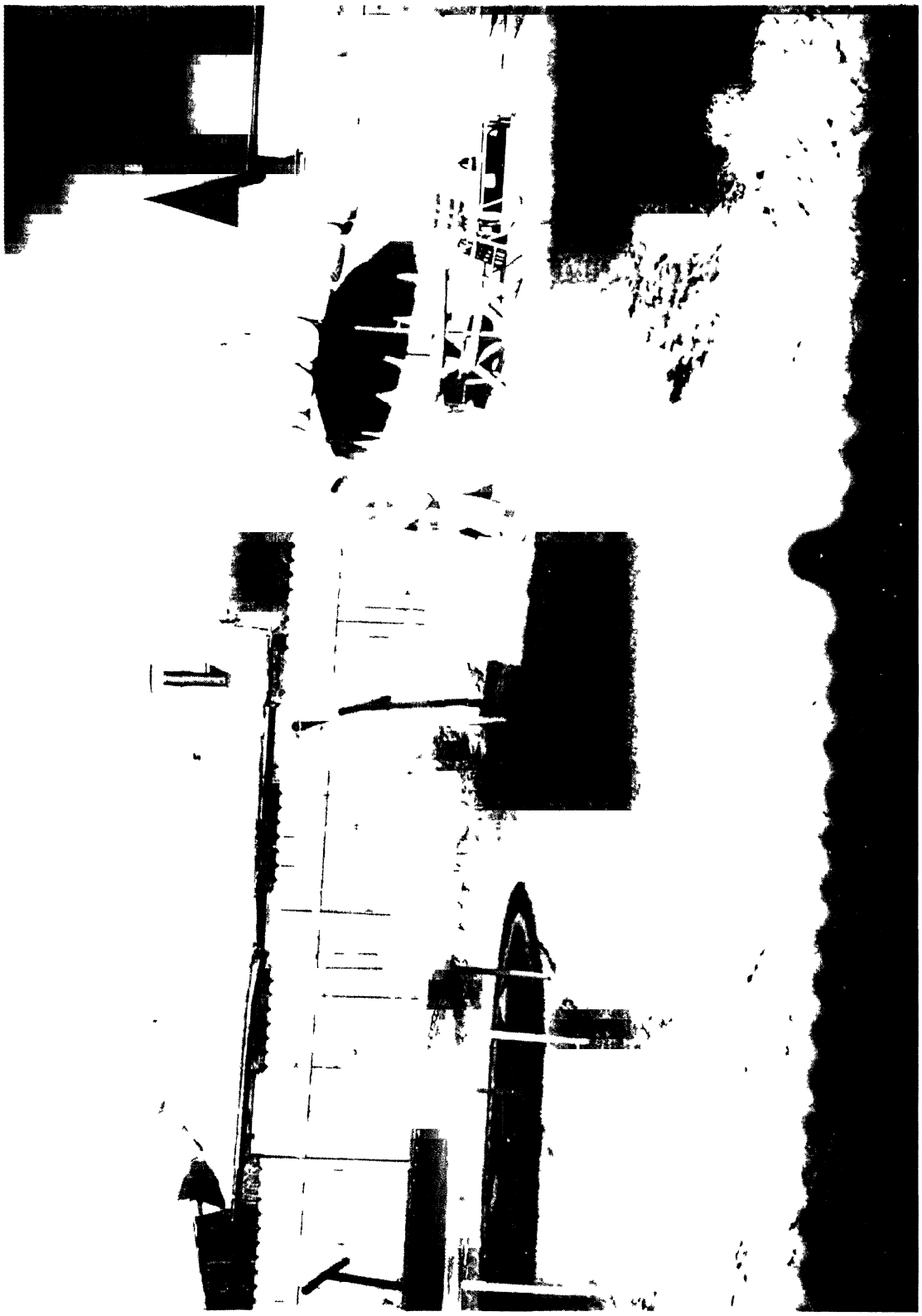
Consequently, we are terminating our offer to purchase his existing home at 7395 West 3100 South in Magna for $87,500.

The home on lot 13 is owned by the Housing Authority. Please instruct the Groberg's to immediately remove any personal property from the premises and to turn over all keys to Dean Maltsberger at our offices. As soon as we have possession of the house we will transfer utility costs to our name.

We will pay the lien to McClellan since we cannot sell the house without clear title. You have had 8 months to resolve the situation with McClellan and have failed to do so. We do not need your approval or authorization to pay it.

If the Groberg's wish to buy the house on lot 13 they may submit an offer. I want to make it clear that no offer from the Groberg's will be accepted that does not fully reimburse HOI for the costs attributable to Groberg's decisions in finishing the house. This amount is currently about $156,000.

Scott Lancelot



GROBERG'S TIME SPENT ON HOUSE

DESCRIPTION:	HOURS SPENT
When house was located at 1453 East 9400 South:	
Changed locks, made sure house was secure, gave key to Dick Welch	2
Removed kitchen cabinets from basement (four people) 4 hours times 4	16
Checked on the house each week (56 weeks @ 15 minutes each)	14
Hauled trash away	2
Removed a basketball standard in front of house	1
Removed upstairs carpets & pad, handrails, deck and bathroom vanities	7
Removed air conditioner from roof (two people) 3 hours times 2	6
1st Phase TOTAL:	48
When house was moved to 3138 Old Glory Circle:	
Evaluate what the house needed	2
Removed kitchen cabinets from upstairs (two people) 3 hours times 2	6
Tiled two upstairs bathrooms & bay window	16
Hired fireplace company to install wall pipe, fire stops & chimney caps	1
Helped Matt McClellan on the back fence	3
Hauled trash away	2
Checked on contractors & subs weekly (60 weeks @ 1 hour each)	60
Picked up the tile from Tile Traditions	2
Began tile work in the basement (kitchen, laundry room & half bath)	16
Finished tile work in the basement (kitchen, laundry room & fireplace)	12
Layed tile on upstairs fireplace	2
Hauled trash away	2
Cleaned bathroom tile floors from painting contractor's over spray	6
Helped Matt McClellan install insulation in the basement	4
Negotiated with Utah Power to have the power turned on (took 30 days)	3
Pulled wire from power box to meter base	1
Switched meter base around	1
Picked up supplies from Home Depot (from Dec '98 to Apr , '99)	6
Grouted tile (kitchen, laundry, fireplace [up & down], and half bath) 4 people @ 4 hours	16
Tiled master bathroom (down stairs) 2 people @ 3days, 10 hours each	20
Changed doors, hinges & hardware (entire house)	8
Installed baseboards, upstairs & downstairs	6
Trimmed the bottom of all upstairs doors, to fit the carpet in	2
Begin stuccoing the garage (inside), and painting	10
Install kitchen cabinets downstairs from previous address	4
Hung all blinds in the house	8
Grading & digging window wells	6
Grading & digging window wells	4
PAGE ONE. 2nd Phase TOTAL:	229

DATE:	DESCRIPTION:	HOURS SPENT:
	Grading & digging window wells	2
	Planting & landscaping	6
	Hauled in top soil, cleaned up rocks, 8 people @ 1 5 hours	12
	Picked up two loads of gravel for window wells & rain gutters	2
	Digged drain field for rain gutters	6
	Removed back patio concrete stairs, 2 people @ 1 5 hours	3
	Hauled away concrete & trash	2
	Moved rocks & dirt to install new patio stairs	2
	Installed new patio stairs & handrails:	6
	Graded dirt around outside of house	6
	Began to stain the fence	12
	Cleaned upstairs (many times)	10
	Cleaned paint from windows (overspray from contractor).	6
	Negotiated with Questar, to have the gas turned on	2
	Negotiated with Magna Water, to have the water turned on.	2
	Worked on the 17 rejected items from the County Inspector	3
	Rewired Electrical outlet in front room.	3
	Installed dishwasher & microwave.	5
	Cut down weeds (weed wack)	1.5
	Hung glass door on fireplace	1
	Install heat vent defusers (entire house)	1
	Install heat duct, vents & cold air return in basement	3
	Install surround sound wiring	3
	Install wood mantle on downstairs fireplace	2
	Plugged surface water pipe	2
	Gluing foam to prepare for stucco, (wall under the patio)	16
	PAGE ONE: 1st Phase TOTAL:	48
	PAGE ONE: 2nd Phase TOTAL:	229
	PAGE TWO: 2nd Phase TOTAL:	119.5
	TENTATIVE TOTAL:	396.5
	Times $15 dollars per/hr	$5,947.50

DETERMINATIVE LEGAL PROVISIONS

Utah Code

UTAH CODE ANN. § 38-1-3. Those entitled to lien - What may be attached.

> 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.

COLUMBIA SAVINGS AND LOAN ASSOCIATION, a Colorado corporation,
Plaintiff in Error,
v.
Dale COUNCE, Defendant in Error.
No. 22242.

Supreme Court of Colorado.
In Department.
Dec. 9, 1968.

Action to foreclose a mechanic's lien. The District Court, Jefferson County, Roscoe Pile, J., entered judgment in favor of plaintiff, and error was brought The Supreme Court, Pringle, J, held that in view of facts that "Receipt and Purchase Agreement" entered into between former record owner and plaintiff did not obligate plaintiff to purchase property but only gave plaintiff right to demand conveyance of property provided he performed conditions of contract, and that plaintiff never attempted to exercise option, plaintiff, who was permitted by building contractor to do some of work on house constructed on property, had neither legal nor equitable ownership which would preclude him from claiming a mechanic's lien.

Affirmed.

1. Vendor and Purchaser ⟹18(3)

Option to purchase property ripens into a mutually binding and mutually enforceable contract only when option is exercised.

2. Mechanics' Liens ⟹8

In view of facts that "Receipt and Purchase Agreement" entered into between former record owner and plaintiff did not obligate plaintiff to purchase property but only gave plaintiff right to demand conveyance of property provided he performed conditions of contract, and that plaintiff never attempted to exercise option, plaintiff, who was permitted by building contractor to do some of work on house constructed on property, had neither legal nor equitable ownership which would preclude him from claiming a mechanic's lien, and thus obtaining interest paramount to that of lender which foreclosed deed of trust on property. C R S. '63, 86–3–1.

Harold Taft King, C J Hafertepen, Denver, for plaintiff in error.

Collier, Hayden & Sweeney, Leeon E. Hayden, Jr, George T. Sweeney, Denver, for defendant in error.

PRINGLE, Justice.

Columbia Savings and Loan Association (Columbia Savings) directs this writ of error to a judgment entered in an action brought by Dale Counce to foreclose a mechanic's lien against certain property once owned by Wisdom Enterprises, Inc. (Wisdom) Prior to trial, Columbia Savings foreclosed a deed of trust on the same property, which it had taken as security for a loan granted to Wisdom. During the trial, therefore, Columbia Savings stood as the record owner of the property, and was the defendant in the litigation After hearing the evidence and considering the stipulated facts, the trial court found that Counce had a valid mechanic's lien which had priority over the interest of Columbia Savings, and entered judgment accordingly.

Dissatisfied with that judgment, Columbia Savings now contends that as a matter of law Counce was the equitable owner of the property at the time he performed the work and was therefore not entitled to a mechanic's lien.

Counsel have stipulated that on July 6, 1962, Wisdom had record title to the property involved in this action. On July 6, 1962, Wisdom and Counce executed an instrument designated a "Receipt and Purchase Agreement." Thereafter, as we have pointed out, Wisdom executed a deed of trust to finance the construction of a house on the property. From the transcript, it further appears that the building contractor permitted Counce to do some of the work on the house at three dollars an hour.

apt time, duly filed his mechanic's lien. On the basis of the evidence, the trial court found that Counce was entitled to a judgment of $1200 25 for his labor and materials, and that his mechanic's lien to secure this amount was valid and enforceable Columbia Savings does not dispute the accuracy of the amount of the judgment, but argues that Counce had no standing to claim a mechanic's lien under the statute. We disagree.

To support its position, Columbia Savings contends that the 'Receipt and Purchase Agreement" obligates Counce to purchase the property. Therefore, according to its argument, Counce was in fact the equitable owner of the property under familiar rules of equitable conversion, and could not claim a mechanic's lien against the property under the terms of the statute

The instrument in question, however, does not support that conclusion It designates a purchase price of $20,000 Of that amount, $50 was paid when the instrument was executed Further provisions authorize Counce to apply to a lending institution for a loan of $12,000 to be secured by the property Wisdom is to erect a house on the property within six months from the date of issuance of a building permit The instrument further provides that time is of the essence, and that if Counce fails to comply with all of the terms and conditions of the contract, the rights and obligations of the parties shall terminate.

From the terms of the instrument, it appears that the parties executed an option agreement which gave Counce the right to demand the conveyance of the property, provided that he performed the conditions of the contract Nothing in the contract obligates Counce to purchase the property. In passing, we note that Columbia Savings had no objection to the instrument's characterization as an option when, at the beginning of the trial, it stipulated that Wisdom "sold an option" to Counce.

[1] The option to purchase the property ripens into a mutually binding and 154 Colo 311, 390 P 2d 313; Stanton v. Union Oil Co of California, 111 Colo. 414, 142 P 2d 285, and Rude v Levy, 43 Colo. 482, 96 P 560, 24 L.R A ,N.S , 91, 127 Am. St R. 123 At no point in the proceedings has Columbia Savings contended that Counce ever attempted to exercise the option Accordingly, Counce had neither legal nor equitable ownership under the doctrine of equitable conversion.

[2] Although the record clearly supports the inference that Counce intended to live in the house when it was completed, he owned no interest in it which would preclude him from claiming a mechanic's lien under the statute Until he exercised the option, he stood as any other person supplying labor and materials, and was therefore entitled to claim a lien under the provisions of C R S 1963, 86-3-1.

The judgment is affirmed.

MOORE, C J , and DAY and GROVES, JJ , concur

WEST KEY NUMBER SYSTEM