

2002

John Groberg and Shauna Groberg v. Housing Opportunities, Inc. an nonprofit organization, Margaret M. Dahle, John L. Krueger , and Granite Credit Union, a Utah corporation : Brief of Appellant

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

SECOND BRIEF OF APPELLANT

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

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**Oral Argument and Published
Decision Requested**

AUG 16 2002

Paulette Stagg
Clerk of the Court

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vs.

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Oral Argument and Published Decision Requested

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DETERMINATIVE LEGAL PROVISIONS

UTAH CODE ANN. § 38-1-3 and UTAH CODE ANN. § 58-55-604.

STATEMENT OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION IN THE COURT BELOW

Because HOI has appealed only a single issue – whether HOI was entitled to recover attorney’s fees for prevailing on the Grobergs’ breach of contract and unjust enrichment claims – the Grobergs provide the following statement of the case limited to that one issue.

The district court ruled that HOI prevailed on the Grobergs’ mechanic’s lien claim, breach of contract claim, and unjust enrichment claim and that the Grobergs prevailed on HOI’s breach of contract counterclaim. (Record on Appeal [hereafter “R.”] 325-30.) The district court awarded HOI attorney’s fees for its defense of the mechanic’s lien claim and awarded the Grobergs attorney’s fees for their defense of HOI’s counterclaim. (R. 347.) Concluding that the amount of attorney’s fees owed by the Grobergs to HOI was substantially the same as the amount of attorney’s fees owed by HOI to the Grobergs, the district court offset the attorney’s fees awards and made no net judgment for fees. (R. 347-48.)

SUMMARY OF ARGUMENT

The Grobergs are entitled to a mechanic’s lien against Lot 13 because they provided improvements to that property at the instance of HOI pursuant to an express or implied contract with HOI. The district court’s factual findings do not preclude the mechanic’s lien claim. Because the work performed by the Grobergs did not require a

contractor's license, the Grobergs' lack of licensure does not prevent them from recovering for the work they performed.

HOI's failure to offer Lot 13 for sale to the Grobergs for the agreed contract price of \$138,000 constitutes a breach of HOI's Uniform Real Estate Contract (the "Contract") with the Grobergs. Any obligation of the Grobergs to tender the purchase price was excused by HOI's unequivocal demands for more than it was entitled under the Contract. Because HOI failed to appeal the trial court's finding as to the purchase price, HOI cannot contest that finding. The labor and materials provided by the Grobergs benefitted HOI, and the Grobergs have met all of the elements of unjust enrichment.

ARGUMENT

I. REPLY TO THE BRIEF OF APPELLEE

A. The Grobergs Are Entitled to a Mechanic's Lien Against Lot 13

In its brief, HOI alleges three principal reasons¹ why it claims the Grobergs' mechanic's lien claim fails: (1) the district court ruled that HOI did not request that the Grobergs perform renovation work; (2) there was no express or implied contract between HOI and the Grobergs for the Grobergs' labor; (3) the Grobergs were not licensed contractors when they performed the work. (Brief of Appellee/Cross Appellant Housing

¹In its Findings of Fact and Conclusions of Law, 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. HOI has apparently abandoned the equitable ownership and waiver arguments by failing to address them in its Appellee's Brief.

Opportunities, Inc. [“Appellee’s Brief”] 16-30.) After close scrutiny, each of these assertions proves unfounded.

1. *The Grobergs Performed Their Work on Lot 13 “at the Instance” of HOI*

a. *HOI Motivated, Solicited, Influenced, Suggested, and Authorized the Grobergs’ Work*

HOI argues that a claimant has no right to a mechanic’s lien “unless the owner [or its agent] requested the claimant’s labor or materials.” (Appellee’s Brief at 19.) HOI seeks to restrict the scope of the mechanic’s lien statute by changing the statutory language from “at the instance of the owner”² to “at the *request* of the owner.” The Utah Supreme Court has rejected such a narrow reading. Instead, the Court held that in the mechanic’s lien statute, “[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). Quoting a Massachusetts case, the Utah Court of Appeals emphasized that “[t]he consent given, however, is to the performance of the work, not to the lien, or the amount for which, under it, the interest of the owner in the land can be charged.” *Id.* (*quoting Vickery v. Richardson*, 189 Mass. 53, 75 N.E. 136 (Mass. 1905.)) Thus, the Grobergs performed

²UTAH CODE ANN. § 38-1-3.

work “at the instance” of HOI if their work was motivated or influenced by HOI, if their work was performed at the “solicitation or suggestion” of HOI, or if HOI gave the Grobergs authority to commence work on improvements.

HOI argues that this Court should ignore the definition of “at the instance of ” provided by the Utah Supreme Court in *Davis* because that case has not been cited in subsequent Utah decisions. However, HOI has cited no reported decision that criticizes or calls into question the *Davis* definition. Moreover, vertical stare decisis requires the Utah Court of Appeals to “follow the holding of a higher court, as well as any ‘judicial dicta’ that may be announced by the higher court.” *State v. Menzies*, 889 P.2d 393, 399 n. 3 (Utah 1994). Absent a reversal of position by the Utah Supreme Court, *Davis*’ definition of “at the instance” remains good law, and this Court is obligated to apply that controlling precedent to the case at hand.

b. *The District Court’s Factual Findings Do Not Preclude the Grobergs’ Mechanic’s Lien*

The district court’s findings include a statement that “the improvements to the property were not requested by HOI” (Findings of Fact and Conclusions of Law [“Findings”], Addendum to Brief of Appellant [“1st Brief Add.”] 8.) Hereafter, this finding shall be referred to as the “Request Finding.” HOI argues that the Request Finding precludes the Grobergs’ mechanic’s lien. Admittedly, the Request Finding seems somewhat at odds with other factual findings entered by the district court, which will be discussed in more detail below. In light of this tension, the Request Finding is ambiguous at best.

In construing ambiguous orders, the Court must look to the language of all the findings and interpret any ambiguity so as to bring the findings in harmony with the facts and the law and to make the findings more reasonable, effective, and conclusive.

Culbertson v. Bd. of County Comm'rs, 2001 UT 108, ¶ 15, 44 P.3d 642. In addition, the findings should be construed against HOI – the party who drafted the findings. *Id.*; Findings, 1st Brief Add. 1.

When the district court's findings and conclusions are viewed as a whole, it becomes clear that the district court did not intend its Request Finding to be interpreted as broadly as HOI suggests. In the same document where the Request Finding appears, the district court found that: the Contract required the Grobergs to “move a house and *rehabilitate the house . . .*” (Findings, 1st Brief Add. 3; Pl. Exh. 10, 1st Brief Add. 26 (emphasis added)); HOI agreed to help the Grobergs obtain funding “*to cover the costs of rehabilitating the house on Lot 13*” (Findings, 1st Brief Add. 3 (emphasis added)); the Grobergs had certain contractual rights “[i]f the Grobergs did not *complete the house on Lot 13 . . .*” (*Id.*(emphasis added)); the Grobergs “*continued to rehabilitate the home on Lot 13 using their contractor, McClellan Construction*” (Findings, 1st Brief Add. 4-5 (emphasis added)); the Grobergs terminated McClellan Construction “[a]fter consulting with HOI . . .” (Findings, 1st Brief Add. 5); prior to HOI's demand to vacate the property, “the Grobergs *had substantial control as to the construction that was pursued* and the costs associated with the renovation” (Findings, 1st Brief Add. 5 (emphasis added)); and prior to making payments, “HOI *inspected the renovation work* to confirm the amount of

work completed” (Findings, 1st Brief Add. 6 (emphasis added.)) Clearly, these additional findings would be inconsistent with a finding that HOI had not requested or authorized *any* of the renovations on Lot 13 which were overseen and performed by the Grobergs.

The district court did not intend its finding to suggest that HOI was unaware of the work the Grobergs were doing and overseeing on Lot 13. In his oral ruling, Judge Medley stated:

I think the best you can say from the evidence presented in this particular case is that, of course, [HOI] had knowledge, certainly had knowledge of – of these improvements, but that knowledge of these improvements, in my opinion, arises from the terms and conditions of the contract between these parties

(R. 368 at 567.) In addition, Dick Welch, the representative of HOI who first proposed the house-swapping deal to the Grobergs, admitted that he encouraged the Grobergs to do work on the house themselves in order to save money. (R. 368 at 333.)

HOI gave the Grobergs “substantial control as to the construction that was pursued and the costs associated with the renovation.” (Findings, 1st Brief Add. 5.)

Although HOI did not dictate the details of the renovation (i.e., the color of paint or type of floor covering), HOI did recommend that the Grobergs do work themselves on the renovation and gave the Grobergs permission to exercise “substantial control” over the renovation process. The most reasonable interpretation of the district court’s Request Finding is that HOI knew the Grobergs were paying for materials and working on renovations themselves, but did not direct every minute detail of the renovation work. This interpretation is reasonable, effective, conclusive, and brings the Request Finding

into harmony with the remaining findings and the uncontested facts presented at trial. Under this interpretation, the Request Finding comports with the remaining findings and does not preclude the Grobergs' mechanic's lien claim.

HOI was the "impelling motive" for the Grobergs' work. HOI solicited the Grobergs to enter into the house-swapping deal and renovate Lot 13. HOI authorized the Grobergs to commence the renovation. Under the standard set out by the appellate courts in Utah, the Grobergs' renovation work was performed "at the instance" of HOI or its representatives, and the district court's findings, when properly construed, do not preclude this conclusion.

**c. A & M Enterprises v. Hunziker and Belnap v. Condon
 Are Distinguishable from the Present Case**

HOI argues cites *A & M Enterprises v. Hunziker*, 482 P.2d 700 (Utah 1971) and *Belnap v. Condon*, 97 P. 111 (Utah 1908) for the proposition that "a vendee in possession who improves premises in his own way and according to his own needs and desires cannot assert a mechanic's lien because such improvements are not 'at the instance of' the owner." (Appellee's Brief 17.) However, *A & M* and *Belnap* are distinguishable from the present case.

In *A & M*, Western Lift and Crane Corporation had an option to purchase a ski lift from Barrett Investment Company. Until the option was exercised, Western's rights to the property were limited to those of a tenant. A & M Enterprises, Inc. performed work on the ski lift at Western's request but without Barrett's permission. Western failed to exercise the option for the ski lift and failed to pay for A & M's work. A & M brought

an action to foreclose Barrett's interest in the ski lift, claiming that Western was the agent of Barrett in dealing with A & M. The trial court granted summary judgment in favor of Barrett. On appeal, the Utah Supreme Court noted that Western "made such improvements as it and it alone decided" and that "Barrett had nothing to do with any work contracted for." *A & M*, 482 P.2d at 701. The Court stated that there were no facts presented at trial which would tend to establish that Western was Barrett's agent. *Id.* at 702. Relying heavily on the fact that the contract between Barrett and Western "specifically prohibited Western from encumbering any interest or right it had under the contract without first getting the written consent thereto from Barrett" and "[n]o such permission was ever request[ed] or granted," the Utah Supreme Court affirmed the lower court's ruling. *Id.*

The facts in the present case differ significantly from the facts in *A & M*. Initially, *A & M* involved a mechanic's lien by a third-party claimant who had been hired by the potential purchaser. In the case at hand, the claim is asserted by the potential purchasers themselves, not by a contractor they hired. In *A & M*, Barrett had "nothing to do with the work contracted for" and there is no indication that the contract between Barrett and Western mentioned or required improvements to the property. *Id.* at 701-02. In the present case, HOI solicited the Grobergs to entered into the Contract requiring the Grobergs to renovate Lot 13. (R. 367 at 37-38; R. 368 at 315-316.) HOI encouraged the Grobergs to do renovation work themselves (R. 368 at 333), set aside "owner to do" funds for the renovation (R. 368 at 337-38.), inspected the work on the house on Lot 13

(Findings, 1st Brief Add. 6), and authorized the Grobergs to enter into a contract with McClellan Construction and other contractors (Findings, 1st Brief Add. 4-5). Unlike the contract in *A & M*, the Contract between HOI and the Grobergs did not prohibit the Grobergs from encumbering HOI's interest in Lot 13. (Pl. Exh. 10, 1st Brief Add. 26.) To the contrary, the Contract contemplated that the Grobergs would hire contractors and do work themselves which would improve the property. (*Id.*) Perhaps most telling, HOI paid a mechanic's lien filed by a contractor (McClelland Construction) which was hired by the Grobergs.³ (R. 270-71.) If HOI did not authorize the Grobergs to do renovation work on Lot 13, HOI would not have been liable for a mechanic's lien of a contractor hired by the Grobergs. Clearly, *A & M* is distinguishable from the case at hand and does not provide a basis for rejecting the Grobergs' mechanic's lien claim.

In *Belnap*, Becker entered into a contract to purchase property from Condon, who agreed to convey title upon payment of the full purchase price. *Belnap*, 97 P. at 112. Becker purchased materials from Belnap which were incorporated into improvements on the property. Becker failed to pay the purchase price for the property and failed to pay Belnap for the materials. Belnap sought to foreclose a mechanic's lien against Condon's interest in the property. The trial court granted judgment in favor of Condon.

On appeal, the Utah Supreme Court noted that Belnap's counsel had cited "numerous cases wherein it has been held that where an owner enters into a contract to

³The Grobergs told HOI not to pay McClellan Construction's mechanic's lien because much of McClellan Construction's work was incomplete and defective. (R. 83.) Despite this advice, HOI chose to pay the lien. (R. 270-71.)

sell real estate, wherein he requires the purchaser to make improvements upon the land sold, the land is subject to mechanics' liens, including the interest of the vendor." *Id.* at

113. The Supreme Court stated that the interest of a lessor is generally not affected by a lien for work provided at the lessee's request, but then provided this important caveat:

Whether a different rule should apply in case a vendor requires his vendee to make improvements as part of the written contract of sale is not involved in this case, as there is no claim that in the written contract of sale in this case such a condition was imposed.

Id. at 113. In affirming the lower court's ruling, the Supreme Court distinguished the cases cited by Belnap's counsel:

We need not pause to review the numerous cases cited by appellant's counsel. It must suffice to say that the decisions in all of them are based upon written contracts between lessors and lessees, or vendors and vendees, wherein it was expressly provided that the lessees or vendees should make certain stipulated improvements upon the premises leased or sold.

Id. at 114.

Like *A & M*, *Belnap* involved a mechanic's lien by a third party claimant who had been hired by the potential purchaser. It is significant that HOI paid the mechanic's lien of a contractor hired by the Grobergs – the equivalent of Condon paying Belnap. This clearly indicates that the *Belnap* holding is not applicable to the facts in the present case.

Even if the present case involved a third-party claimant, the holding in *Belnap* would not apply. The case at hand falls into the category of cases which the *Belnap* court distinguished and chose not to address. Unlike the contract between Becker and Condon, the written Contract between HOI and the Grobergs expressly required the

Grobergs to renovate the home on Lot 13. The court in *Belnap* explicitly distinguished cases in which the “vendor requires his vendee to make improvements as part of the written contract of sale” and “written contracts between . . . vendors and vendees . . . expressly provided that the . . . vendees should make certain stipulated improvements upon the premises . . . sold.” *Id.* at 113-14.

Interestingly, HOI fails to distinguish or otherwise address a decision of the Colorado Supreme Court cited in the Grobergs’ first brief which is remarkably similar to the present case. *Columbia Savings and Loan Association v. Counce*, 446 P.2d 977 (Colo. 1968) (1st Brief Add. 71-72) involved a mechanic’s lien claim by a vendee who made improvements on the subject property but failed to exercise his option to purchase. The Colorado Supreme Court held that “[u]ntil [the vendee] exercised the option [to purchase], he stood as any other person supplying labor and materials, and was therefore entitled to claim a lien.” *Id.* at 978. Rather than stretching the holdings of distinguishable third-party cases such as *A & M* and *Belnap* to make them apply to the present case, this Court should follow the reasoning of *Counce* which addressed the very circumstances presented by Grobergs’ mechanic’s lien claim.

2. *The Grobergs Performed the Renovations Pursuant to an Express or Implied Contract with HOI*

HOI argues that the Grobergs’ mechanic’s lien fails because the Grobergs had no express or implied contract with HOI. This assertion is contrary to the district court’s findings and the uncontested facts presented at trial.

The agreement between the Grobergs and HOI stated that “[t]he Grobergs *will* move a house [to Lot 13] and *rehabilitate the house . . .*” (Pl. Exh. 10, 1st Brief Add. 26 (emphasis added.)) Clearly, this constitutes an express contractual obligation on the part of the Grobergs to renovate the house which was moved to Lot 13. HOI correctly argues that nothing in the agreement required the Grobergs to perform labor or do work themselves. (Appellee’s Brief at 22-23.) Similarly, nothing in the agreement prohibits the Grobergs from doing the work themselves. (Pl. Exh. 10, 1st Brief Add. 23-26.) In fact, HOI admitted it set aside more than \$12,000 in “owner to do” funds to allow the Grobergs to use for appliances and “some contingency money . . . for [the Grobergs] to draw from so they could do extra little upgrades they may want to put in the house.” (R. 368 at 337-38.) Moreover, HOI’s representative, Dick Welch, advised the Grobergs that they would save money if they did some of the renovation work themselves. (R. 367 at 50; R. 368 at 333, 336.) HOI admits it asked the Grobergs to work themselves on the renovations, and the Grobergs agreed in order to save money. Whether under the written agreement or subsequent oral agreements, the Grobergs clearly performed renovations on Lot 13 pursuant to a contract with HOI.

HOI argues that the improvements made by the Grobergs fell outside the McClellan Construction contract and thus went beyond the Grobergs’ contractual obligation to “rehabilitate” the house on Lot 13. (Appellee’s Brief at 24-25.) However, HOI admitted it set aside funds beyond the McClellan Construction contract for the

Grobergs to use for “contingency money” to “do extra little upgrades.” (R. 368 at 337-38.)

In addition, HOI intentionally gave the Grobergs broad authority to oversee the rehabilitation of the house on Lot 13. HOI allowed the Grobergs to choose their general contractor for the renovation, and it was the Grobergs, not HOI, who retained that contractor. (Pl. Exh. 21, Addendum [“Add.”] 4, 11.) HOI went so far as to prepare several documents for the Grobergs’ signatures which referred to the Grobergs as the “owners” of Lot 13.⁴ The Grobergs were also listed as the owners on the building permit issued by Salt Lake County. (Pl. Exh. 22, Add. 20.) The district court found that HOI granted the Grobergs “substantial control as to the construction that was pursued” (Findings, 1st Brief Add. 5), and HOI’s representative admitted that the Grobergs had “full control of the rehab process on that house.” (R. 376 at 282.) Given the Grobergs’ contractual obligation to renovate the home, the broad authority granted by HOI for the Grobergs to oversee renovation, and the fact that “HOI inspected the renovation work to confirm the amount of work completed” (Findings, 1st Brief Add. 6), HOI has no basis to suggest that certain aspects of the renovation were not performed pursuant to an express or implied contract.

⁴See Notice to Proceed with construction (Pl. Exh. 15, Add. 1), Housing Authority Rehabilitation Agreement with Owner (Pl. Exh. 20, Add. 2), and Home Repair Contract between the Grobergs and McClellan Construction (Pl. Exh. 21, Add. 4).

3. *The Fact That the Grobergs Are Not Licensed Contractors Does Not Preclude Their Mechanic's Lien Claim*

HOI argues that UTAH CODE ANN. § 58-55-604 precludes the Grobergs from recovering for the work they performed on Lot 13 because the Grobergs are not licensed contractors. Section 58-55-604 bars an unlicensed party from recovering compensation for “any act for which a license is required by this chapter.” UTAH CODE ANN.

§ 58-55-604. HOI has neglected, both at trial and in its Appellee's Brief, to identify any of the tasks performed by the Grobergs which allegedly require a contractor's license.

And even if HOI could identify tasks which required a contractor's license, Section 58-55-604's prohibition would be limited to those particular tasks and would not preclude recovery for other tasks or for the Grobergs' purchase of materials.

B. *HOI's Breach of Contract in Refusing to Sell Lot 13 for \$138,000 Is Not Excused by the Grobergs' Failure to Tender Payment*

As an alternative to their Mechanic's Lien claim, the Grobergs are entitled to recover damages based upon HOI's failure to sell Lot 13 to the Grobergs for the Contract price of \$138,000.⁵ HOI argues for the first time in its Appellee's Brief that this alternate

⁵HOI contends that the Grobergs “never made any such contention [regarding breaching the contract to sell Lot 13 for \$138,000] at trial.” (Appellee's Brief at 35.) This statement is incorrect. At closing argument, the Grobergs' counsel stated as follows:

Housing Opportunities breached the contract by not ever giving the Grobergs an opportunity to purchase the house for that price. In fact, Housing Opportunities never even gave the Grobergs an opportunity to purchase the house for the price of the appraisal done a couple of years after the real estate agreement, it was \$138,000[.] They said in their letters that they would, but they would tack on additional charges that would require a second mortgage.

recovery fails because the Grobergs never tendered the \$138,000 payment to HOI.

(Appellee's Brief at 35.)

The Utah appellate courts have held that tender is not required where it would be a futile act:

[T]ender is excused where "it is plain and clear that a tender, if made, 'would be an idle ceremony and of no avail.'" *Fitzgerald v. Corbett*, 793 P.2d 356, 359 (Utah 1990) (*quoting* 74 AM. JUR. 2D *Tender* § 4 (1974)); *accord Hansen v. Christensen*, 545 P.2d 1152, 1154 (Utah 1976) (tender excused where obligee's unreasonable conduct "would make an actual tender a fruitless gesture").

Jenkins v. Equipment Center, Inc., 869 P.2d 1000, 1003 (Utah Ct. App. 1994).

This court has held "tender to be fruitless and thus excused where the lienor states that he or she does not intend to accept payment, [and] where the lienor claims a larger sum than he or she is entitled to collect." *Jenkins*, 869 P.2d at 1003 (citations omitted). If a demand for "a larger sum is so made that it amounts to an announcement that it is useless to tender a smaller sum, it dispenses with" the tender requirement. *Id.* (*quoting Simons v. Brashears*, 344 P.2d 1107, 1112 (Okla. 1959) (citation omitted)).

Shields v. Harris, 934 P.2d 653, 655 (Utah Ct. App. 1997). In *Shields*, the seller wrote letters to the buyer using language such as "that is My [sic] price to you, take it or leave it" and "I'm firm in what I want." *Id.* at 656. Based upon this language, the Utah Court of Appeals held that the tender "would have been to no avail [and] tender of the purchase price was unnecessary." *Id.*

In the present case, any obligation of the Grobergs to tender payment was excused by HOI's adamant demand for a sum larger than it was entitled to collect. In correspondence dated October 4, 1999, HOI stated that "Groberg has two choices . . .":

(R. 368 at 529-30.)

(1) purchase the home for \$156,532.72 or (2) turn over Lot 13 to HOI who would market it for sale. (Findings, 1st Brief Add. 5; Pl. Exh. 29, 1st Brief Add. 53-55.) HOI adamantly stated that “[t]hese are the only two options available” and stated that if the purchase was not made under the first option, “we will terminate the deal and take possession of the house and offer it for sale.” *Id.*

Because HOI demanded a larger sum than it was entitled to, and because HOI’s announcement made it clear that it would be useless to tender a smaller sum, the Grobergs were excused from tendering the purchase price of \$138,000.

C. HOI Is Precluded From Arguing That It Did Not Agree to Sell Lot 13 for \$138,000

As an alternative to its tender argument, HOI asserts that “the reviewing Court can find that the record does not support the notion that the Grobergs and HOI ever agreed to a \$138,000 price.” (Appellee’s Brief at 36.) This argument fails for two simple reasons. First, in its findings of fact and conclusions of law, which were drafted by HOI’s counsel, the court ruled as follows:

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.

(Findings, 1st Brief Add. 8.) The Grobergs did not challenge this ruling on appeal. In its Docketing Statement, HOI identified two issues relating to attorney’s fees, but did not indicate that the court’s ruling regarding Lot 13’s purchase price was at issue. (HOI’s Docketing Statement at 4-5.) In its Appellee’s Brief, HOI did not identify the issue as to the contract price in its “Statement of Issues Presented by Appellants.” (Appellant’s

Brief at 1-3.) While HOI certainly could have appealed the district court's ruling regarding the sale price of Lot 13, HOI has failed to properly present this issue on appeal.

Second, even if HOI had properly raised the issue before this Court, the issue of whether the parties entered into an oral agreement for the sale of Lot 13 for \$138,000 is largely a factual issue. On appeal, "[a] party challenging a fact finding must first marshal all record evidence that supports the challenged finding." UTAH R. APP. P. 24(a)(9). HOI has failed to "marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence,' thus making them 'clearly erroneous.'" *Valcarce v. Fitzgerald*, 961 P.2d 305, 312 (Utah 1998).

HOI seeks to justify its improper attack of the trial court's findings by asserting that "[o]n appeal, the trial court's decision may be affirmed on any proper ground or theory apparent from the record, even if it does so upon a ground that differs from the one the trial court has relied upon." (Appellee's Brief at 36.) While the appellate court may affirm a trial court's decision on legal grounds different from those relied upon by the trial court, the new legal argument must be consistent with the trial court's factual findings or based upon the reversal of findings which are against the clear weight of the evidence. Because HOI has failed to marshal the evidence in support of the district court's factual finding as to the \$138,000 sales price, HOI's "meeting of the minds" argument need not be considered by this Court.

D. The Grobergs Are Entitled to Recover Under Their Unjust Enrichment Claim⁶

1. *HOI Failed to Preserve the Issue of the Grobergs Providing a Benefit to HOI for Appeal*

In response to the Grobergs' arguments regarding unjust enrichment,⁷ HOI claims for the first time that the Grobergs' work did not provide any benefit to HOI.

(Appellee's Brief at 38-40.) As an initial matter, HOI failed to preserve this issue in the trial court. In the portion of his closing statement relating to unjust enrichment, HOI's attorney stated as follows:

First – the first instance is – it requires the conferring of a benefit, I'm going to argue that in a minute, but I think that's questionable; but for purposes of this argument I will concede it at this point. Post [the defendant in *Knight*] was aware of the benefit. Certainly, we knew that the Grobergs were working.

(R. 368 at 549.) HOI's attorney did not subsequently revisit the issue of the Grobergs conferring a benefit upon HOI.

⁶Relying 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." The Grobergs addressed in their first brief the district court's error in making these conclusions. (1st Brief 33-36.) Because HOI has apparently abandoned this issue by failing to address it in its Appellee's Brief, the Grobergs will not provide further argument on that issue.

⁷In their Appellants' Brief, the Grobergs asserted that HOI was unjustly enriched by two types of benefits: (1) the labor and materials the Grobergs provided to Lot 13 and (2) the cost of restoring the landscaping which HOI damaged and failed to replace when it installed water and storm drain lines across the easement on the Grobergs' property. (1st Brief 38-39.) The unjust enrichment claim relating to the labor and materials provided on Lot 13 is an alternative to the mechanic's lien and breach of contract claims. The unjust enrichment claim relating to the restoration of landscaping is independent from the mechanic's lien and breach of contract claims.

2. *The Grobergs' Labor and Materials Benefitted HOI*

Even if this Court finds that HOI did preserve the issue for appeal, HOI's assertion that the Grobergs provided no benefit to HOI fails. HOI contends that because it spent more developing Lot 13 than it received from the sale of that lot, the Grobergs' work on Lot 13 did not provide a benefit. This argument improperly confuses the profitability of a project with the beneficial nature of work performed on that project.

The district court found that “[d]uring 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.” (Findings, 1st Brief Add. 6.) In addition, HOI did not contest the Grobergs' testimony that they had spent approximately 416 hours working on the renovation of Lot 13. (R. 104-05; Pl. Exh. 46, 1st Brief Add. 68-69.) It is uncontested that the Grobergs provided labor and materials toward the improvement of Lot 13 for which they were not compensated.

The materials and utilities provided by the Grobergs clearly benefitted HOI. The materials purchased by the Grobergs were incorporated into the house on Lot 13 which was ultimately sold by HOI. The utilities paid by the Grobergs related to the improvement of Lot 13. Had the Grobergs not paid for these materials and utilities, HOI would have been required to pay for them. HOI presented no evidence at trial that the cost of the materials was excessive or that the materials did not improve the value of the home. The Utah Supreme Court has noted that a party may confer a benefit, for purposes

of an unjust enrichment claim, by “improving . . . property” *Jeffs v. Stubbs*, 970 P.2d 1234, 1248 (Utah 1998).

It is also clear that the Grobergs’ labor benefitted HOI. The Utah Supreme Court has noted that the “benefit” required for unjust enrichment “may be . . . beneficial services conferred” *Jeffs*, 970 P.2d at 1248 (*quoting Baugh v. Darley*, 184 P.2d 335, 337 (Utah 1947)). Dick Welch instructed the Grobergs to do some of the renovation work themselves in order to save money. (R. 367 at 50; R. 368 at 333.) Because HOI ultimately refused to sell Lot 13 to the Grobergs, HOI retained the benefit the Grobergs provided by doing work themselves rather than paying a contractor to do it. HOI presented no evidence at trial that the Grobergs’ labor did not improve the value of the home.

The fact that HOI claims it did not make a profit on Lot 13 has no bearing on whether the Grobergs’ work provided a benefit to HOI. The costs claimed by HOI include development costs, employee salaries and benefits, or the legal fees, interest charges, and insurance premiums, and other miscellaneous expenses paid by HOI for the subdivision. (Def. Exh. 11, Add. 23.) The Grobergs also had no control over these expenses or what portion of the development costs for the entire subdivision were allocated to Lot 13. The question is not whether HOI made a profit on Lot 13, but whether the work furnished by the Grobergs either (1) increased the value of Lot 13 or (2) reduced the costs HOI would otherwise have been required to pay in conjunction with the renovation of Lot 13. HOI’s own correspondence indicates that in July 1999 the

residence on Lot 13 appraised for \$155,000 while none of the other nine residences in the subdivision appraised for more than \$108,000. (Pl. Exh. 24., Add. 21.) Dick Welch admitted that the Grobergs' labor would "save money." Clearly, the Grobergs' labor and materials provided a benefit to HOI.

Because the trial court did not make any findings regarding the value of the benefit provided to HOI, this Court should remand the unjust enrichment claim to the trial court for a determination of the value of the benefit conferred by the Grobergs.

3. *The Holding in Jeffs v. Stubbs Is Applicable to the Present Case*

HOI argues that *Jeffs*, 970 P.2d at 1234 is distinguishable from the present case and that the reasoning in *Jeffs* should not be applied in the present case. Specifically, HOI argues that the claimants in *Jeffs* "had not only made improvements on their land, but also had *donated land to the organization and relied upon a promise that they could live there forever.*" (Appellee's Brief at 41 (emphasis in original.)) While it is true that some of the claimants in *Jeffs* had donated their land, the decision in *Jeffs* clearly indicates that the unjust enrichment claim related to the claimants' *improvements* on the land, not their donation of the land itself.⁸ Accordingly, the holding in *Jeffs* should be applied to the present case.

⁸The court noted that "the claimants presented a number of claims, the most pertinent of which is that . . . the UEP has been *unjustly enriched by their improvements to the land.*" *Jeffs*, 970 P.2d at 1240 (emphasis added). On appeal, the owner of the property argued that "there is nothing inequitable about the UEP's *keeping the improvements* without compensating the claimants." *Id.* at 1243 (emphasis added). The court concluded that "the trial court did not abuse its discretion in requiring the UEP to . . . compensate [the claimants] *for the improvements.*" *Id.* at 1243 (emphasis added).

4. *The Grobergs Satisfied the Elements of Unjust Enrichment*

HOI argues that the trial court has broad discretion in applying unjust enrichment law to the facts. While this is a correct statement of the law, HOI overlooks the fact that the Grobergs have challenged the legal criteria utilized by the district court in rejecting the unjust enrichment claim. The district court held that the Grobergs were not entitled to unjust enrichment unless they could establish “some misleading act, request for services, or the like by the party who retained the benefit.” (Findings, 1st Brief Add. 9-10.) Whether this is a proper requirement for unjust enrichment is a pure legal question for which the trial court’s holding receives no deference on appeal.⁹

Even if the “misleading act, request for services, or the like” requirement was properly adopted by the trial court as an element of unjust enrichment, the uncontested evidence presented at trial and summarized in the Grobergs’ first brief established that HOI misled the Grobergs, specifically requested their services, and subjected the Grobergs to other similar improper conduct. The district court abused its discretion in ignoring these uncontested facts and holding that HOI’s conduct was not such that it would make the retention of the benefits provided by the Grobergs unjust.

⁹The Grobergs’ first brief outlines the reasons why the trial court erred in adding this criterion to the established elements of unjust enrichment. (1st Brief 33-39.) Because HOI has not addressed that issue in its brief, the Grobergs will not restate their argument here.

II. RESPONSE TO HOI'S CROSS-APPEAL

A. The Trial Court Properly Refused to Award Attorney's Fees for HOI's Defense of the Grobergs' Breach of Contract Claim

HOI argues that it was entitled to recover attorney's fees incurred in defending against the Grobergs' breach of contract claim. At trial, the Grobergs asserted that the contract between them and HOI had two components: the promises stated in the written Contract and the oral promises made by HOI which were not contained in the written Contract. The Grobergs argued that the oral promises made by HOI should be included as part of the obligations between the Grobergs and HOI. [Tr. 525-527.] The trial court rejected this argument, holding that the Contract was integrated with respect to all terms except the price at which the Grobergs would purchase Lot 13. (Findings, 1st Brief Add. 7.) In essence, the trial court divided the Grobergs' breach of contract claim into two parts: (1) breach of the obligations under the written agreement; and (2) breach of oral obligations not contained within the written agreement.

To the extent that HOI prevailed on the first part (i.e., claims under the written agreement), paragraph 18 of the Contract entitles HOI to recover the attorney's fees it incurred in defending that claim. (Pl. Exh. 10, 1st Brief Add. 23-26.) Alternatively, if this Court reverses the trial court's ruling and determines that HOI breached the Contract, the Grobergs are entitled to recover attorney's fees under paragraph 18 of the Contract.

With respect to the second part of the breach of contract claims (i.e., breach of oral representations), HOI is not entitled to recover attorney's fees for prevailing at trial. The trial court held that the oral representations (with the exception of the sale price of

Lot 13) were not part of the Contract. Thus, the attorney's fees provision of the Contract does not apply to the Grobergs' claims based upon oral representation. Absent a contractual or statutory basis, HOI cannot recover attorney's fees. *Softsolutions, Inc. v. Brigham Young Univ*, 2000 UT 46, ¶ 41, 1 P.3d 1095.

“Where a contract provides the ‘right to attorney fees, Utah courts have allowed the party who successfully prosecuted or defended against a claim to recover the fees attributable to those claims on which the party was successful.’” *Dejavue, Inc. v. U.S. Energy Corp.*, 1999 UT App. 344, ¶ 20, 993 P.2d 222 (internal citations omitted)). The trial court followed this direction and attributed one-fourth of the attorney's fees to each of the four claims presented at trial. (R. 347-48.)

Relying on *Dejavue*, HOI argues that it is entitled to recover attorney's fees for defending the Grobergs' breach of contract and unjust enrichment claims because it asserted and defended “multiple claims involving a common core of facts and related legal theories” (Appellee's Brief at 42.) The trial court's division of fees among the four claims suggests that claims asserted did not “involv[e] a common core of facts and related legal theories” (*Id.* at ¶ 20), but the trial court did not enter specific findings on this issue.

In *Dejavue*, “the trial court specifically found that the claims advanced by Dejavue . . . were based on inter-related legal theories and arose from a common core of facts,” and the opposing party, U.S. Energy, did not dispute these factual findings. *Id.* at ¶ 21. In the present case, the trial court made no such findings. Because the issue of whether

there are “multiple claims involving a common core of facts and related legal theories” is a question of fact, this determination must be made by the trial court. This Court cannot award HOI attorney’s fees on this basis until the trial court has made these factual findings. Thus, if this Court refuses to reverse the trial court’s rejection of the Grobergs’ claims, it cannot award the attorney’s fees requested by HOI without first remanding to the trial court the issue of whether there are multiple claims involving a common core of facts and related legal theories.

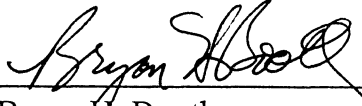
Of course, if this Court reverses the trial court and rules that the Grobergs prevail on one of their claims, the trial court must determine whether the Grobergs are entitled to attorney’s fees on the same basis of “a common core of facts and related legal theories.”

CONCLUSION

For the foregoing reasons, the Grobergs respectfully request that this Court reverse the trial court’s rejection of the Grobergs’ mechanic’s lien claim and award attorney’s fees to the Grobergs under this claim. In the alternative, the Grobergs request that this Court reverse the trial court’s rejection of the Grobergs’ breach of contract claim and award attorney’s fees to the Grobergs on this claim. As an alternative to recovery under the mechanic’s lien and breach of contract claims, the Grobergs request that this Court reverse the trial court’s rejection of the Grobergs’ unjust enrichment claim.

DATED this 15th day of August, 2002.

KIRTON & McCONKIE



Bryan H. Booth

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2002, I caused two true and correct copies of the foregoing **SECOND BRIEF OF APPELLANT** to be mailed by United States mail, postage prepaid, to each of the following:

J. Bruce Reading
Scalley & Reading, P.C.
261 East 300 South, Suite 200
Salt Lake City UT 84111

Rodney Gilmore
P.O. Box 1971
Layton UT 84041



Tab A

ADDENDUM

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Tab 1

Housing Authority of the County of Salt Lake
Housing Rehabilitation Division

NOTICE TO PROCEED

Date: March 31, 1998

Name: John A. Groberg
Shauna Groberg

Address: 7395 W 3100 S, Magna 840

Loan No: HOI/lot13

To: McClellan Construction
3197 Patrick Drive
Magna, UT 84044

Gentlemen:

Effective 4-5-98, authorization is hereby given for
McClellan Construction to proceed with work as set forth in the
contract document dated April 1, 1998 pertaining to the subject
property known and numbered as 3138 S. OLD GLOVE ^{Cn.} Magna 840. Work must
commence on or before 4-15-98. All work shall be
satisfactorily completed on or before 8-28-98.


Owner's Signature


Owner's Signature


Contractor's Signature

Tab 2

HOUSING AUTHORITY REHABILITATION AGREEMENT WITH OWNER

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

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

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

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

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

NOW THEREFORE the parties agree as follows:

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

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

DATED this 1st day of April, 1998.

Housing Authority of the County of Salt Lake

y: M. Grubbs

[Signature]
OWNER

[Signature]
OWNER

Tab 3

HOME REPAIR CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

R. The Owner will;

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

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

Contractor and Owner hereby acknowledge acceptance of this agreement:

[Signature]
Owner

4-1-98
Date

[Signature]
Owner

April 1st 98
Date

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

McClellan Constructi
Contractor - Firm Name

April 7 98
Date

3197 Patrick Drive
Address

[Signature]
Contractor Signature

pres
Title

4:15pm -
12/30/06

DESCRIPTION OF WORK
(Proposal/Id)

Date: October 21, 1996

Matt McClellan
250-3142-

John and Shauna Groberg
Lot 13, Madison Subdivision

PROPOSAL

BID

EXTERIOR

- 675²⁰ 2. Replace all windows with Amsco V60 white vinyl. Include replacing new sills on interior. Frame living room window for proper height from floor. Frame Bedrooms & 1/2 Bath windows
-5.20-
- 500 2. Install new bay window to replace slider door in kitchen. Frame bench in kitchen.
-9.98
- 150 2. Replace front door with new 5'6" unit with oval top and glass light on side. (supplied by owner)
-29-
- 11 1. Increase foundation for porch area and storage under in basement with steel frame and door.
- 10 2. Install stop and waste valve, shut off valves, plastic pipe and sprinkler heads for exterior sprinkler system. (By Owner)
By contract for PL
MM
- 3585 2. Install wood fence on ~~same~~ property line. Six feet high to match existing style in subdivision.
Waste in front
- 7 1. Excavate form and pour cutout in foundation for extending vent chase for fire place and basement.
- 550 2. Form and pour concrete landings for porch steps, sidewalks on front and rear entrance steps in garage
-9.98
- 1 2. Excavate, form and pour basement walls. Install center support walls and floor per drawing.
- PI 1. Install sewer and water lines from stub out in curb to dwelling. Include ord. fire valve and shut off valve.

- E 14. Connect electrical to meter base. Connect exterior and interior ground system.

front.

- 9 Garage
- 2500 1. Repair framing & sheet rock - 10
- 65 2. install door & closer
- 185 3. install metal door (passage)

INTERIOR

Living Room

- 500 1x Remove two walls in entrance way. See drawing.
149 install stair grade post & rail
1800 2x Install new sheet rock to ceiling in living rooms with knock down finish
0 3x Install hardwood floor in living room and hall to bathroom door. (owner)
P 4x Paint walls, ceiling and trim. Include stairway and new closet.
-98 950 5x Reconnect existing gas log. (new oak-insulated & facing on wall, shiny hearth)
8x Frame closet with door, robe, shelves and entrance way. See drawing
F 7 Remove closet in hall and install stairway to basement. (install hand rail)
- 8. Install light and switch over stairway. fixture
E 9. Install new track light on ceiling with four fixtures.
E 10. Install (2) ceiling light with fan in ceiling.
0 11. Install carpet and pad down stairway to basement. (by owner)

Kitchen

- 0 1. Remove all kitchen cabinets. & counter tops (by owner)
0 2. Install new cabinets, sink, taps, island with stove installed. (by owner)
0 3. Install new refrigerator, dish washer and dishwasher microwave. (by owner)
25 4x Install hardwood floor in kitchen/dining area. secure existing floor to stop settling (by owner)
168 5x Install new insulated - steel door to garage/kitchen. Automatic closer required.

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

Main Floor Bathroom

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

John and Shauna Groberg
Lot 13, Madison Subdivision
Page 4

Main Floor 3/4 Bath

2. ~~Remove existing shower.~~
2. Install cabinets to left side with doors on upper and drawers on bottom half.
4. ~~Install shower on right side with taps, shower head, shower door.~~

4. Install new vanity with sink, taps and drains.

5. Install new vinyl floor.

6. Paint walls, ceiling and trim.

7. Medicine cabinet & shower door (supplied by owner)
All Upper Bedrooms

140 1+ Install new six panel colonial type doors and hardware.
5-20

200 2. Install mirror sliding doors on closet, brass or white trim. (Mirror by owner)

3. ~~Sheetrock ceilings to cover spray material.~~
Prep ready for paint.

4. Paint all walls, ceiling and trim, include closets.

5. Install new carpet and pad in rooms. Include (By owner) closets.

6. Install new ceiling fixtures where broken or missing.

Basement

4-420 1+ Install window in all rooms to code.

Family Room

7-F 1. Install electrical, sheet rock. Prep for paint.

98 2. Install fireplace insert, gas line, and gas log with vent-free. (By owner)

17 3 gas Log insert ~

John and Shauna Groberg
Lot 13, Madison Subdivision
Page 5

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

Basement Kitchen

1. Install wiring for range, ^{110v} refrigerator, G.F.I. outlet over counter, light switches and room outlets to code.
2. Install plumbing, drains, water lines for sink. & gas line for stove
- 300 3. Install kitchen base cabinets, countertop and upper cabinets per drawing. Install sink, taps, shut off valves. (cabinets By owner)
- O 4. Install vinyl, carpet and pad to floor per drawing. Owner to choose style and color. (By owner)
- 2948
1275 5. Install double french doors to exterior door way.
- F 6. ~~Frame cross, install door and shelves.~~
Hurry ceiling Area Owner supply Lights (3)
- P2 7. Paint walls, ceiling and trim.

1/2 Bathroom

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

Furnace Room

- 7-3
5925
- F 1. Frame, sheetrock walls and ceiling.
2. Install 80% furnace, ducts, vents and cold air to code. include central air
- 200- 3. Install water heater, vents and water lines.
Install electric light and outlet. & floor drain
- 155 4. Install louver doors on entrance.

Utility Room

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

Lower Master Bedroom

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

Main Bath - Lower

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

350 S. + Install closets with shelves and closet rods.

O 6. Install carpet and pad and vinyl floor in closets and bath.

50 7. + Install double doors on entrance to bathroom.

closet 6 panel (mirror by sold)

1-5-25- 3275 + concrete floor in Basement

1025 + 1000 North side to match south
 install 4 turtle vents

500 + siding repair

840 + foundation patch

4750 + Awning over back porch 14 x 44
 Rubber roof + soffit under on ceiling

500 + Repair chimney top

9270 + Replace post on back of Garage with concrete footing

7550 F - Framing + sheet rock + trim

5050 PA - Paint

78650 Pl - Plumber Note: Check for 3158.02 9-23-98 R.W.
 PL 18 to HETHE JACKRILL

5500 E - Electrical 6-9 - front door

O - Owner 3-4'0" mirror door

12-5'0" mirror door

6-29-98 French door

hand railing

6-9 - Jet Tub

6-9 - Bath sink

16-9 - Kitch sink

19-8 hi Bay toilet

6-9-98 Bay window

tile + shower

#1
 HOLD DOWN BRACKETS 150
 SIDEWALK in REAR 300

Basement cabinets
 counter top

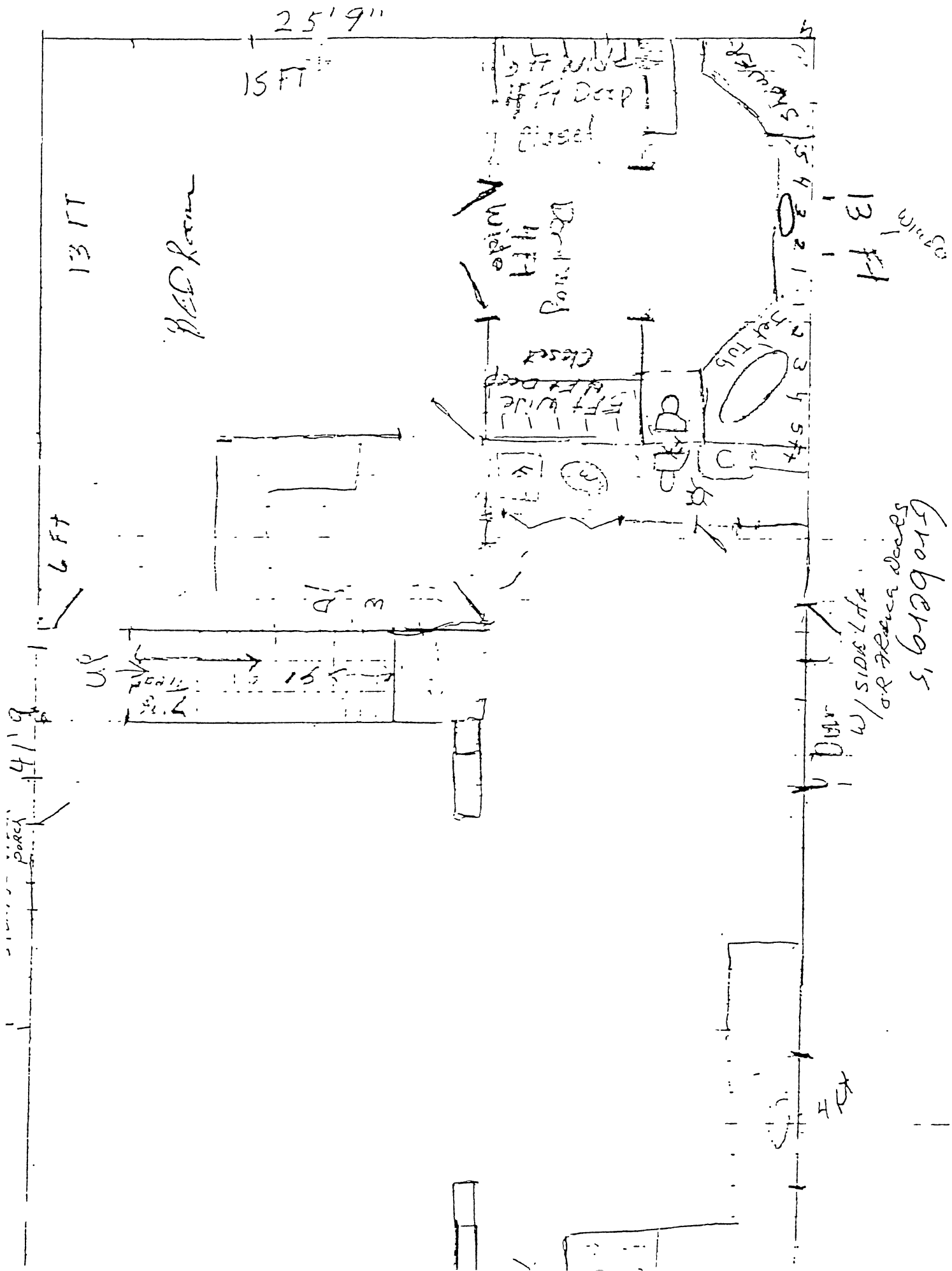
tile + shower
 1350
 650
 500

0.00 *
 1,675.00 *
 500.00 *
 150.00 *
 5,585.00 *
 1,550.00 *
 2,500.00 *
 650.00 *
 185.00 *
 175.00 *
 425.00 *
 1,500.00 *
 500.00 *
 1,800.00 *
 950.00 *
 2 *
 1 *

Not Done

101500
 51000
 35000
 + 11000
 + 25000
 361000
 11700
 22000
 - 23500
 + 50000

3000
 9948



Tab 4

ALT LAKE COUNTY

DEVELOPMENT SERVICES DIVISION

DEPARTMENT OF PUBLIC WORKS

Inspection Requests: 468-2163

2001 S. State St. #N3600, Salt Lake City, UT 84190-4050

PERMIT #

Inspection questions: 468-CODE (468-2633)

Inspection questions: 468-2000

468-2169

BUILDING PERMIT

(This application becomes a permit upon required approvals and acceptance of required fees.)

105662

Description of Work FINISH BASEMENT, PATIO COVER☒ Residential ☐ Non-residential☐ New ☐ Addition ☒ Remodel ☐ Tenant Finish ☐ Move Building ☐ Preinspection☐ Demolition (Health approval _____; Historic _____) ☐ Other _____Address 3128 S. 12th St. S. 12th St.Named street, give coordinate location 7385 W Sidwell # 14-28-426-031Subdivision WEST MADISON Lot # 13 Lot size .28Owner John & Sharon Graber Phone 250-3865

Owner Address _____

Applicant M2H McCLellan Phone 250-2146Applicant Address 3197 Patrick Dr

CONTRACTORS/DESIGNERS

Name _____ State License # _____ Phone # _____ Bus. Lic. _____ City _____

General M2H McCLellan 95-289675 73-2778 _____

Electrical _____ _____ _____ _____

Mechanical _____ _____ _____ _____

Plumbing _____ _____ _____ _____

Architect/Engineer _____ _____ _____ _____

CHECK ONE

☒ LICENSED CONTRACTOR DECLARATION:

I hereby affirm that all work will be performed by contractors licensed under the Construction Trades Licensing Act (58-55, UCA) whose licenses are in full force and effect.

If contractors have not been selected at the time of the application for this permit, the permit is issued only on the condition that currently licensed contractors shall be selected by the applicant, that the applicant shall provide the names and license numbers of the contractors to Salt Lake County, and shall enter the same names and numbers on the permit before they begin their work.

This permit shall become null and void if work is not commenced within 180 days, or if work is suspended or abandoned for a period of 180 days or more at any time after the work has commenced. Commencement or continuation of work shall be verified only by inspection reports from Salt Lake County inspectors. All required inspections shall be requested at least on working day before they are to be made. Inspections are required before any work is covered. Please call if you need further information about when an inspection is required.

I hereby certify that I have read and examined this permit and that the information provided by me is true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

Signature of applicant M2H McCLellan Date 4-15-98 Please print name M2H McCLellan

Zoning Comments _____

Approved TVDate 5/4/98

Building Code Comments _____

Date 5/4/98Comm. Coun # 10Zone R-1-10

PL# _____

☐ Minimum OR ☐ See Approved

Setbacks _____ Site Plan _____

Front 25 Side 8Rear 15 Side 8Corner Lot ☒Manufactured Home ☒

HAZARDS Yes No

Flood Plain ☐ ☒Hillside ☐ ☒Avalanche ☐ ☒Fault Rupture ☐ ☐Liquefaction H M L ☒Overpressure 0.5 0.3 0.2 ☒ None

CARDFILE # _____

PERMIT TYPE FEES

Building 277.25Plan Check 30 -

Park Impact _____

Electrical _____

Mechanical _____

Plumbing _____

Grading _____

Demolition _____

Pre-inspection _____

State Surcharge 2.79

Prepaid PC _____

Receipt # _____

Rec'd by _____

Check # _____

TOTAL 312.04Receipt # 1258Rec'd by 2794Check # 2794Valuation \$16,500

Type of Construction _____

Occupant Load _____

Group/Division _____ Square Feet

Net. Cov. 490Fin. Cont. 1118

Tab 5



August 23, 1999

Dear Homeowners,

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

The second appraisals have been completed on the homes in the Madison subdivision. We arranged for these appraisals to check the original appraisals that were done by Washington Mutual Bank before the houses were fully completed and sold. Both appraisals were completed by certified appraisers. HOI has not worked with either of these appraisers in the past.

The results of the appraisals are as follows:

Lot	Address	Owner	Appraisal May, 1998	Appraisal July, 1999	Difference
6	7396 W. Madison	Robison	\$104,000	\$103,000	-\$1,000
7	3170 S. Old Glory	Dye	103,000	104,000	+\$1,000
8	3169 S. Old Glory	For Sale	104,000	107,000	+\$3,000
9	7356 W. Madison	For Sale	100,000	100,000	Even
10	3157 S. Old Glory	DiDonato	100,000	98,500	-\$1,500
11	3147 S. Old Glory	Jenkins	106,000	103,000	-\$3,000
12	3137 S. Old Glory	McPhail	106,000	105,000	-\$1,000
13	3138 S. Old Glory	Groberg	138,000	155,000	+17,000
14	3148 S. Old Glory	Gallegos	108,000	108,000	Even
15	3158 S. Old Glory	Lee	105,000	105,000	Even

These appraisals provide qualified opinions as to the value of the homes. We believe that these prices are consistent with the market and represent a fair assessment of the value of the homes. Since the sale price was based on the May, 1998 appraisal we will continue to use that figure if the new appraisal indicated a higher value. If the July, 1999 appraisal indicated a lower value we will reduce the value of the second mortgage by that amount.

However, this will not affect your monthly payments. As you may recall the first mortgage on your homes was funded by local banks and your monthly payments set based on the amount borrowed. Payments on the second mortgage to Salt Lake County will be deferred until after the banks have been repaid in 20 years.

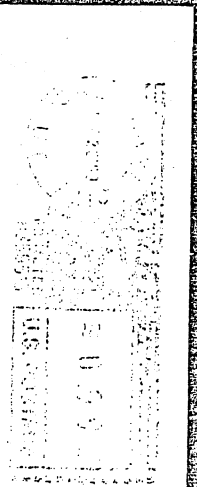
We are enclosing a copy of the most recent appraisal for your records.

Sincerely,

Scott Lancelot

Appraisal

TO	
HOUSING AUTHORITY	
OF THE COUNTY OF SALT LAKE	
3595 S. MAIN SALT LAKE CITY, UT 84115	
JOHN & SHAUNA GROBERG	
3138 S. OLD GLORY	
Magna, UT 84044	



Tab 6

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				
			HOI Dev. Costs	HOI Admin Costs	HOI Loan Costs	108	Home Funds
Title Fee 10-033	07/31/1995	\$ 1.60	\$ 1.60				
Associated Title Co. Purchase 10-022	08/30/1996	\$ 3,340.00					\$ 3,340.00
Larson & Malmquist Review 10-020	06/30/1996	\$ 436.00					\$ 436.00
Thomson Appraisal 10-032	07/10/1996	\$ 20.00					\$ 20.00
Magna Water Plan Check Fee 10-021	07/11/1996	\$ 50.00					\$ 50.00
Larson & Malmquist Review 10-020	09/04/1996	\$ 534.38	\$ 436.00				\$ 98.38
Salt Lake County Dev Service 10-020	10/23/1996	\$ 90.00					\$ 90.00
Salt Lake County Eng. Street Sign 10-37	10/31/1996	\$ 6.67					\$ 6.67
Dick Welch Salary JE 12-016/10-023	12/31/1996	\$ 207.15		\$ 207.15			
Admin Expense JE 6-024/10-023	06/30/1997	\$ 420.74		\$ 420.74			
Admin Expense JE 6-025/10-023	06/30/1997	\$ 1.91		\$ 1.91			
Legal Expense 10-034	06/30/1997	\$ 13.01	\$ 13.01				
Old Republic Title Co Title Search 10-033	07/17/1997	\$ 13.33	\$ 13.33				
Salt Lake County Building Fees 10-021	08/20/1997	\$ 668.86	\$ 668.86				
Larson & Malmquist Review 10-020	08/26/1997	\$ 30.00	\$ 30.00				
Larson & Malmquist Review 10-020	08/26/1997	\$ 23.00	\$ 23.00				
Larson & Malmquist Review 10-020	09/30/1997	\$ 176.07	\$ 176.07				
Larson & Malmquist Review 10-020	09/30/1997	\$ 36.95	\$ 36.95				
Fred A. Morton Insurance	10/03/1997	\$ 284.07	\$ 284.07				
Well's Robert Moving	10/16/1997	\$ 7,500.00	\$ 1,500.00				\$ 6,000.00
General Remodeling 10-029	10/31/1997	\$ 11,370.00					\$ 11,370.00
Fred A. Morton Insurance 10-039	10/31/1997	\$ 111.50	\$ 111.50				
Herm Hughes & Sons 10-037	11/07/1997	\$ 3,633.33	\$ 3,633.33				
Larson & Malmquist Review 10-020	11/07/1997	\$ 410.94	\$ 410.94				
Magna Water Sub Fees 10-020	11/07/1997	\$ 304.60	\$ 304.60				
General Remodeling 10-029	11/07/1997	\$ 3,790.00	\$ 3,790.00				
Larson & Malmquist Review 10-020	11/30/1997	\$ 23.50	\$ 23.50				
Larson & Malmquist Review 10-020	11/30/1997	\$ 104.31	\$ 104.31				
Old Republic Title Co Title Search 10-033	11/30/1997	\$ 47.27	\$ 47.27				
Wells Fargo Loan Nov Int.	11/30/1997	\$ 17.58			\$ 17.58		
Wells Fargo Loan Nov Fees	11/30/1997	\$ 266.66			\$ 266.66		
Joe Rhodes Consulting 10-031	12/31/1997	\$ 105.06					\$ 105.06
Fred A. Morton Insurance	12/31/1997	\$ 109.00	\$ 109.00				
Wells Fargo Loan Dec Int.	12/31/1997	\$ 109.10			\$ 109.10		
Admin Expenses JE 12-023/10-023	12/31/1997	\$ 367.57		\$ 367.57			
Larson & Malmquist Review	01/20/1998	\$ 45.00	\$ 45.00				
Herm Hughes & Sons 10-037	01/28/1998	\$ 4,653.68	\$ 4,653.68				
Wells Fargo Loan Jan Int. 01-028	01/31/1998	\$ 109.98			\$ 109.98		
Utah Power & Light 10-037	02/04/1998	\$ 100.00	\$ 100.00				
Wells Fargo Loan Mar Int. 03-035	03/31/1998	\$ 112.66			\$ 112.66		
Herm Hughes & Sons 10-037	04/22/1998	\$ 3,200.00	\$ 3,200.00				
Magna Water	05/11/1998	\$ 3,500.00				\$ 3,500.00	
McClellan Const.	05/20/98	\$5,174.40				\$5,174.40	
McClellan Const.	05/31/98	\$8,772.00				\$8,772.00	
Fred A. Morton Insurance 10-029	06/20/1998	\$ 3.46	\$ 3.46				
Fred A. Morton Insurance 10-029	06/20/1998	\$ 26.40	\$ 26.40				
McClellan Const.	06/30/98	\$9,016.00				\$9,016.00	
Wells Construction Advertise 10-027	07/22/1998	\$ 157.34	\$ 157.34				
Insurance Settlement	08/30/1998	\$ (5,965.09)	\$ (5,965.09)				
Wells Fargo App Eng Fee	08/31/1998	\$ 118.10			\$ 118.10		
McClellan Const.	09/03/98	\$11,000.00				\$11,000.00	
Federal Express 10-036	09/09/1998	\$ 0.49		\$ 0.49			
Heath Fackrell	09/24/98	\$3,158.02				\$3,158.02	
Herm Hughes & Sons 10-037	09/30/1998	\$ 7,128.71	\$ 7,128.71				
Salt Lake County Impact Fee	09/30/1998	\$ 1,151.00	\$ 1,151.00				
Sign-A-Rama Advertising 10-027	09/30/1998	\$ 27.38	\$ 27.38				
Kayco Construction	10/29/1998	\$ 548.53	\$ 548.53				
Credit Reports JE 10-018	10/30/1998	\$ 10.92		\$ 10.92			
Admin Salaries JE 10-024	10/30/1998	\$ 851.94		\$ 851.94			
Admin Empl Ben JE 10-026	10/30/1998	\$ 47.25		\$ 47.25			
Copies JE 10-28	10/30/1998	\$ 0.40		\$ 0.40			
Admin P/R Taxes JE 10-030	10/30/1998	\$ 71.56		\$ 71.56			
Tax Settlement 10-035 *	10/30/1998	\$ 44.75					\$ 44.75
Conserve A Wait	10/31/1998	\$ 3.82	\$ 3.82				

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				
			HOI Dev. Costs	HOI Admin Costs	HOI Loan Costs	108	Home Funds
Experian Credit Reports	10/31/1998	\$ 0.58		\$ 0.58			
First Security Bankcard	10/31/1998	\$ 18.93	\$ 18.93				
Larson & Malmquist	10/31/1998	\$ 33.35	\$ 33.35				
Plumbers Supply	10/31/1998	\$ 4.50	\$ 4.50				
Plumbers Supply	10/31/1998	\$ 2.11	\$ 2.11				
Plumbers Supply	10/31/1998	\$ (1.33)	\$ (1.33)				
Evelyn Tuddenham	10/31/1998	\$ 18.01	\$ 18.01				
United Rentals	10/31/1998	\$ 29.28	\$ 29.28				
United Rentals	10/31/1998	\$ 1.17	\$ 1.17				
Defa Construction	11/18/1998	\$ 386.53	\$ 386.53				
Eagle Hardware	11/24/1998	\$ 4.72	\$ 4.72				
Salt Lake County P-tax	11/24/1998	\$ 167.46	\$ 167.46				
Defa Construction	11/25/1998	\$ 346.84	\$ 346.84				
Defa Construction	11/25/1998	\$ 1,296.00	\$ 1,296.00				
McClellan Const.	11/30/1998	\$ 8,200.00	\$ 8,200.00				
Evelyn Tuddenham	11/30/1998	\$ 36.02	\$ 36.02				
Allocate Mileage Expense 11-03B	11/30/1998	\$ 63.59		\$ 63.59			
Allocate Copy Expense 11-040	11/30/1998	\$ 1.27		\$ 1.27			
Allocate Admin Salaries 11-041	11/30/1998	\$ 206.84		\$ 206.84			
Allocate Emp Benefits 11-039A	11/30/1998	\$ 28.49		\$ 28.49			
Allocate P/r Taxes 11-039B	11/30/1998	\$ 19.76		\$ 19.76			
Inventory Usage 11-021	11/30/1998	\$ 228.12	\$ 228.12				
John & Shauna Groberg - Materials	12/18/1998	\$ 2,616.19	\$ 2,616.19				
McClellan Const.	12/18/1998	\$ 9,502.60	\$ 9,502.60				
Experian Credit Reports	12/22/1998	\$ 0.70		\$ 0.70			
Reclass Expenses Sold Lots 12-095	12/30/1998	\$ 266.06		\$ 266.06			
Strictly Hardwood Corp.	12/31/1998	\$ 1,924.50	\$ 1,924.50				
Wells Fargo Interest 12-037	12/31/1998	\$ 1,414.35			\$ 1,414.35		
Wells Fargo Loan Fees 12-038	12/31/1998	\$ 15.43			\$ 15.43		
Allocate Copy Expense 12-039	12/31/1998	\$ 0.30		\$ 0.30			
Allocate Emp Benefits 12-040	12/31/1998	\$ 4.28		\$ 4.28			
Allocate Admin Salaries 12-042	12/31/1998	\$ 460.39		\$ 460.39			
Larson & Malmquist	01/15/1999	\$ 27.51	\$ 27.51				
Larson & Malmquist	01/15/1999	\$ 2.50	\$ 2.50				
Larson & Malmquist	01/15/1999	\$ 20.11	\$ 20.11				
Larson & Malmquist	01/15/1999	\$ 26.55	\$ 26.55				
Larson & Malmquist	01/15/1999	\$ 12.51	\$ 12.51				
Larson & Malmquist	01/15/1999	\$ 75.57	\$ 75.57				
Larson & Malmquist	01/15/1999	\$ 20.24	\$ 20.24				
Allocate P/r Taxes 01-027	01/30/1999	\$ 8.09		\$ 8.09			
Allocate Admin Salaries 01-027	01/30/1999	\$ 82.38		\$ 82.38			
Allocate Mileage Expense 01-027	01/30/1999	\$ 12.20		\$ 12.20			
Allocate Emp. Ben 01-027	01/30/1999	\$ 6.22		\$ 6.22			
Allocate Copy Expense 01-027	01/30/1999	\$ 0.45		\$ 0.45			
Reclass Expenses Sold Lots 01-045	01/30/1999	\$ 54.86		\$ 54.86			
John & Shauna Groberg - Materials	01/31/1999	\$ 4,077.51	\$ 4,077.51				
Allocate Mileage 1-95	01/31/1999	\$ 7.72		\$ 7.72			
Wells Fargo Loan Rev Oct Nov Dec 1-96	01/31/1999	\$ (334.27)			\$ (334.27)		
Wells Fargo Interest 1-97	01/31/1999	\$ 365.94			\$ 365.94		
Federal Express	02/18/1999	\$ 0.48		\$ 0.48			
John & Shauna Groberg - Materials	02/18/1999	\$ 306.00	\$ 306.00				
John & Shauna Groberg - Materials	02/18/1999	\$ 1,924.50	\$ 1,924.50				
Clasic Cabinets	02/24/1999	\$ 3,467.83	\$ 3,467.83				
Robert Kusner	02/24/1999	\$ 576.00	\$ 576.00				
New Age Plastering Inc.	02/24/1999	\$ 2,300.00	\$ 2,300.00				
Newman Wood Systems	02/24/1999	\$ 325.00	\$ 325.00				
Allocate P/r Taxes 2-91A	02/28/1999	\$ 20.64		\$ 20.64			
Allocate Admin Salaries 2-91B	02/28/1999	\$ 216.51		\$ 216.51			
Allocate Mileage Expense 2-91C	02/28/1999	\$ (9.36)		\$ (9.36)			
Allocate Rullmanoni 2-91D	02/28/1999	\$ 2.09		\$ 2.09			
Allocate Emp. Ben 2-91E	02/28/1999	\$ 10.37		\$ 10.37			
Allocate Copy Expense 2-91F	02/28/1999	\$ 0.93		\$ 0.93			
Wells Fargo Loan Interest 2-91G	02/28/1999	\$ (244.04)			\$ (244.04)		
Allocate Credit Reports 2-92C	02/28/1999	\$ 0.18		\$ 0.18			

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				108	Home Funds
			HOI Dev. Costs	HOI Admin Costs	HOI Loan Costs			
Redress Expenses Unsold Lots 2-92D	02/28/1999	\$ 0.24		\$ 0.24				
Bergon Distributing Inc	03/03/1999	\$ 3,584.82	\$ 3,584.82					
Stephen R. Voskell	03/12/1999	\$ 1,318.00	\$ 1,318.00					
John & Shauna Groberg - Materials	03/25/1999	\$ 3,621.06	\$ 3,621.06					
Richards Electrical	03/25/1999	\$ 1,300.00	\$ 1,300.00					
John & Shauna Groberg - Materials	03/26/1999	\$ 888.00	\$ 888.00					
John & Shauna Groberg - Materials	03/26/1999	\$ 2,022.58	\$ 2,022.58					
Allocate P/R Taxes 3-45A	03/31/1999	\$ 13.96		\$ 13.96				
Allocate Admin Salaries 3-45B	03/31/1999	\$ 144.35		\$ 144.35				
Allocate Mileage 3-45C	03/31/1999	\$ 30.49		\$ 30.49				
Allocate Emp Ben 3-45D	03/31/1999	\$ 7.55		\$ 7.55				
Allocate Emp Ben 3-45E	03/31/1999	\$ 7.62		\$ 7.62				
Allocate Copies 3-45F	03/31/1999	\$ 1.97		\$ 1.97				
Wells Fargo Loan Interest 3-45G	03/31/1999	\$ 709.20			\$ 709.20			
John & Shauna Groberg - Materials	04/08/1999	\$ 307.48	\$ 307.48					
Experian Credit Reports	04/29/1999	\$ 0.58		\$ 0.58				
Allocate P/R Taxes 4-54A	04/30/1999	\$ 17.87		\$ 17.87				
Allocate Admin Salaries 4-54B	04/30/1999	\$ 186.96		\$ 186.96				
Allocate Emp Ben 4-54E	04/30/1999	\$ 7.14		\$ 7.14				
Allocate Copies 4-54F	04/30/1999	\$ 0.64		\$ 0.64				
Wells Fargo Loan 4-54G	04/30/1999	\$ 312.50			\$ 312.50			
Allocate Credit Reports 4-54H	04/30/1999	\$ 0.49		\$ 0.49				
Allocate P/R Taxes 5-42A	05/30/1999	\$ 16.58		\$ 16.58				
Allocate Admin Salaries 5-42B	05/30/1999	\$ 178.82		\$ 178.82				
Allocate Mileage 5-42C	05/30/1999	\$ 8.06		\$ 8.06				
Allocate Emp Ben 5-42E	05/30/1999	\$ 5.67		\$ 5.67				
Allocate Copies 5-42F	05/30/1999	\$ 0.12		\$ 0.12				
Wells Fargo Loan Int 5-42G	05/30/1999	\$ 243.01			\$ 243.01			
Voided Check 5-43A	05/31/1999	\$ (500.00)	\$ (500.00)					
Allocate P/R Taxes 6-105A	06/30/1999	\$ 23.33		\$ 23.33				
Allocate Admin Salaries 6-105B	06/30/1999	\$ 245.64		\$ 245.64				
Allocate Mileage 6-105C	06/30/1999	\$ 16.15		\$ 16.15				
Allocate Emp Ben 6-105E	06/30/1999	\$ 11.85		\$ 11.85				
Allocate Copies 6-105F	06/30/1999	\$ 0.83		\$ 0.83				
Wells Fargo Loan Int 6-105G	06/30/1999	\$ 243.01			\$ 243.01			
Appraisal Professionals	07/15/1999	\$ 225.00	\$ 225.00					
Experian Credit Reports	07/15/1999	\$ 0.12		\$ 0.12				
Allocate Admin P/R Taxes 7-47A	07/31/1999	\$ 11.71		\$ 11.71				
Allocate Admin Salaries 7-47B	07/31/1999	\$ 125.56		\$ 125.56				
Allocate Admin Mileage 7-47C	07/31/1999	\$ 13.92		\$ 13.92				
Allocate Admin Medical 7-47D	07/31/1999	\$ 5.43		\$ 5.43				
Allocate Admin Interest 7-47G	07/31/1999	\$ 69.48			\$ 69.48			
Allocate Admin Credit Reports 7-47H	07/31/1999	\$ 0.07		\$ 0.07				
Allocate Admin Interest 7-49G	07/31/1999	\$ (138.96)			\$ (138.96)			
Allocate Admin P/R Taxes 8-49A	08/31/1999	\$ 8.07		\$ 8.07				
Allocate Admin Salaries 8-49B	08/31/1999	\$ 81.45		\$ 81.45				
Allocate Admin Mileage 8-49C	08/31/1999	\$ 11.19		\$ 11.19				
Allocate Admin Medical 8-49E	08/31/1999	\$ 7.01		\$ 7.01				
Allocate Admin Copies 8-49F	08/31/1999	\$ 0.83		\$ 0.83				
Allocate Admin Interest 8-49G	08/31/1999	\$ 280.01			\$ 280.01			
Allocate Admin P/R Taxes 9-42A	09/30/1999	\$ 12.10		\$ 12.10				
Allocate Admin Salaries 9-42B	09/30/1999	\$ 128.10		\$ 128.10				
Allocate Admin Mileage 9-42C	09/30/1999	\$ 6.54		\$ 6.54				
Allocate Admin Medical 9-42E	09/30/1999	\$ 3.85		\$ 3.85				
Allocate Admin Copies 9-42F	09/30/1999	\$ 2.34		\$ 2.34				
Allocate Admin Interest 9-42G	09/30/1999	\$ 161.80			\$ 161.80			
McClellan Const.	10/07/1999	\$ 12,980.00	\$ 12,980.00					
Art House Design	10/28/1999	\$ 28.12	\$ 28.12					
Herm Hugh	10/28/1999	\$ 487.50	\$ 487.50					
Newspaper Agency Corp.	10/28/1999	\$ 34.67	\$ 34.67					
Allocate Admin P/R Taxes 10-37A	10/31/1999	\$ 18.11		\$ 18.11				
Allocate Admin Salaries 10-37B	10/31/1999	\$ 191.99		\$ 191.99				
Allocate Admin Mileage 10-37C	10/31/1999	\$ 12.18		\$ 12.18				
Allocate Admin Medical 10-37E	10/31/1999	\$ 10.67		\$ 10.67				

Lot 13

Lot Escrow Costs

Name	Date	Amount	Paid From				
			HOI Dev Costs	HOI Admin Costs	HOI Loan Costs	108	Home Funds
Allocate Admin Copies 10-37F	10/31/1999	\$ 1 71		\$ 1 71			
Allocate Admin Interest 10-37G	10/31/1999	\$ 472 64			\$ 472 64		
Allocate Madison Supplies 10-37H	10/31/1999	\$ 5 84		\$ 5 84			
Salt Lake County P tax	11/09/1999	\$ 990 07	\$ 990 07				
Allocate Admin PR Taxes 11-28A	11/30/1999	\$ 22 63		\$ 22 63			
Allocate Admin Salaries 11-28B	11/30/1999	\$ 238 32		\$ 238 32			
Allocate Admin Mileage 11-28C	11/30/1999	\$ 16 86		\$ 16 86			
Allocate Admin Medical 11-28E	11/30/1999	\$ 11 67		\$ 11 67			
Allocate Admin Copies 11-28F	11/30/1999	\$ 0 78		\$ 0 78			
Allocate Admin Interest 11-28G	11/30/1999	\$ 243 43			\$ 243 43		
Magna Water	12/09/1999	\$ 22 94	\$ 22 94				
Utah Power & Light	12/09/1999	\$ 12 32	\$ 12 32				
Keyco Construction	12/30/1999	\$ 1 125 00	\$ 1 125 00				
Magna Water	12/30/1999	\$ 22 94	\$ 22 94				
Questar Gas	12/30/1999	\$ 55 67	\$ 55 67				
Scalley & Reading PC	12/30/1999	\$ 123 75		\$ 123 75			
Utah Power & Light	12/30/1999	\$ 14 52	\$ 14 52				
Allocate Admin PR Taxes 12-25A	12/31/1999	\$ 8 31		\$ 8 31			
Allocate Admin Salaries 12-25B	12/31/1999	\$ 89 86		\$ 89 86			
Allocate Admin Mileage 12-25C	12/31/1999	\$ 20 43		\$ 20 43			
Allocate Admin Medical 12-25E	12/31/1999	\$ 3 09		\$ 3 09			
Allocate Admin Copies 12-25F	12/31/1999	\$ 0 23		\$ 0 23			
Allocate Admin Interest 12-25G	12/31/1999	\$ 467 54			\$ 467 54		
Questar Gas	01/20/2000	\$ 115 78	\$ 115 78				
Olene Walker Interest	01/25/2000	\$ 496 08			\$ 496 08		
Commission	01/25/2000	\$ 9,135 00	\$ 9,135 00				
Closing Costs	01/25/2000	\$ 1,212 65	\$ 1,212 65				
Magna Water	01/28/2000	\$ 23 87	\$ 23 87				
Utah Power & Light	01/28/2000	\$ 17 21	\$ 17 21				
Allocate Admin PR Taxes 1-36A	01/31/2000	\$ 10 72		\$ 10 72			
Allocate Admin Salaries 1-36B	01/31/2000	\$ 115 00		\$ 115 00			
Allocate Admin Medical 1-36E	01/31/2000	\$ 6 33		\$ 6 33			
Allocate Admin Copies 1-36F	01/31/2000	\$ 0 28		\$ 0 28			
Allocate Admin Interest 1-36G	01/31/2000	\$ (233 77)			\$ (233 77)		
Questar Gas	02/03/2000	\$ 66 19	\$ 66 19				
Strike Force Construction	02/03/2000	\$ 1 378 00	\$ 1 378 00				
Christina Sweet	02/03/2000	\$ 350 00	\$ 350 00				
Utah Power & Light	02/10/2000	\$ 2 74	\$ 2 74				
Allocate Admin PR Taxes 2-25A	02/29/2000	\$ 6 15		\$ 6 15			
Allocate Admin Salaries 2-25B	02/29/2000	\$ 68 02		\$ 68 02			
Allocate Admin Mileage 2-25C	02/29/2000	\$ 12 71		\$ 12 71			
Allocate Admin Medical 2-25E	02/29/2000	\$ 3 29		\$ 3 29			
Allocate Admin Copies 2-25F	02/29/2000	\$ 0 08		\$ 0 08			
Allocate Admin Interest 2-25G	02/29/2000	\$ 355 44		\$ 355 44			
Magna Water	03/09/2000	\$ 44 40	\$ 44 40				
Strike Force Construction	03/31/2000	\$ 1 345 00	\$ 1 345 00				
Allocate Admin PR Taxes 3-41A	03/31/2000	\$ 8 05		\$ 8 05			
Allocate Admin Salaries 3-41B	03/31/2000	\$ 92 92		\$ 92 92			
Allocate Admin Mileage 3-41C	03/31/2000	\$ 17 69		\$ 17 69			
Allocate Admin Medical 3-41E	03/31/2000	\$ 6 21		\$ 6 21			
Allocate Admin Copies 3-41F	03/31/2000	\$ 2 23		\$ 2 23			
Total Expenses		\$ 176,735 28	\$ 103,004 02	\$ 6,272 50	\$ 5,277 48	\$ 40,620 42	\$ 21,560 86
G/L Balance		\$ 176,735 28					\$ 7 22
Variance		\$ -		* Additional Shown By County			