

MEMORANDUM

To: Utah Residence Lien Recovery Fund Advisory Board
From: Lien Recovery Fund Staff
Date: December 2, 2014
Subject: Information Packet for Upcoming Board Meeting

Enclosed please find the application reports and other documents for the upcoming Board meeting. That meeting is scheduled to begin at **8:15 am on Wednesday, December 10, 2014** in the **North Conference Room**, on the first floor of the Heber M. Wells Building - **160 East 300 South, Salt Lake City, Utah**. We anticipate the meeting will last until 9:30 a.m.

We appreciate your service on the Board - see you at the meeting.

Agenda

Utah Residence Lien Recovery Fund Advisory Board

December 10, 2014 8:15 am
North Conference Room, First Floor
Heber M. Wells Building
160 E. 300 S. Salt Lake City, Utah

This agenda is subject to change up to 24 hours prior to the meeting.

ADMINISTRATIVE BUSINESS

1. Review and approve minutes from previous board meeting
2. Travel reimbursement

HOMEOWNER APPLICATIONS APPROVED PRIOR TO BOARD MEETING

- a) Jacob Hathaway v Peachtree Construction LLC
- b) Ben Welch v Picasso Custom Homes

HOMEOWNER AFFIDAVIT OF COMPLIANCE APPROVED PRIOR TO BOARD MEETING

- a) Jacqueline & Eric Thompson v Wesley Green Roofing Inc

HOMEOWNER APPLICATIONS FOR REVIEW

1. Recommended for Denial and Explanation Required
 - a) BOYJEN001 Justin & Miranda Jenson v Boyd C Johnson Construction LLC - Dane
 - b) BRALUN001 Brian & Lisa Lundahl v Brad Marshall dba Brad Marshall Construction - Dane
 - c) FRAMIC001 Franklin Heights Crown LLC v Michael Cutler Construction Inc - Dane
2. Recommended for Approval and Explanation Required
 - a) CREDAV001 Steve Davis v Creative Living Construction LLC - Dane

CLAIMS FOR REVIEW

1. Recommended for Denial and Explanation Required
 - a) LRF-2014-0721-01 International Installations LLC v Picasso Custom Homes LLC (Dixon) - Dane
 - b) LRF-2014-0728-01 Premier Building Supply LLC v Picasso Custom Homes LLC (Campbell) - Dane
 - c) LRF-2014-0728-02 Premier Building Supply LLC v Picasso Custom Homes LLC (Sheid) - Dane

- d) LRF-2014-0728-03 Premier Building Supply LLC v Picasso Custom Homes LLC (Nicol) - Dane
- e) LRF-2014-0728-04 Premier Building Supply LLC v Picasso Custom Homes LLC (Geertsen) - Dane
- f) LRF-2014-0731-01 Dependable Plumbing Inc v Picasso Custom Homes LLC (Scheid) - Dane
- g) LRF-2014-0731-02 Dependable Plumbing Inc v Picasso Custom Homes LLC (Campbell) - Dane
- h) LRF-2014-0731-03 Dependable Plumbing Inc v Picasso Custom Homes LLC (Geertsen) - Dane
- i) LRF-2014-0812-03 Gunner Heating & Air Conditioning LLC v Picasso Custom Homes LLC (Geertsen) - Dane

2. Recommended for Approval and No Explanation Required

- a) LRF-2014-0828-01 Reeve Built LLC v SMA Enterprises dba Elite Builder Group - Dane
- b) LRF-2014-0911-01 ProBuild Company LLC v Picasso Custom Homes LLC (Geersten) - Dane

NEXT SCHEDULED MEETING:

January 14, 2014

Note: In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify, Dave Taylor, ADA Coordinator, at least three working days prior to the meeting. Division of Occupational & Professional Licensing, 160 East 300 South, Salt Lake City, Utah 84115, 801-530-6628 or toll-free in Utah only 866-275-3675

MINUTES

**UTAH
RESIDENCE LIEN RECOVERY FUND
ADVISORY BOARD
MEETING**

**October 8, 2014
North Conference Room– 8:15 a.m.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED:

ADJOURNED :

Board Members Present:

Bradley Stevens, Chair
Calvin Bowen, Vice Chair
Douglas Darrington
Jeff Park
DeAnna Leahy

Board Members absent:

Dave McArthur
Patty Fullmer

DOPL Staff Present:

Program Manager, Dane Ishihara
Fund Secretary, Tracy Naff
AG, Sterling Corbett

Guests:

Gorm Klungervik, homeowner
Kent Wallen, counsel for Gorm Klungervik

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Review and approve minutes from the August 13, 2014 Board meeting.

Mr Darrington made a motion to approve the August 13, 2014 Board minutes. Mr Bowen seconded the motion. Motion passed by unanimous vote.

Homeowner applications for Review

1. Recommended for Denial and Explanation Required
 - a) LEWCHR001- Mr. Ishihara gave a brief explanation of the application. Mr Darrington made a motion to deny the application. Mr Bowen seconded the motion. Motion passed by unanimous vote.

2. Recommended for Approval & Explanation Required

- a) ASHKL001 - Mr. Ishihara gave a brief explanation of the application. Mr Bowen made a motion to approve the application. Ms Leahy seconded the motion. Motion passed by unanimous vote.

Claims for view

1. Recommended for Approval & No Explanation Required

- a) LRF-2014-0721-02 International Installations LLC v Picasso Custom Homes LLC (Scheid) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- b) LRF-2014-0721-03 International Installations LLC v Picasso Custom Homes LLC (Saunders) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- c) LRF-2014-0721-04 International Installations LLC v Picasso Custom Homes LLC (Campbell) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- d) LRF-2014-0721-05 Newel Woodworks v Picasso Custom Homes LLC (McOmbler) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- e) LRF-2014-0722-01 CH Drywall Inc v Picasso Custom Homes LLC (Campbell) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- f) LRF-2014-0722-02 CH Drywall Inc v Picasso Custom Homes LLC (McOmbler) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- g) LRF-2014-0801-01 V3 Construction Inc v Picasso Custom Homes LLC (Campbell) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- h) LRF-2014-0804-02 Clean Cut Painting LLC v Picasso Custom Homes LLC (Campbell) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.

- i) LRF-2014-0804-03 Columbia River Enterprises Inc v Picasso Custom Homes LLC (Campbell) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- j) LRF-2014-0811-01 Crown Vinyl Fence & Shed Inc v Picasso Custom Homes LLC (Quist) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- k) LRF-2014-0811-02 Buehner Countertops Inc v Picasso Custom Homes LLC (Saunders) – Mr made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- l) LRF-2014-0811-03 Platinum Carpentry LLC v Picasso Custom Homes LLC (Scheid) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- m) LRF-2014-0812-01 Gunner Heating & Air Conditioning LLC v Picasso Custom Homes LLC (Campbell) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- n) LRF-2014-0812-02 Gunner Heating & Air Conditioning LLC v Picasso Custom Homes LLC (Quist) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- o) LRF-2014-0812-04 Gunner Heating & Air Conditioning LLC v Picasso Custom Homes LLC (Sheid) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- p) LRF-2014-0815-01 Ash Construction v Picasso Custom Homes LLC (Nicol) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- q) LRF-2014-0815-02 Ash Construction v Picasso Custom Homes LLC (McOmber) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- r) LRF-2014-0815-03 Ash Construction v Picasso Custom Homes LLC (Scheid) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.

- s) LRF-2014-0815-04 Ash Construction v Picasso Custom Homes LLC (Saunders) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- t) LRF-2014-0815-05 Ash Construction v Picasso Custom Homes LLC (Campbell) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- u) LRF-2014-0818-01 Alpine Enterprises Inc v Picasso Custom Homes LLC (McOmber) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- v) LRF-2014-0818-02 Intermountain Ornamental and Fabrication Corp v Picasso Custom Homes LLC (McOmber) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.
- w) LRF-2014-0818-03 Reed’s Built In’s Inc v Picasso Custom Homes LLC (Saunders) – Mr Darrington made a motion to approve the application. Mr Park seconded the motion. Motion passed by unanimous vote.

Meeting adjourned: 8:33

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

Date Approved

(ss) Brad Stevens
Chairperson, Residence Lien Recovery Fund Advisory Board

Date Approved

(ss) Dane Ishihara
Program Coordinator, Division of Occupational & Professional Licensing

Claim Disposition Report

December 4, 2014

Processing Status	Active Pending Action By	Disposition	Number of Claims	
Active	Board		13	0.5%
Active	Claimant		2	0.1%
Active	LRF		2	0.1%
Active		Paid	1	0.0%
Closed		Denied	554	19.5%
Closed		Dismissed	243	8.5%
Closed		Paid	2,025	71.1%
Prolonged			8	0.3%
Total Claims Filed			2,848	

Applications for Certificate of Compliance Disposition Report

December 4, 2014

Processing Status	Active Pending Action By	Disposition	Number of Apps	
Active	Board		3	0.2%
Active	Homeowner		1	0.1%
Active	LRF		63	3.4%
Closed		Approved	1162	62.0%
Closed		Denied	557	29.7%
Closed		Withdrawn	81	4.3%
Prolonged			6	0.3%
Total Applications Filed			1,873	

Summary of Payments

Sorted by Claimant Type

December 4, 2014

Claimant Type	Number of Paid Claims	Total Payments	
Contractor	868	5,054,958.87	39.7%
Laborer	10	17,070.17	0.1%
Other	1	3,001.75	0.0%
Supplier	1147	7,671,679.03	60.2%
Total Paymen	2026	\$12,746,709.81	100.0%

Summary of Payments

Sorted by Nonpaying Party Type

December 4, 2014

Nonpaying Party Type	Number of Paid Claims	Total Payments	
Home Builder	1224	7,891,282.28	61.9%
Other	25	179,357.47	1.4%
Real Estate Developer	72	462,183.51	3.6%
Specialty Contractor	705	4,213,886.55	33.1%
Total Payments	2026	\$12,746,709.81	100.0%

CERTIFICATE OF COMPLIANCE

RECOMMENDED FOR DENIAL

- EXPLANATION REQUIRED-

Application Report

Property ID: BOYJEN001

Application Examined by: new

Homeowner Application

December 3, 2014

Homeowner: Justin & Miranda Jenson

Original Contractor: Boyd C Johnson Construction LLC

License Number: 378066

License Issue Date: 9/16/1999

Type: Licensed Contractor

License End Date: 11/30/2015

Abstract and Recommendation

Division's Recommendation: Deny

Having reviewed evidence submitted by the homeowners, it is the Division's opinion that the evidence submitted fails to meet the homeowners' burden of proof. Specifically, the Division finds that the work that was performed fails to qualify as a "residence" as defined UTAH CODE ANN. § 38-11-102 (22). For this reason, the Division recommends the application be denied.

Factual Review and Analysis

Utah Code Ann. § 38-11-102 (22) (a) states:

"Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with:

- (i) a primary or secondary detached single family dwelling; or
- (ii) a multifamily dwelling up to and including duplexes.

The homeowners submitted a statement from Julie Jenson, with Jenson Refrigeration Inc, explaining why some of the checks were issued by Jenson Refrigeration Inc. The Division finds that the statement establishes that the work that was performed fails to qualify as improvement to real property that is used in conjunction with a single family dwelling. The statement clearly establishes that the contract was for a garage that is going to be used by Jenson Refrigeration Inc. Thus, the Division recommends that the application be denied.

Exhibit A

October 24, 2014

To whom it may concern,

I am writing as to reference #1920513. Jenson Refrigeration has been looking for space closer to the south end of the valley to expand our facility. We have not been able to do that as of yet so we decided to build a garage where we could store a couple items until we are able to expanded our location. This garage was built at the home of Justin and Miranda Jenson parcel #27302260050000 in Riverton. Jenson Refrigeration wrote the checks out to Boyd C. Johnson Construction after the completion of the job. The checks have cleared the bank, and the contract has been paid in full.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Jenson". The signature is fluid and extends across the width of the page.

Julie Jenson

Jenson Refrigeration Inc.

801-550-4553

Application Report
Property ID: BRALUN001
Application Examined by: Dane

Homeowner Application
December 2, 2014

Homeowner: Brian & Lisa Lundahl

Original Contractor: Brad Marshall dba Brad Marshall Construction
License Number: 278626 Type: Licensed Contractor
License Issue Date: 10/28/1994 License End Date: 11/30/2015

Abstract and Recommendation

Division's Recommendation: Deny

The Division recommends that the application be denied because the homeowners failed to meet their burden of proof in meeting the requirements of Utah Code Ann. § 38-11-204 (4) (a) & (b).

Written Contract

Utah Code Ann. § 38-11-204 (3) & (4) (a) require:

To obtain a certificate of compliance an owner ... shall establish that ...the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:

For the purpose of administering the Residence Lien Recovery Fund, Utah Administrative Code R156-38a-102 (11) provides:

"Written contract", as used in Subsection 38-11-204(4)(a)(i), means one or more documents for the same construction project which collectively contain all of the following:

- (a) an offer or agreement conveyed for qualified services that will be performed in the future;
- (b) an acceptance of the offer or agreement conveyed prior to the commencement of any qualified services; and
- (c) identification of the residence, the parties to the agreement, the qualified services that are to be performed, and an amount to be paid for the qualified services that will be performed.

As evidence of a written contract, the homeowners provided multiple invoices. The invoices do not exhibit "an acceptance of the offer or agreement conveyed prior to the commencement of any qualified services."

Payment in Full

UTAH CODE ANN. § 38-11-204 (4) (b) requires:

The owner has paid in full the original contractor . . . , real estate developer, or factory built housing retailer . . . with whom the owner has a written contract in accordance with the written contract and any amendments to the contract.

Under UTAH ADMIN. RULE § R156-38a-110(3) a homeowner must provide, at minimum:

- (a) except as provided in Subsection (7), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or
- (b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract

The homeowner failed to meet their burden of proof and did not establish that the original contractor was paid in full.

Owner Occupied Residence

Affidavit of Compliance, Certification, and Release of Information included with the application was incomplete. Thus, the affidavit failed to establish that the residence was owner-occupied.

Based on the above analysis, the Division recommends that the application be denied.

Application Report

Property ID: FRAMIC001

Application Examined by: new

Homeowner Application

December 3, 2014

Homeowner: Franklin Heights Crown LLC

Original Contractor: Michael Cutler Construction Inc

License Number: 314210

License Issue Date: 1/10/1996

Type: Licensed Contractor

License End Date: 11/30/2015

Abstract and Recommendation

Division's Recommendation: Deny

The application listed four properties and the applicant only submitted one application fee. Thus, three of the properties fail to have standing with the Division and the Division will proceed reviewing the application for the first property listed in the application; 541 W 500 S, Provo, UT, 84601.

To qualify for a Certificate of Compliance, the residence at issue in an application must be an "owner-occupied residence." One of the requirements for an owner-occupied residence is the owner or the owner's tenant/lessee must occupy the residence within 180 days of completion of construction. In this case the applicant failed to meet their burden of proof and establish that the residence was "owner-occupied". Additionally, the application listed four properties and the applicant only submitted one application fee. Thus, three of the properties fail to have standing with the Division and the Division will proceed reviewing the application for the first property listed in the application.

Factual Review and Analysis

Relevant Law and Rule

Utah Code Ann. 38-11-102 (18) states:

"Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days from the date of the completion of the construction on the residence.

Utah Admin. Code R156-38a-110a (6) (a) requires:

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance seeking protection under Subsection 38-11-110(1)(a)(i):

(a) an affidavit from the homeowner establishing that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18); or

(b) other credible evidence establishing that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18).

Relevant Evidence

A. Affidavit of Compliance, Certification, and Release of Information (Exhibit A)

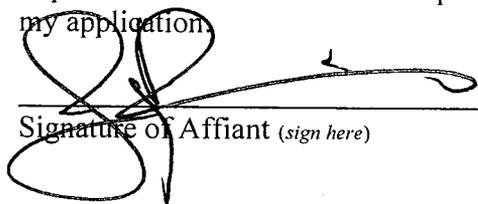
Division's Analysis

The finds that the Affidavit submitted by the applicant fails to establish that the property is an "owner-occupied residence". The owner is Franklin Heights Crown, LLC. Thus, additional evidence is required to establish who occupied the residence. The Division corresponded multiple times with the applicant and as of December 3, 2014 no additional evidence related to the "owner-occupied residence" requirement has been submitted. Thus, the Division recommends that the application be denied because the applicant failed to meet their burden of proof in establishing that the property qualifies as a "owner-occupied residence" as defined by Utah Code Ann. 38-11-102 (18).

Exhibit A

6. Type of Residence: *(check the appropriate box)*
 Detached single family dwelling
 Duplex (single building with two separate living units)
 More than two living units in building
7. Date construction of the project was complete: *(check one box & fill in date)*
 Certificate of Occupancy Date 4 / 17 / 14
 Final Inspection Date / /
 No substantial work left to complete Date / /
 Original contractor was terminated Date / /
8. Date the residence was/will be occupied: *(check one box & fill in date)*
 Do not intend to occupy
 Have occupied the residence since Date 5 / 1 / 14
 Will occupy the residence on Date / /
9. How the residence is/will be used: *(check the appropriate box)*
 Owner's primary residence
 Owner's secondary residence
 Tenant or Lessee's primary residence
 Tenant or Lessee's secondary residence
 Other (explain) _____

I hereby authorize all persons, institutions, governmental agencies, employers, or any others not specifically included in the preceding characterization, which are set forth directly or by reference in this application, to release to the Division of Occupational and Professional Licensing, State of Utah or the Residence Lien Recovery Fund Advisory Board, any files, records or information of any type reasonably required for the Division of Occupational and Professional Licensing or the Board to properly evaluate my application.



 Signature of Affiant *(sign here)*

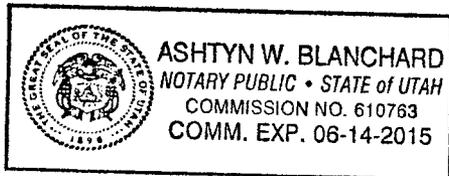
8 / 14 / 14
 Date

Subscribed and sworn to before me this 14th day of August, 2014

(SEAL)



 Signature of Notary Public



CERTIFICATE OF COMPLIANCE

RECOMMENDED FOR APPROVAL

- EXPLANATION REQUIRED-

Application Report
Property ID: CREDAV001
Application Examined by: Dane

Homeowner Application
December 4, 2014

Homeowner: Stephen R Davis

Original Contractor: Creative Living Construction LLC ("Creative")
License Number: 5144762-5501 Type: Licensed Contractor
License Issue Date: 7/16/2002 License End Date: 3/27/2014

Abstract and Recommendation

Division's Recommendation: Approve

Having reviewed the homeowner's application and supporting documents, the Division finds that all statutory requirements have been met, and recommends that the application be approved. However, the issue of Payment in Full requires explanation.

Factual Review and Analysis

Utah Code Ann. § 38-11-204(b) requires that an applicant show that:

the owner has paid in full the original contractor .
. . . with whom the owner has a written contract in
accordance with the written contract and any
amendments to the contract

The homeowner indicated in the application that Creative was terminated on April 22, 2014 and the project was incomplete. The homeowner had paid the original contractor \$747,189.99 of the contract amount of \$860,150; leaving a balance of \$112,960.01.

However, based on the evidence, it appears that the homeowner received substantially less than the amount of services for which they had paid. The homeowner submitted with their application various bids, invoices, and correspondence with subcontractors that show the amount of services remaining to complete the project was \$524,351.39. Based on the foregoing evidence, it is the Division's opinion that the homeowner paid the original contractor in full for the services performed. Therefore, the Division recommends the application be approved as presented in this report.

Additionally, one of the lien claimants submitted a response to the application. The response has been attached as exhibit B.

Exhibit A

<u>Payment Type</u>	<u>Payor</u>	<u>Payee</u>	<u>Date</u>	<u>Amount</u>
check2477	UCCU/steve davis	Avrum Mcclure	5/30/14	\$1,450.00
check2478	UCCU/steve davis	Burton Lumber	5/30/14	\$2,088.17
check2479	UCCU/steve davis	Center Point Stone	5/30/14	\$10,000.00
check	UCCU/steve davis	Harrington & Company	5/30/14	\$1,275.81
check	UCCU/steve davis	Summit Cabinet Inc	5/30/14	\$45,000.00
check2482	UCCU/steve davis	United Site Services	5/30/14	\$107.70
check2483	UCCU/steve davis	Webster Construction	5/30/14	\$9,990.60
check2729	UCCU/steve davis	Allied Waste	7/1/14	\$35.00
check2730	UCCU/steve davis	Avrum Mcclure	7/1/14	\$275.00
check2731	UCCU/steve davis	Contractors Window Supply	7/1/14	\$3,301.70
check2732	UCCU/steve davis	Dura-crete Inc	7/1/14	\$1,111.64
check2733	UCCU/steve davis	Frontier Wood Works Inc	7/1/14	\$8,853.82
check2734	UCCU/steve davis	Graharn Plumbing & Heating Inc	7/1/14	\$4,300.00
check2735	UCCU/steve davis	Harrington & Company	7/1/14	\$264.90
check2736	UCCU/steve davis	Heber Light & Power	7/1/14	\$41.07
check2737	UCCU/steve davis	JJ Sheet Metal LLC	7/1/14	\$6,375.00
check2739	UCCU/steve davis	Parcel Electric	7/1/14	\$24,185.79
check2740	UCCU/steve davis	United Site Services	7/1/14	\$95.60
check2741	UCCU/steve davis	Wards Carpet	7/1/14	\$16,000.00
check2742	UCCU/steve davis	Webster Construction	7/1/14	\$8,773.94
check2834	UCCU/steve davis	Luminescent Specialty Painting	7/15/14	\$3,596.90
check2909	UCCU/steve davis	Allied Waste	7/28/14	\$235.80
check2911	UCCU/steve davis	Burton Lumber	7/28/14	\$5,002.69
check2912	UCCU/steve davis	Contractors Window Supply	7/28/14	\$75.00
check2913	UCCU/steve davis	Heber Light & Power	7/28/14	\$68.00
check2914	UCCU/steve davis	Heber/Park City Appliance Sales & Service	7/28/14	\$12,448.29
check2915	UCCU/steve davis	Hillcrest	7/28/14	\$450.00
check2916	UCCU/steve davis	Midway Sanitation District	7/28/14	\$175.50
check2917	UCCU/steve davis	Prices Guaranteed Doors	7/28/14	\$2,734.00
check2918	UCCU/steve davis	Superior Buck & Steel Supply Inc	7/28/14	\$410.64
check2919	UCCU/steve davis	United Site Services	7/28/14	\$95.60
check2920	UCCU/steve davis	Webster Construction	7/28/14	\$12,105.26
check3117	UCCU/steve davis	Bob DcWland	8/19/14	\$17,500.00
check3118	UCCU/steve davis	BSR Masonry	8/19/14	\$18,000.00
check3119	UCCU/steve davis	Burton Lumber	8/19/14	\$190.21
check3120	UCCU/steve davis	Flateline Construction	8/19/14	\$32,000.00

check3121	UCCU/steve davis	Frontier Wood Works Inc	8/19/14	\$1,047.46
check3122	UCCU/steve davis	Heber Light & Power	8/19/14	\$45.46
check3123	UCCU/steve davis	L&L Electric	8/19/14	\$675.99
check3124	UCCU/steve davis	Midway City	8/19/14	\$251.34
check3125	UCCU/steve davis	Rain Gutter Specialties	8/19/14	\$1,555.00
check3126	UCCU/steve davis	Standard Drywall	8/19/14	\$20,000.00
check3127	UCCU/steve davis	Summit Cabinet Inc	8/19/14	\$24,600.00
check3128	UCCU/steve davis	United Site Services	8/19/14	\$95.60
check3129	UCCU/steve davis	Webster Construction	8/19/14	\$32,165.07
check3256	UCCU/steve davis	B & R Landscaping	9/5/14	\$4,515.00
check3387	UCCU/steve davis	Alpine Door Hardware LLC	9/19/14	\$4,428.32
check3388	UCCU/steve davis	B & R Landscaping	9/19/14	\$28,770.00
check3389	UCCU/steve davis	Bob Dowland	9/19/14	\$7,640.00
check3390	UCCU/steve davis	Burton Lumber	9/19/14	\$1,166.16
check3391	UCCU/steve davis	Center Point Stone	9/19/14	\$6,125.00
check3392	UCCU/steve davis	Graham Plumbing & Heating Inc	9/19/14	\$21,615.67
check3393	UCCU/steve davis	Heber/Park City Appliance Sales & Service	9/19/14	\$12,485.78
check3394	UCCU/steve davis	JJ Sheet Metal LLC	9/19/14	\$1,175.00
check3395	UCCU/steve davis	L & L Erection & Fabrication Inc	9/19/14	\$9,007.46
check3396	UCCU/steve davis	Luminescent Specialty Painting	9/19/14	\$20,461.00
check3397	UCCU/steve davis	Mountain Land Design	9/19/14	\$1,439.82
check3398	UCCU/steve davis	Parcel Electric	9/19/14	\$19,553.85
check3399	UCCU/steve davis	Republic Services	9/19/14	\$237.25
check3400	UCCU/steve davis	Spa Performance & Supply	9/19/14	\$550.00
check3401	UCCU/steve davis	Stone Connections	9/19/14	\$2,392.78
check3402	UCCU/steve davis	Sunroc Building Materials	9/19/14	\$10,897.94
check3403	UCCU/steve davis	United Site Services	9/19/14	\$95.60
check3404	UCCU/steve davis	Wards Carpet	9/19/14	\$21,839.50
check3405	UCCU/steve davis	Webster Construction	9/19/14	\$20,905.71

total				\$524,351.39
contract amount				\$860,150.00
amount pd				\$747,189.99
difference				\$112,960.01
paid to new contractor				\$524,351.39
				(\$112,960.01)
amount paid above original contract				\$411,391.38

Exhibit B

FORD G. SCALLEY
J. BRUCE READING
MARLON L. BATES
JOHN EDWARD HANSEN*
SCOTT N. RASMUSSEN**
DARWIN H. BINGHAM†
DAVID S. BRIDGE
S. GRACE ACOSTA †
JONATHAN H. RUPP†
MITCHELL T. BROOKS
JOSEPH A. SKINNER †
BEN A. PICKLESIMER
BRADLEY W. MADSEN †
DUSTIN D. GIBB **
ALISHA M. GILES

*ALSO ADMITTED IN WYOMING
**ALSO ADMITTED IN NEW YORK
†ALSO ADMITTED IN NEBRASKA,
CALIFORNIA & IDAHO
‡ALSO ADMITTED IN IDAHO
§ALSO ADMITTED IN NEVADA
¶ALSO ADMITTED IN ARIZONA

SCALLEY READING BATES HANSEN & RASMUSSEN

A PROFESSIONAL CORPORATION

May 22, 2014

PHYSICAL ADDRESS
15 WEST So. TEMPLE, STE 600
SALT LAKE CITY, UTAH 84101

MAILING ADDRESS
POST OFFICE BOX 11429
SALT LAKE CITY, UTAH 84147-0429

TELEPHONE (801) 531-7870
FACSIMILE (801) 326-4669

WWW.SCALLEYREADING.COM

SENDER'S EMAIL
dbingham@scalleyreading.net

Tracy Naff
DOPL – LRF
P.O. Box 146741
Salt Lake City, Utah 84114-6741

Re: Application for Certificate of Compliance
Homeowner: Stephen Davis
Original Contractor: Creative Living Construction, LLC
Located at: 1080 S. Clearwater Way, Midway, Utah
Property Tax Parcel No.: OZH-0047-0-003-004

Dear Mr./Ms. Naff:

This law firm represents ProBuild Company, LLC (“ProBuild”) with respect to a mechanic’s lien that ProBuild holds against the subject property. ProBuild’s lien is currently involved in a pending lawsuit which seeks, among other things, to foreclose the lien. A copy of the applicable Complaint is enclosed for your reference. A judgment was also recently obtained against Creative Living Construction and Russell Koehler, and a copy of the judgment is also included for your reference.

Please accept this letter as notification of ProBuild’s desire to participate in any adjudication of the pending application for Certificate of Compliance. One of primary concerns ProBuild has with the application is that the contract with the original contractor had not been completed and the home was uninhabitable at the time the application was submitted.

If you need anything further regarding ProBuild’s claim against the property, please feel free to contact me.

Sincerely,

SCALLEY READING BATES
HANSEN & RASMUSSEN, P.C.


Darwin H. Bingham

Enclosures

cc: Bruce Baird, Esq.
ProBuild Company



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

April 23, 2014

Subject: Notification of Application for Certificate of Compliance
Homeowners' Name(s): Stephen Davis
Original Contractor: Creative Living Construction LLC
Located at: 1080 S Clearwater Way, Midway UT 84049
Property Tax Parcel Number (if known): OZH-0047-0-003-044
Described as (if known): Lot 47

We are writing to inform you we have received an application for Certificate of Compliance for the above-referenced property. The application names your company as potentially claiming lien against this property. Therefore, you are receiving this notice along with all parties listed on the "List of Known Lien Claimants."

You should have received a copy of the application from the homeowner(s); if you have not received a copy, you should contact the homeowner(s) immediately to obtain a copy.

You May have a Right to Participate in the Application Adjudication: If you have demanded payment from the homeowner for qualified services, you may have a right to participate in the adjudication of the application for Certificate of Compliance. To perfect the right to participate, you must file a written response to the application for Certificate of Compliance within 30 days of this letter.

Any written response must include documentation or other evidence supporting your position. If you do not file a response, you will not have the right to participate in the adjudication or in agency review. If you decide to submit a written response and supporting documentation, you must mail it to the following address:

DOPL - LRF
PO BOX 146741
SALT LAKE CITY UT 84114-6741

Respectfully,

Tracy Naff
Fund Secretary
801-530-6104
tnaff@utah.gov

LIST OF KNOWN LIEN CLAIMANTS

ProBuild Company LLC
Attn: Legal
7595 Technology Way STE 500
Devnver CO 80237

Sunroc Corporation
PO Box 488
Spanish Fork UT 84660

LKL Associates
134 N 1600 W
Orem UT 84057

Darwin H. Bingham (#7810)
Ben A Picklesimer (#11749)
SCALLEY READING BATES
HANSEN & RASMUSSEN, P.C.
Attorneys for ProBuild Company, LLC
15 West South Temple, Suite 600
Salt Lake City, Utah 84101
Telephone: (801) 531-7870
Facsimile: (801) 531-7968
Email: dbingham@scalleyreading.net
Email: ben@scalleyreading.net

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

PROBUILD COMPANY, LLC,
Plaintiff,

v.

CREATIVE LIVING CONSTRUCTION,
LLC; RUSSELL KOEHLER; STEPHEN
DAVIS; MARY DAVIS and L.K.L.
ASSOCIATES, INC.,
Defendants.

COMPLAINT

Civil No. 140500021

Judge Derek Pullan

Plaintiff ProBuild Company, LLC ("ProBuild"), by and through counsel, alleges and complains against the above-named Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff ProBuild is a foreign corporation, which at all times relevant hereto was registered to conduct business in the State of Utah.
2. Defendant Creative Living Construction, LLC (“Creative Living”) is a Utah limited liability corporation conducting business within Wasatch County, Utah.
3. Upon information and belief, Defendant Russell Koehler (“Koehler”) is an individual residing within, and/or conducting business within, Wasatch County, State of Utah.
4. Defendants Stephen Davis and Mary Davis (the “Owners”) are the owners of the Property, as defined below.
5. Defendant L.K.L. Associates, Inc. (“LKL”) is a Utah corporation conducting business in Wasatch County, Utah.
6. The Property at issue in this matter is located within Wasatch County, State of Utah.
7. For purposes of Rule 8 and Rule 26 of the Utah Rules of Civil Procedure, Plaintiffs seek monetary relief and damages in an amount that qualifies under Tier 2.

FACTS COMMON TO ALL CLAIMS FOR RELIEF

8. Creative Living executed and delivered to ProBuild a Commercial Credit Application (the “Account Agreement”) under which Creative Living requested that ProBuild provide Creative Living with certain goods and/or materials on account. A copy of the Account Agreement is attached hereto as **Exhibit A**, and is incorporated herein by this reference.

9. As additional consideration for the Account Agreement, Koehler executed and delivered to ProBuild a Personal Guaranty (the "Guaranty") under which Koehler unconditionally guaranteed the performance of Creative Living's duties and obligations under the account opened with ProBuild. (See Exhibit A).

10. Upon information and belief, Creative Living entered into a contract or contracts with the Owners to provide certain equipment, labor and/or materials in connection with the improvement of certain real property (the "Property") located at approximately 1080 South Clearwater Way, Midway, Utah, and more particularly described as:

LOT 47, THE CASCADES AT SOLDIER HOLLOW SUBDIVISION AMENDED,
ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD
IN THE WASATCH COUNTY RECORDER'S OFFICE.

Parcel No.: 00-0020-4777
Tax ID Number: 0ZH-0047

11. In performance of its contract or contracts with the Owners, Creative Living ordered certain goods and materials from ProBuild.

12. Pursuant to the contract or contracts with Creative Living, ProBuild furnished all of the goods and materials necessary for performance of its contract or contracts with Creative Living, and has otherwise fully satisfied all of the terms and conditions of its contract or contracts with Creative Living within the time therein required.

13. The goods and materials provided by ProBuild were incorporated into the improvement of the Property.

14. Due to nonpayment by Creative Living, ProBuild recorded an Amended Notice of Lien (the “Mechanic’s Lien”) in the office of the Wasatch County Recorder against the Property on March 5, 2014, Entry No. 398893, in Book 1100 at Pages 1239 through 1241, in the principal amount of \$99,161.91, together with interest at the contract or statutory rate, attorney’s fees and costs. A true and correct copy of the Mechanic’s Lien is attached hereto as **Exhibit B**, and is incorporated herein by this reference.

15. LKL is believed to claim an interest in the Property under a Notice of Mechanic’s Lien recorded against the Property on February 3, 2014, Entry No. 398087 in Book 1099 at Page 47.

FIRST CAUSE OF ACTION
(Mechanic’s Lien Foreclosure)

16. ProBuild hereby incorporates paragraphs 1 through 15 of this Complaint as if fully set forth herein.

17. The Mechanic’s Lien was duly signed and complied in all respects with the requirements of Utah Code Ann. §§ 38-1a-101, *et seq.*

18. ProBuild is entitled to a lien against the Property for the amount due under the Mechanic’s Lien, which is at least \$99,161.91, plus interest at the contract or statutory rate from October 29, 2013, or from when payment was otherwise due to ProBuild, until paid in full, as well as attorney’s fees and costs.

19. To the extent the lien interest claimed by LKL relates to a different original contract for project for the Property, or to the extent said lien interest does not comply with the requirements of Utah law, then the Mechanic’s Lien of ProBuild has priority over the interest claimed by LKL.

20. Pursuant to Utah Code Ann. §§ 38-1a-101, *et seq.*, ProBuild is entitled to an order directing the Property to be foreclosed and sold to satisfy the amount due and owing to ProBuild with the sales proceeds to be distributed in accordance with applicable law.

21. Pursuant to Utah Code Ann. § 38-1a-701(6)(a), attached hereto as **Exhibit C** are instructions to protect residents who are entitled to the same under the Residence Lien Recovery Fund.

SECOND CAUSE OF ACTION
(Breach of Contract -- Creative Living)

22. ProBuild hereby incorporates paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Aside from the \$99,161.91 in goods and/or materials incorporated into the Property, ProBuild delivered additional goods and/or materials to Creative Living for use on other projects.

24. As of January 31, 2014, the amount due and owing to ProBuild was \$108,374.59.

25. Creative Living materially breached the Account Agreement with ProBuild by, among other things, failing to pay the contract price for the goods and materials provided to Creative Living.

26. As a direct and proximate result of Creative Living's breach of contract, ProBuild has been damaged in an amount to be proven at trial, but not less than \$108,374.59, plus interest at the contract rate of 18% per year from January 31, 2014, or from when payment was otherwise due to ProBuild, until paid in full, as well as reasonable attorney's fees and costs, as provided by the terms of the Account Agreement.

THIRD CAUSE OF ACTION

(Breach of Contract -- Koehler)

27. ProBuild hereby incorporates paragraphs 1 through 26 of this Complaint as if fully set forth herein.

28. Koehler materially breached the Guaranty by, among other things, failing to pay the contract price for the goods and services ProBuild provided to Creative Living.

29. As a direct and proximate result of Koehler's breach of contract, ProBuild has been damaged in an amount to be proven at trial, but not less than \$108,374.59, plus interest at the contract rate of 18% per year from January 31, 2014, or from when payment was otherwise due to ProBuild, until paid in full, as well as reasonable attorney's fees and costs, as provided by the terms of the Account Agreement and the Guaranty.

FOURTH CAUSE OF ACTION

(Failure to Pay Construction Funds -- Creative Living)

30. ProBuild hereby incorporates paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. Creative Living acted in the capacity of either general contractor or subcontractor on the Property for which ProBuild supplied goods or materials.

32. In its capacity as either general contractor or subcontractor, Creative Living must comply with Utah Code Ann. §58-55-603, which requires that Creative Living pay subcontractors and suppliers, such as ProBuild, for goods or services provided to the Project within thirty (30) days of being paid by the general contractor or owner, as applicable.

33. To the extent that Creative Living has received payment from the Owners or another third party for the goods or materials provided by ProBuild, Creative Living has failed to pay said funds to ProBuild.

34. As a result of such failure, Creative Living is in violation of Utah Code Ann. §58-55-603, and, therefore, is liable to ProBuild for the amount of \$108,374.59, plus interest at the statutory rate of 12% per year from January 31, 2014, or from when payment was otherwise due to ProBuild, until paid in full, as well as reasonable attorney's fees and costs.

FIFTH CAUSE OF ACTION
(Dishonored Check – Check I)

35. ProBuild hereby incorporates paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Creative Living and Koehler submitted a check number 2703 (“Check I”) to ProBuild dated November 12, 2013 in the amount of \$50,000.00 as payment for the goods or materials provided by ProBuild to Creative Living. A copy of Check I is attached hereto as **Exhibit D**, and is incorporated herein by this reference.

37. Check I was dishonored, and was returned to ProBuild unpaid due to insufficient funds in the subject bank account.

38. Pursuant to Utah Code Ann. § 7-15-1, ProBuild sent a letter providing notification that Check I was dishonored. To date, Creative Living and Koehler have failed and refused to pay the amounts due to ProBuild. A copy of the letter sent to by ProBuild is attached hereto as part of Exhibit D, and is incorporated herein by this reference.

39. Pursuant to Utah Code Ann. § 7-15-1, ProBuild is entitled to recover from Creative Living and Koehler, jointly and severally, the face amount of Check I, which is \$50,000.00, plus a service charge of \$20.00, collection costs of \$20.00, and statutory damages of \$500.00, for a total amount of \$50,540.00, together with prejudgment interest at the statutory rate of 10% per year from November 12, 2013, until the date judgment is entered, and post-judgment interest thereafter at the statutory rate until paid in full, as well as court costs and attorneys' fees, as provided by Utah Code Ann. § 7-15-1.

SIXTH CAUSE OF ACTION
(Dishonored Check – Check II)

40. ProBuild hereby incorporates paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Creative Living and Koehler submitted a check number 2704 (“Check II”) to ProBuild dated November 15, 2013 in the amount of \$51,000.00 as payment for the goods or materials provided by ProBuild to Creative Living. A copy of Check II is attached hereto as **Exhibit E**, and is incorporated herein by this reference.

42. Check II was dishonored, and was returned to ProBuild unpaid due to insufficient funds in the subject bank account.

43. Pursuant to Utah Code Ann. § 7-15-1, ProBuild sent a letter providing notification that Check II was dishonored. To date, Creative Living and Koehler have failed and refused to pay the amounts due to ProBuild. A copy of the letter sent to by ProBuild is attached hereto as part of Exhibit E, and is incorporated herein by this reference.

44. Pursuant to Utah Code Ann. § 7-15-1, ProBuild is entitled to recover from Creative Living and Koehler, jointly and severally, the face amount of Check II, which is \$51,000.00, plus a service charge of \$20.00, collection costs of \$20.00, and statutory damages of \$500.00, for a total amount of \$51,540.00, together with prejudgment interest at the statutory rate of 10% per year from November 15, 2013, until the date judgment is entered, and post-judgment interest thereafter at the statutory rate until paid in full, as well as court costs and attorneys' fees, as provided by Utah Code Ann. § 7-15-1.

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

45. ProBuild hereby incorporates paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. ProBuild furnished goods and materials to the Property at the request of Creative Living, and in furtherance of the contract between Creative Living and the Owners.

47. The goods and materials provided by ProBuild were incorporated into the Property, and benefitted the Owners.

46. ProBuild has not been fully paid for the value of the goods and materials provided by ProBuild.

48. Creative Living and the Owners each knew, or should have known, ProBuild expected to be paid for the goods and materials provided by ProBuild, and knew or should have known of ProBuild's performance which conferred a benefit upon them.

49. Under the circumstances, Creative Living and the Owners would be unjustly enriched to ProBuild's detriment if not required to repay ProBuild for the value of the goods and materials provided by ProBuild.

50. As a result of the unjust enrichment described above, ProBuild has been damaged in an amount to be proven at trial, but not less than \$99,161.91, plus prejudgment interest at the statutory rate of 10% per year from October 29, 2013, or from when payment was otherwise due to ProBuild, until the date a judgment is entered, and post-judgment interest thereafter at the statutory rate, until paid in full, as well as reasonable attorney's fees and costs.

WHEREFORE, ProBuild prays for the following relief:

1. That ProBuild be adjudged to have a valid lien against the Property in the amount of at least \$99,161.91, together with attorney's fees, costs and interest at the contract or statutory rate from October 29, 2013, until paid in full;
2. That an order issue determining that Mechanic's Lien of ProBuild has priority over the interests claimed by LKL;
3. That an order issue directing the Property to be sold in satisfaction of the Mechanic's Lien, with the sales proceeds to be allocated in accordance with applicable law;
4. Should a deficiency result from the foreclosure of the Mechanic's Lien, that a money judgment be entered in favor of ProBuild and against the Owners, jointly and severally, in the amount of such deficiency;

5. That a money judgment be entered in favor of ProBuild and against Creative Living and Koehler, jointly and severally, for the amount owed to ProBuild under the Account Agreement and the Guaranty, which is \$108,374.59, together with attorney's fees, costs and interest at the contract or statutory rate from January 31, 2014, until paid in full;

6. That a money judgment be entered in favor of ProBuild and against Creative Living and Koehler, jointly and severally, for the amount owed under Check I, which is \$50,540.00, plus prejudgment interest at the statutory rate of 10% per year from November 12, 2013, until the date judgment is entered, and post-judgment interest thereafter at the statutory rate until paid in full, as well as court costs and attorneys' fees, as provided by Utah Code Ann. § 7-15-1;

7. That a money judgment be entered in favor of ProBuild and against Creative Living and Koehler, jointly and severally, for the amount owed under Check II, which is \$51,540.00, plus prejudgment interest at the statutory rate of 10% per year from November 15, 2013, until the date judgment is entered, and post-judgment interest thereafter at the statutory rate until paid in full, as well as court costs and attorneys' fees, as provided by Utah Code Ann. § 7-15-1;

8. For an order allowing ProBuild to augment any judgment obtained against any of the Defendants in the amount of reasonable costs and attorney's fees expended in collecting or enforcing the judgment by execution or otherwise, as established by an affidavit from ProBuild or ProBuild's counsel without further notice to the Defendants; and

9. For such other and further relief this Court deems just and proper.

DATED this 12 day of March, 2014.

SCALLEY READING BATES
HANSEN & RASMUSSEN, P.C.



Darwin H. Bingham
Ben A. Picklesimer
Attorneys for ProBuild Company, LLC

Plaintiff's Address:

3020 Williamette Drive NE
Lacey, WA 98516

EXHIBIT A

PROBUILT

Midvale • Heber • Ogden • Orem • Salt Lake Truss

COMMERCIAL CREDIT APPLICATION

(NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES)

APPLICANT INFORMATION			
LEGAL BUSINESS NAME OF APPLICANT: CREATIVE LIVING CONSTRUCTION, LLC		CONTRACTOR LICENSE NO:	SSN OR EIN:
PHYSICAL STREET ADDRESS: 383 W. 1150 N.		MAILING ADDRESS: P.O. Box 120 B	
CITY, STATE, ZIP: MIDDWAY, UT 84049		CITY, STATE, ZIP: MIDDWAY, UT 84049	
E-MAIL: CLCLLC35@GMAIL	PHONE NO: 435-654-0057	MOBILE NO: 801-735-6688	FAX NO: 435-657-3471
DATE FORMED: 5-08	STATE OF ORGANIZATION: UTAH	BUSINESS TYPE: <input type="checkbox"/> Corp <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other:	
DESCRIPTION OF BUSINESS (check the one that best describes your business): <input checked="" type="checkbox"/> New Construction - Residential <input type="checkbox"/> New Construction - Commercial <input type="checkbox"/> Repair/Remodel <input type="checkbox"/> Developer <input type="checkbox"/> Government <input type="checkbox"/> Personal Home Construction <input checked="" type="checkbox"/> Other:			OFFICE USE ONLY: STORE NO: STORE NAME: ACCOUNT NO: SALES REP NO: 803 CUSTOMER CLASS: OTHER:
NUMBER OF EMPLOYEES: 3	TAXABLE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No - attach cert.	POS REQUIRED: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	EST. MONTHLY PURCHASES \$ 50,000.00
HAS APPLICANT OR ANY OFFICERS, PARTNERS, OWNERS OR MEMBERS EVER FILED BANKRUPTCY? WHO AND WHEN? NO		OUTSTANDING LIENS OR JUDGMENTS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
LIST THE NAMES OF ANY AFFILIATED, SUBSIDIARY OR PARENT COMPANIES OF APPLICANT. LIST THE NAME OF ANY OTHER BUSINESS OPERATED BY ANY OFFICER, PARTNER OR OWNER, WHETHER PAST OR PRESENT. NONE			
HAVE YOU EVER DONE BUSINESS WITH OR RECEIVED CREDIT FROM PRO-BUILD OR A PRO-BUILD SUBSIDIARY BEFORE? NO		ACCTS PAYABLE CONTACT: Name: RUSSELL KOEHLER Phone No: 801-735-6688	
If yes, under what Name: _____ Location: _____			
DETAILS OF OWNERS, PARTNERS, OFFICERS & MEMBERS			
NAME & TITLE: RUSSELL KOEHLER / OWNER		SSN:	NAME & TITLE:
HOME ADDRESS: 383 W. 1150 N.			HOME ADDRESS:
CITY, STATE, ZIP: MIDDWAY UT 84049			CITY, STATE, ZIP:
HOME TELEPHONE: 435-654-0057	MOBILE NO: 801-735-6688	HOME TELEPHONE:	MOBILE NO:
NAME & TITLE:		SSN:	NAME & TITLE:
HOME ADDRESS:			HOME ADDRESS:
CITY, STATE, ZIP:			CITY, STATE, ZIP:
HOME TELEPHONE:	MOBILE NO:	HOME TELEPHONE:	MOBILE NO:
PRIMARY BANK REFERENCES			
BANK NAME: Zions Bank		OFFICE TELEPHONE NO: 435-654-2780	LOAN OFFICER:
CHECKING ACCT NO:	CONSTRUCTION LOAN NO:	BUSINESS LOAN NO:	SAVINGS ACCT NO:
BANK NAME:		OFFICE TELEPHONE NO:	LOAN OFFICER:
CHECKING ACCT NO:	CONSTRUCTION LOAN NO:	BUSINESS LOAN NO:	SAVINGS ACCT NO:
PRINCIPAL TRADER REFERENCES			
COMPANY NAME: COLONIAL BUILDING SUPPLY		CITY: CANTONVILLE, UT	OFF. TELEPHONE NO: 801-392-9407
COMPANY NAME: HUTTEN WELLS & CAROL		CITY: MURKIN	OFF. TELEPHONE NO: 801-266-3922

COMPANY NAME:

STARK PAPERSON'S

CITY:

OLDEN, UT

PHONE NUMBER:

FAX NO:

LEGAL BUSINESS NAME OF APPLICANT:

ATTACH COPY OF THE MOST RECENT FINANCIAL STATEMENTS IF BUSINESS IS A CORPORATION, LIMITED PARTNERSHIP OR LIMITED LIABILITY CORPORATION, THEN PERSONAL GUARANTY MUST BE SIGNED

CREDIT AGREEMENT

The terms and conditions of this application shall, upon extension of credit to the undersigned (hereinafter "Applicant") by Pro-Build Holdings, Inc., any of its subsidiaries, branches or divisions now existing or hereafter created and their successors and assigns (hereinafter collectively referred to as the "Seller"), constitute a credit agreement between Applicant and Seller (hereinafter, this "Agreement") and shall take precedence over and supersede any and all conditions set forth by Applicant's purchase order, whether the order is written or verbal. Should credit be granted by Seller to Applicant, all credit shall be extended at the sole discretion of Seller. Seller may increase, decrease, or terminate any credit availability at any time within its sole discretion.

Applicant agrees to pay to the order of Seller: (1) all invoices by the fifteenth day of the month following sale or as otherwise stated on invoices or statements and, if not paid on or before said date, such invoices are then delinquent; (2) default interest on any delinquent invoices at the rate of eighteen percent per annum or the maximum rate of default interest allowed in the state where the goods are sold, whichever is less; and (3) all costs of collecting delinquent invoices and default interest, including court costs, reasonable attorney fees, and collection agency fees.

Applicant agrees that in the event of delivery of purchased goods F.O.B. place of delivery, title shall pass to Applicant upon tender of the goods or materials to the place of delivery with or without the presence of Applicant or Applicant's employees or agents to inspect or accept delivery and with or without Applicant's signature of acceptance. Any sales that result from an extension of credit by Seller shall be construed under the laws of the state where the shipment of goods originated and any lawsuits resulting from this extension of credit may be commenced in the county where the shipment of goods originated. Applicant waives any and all objections to such location, including objections based on jurisdiction or venue. Applicant understands that Seller intends to rely on all of the information presented in this application in determining its creditworthiness and Applicant represents that such information is true, correct and complete.

SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND BEARS NO RESPONSIBILITY, AS TO THE INSTALLATION, USE OR OTHER DISPOSITION OF ANY GOODS OR PRODUCTS SOLD PURSUANT TO AN EXTENSION OF CREDIT HEREUNDER, THEIR MERCHANTABILITY OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE, AND SELLER HEREBY DISCLAIMS THE SAME. ACCORDINGLY, APPLICANT AGREES TO INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY LIABILITY FOR INJURY OR DAMAGES ARISING OUT OF, OR IN ANY WAY CONNECTED WITH OR PERTAINING TO THE SALE, INSTALLATION, USE OR OTHER DISPOSITION OF, ANY GOODS OR PRODUCTS SOLD PURSUANT TO AN EXTENSION OF CREDIT HEREUNDER.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent permitted by applicable law, Applicant waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No failure by Seller to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, except that Applicant may not assign or otherwise transfer all or any part of its rights or obligations hereunder without the prior written consent of Seller, and any such assignment or transfer purported to be made without such consent shall be ineffective. Seller may at any time assign or otherwise transfer all or any part of its interest hereunder or any credit extended hereunder, and to the extent of such assignment, the assignee shall have the same rights and benefits against Applicant as if such assignee were Seller.

Applicant represents and warrants to Seller that Applicant will use the credit requested hereunder for business and commercial purposes only and not for personal, family or household purposes. Applicant understands that Seller is relying on the foregoing representation and would not otherwise extend credit to Applicant.

APPLICANT AUTHORIZES AND CONSENTS TO ANY CONTACT WITH OR INQUIRY OF ANY PERSON, INDIVIDUAL, OR ENTITY OF ANY KIND REGARDING THE CREDIT HISTORY OR OTHER FINANCIAL INFORMATION OR REFERENCES OF APPLICANT AND EACH BUSINESS OWNER, PARTNER, OFFICER & MEMBER OF APPLICANT, INCLUDING BANK AND TRADE REFERENCES AND INFORMATION FURNISHED BY CREDIT REPORTING AGENCIES. APPLICANT CONSENTS TO SELLER'S USE OF SUCH INFORMATION IN CONNECTION WITH ANY DECISION TO EXTEND OR TERMINATE CREDIT TO APPLICANT. APPLICANT AGREES TO RELEASE AND HOLD HARMLESS SELLER FROM, AND INDEMNIFY FOR, ANY CLAIMS OR LIABILITIES IN CONNECTION WITH SUCH INQUIRY.

APPLICANT HAS READ AND UNDERSTANDS THIS AGREEMENT, AND AGREES TO EACH AND EVERY PROVISION CONTAINED HEREIN.

APPLICANT

By: [Signature] 11-16-2011
Authorized Signature & Title Date

By: _____
Authorized Signature & Title Date

LEGAL BUSINESS NAME OF APPLICANT: PRO BUILD CONSTRUCTION, LLC

PERSONAL GUARANTY

For value received and to induce [Pro-Build Holdings, Inc., its subsidiaries, branches or divisions now existing or hereafter created and their successors, and assigns] (hereinafter collectively referred to as the "Seller") to extend credit to Applicant the undersigned guarantor ("Guarantor"), jointly and severally, if more than one, hereby warrants and unconditionally guarantees to Seller the full and prompt payment when due of all indebtedness, obligations and liabilities of Applicant (as named in the within application for credit) to Seller, including without limitation, all invoiced amounts, all default interest on any delinquent invoices and all costs of collecting delinquent invoices and default interest, including court costs, reasonable attorney fees, and collection agency fees, whether now existing or hereafter created or arising, and all indebtedness resulting from increased credit lines or Applicant exceeding the credit limit (the "Indebtedness"). It is understood that credit lines are established at the sole discretion of Seller and can be increased or decreased without written notice. Guarantor further agrees to pay all expenses, including court costs and reasonable attorney's fees, paid or incurred by Seller in endeavoring to collect the Indebtedness or any part thereof or in enforcing the Guaranty.

This Guaranty will take effect when received by Seller without the necessity of any acceptance by Seller, or any notice to Guarantor or to Applicant, and will continue in full force until all Indebtedness incurred or contracted before receipt by Seller of any notice of revocation shall have been fully and finally paid and satisfied and all other obligations of Guarantor under this Guaranty shall have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Seller, by certified mail, at the address of Seller listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to advances or new Indebtedness created after actual receipt by Lender of Guarantor's written revocation.

Guarantor authorizes Seller, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (a) to sell merchandise to Applicant and to extend credit to Company; (b) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness; (c) to take and hold collateral for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such collateral, with or without the substitution of new collateral; (d) to release, substitute, agree not to sue, or deal with any one or more of Applicant's sureties, endorsers, or other guarantors on any terms or in any manner Seller may choose; (e) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (f) to apply such collateral and direct the order or manner of sale thereof; (g) to sell, transfer or assign the Indebtedness; and (h) to assign or transfer this Guaranty in whole or in part.

Guarantor waives all notices, demands and defenses of any kind, including all suretyship defenses, and hereby consents to any agreements or arrangements whatsoever with Applicant including without limitation agreements and arrangements for payments, extension, subordination, composition, arrangement, discharge or release of the whole or any part of the indebtedness, and shall in no way impair Guarantor's liability hereunder. Without limitation, and except as prohibited by applicable law, Guarantor waives any right to require Seller (a) to continue to extend credit to Applicant; (b) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Applicant, Seller, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (c) to resort for payment or to proceed directly or at once against any person, including Applicant or any other guarantor; (d) to proceed directly against or exhaust any collateral held by Seller from Applicant, any other guarantor, or any other person; (e) to pursue any other remedy within Seller's power; or (f) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses arising by reason of (a) any "one action" or "anti-deficiency" law; (b) any election of remedies by Seller which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Applicant for reimbursement; (c) any disability or other defense of Applicant, of any other guarantor, or of any other person, or by reason of the cessation of Applicant's liability from any cause whatsoever, other than payment in full in legal tender, of the Indebtedness; (d) any right to claim discharge of the Indebtedness on the basis of unjustified impairment of any collateral for the Indebtedness; (e) any statute of limitations, if at any time any action or suit brought by Seller against Guarantor is commenced there is outstanding Indebtedness of Applicant to Seller which is not barred by any applicable statute of limitations; or (f) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness. If payment is made by Applicant, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Seller is forced to remit the amount of that payment to Applicant's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the Indebtedness shall be considered unpaid for the purpose of enforcement of this Guaranty. Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Applicant, the Guarantor, or both.

This Guaranty shall be governed by the state law where the Pro-Build/United Building Centers store is located. Guarantor waives any and all objections to such location, including objections based on jurisdiction or venue.

This Guaranty is enforceable against the undersigned Guarantors whether or not the signatures are witnessed. This agreement shall be binding upon Guarantor, and his or her successors, assigns, heirs, executors and legal representatives.

GUARANTOR HEREBY AUTHORIZES AND CONSENTS TO ANY CONTACT WITH OR INQUIRY OF ANY PERSON, INDIVIDUAL, OR ENTITY OF ANY KIND, REGARDING GUARANTOR'S CREDIT HISTORY OR OTHER FINANCIAL INFORMATION, INCLUDING BANK AND TRADE REFERENCES AND ANY CREDIT REPORTING AGENCIES.

BY SIGNING THIS GUARANTEE, I ACKNOWLEDGE THAT I HAVE READ AND AGREED TO THE TERMS OF SALES AS SET OUT IN THE CREDIT APPLICATION.

Guarantor Signature [Signature] Date 11-16-2011 Print Name RUSSELL KOEHLER
(Signed in my individual capacity)

Guarantor Signature _____ Date _____ Print Name _____
(Signed in my individual capacity)

EXHIBIT B

Electronically Recorded by:
Darwin H. Bingham, Esq.
Scalley Reading Bates
Hansen & Rasmussen, P.C.
15 West South Temple, Suite 600
Salt Lake City, Utah 84101
(801) 531-7870

Ent 398893 Bk 1100 Pg 1239 - 1241
ELIZABETH M PALMIER, Recorder
WASATCH COUNTY CORPORATION
2014 Mar 05 10:58AM Fee: \$14.00 JP
For: Scalley Reading Bates Hansen & Rasmu
ELECTRONICALLY RECORDED

AMENDED NOTICE OF LIEN

Notice is hereby given that ProBuild Company, LLC ("Claimant"), which may be contacted at 7380 South 700 West, Midvale, Utah, Utah, (801) 255-4201, claims a lien pursuant to Utah Code Annotated § 38-1a-101, *et seq.* as follows:

1. Claimant provided labor, materials or equipment upon and in connection with the improvement of certain real property located in Wasatch County at approximately 1080 South Clearwater Way, Midway, Utah, being more particularly described as follows:

LOT 47, THE CASCADES AT SOLDIER HOLLOW SUBDIVISION AMENDED,
ACCORDING TO THE OFFICIAL PLA THEREOF ON FILE AND OF RECORD IN THE
WASATCH COUNTY RECORDER'S OFFICE

Parcel No.: 00-0020-4777
Tax ID No.: 0ZH-0047

2. To the best of Claimant's knowledge, Stephen Davis and Mary Davis are the owners of the real property described above.

3. There is due and owing to Claimant the sum of \$99,161.91, for the labor, materials and/or equipment provided by Claimant, together with interest at the contract or statutory rate, costs and attorneys' fees.

4. The labor, materials or equipment for which claim is made was provided to or at the request of Creative Living Construction, LLC.

5. Claimant first furnished labor, materials or equipment on or about May 22, 2013, and last furnished labor, materials or equipment on or about October 29, 2013.

6. Claimant previously recorded a Notice of Lien on November 6, 2013, as Entry No. 395784 in Book 1094 at Pages 442 through 443. This Amended Notice of Lien is intended to amend Claimant's prior Notice of Lien.

7. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Sections 38-1a-502 and/or 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

CERTIFICATE OF MAILING

I certify I mailed a copy of the foregoing AMENDED NOTICE OF LIEN by certified mail, return receipt requested, to the following, on this 5 day of March, 2014.

Stephen Davis
1080 South Clearwater Way
Midway, Utah 84049

CERTIFIED NO. 7011 2970 0003 5123 6843

Mary Davis
1080 South Clearwater Way
Midway, Utah 84049

CERTIFIED NO. 7011 2970 0003 5123 6850

Creative Living Construction, LLC
P.O. Box 1208
Midway, Utah 84047

CERTIFIED NO. 7011 2970 0003 5123 6867

Creative Living Construction, LLC
1001 South Cascade Falls Circle
Midway, Utah 84047

CERTIFIED NO. 7011 2970 0003 5123 6874

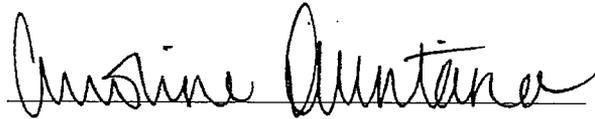


EXHIBIT C



State of Utah
Department of Commerce
Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

Dear Resident:

You are being sued to collect a mechanics' lien on your property. The law requires that you be provided with the attached application form.

The Utah Residence Lien Restriction and Lien Recovery Fund Act provides that homeowners who meet certain criteria can obtain a Certificate of Compliance, which certifies the owner is protected from the mechanics' lien and related lawsuits. To apply for the certificate, you, or your attorney if you choose to have one, must complete the attached form and submit to the Division of Occupational and Professional licensing within 30 days of receiving the summons and complaint from the lien claimant.

The Lien Recovery Fund can help assist you with the application. However, the fund personnel cannot answer questions about your specific legal circumstances or represent you in legal matters. You can contact the Lien Recovery fund at (801) 530-6104 or lrf@utah.gov.

Additional information can be obtained by visiting the fund's website at <http://www.dopl.utah.gov/lrf/index.html>

Respectfully,

Dane Ishihara
Lien Recovery Fund Manager



State of Utah
Department of Commerce
Division of Occupational and Professional Licensing

GARY R. HERBERT
Governor

FRANCINE A. GIANI
Executive Director

MARK B. STEINAGEL
Division Director

Dear Resident:

You may be eligible for protection against mechanics' liens and related lawsuits.

The Utah Residence Lien Restriction and Lien Recovery Fund Act provides that homeowners who meet certain criteria can obtain a Certificate of Compliance, which certifies that the owner is protected from mechanics' liens and related lawsuits.

The sections below are instructions on how to apply for a Certificate:

1. If you contracted for more than \$5,000 you must complete the application for Certificate of Compliance located on pages 1-6 of the attachment and submit the required supplemental documentation.
2. If you contracted after May 10, 2010 for no more than \$5,000 you have the option to apply under section 1 or by completing the Affidavit of Compliance located on pages 7 & 8 of the attachment.

The Residence Lien Recovery Fund staff can assist you with the application. However, Fund personnel cannot answer questions about your specific legal circumstances or represent you in legal matters. You may contact the Residence Lien Recovery Fund at (801) 530-6104 or lrf@utah.gov.

Please be aware it is your responsibility to understand the statutes and rules that govern the Residence Lien Recovery Fund. The statutes, rules and additional information may be found on the Fund's website located at: <http://www.dopl.utah.gov/lrf/index.html>

Respectfully,

Dane S Ishihara
Lien Recovery Fund Manager

State of Utah
DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

160 East 300 South, P.O. Box 146741
Salt Lake City, Utah 84114-6741
Telephone (801) 530-6628
www.dopl.utah.gov

Certificate of Compliance Application

Checklist

- \$30 non-refundable application fee
- Complete Application

The following must be attached your application:

- A copy of your written contract
- Evidence establishing the owner of the residence on the date the contract was entered
- Evidence your contract was paid in full
- Evidence establishing the project completion date
- Copies of liens filed on residence

Submit the above items to one of the following:

By U.S. Mail	DOPL / LRF PO Box 146741 Salt Lake City, Utah 84114-6741
In Person or Express Mail	160 East 300 South 1st Floor Salt Lake City, Utah 84111

For Questions or Other Information

Direct: (801) 530-6628 • Toll-free: (866) 275-3675 (*Utah only*) • e-mail: lrf@utah.gov

Additional Requirement

- Send a copy of this application and all attachments by certified mail, return receipt requested, to all lien claimants and the party with whom you contracted.

APPLICATION FOR CERTIFICATE OF COMPLIANCE

Applicant:

Name: _____

Address of Property against which Lien was filed: _____

City: _____ State: _____ Zip: _____

Telephone: () _____ Email: _____

Is the address listed above the same as your mailing address? Yes No

If "no," please provide your complete mailing address: _____

Tax Parcel Number (*found on your annual property tax notice*): _____

Legal Description or Lot Number (*found on the Notice of Lien*): _____

Applicant's Attorney or Other Representative (*if applicable*):

Name: _____

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: () _____ Email: _____

Original Contractor/Factory Built Housing Retailer/Real Estate Developer:

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: (_____) _____ Email: _____

**Original Contractor/Factory Built Housing Retailer/Real Estate Developer's Attorney
(if applicable):**

Name: _____

Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: (_____) _____ Email: _____

Mechanics' Lien Holders: Attach a copy of all notice of liens filed on your property. List all companies or individuals who have filed a mechanics' lien on your residence.

Company or Individual Name: _____

*Note you are required to send a copy of this application and all attachments by certified mail, return receipt requested, to all lien claimants and the party with whom you contracted UTAH CODE ANN. § 38-1-11 (6) (e)

Written Contract:

Did you enter into a written contract? Check one

Yes. Attach a copy of the contract to this application

No. Explain: _____

Required documentation of licensure or exemption from licensure:

Check which section best describes your situation & attach the supporting documentation:

Contracted with a licensed contractor:

① Attach evidence your contractor was licensed

Contracted with an exempt contractor:

① Attach evidence your contractor was exempt from licensure

Contracted with a real estate developer:

① Attach evidence the developer had ownership interest in the property

② Attach evidence the developer offered the residence for sale to the public

③ Attach a copy of the contract between the developer and a licensed contractor

Contracted with a contractor real estate developer:

① Attach evidence the contractor developer had ownership interest in the property

② Attach evidence the contractor developer offered the residence for sale to the public

③ Attach evidence the contractor developer was a licensed contractor

Payment in Full:

Did you pay your original contractor in full according to the terms of the written contract and any modifications to that contract?

Yes. Attach documents demonstrating payment

No. Explain: _____

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE APPLICATION
FOR A CERTIFICATE OF COMPLIANCE
ON THE RESIDENCE OF

(Homeowners' Name)

LOCATED AT _____

(Address, City, and State of the property)

AFFIDAVIT OF COMPLIANCE,
CERTIFICATION, AND RELEASE OF
INFORMATION

STATE OF UTAH)
 :SS.
COUNTY OF _____)

I, _____, being first duly sworn state as follows:
(Name of person completing application)

1. I am authorized to sign this affidavit for the homeowner described and identified in this application.
2. The information contained in this application and the supporting documents are free from fraud, misrepresentation, or omission of material fact.
3. I will ensure that any information subsequently submitted to DOPL in conjunction with this application and/or its supporting documents will meet the same standard set forth above.
4. I understand that homeowners and/or their representatives who report false information, withhold information, or present false or misleading documentation pertinent to an application in order to receive a Certificate of Compliance from the Lien Recovery Fund to which they are not entitled will be disqualified from receiving said Certificate and may be subject to both criminal prosecution and civil penalties.
5. I understand that this application will be classified as a public record and will be available for inspection by the public except with regard to the release of information which is classified as controlled, private, or protected under the Government Records Access and Management Act or restricted by other law.

State of Utah
DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

160 East 300 South, P.O. Box 146741
Salt Lake City, Utah 84114-6741
Telephone (801) 530-6628
www.dopl.utah.gov

Affidavit of Compliance

Name: _____

Address of Property against which Lien was filed: _____

City: _____ State: _____ Zip: _____

Telephone: (_____) _____ Email: _____

Is the address listed above the same as your mailing address? _____ Yes _____ No

If "no," please provide your complete mailing address: _____

Tax Parcel Number (*found on your annual property tax notice*): _____

Checklist

- \$30 non-refundable application fee
- Original Affidavit of Compliance
- Attach a list of all known subcontractors and suppliers
- A copy of this checklist

Submit the above items to one of the following:

By U.S. Mail	DOPL / LRF PO Box 146741 Salt Lake City, Utah 84114-6741
In Person or Express Mail	160 East 300 South 1st Floor Salt Lake City, Utah 84111

For Questions or Other Information

Direct: (801) 530-6628 • Toll-free: (866) 275-3675 (*Utah only*) • e-mail: lrf@utah.gov

Additional Requirement

- Send a copy of this application and all attachments by certified mail, return receipt requested, to all lien claimants and the party with whom you contracted

EXHIBIT D



ProBuild

NOTICE OF DISHONOR OF CHECK

January 18, 2014

CREATIVE LIVING CONSTRUCTION LLC
PO BOX 1208
MIDWAY, UT 84049

Dear Customer:

Your check drawn by you and made payable by you to **ProBuild Company LLC** in the amount of \$50,000.00 has not been accepted for payment by Zion First National Bank which is the drawee bank designated on your check.

This check is dated November 12, 2013 and it is check #2703

You are *cautioned* that unless you pay the amount of this check plus a reasonable handling fee of \$20.00 per check as provided in UT Code 7-15-1 and 2 within *fifteen days* after the date this letter is postmarked, you may very well have to pay the following amounts:

Thereafter, the Notice allows The Debtor to pay the face amount of the check plus \$40 within the first 30 days from when the notice was received. If the Debtor does not pay the face amount of the check plus the appropriate "service charge," then 30 days after the Notice is sent, the creditor may file a civil /criminal action and seek: (1) the check amount, (2) interest, (3) court costs, (4) attorneys' fees, (5) actual costs of collection, and (6) damages in an amount equal to triple the value of the check, but not to exceed \$500. id.

You are *cautioned* that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with civil/criminal Charges if you do not pay the amount within *fifteen days* after the date this letter is postmarked.

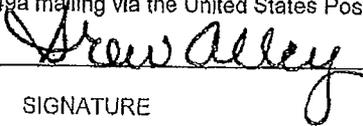
Payment must be made in CASH, CASHIERS CHECK OR MONEY ORDER to the address below:

ProBuild Company LLC
Attn: Legal Department
5519 20th Street
Tacoma, WA 98424
Phone: 253-922-8969 X 107

AFFIDAVIT OF SERVICE BY MAIL

I, Drew Alley, do hereby certify that on the 18th day of January, a copy of the attached notice was served to Creative Living Construction LLC, PO Box 1208, Midway, UT 84049a mailing via the United States Postal Service,

January 18, 2014
DATED


SIGNATURE

WELLS FARGO BANK N.A.
P.O. BOX 63020
SAN FRANCISCO, CA 94163

182



UNITED BUILDING CENTERS
ATTN: DENNIS GARDNER
7380 S 700 WEST
P.O. BOX 220
MIDVALE, UT 84047

ITEMS ENCLOSED: 1

PAGE 1 OF 1 ACCOUNT CHARGED

DATE: 11-21-2013

YOUR ACCOUNT HAS BEEN CHARGED FOR THE FOLLOWING ITEM(S) RETURNED UNPAID:

REASON FOR NON-PAYMENT	SEQUENCE #	AMOUNT
DEPOSITORY ACCOUNT NUMBER:		
LOCATION (STORE) NUMBER: 960		
CHARGES FOR PAPER RETURNS		
NSF 2nd Time		50,000.00
TOTAL CHARGES FOR PAPER RETURNS		50,000.00

* 11/21/2013 *

NSF

This is a LEGAL COPY
of your check. You can
use it the same way
you would use the
original check.

RETURN REASON-A
NOT SUFFICIENT
FUNDS

CREATIVE LIVING CONSTRUCTION LLC 10-11
P O BOX 1209
MIDWAY, UT 84049

2009 FIRST NATIONAL BANK
1000 EAST 1000 SOUTH
SALT LAKE CITY, UT 84143

2703
11/21/13

11-22-2013

PAY TO THE ORDER OF: Pro-Build \$ 50,000.⁰⁰

EDD J. THOMPSON DENNIS G. GARDNER DOLLARS

MEMO: DAGG

[Signature]
AUTHORIZED SIGNATURE

IF YOU HAVE ANY QUESTIONS OR REQUIRE ADDITIONAL INFORMATION, PLEASE CALL THE PHONE NUMBER THAT IS LISTED ON YOUR BANK STATEMENT.

EXHIBIT E



PROBuild

NOTICE OF DISHONOR OF CHECK

January 18, 2014

CREATIVE LIVING CONSTRUCTION LLC
PO BOX 1208
MIDWAY, UT 84049

Dear Customer:

Your check drawn by you and made payable by you to **ProBuild Company LLC** in the amount of \$51,000.00 has not been accepted for payment by Zion First National Bank which is the drawee bank designated on your check.

This check is dated November 15, 2013 and it is check #2704

You are *cautioned* that unless you pay the amount of this check plus a reasonable handling fee of \$20.00 per check as provided in UT Code 7-15-1 and 2 within *fifteen days* after the date this letter is postmarked, you may very well have to pay the following amounts:

Thereafter, the Notice allows The Debtor to pay the face amount of the check plus \$40 within the first 30 days from when the notice was received. If the Debtor does not pay the face amount of the check plus the appropriate "service charge," then 30 days after the Notice is sent, the creditor may file a civil /criminal action and seek: (1) the check amount, (2) interest, (3) court costs, (4) attorneys' fees, (5) actual costs of collection, and (6) damages in an amount equal to triple the value of the check, but not to exceed \$500. Id.

You are *cautioned* that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with civil/criminal Charges if you do not pay the amount within *fifteen days* after the date this letter is postmarked.

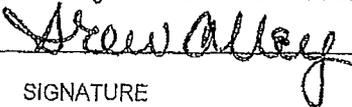
Payment must be made in CASH, CASHIERS CHECK OR MONEY ORDER to the address below:

ProBuild Company LLC
Attn: Legal Department
5519 20th Street
Tacoma, WA 98424
Phone: 253-922-8969 X 107

AFFIDAVIT OF SERVICE BY MAIL

I, Drew Alley, do hereby certify that on the 18th day of January, a copy of the attached notice was served to Creative Living Construction LLC, PO Box 1208, Midway, UT 84049a mailing via the United States Postal Service,

January 18, 2014
DATED


SIGNATURE

WELLS FARGO BANK N.A.
P.O. BOX 63020
SAN FRANCISCO, CA 94163

182



UNITED BUILDING CENTERS
ATTN: DENNIS GARDNER
7380 S 700 WEST
P.O. BOX 220
MIDVALE, UT 84047

ITEMS ENCLOSED: 1

AGE 1 OF 1 ACCOUNT CHARGED

DATE: 11-26-2013

OUR ACCOUNT HAS BEEN CHARGED FOR THE FOLLOWING ITEMS RETURNED UNPAID

REASON FOR NON-PAYMENT	SEQUENCE #	AMOUNT
DEPOSITORY ACCOUNT NUMBER: LOCATION (STORE) NUMBER: 960		
CHARGES FOR PAPER RETURNS		
TOTAL CHARGES FOR PAPER RETURNS	NSF 2nd Time	51,000.00

* 11/26/2013 *

NSF

This is a LEGAL COPY
of your check. You can
use it the same way
you would use the
original check.

RETURN REASON - A
NOT SUFFICIENT
FUNDS

CREATIVE LIVING CONSTRUCTION LLC 10-11
P.O. BOX 1208
MIDWAY, UT 84049

JOHN FRET NATIONAL BANK
1400 THE BLVD, SUITE 200
SANDHURST, CA 94588
HOW OUR BANK WORKS

2704
11-25-2013
31421M
21

PAY TO THE ORDER OF Pro-Build \$ 51,000.⁰⁰

DEBBY ANN THORSON Dennis G 11/26

MEMO DARR RBT

[Signature]
AUTHORIZED SIGNATURE

WOULD YOU HAVE ANY QUESTIONS OR REQUIRE ADDITIONAL INFORMATION, PLEASE CALL THE
PHONE NUMBER THAT IS LISTED ON YOUR BANK STATEMENT.

51,000.00

Carrie Quintana

From: efiler_utbar@efiling.tybera.com
Sent: Thursday, March 13, 2014 2:28 PM
To: Darwin Bingham
Cc: Shelley Proctor; Carrie Quintana
Subject: NEF Notification
Attachments: Complaint.pdf; Exhibits.pdf



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 140500021

Judge: DEREK P PULLAN

Official File Stamp: 03-13-2014:13:29:13

Court: 4TH DISTRICT COURT - HEBER
District
Heber City

Case Title: PROBUILD COMPANY LLC vs. CREATIVE LIVING CONSTRUCTION, et al.

Document(s) Submitted: Complaint
Other Exhibits

Filed by or in behalf of: DARWIN H BINGHAM

This notice was automatically generated by the courts auto-notification system.

The following people were served electronically:

BEN A PICKLESIMER for PROBUILD COMPANY LLC
DARWIN H BINGHAM for PROBUILD COMPANY LLC

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

MARY DAVIS
STEPHEN DAVIS
RUSSELL KOEHLER
CREATIVE LIVING CONSTRUCTION

The Order of Court is stated below:

Dated: May 21, 2014
08:29:10 AM

/s/ STEVEN L HANSEN
District Court Judge



Darwin H. Bingham, #7810
Ben A. Picklesimer, #11749
SCALLEY READING BATES
HANSEN & RASMUSSEN, P.C.
Attorneys for ProBuild Company, LLC
15 West South Temple, Suite 600
Salt Lake City, Utah 84101
Telephone: (801) 531-7870
Facsimile: (801) 326-4669
E-mail: dbingham@scalleyreading.net
E-mail: ben@scalleyreading.net

IN THE FOURTH JUDICIAL DISTRICT COURT

WASATCH COUNTY, STATE OF UTAH

<p>PROBUILD COMPANY, LLC, Plaintiff, vs. CREATIVE LIVING CONSTRUCTION, LLC; RUSSELL KOEHLER; STEPHEN DAVIS; MARY DAVIS and L.K.L. ASSOCIATES, INC., Defendants.</p>	<p>DEFAULT JUDGMENT AS TO DEFENDANTS CREATIVE LIVING CONSTRUCTION, LLC AND RUSSELL KOEHLER Civil No. 140500021 Judge Steven L. Hansen</p>
---	--

IN THIS ACTION, Defendants Creative Living Construction, LLC and Russell Koehler (the "Defendants"), having been served with process and having failed to appear and answer Plaintiff ProBuild Company, LLC's Complaint on file herein, the legal time for answering having expired, and the default of the Defendants having been duly entered according to law, now upon application of Plaintiff to the Court, JUDGMENT IS HEREBY ENTERED as follows:

1. Judgment is hereby entered in favor of the Plaintiff and against Defendants,

jointly and severally, for the amount due and owing to Plaintiff under the Account Agreement and the Guaranty, as such term is defined in the Complaint, which is \$108,374.59, plus interest at the contract rate of 18% from January 31, 2014, until paid in full;

2. Judgment is hereby entered in favor of the Plaintiff and against Defendants, jointly and severally, for the amount due and owing to Plaintiff under Check I, as such term is defined in the Complaint, which is \$50,540.00, plus pre-judgment interest at the statutory rate of 10% per year from November 12, 2013, until the date judgment is entered, and post-judgment interest thereafter at the statutory rate, until paid in full;

3. Judgment is hereby entered in favor of the Plaintiff and against Defendants, jointly and severally, for the amount due and owing to Plaintiff under Check II, as such term is defined in the Complaint, which is \$51,540.00, plus pre-judgment interest at the statutory rate of 10% per year from November 12, 2013, until the date judgment is entered, and post-judgment interest thereafter at the statutory rate, until paid in full;

4. Judgment is hereby entered in favor of the Plaintiff and against the Defendants, jointly and severally, for attorney's fees of \$2,315.00 and costs of \$798.28;

5. This total judgment awarded to the Plaintiff, excluding prejudgment and post-judgment interest is \$112,567.87¹; and

¹\$101,000.00 of the amounts set forth in Plaintiff's claims are duplicated in Plaintiff's claims under the Account Agreement, Guaranty, Check I and Check II, and is, therefore, not being double counted as part of the total judgment amount

6. It is further ordered that this judgment may be augmented in the amount of reasonable costs and attorney's fees expended in collecting the judgment by execution or otherwise as shall be established by affidavit from the Plaintiff or Plaintiff's counsel without further notice to the Defendants.

DATED this _____ day of _____, 2014.

.....BY THE COURT:.....

Honorable Steven L. Hansen
Fourth District Court Judge

APPLICATION FOR PAYMENT

RECOMMENDED FOR DENIAL

- EXPLANATION REQUIRED-

Claim Report

Informal Claim

Claim Number: LRF-2014-0721-01

December 3, 2014

Claim Examined by: Dane

Claimant: International Installations LLC

Contractor License #7252488-5501 Issue Date: 2/2/2009

Expiration Date: 11/30/2015

Claimant Classification: Contractor

Claimant's Attorney: Jason Robinson

Nonpaying Party: Picasso Custom Homes LLC

Contractor License # 7464077

NPP Classification: Specialty Contractor

Original Contractor: Picasso Custom Homes LLC

Type: Licensed Contractor

Contractor License # 7464077

License Issuance Date: 11/30/2009 License End Date: 11/30/2013

Homeowners: Tyler & Marianne Dixon

Abstract and Recommendation

Division's recommended disposition: Deny

Having reviewed evidence submitted by the claimant, it is the Division's opinion that the evidence submitted fails to meet the claimant's burden of proof. Specifically, the Division finds that the claimant failed to meet the statutory requirements of Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B).

For these reasons, the Division recommends the application be denied.

Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) requires that a claimant filed action against the nonpaying party within the earlier of 180 days of the notice of lien filing or 270 days from completion of the project. In this case, the claimant filed action against the nonpaying party 313 days after completion of the original contract. Thus, the claimant missed the filing deadline.

Relevant Law

Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Utah Code Ann. § 38-11-204 (2) which requires:

To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

- (a) from the date the judgment required by Subsection (3)(c) is entered;
- (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
- (c) if a laborer, from the date the laborer completed the laborer's qualified services.

Claimant's Evidence

A. Claimant's Evidence (*Exhibit A*)

The claimant appears to argue that that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party – regardless of when the action to obtain the judgment was filed.

Division's Analysis

The Division finds the claimant's argument that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party – regardless of when the action to obtain the judgment was filed is without merit. The requirements of Utah Code Ann. § 38-11-204 (2) are separate from the requirements of Utah Code Ann. § 38-11-204 (4). Thus, both the action filing and the application filing requirements must be met in order to comply with the requirements of Utah Code Ann. § 38-11-204.

Summary

The claimant missed the filing deadlines established in Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B). Additionally, Utah Code Ann. § 38-11-204 (2) and Utah Code Ann. § 38-11-204 (4) are separate requirements and all of the requirements of Utah Code Ann. § 38-11-204 must be satisfied to be reimbursed from the Fund. Thus, the Division recommends that the application be denied.

Exhibit A



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ATTORNEYS AND COUNSELORS AT LAW

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November 21, 2014

VIA HAND DELIVERY

Dane Ishihara
DOPL - LRF
PO BOX 146741
Salt Lake City, Utah 84114-6741

Re: Response to Conditional Denial of Claim for Applications Numbered:
LRF-2014-0731-01
LRF-2014-0731-02
LRF-2014-0731-03
LRF-2014-0728-01
LRF-2014-0728-02
LRF-2014-0728-03
LRF-2014-0728-04
LRF-2014-0721-01
LRF-2014-0812-03

**Claimants: Dependable Plumbing, Premier Building Supply, International Installations,
and Gunner Heating & Air Conditioning**

Dear Mr. Ishihara:

This letter responds to the conditional denials of the claims noted above regarding Dependable Plumbing, Premier Building Supply, International Installations, and Gunner Heating & Air Conditioning (collectively referred to as "Claimants"). As explained below, the Division should approve the claims because (1) Dependable and Premier were required to release their liens and could not file foreclosure actions under Utah Code § 38-11-204(4)(d)(i), which therefore pushed their filing deadline to the 270-day requirement, or (2) because Utah Code § 38-11-204(4)(d)(i)-(iv) contains the disjunctive "or" and therefore allows Claimants to file their applications within one year after obtaining the judgment required by (4)(d)(ii).

(1) Dependable and Premier were required to release their liens once the Fund issued Certificates of Compliance, which therefore allowed them to file an action against the nonpaying party within 270 days from the Certificates of Occupancy.

Concerning only the claims identified in the table below, the Fund should approve Dependable and Premier’s applications because the Fund’s issuance of Certificates of Compliance required Dependable and Premier to release their liens—thus removing the requirement to file foreclosure actions within 180 days after the lien filings. Utah Code § 38-11-204(4)(d)(i) requires a qualified beneficiary to file an action against the nonpaying party “within the earlier of: (A) 180 days from the date the qualified beneficiary filed a notice of claim under section 38-1a-502; or (B) 270 days from the completion of the original contract pursuant to subsection 38-1a-502(1) (defined as the date of the Certificate of Occupancy). It is no coincidence the Legislature chose the 180-day requirement in paragraph (4)(d)(i) to be the same number of days required to file a foreclosure action on a lien under 38-1a-701. Indeed, it appears the legislative intent with respect to paragraph (4)(d)(i) was to require a qualified beneficiary to timely file a foreclosure action if they held a valid lien; but if they did not hold a valid lien or if they never filed a lien, then they must file against the nonpaying party within 270 days from the Certificate of Occupancy.

Considering this, because Dependable and Premier were required to release their liens after the Fund issued Certificates of Compliance on the subject homes, the proper deadline was 270 days to file an action against the nonpaying party. That is, on the 180th day after Dependable and Premier filed their liens, *they did not have liens* on which to file foreclosure actions. And without liens to foreclose, the proper deadline under (4)(d)(i) was 270 days from the respective Certificates of Occupancy on each home. Those respective dates are as follows:

Qualified Beneficiary	LRF Application Number	Homeowner	Date of Certificate of Occupancy	270 Days from Certificate of Occupancy	Date Qualified Beneficiary filed Confession of Judgment Against Nonpaying Party
Dependable Plumbing	LRF-2014-0731-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Dependable Plumbing	LRF-2014-0731-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-03	Nicol	12/24/2013	9/20/2014	6/2/2014

As shown in this table, Dependable and Premier filed the Confession of Judgments well within the 270-day deadlines. Therefore, the Fund should approve the applications.

(2) The Claimants were allowed to file their application to the Fund within one year after obtaining the judgment required by § 38-11-204(4)(d)(ii) because (4)(d) contains the disjunctive “or” following paragraph (iii).

In the alternative, the Fund should approve the Claimants’ applications because the plain language of Utah Code § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party—regardless of when the action to obtain that judgment was filed. Section 38-11-204(2) states: “To recover from the fund, the application [to the lien recovery fund] shall be field no later than one year: (a) from the date the judgment required by subsection 4(d) is entered.” Subsection 4(d) requires a qualified beneficiary to establish one of four things:

- (i) The qualified beneficiary filed an action to foreclose on a lien within 180 days after filing the lien or filed an action within 270 days after the certificate of occupancy;
- (ii) The qualified beneficiary obtained a judgment against the nonpaying party;
- (iii) The qualified beneficiary obtained an order to ascertain the nonpaying party’s assets; **OR**
- (iv) The qualified beneficiary timely filed a proof of claim if the nonpaying party has filed bankruptcy.

It is critical to note that subsection 4(d) contains the disjunctive “or” at the end of paragraph 4(d)(iii). In other words, under the plain language of the statute and considering that the Legislature uses each word advisedly,¹ a qualified beneficiary is allowed to file its application to the Fund within one year after obtaining the judgment noted in paragraph 4(d)(ii). Accordingly, the Fund should approve Claimants’ applications since they filed their applications well within one year after obtaining judgments under (4)(d)(ii).

Thank you for your consideration of this matter.

Sincerely,

BABCOCK SCOTT & BABCOCK



Joshua J. Sundloff
Attorney

¹ *Marion Energy, Inc. v. KFJ Ranch P’ship*, 267 P.3d 863, 866 (Utah 2011).

Claim Report

Informal Claim

Claim Number: LRF-2014-0728-01, 02 & 03

December 3, 2014

Claim Examined by: Dane

Claimant: Premier Building Supply LLC

LRF Registration # 7492187-5501 Registration Date: 10/28/2009 Expiration Date: 11/30/2015

Claimant Classification: Supplier

Claimant's Attorney: Jason H Robinson & Joshua J Sundloff

Nonpaying Party: Picasso Custom Homes LLC

Contractor License # 7464077 NPP Classification: Specialty Contractor

Original Contractor: Picasso Custom Homes LLC

Type: Licensed Contractor Contractor License # 7464077

License Issuance Date: 11/30/2009 License End Date: 11/30/2013

Homeowners: Campbell, Scheid & Nicol

Abstract and Recommendation

Division's recommended disposition: Deny

Having reviewed evidence submitted by the claimant, it is the Division's opinion that the evidence submitted fails to meet the claimant's burden of proof. Specifically, the Division finds that the claimant failed to meet the statutory requirements of Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B).

For these reasons, the Division recommends the application be denied.

Detailed Analysis and Findings of Facts

Relevant Law

Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary within the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or
- (B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Utah Code Ann. § 38-11-204 (2) which requires:

To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

- (a) from the date the judgment required by Subsection (3)(c) is entered;
- (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
- (c) if a laborer, from the date the laborer completed the laborer's qualified services.

Relevant Dates

<u>Homeowner</u>	<u>Project Completion</u>	<u>270 days from Completion</u>	<u>Lien Filing</u>	<u>180 days from lien filing</u>	<u>Civil Action Filing</u>	<u>Days Late</u>
Campbell	10/23/2013	7/20/2014	11/18/2013	5/17/2014	6/2/2014	16
Scheid	11/19/2013	8/16/2014	11/22/2013	5/21/2014	6/2/2014	12
Nicol	12/23/2013	9/19/2014	11/13/2013	5/12/2014	6/3/2014	22

Claimant's Evidence

A. Claimant's Evidence (*Exhibit A*)

The claimant provides two arguments:

- (1) The claimant argues that paragraph (4) (d) (i) is to require a qualified beneficiary to timely file a foreclosure action if they held a valid lien; but if they did not hold a valid lien or if they never filed a lien, then they must file against the nonpaying party within 270 days from the Certificate of Occupancy. Based on this argument the claimant asserts that because the Certificates of Compliance were issued and the claimant was required to remove their lien the proper deadline is 270 days from the date the Certificates of Occupancies were issued.
- (2) The claimant argues that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed.

Division's Analysis

The Division finds that the issuance of a Certificate of Compliance does not affect the civil action filing deadline required to recover from the Fund. In this case the earlier of the two dates is 180 days from the Notice of Lien and the claimant filed an action against the nonpaying party after the applicable deadline. Therefore, it is the Division's

opinion that the claimant failed to meet the statutory requirement outlined in Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B).

Additionally, the Division finds the claimants argument that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed is without merit. The requirements of Utah Code Ann. § 38-11-204 (2) are separate from the requirements of Utah Code Ann. § 38-11-204 (4). Thus, both the action filing and the application filing requirements must be met in order to comply with the requirements of Utah Code Ann. § 38-11-204.

Summary

Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) requires that a claimant filed action against the nonpaying party within 180 days of the notice of lien filing. In this case, the claimant filed action against the nonpaying party after the applicable deadline; missing the action filing deadline by 16, 12 and 22 days. Therefore, the Division recommends that the application be denied.

Exhibit A



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November 21, 2014

VIA HAND DELIVERY

Dane Ishihara
DOPL - LRF
PO BOX 146741
Salt Lake City, Utah 84114-6741

Re: Response to Conditional Denial of Claim for Applications Numbered:
LRF-2014-0731-01
LRF-2014-0731-02
LRF-2014-0731-03
LRF-2014-0728-01
LRF-2014-0728-02
LRF-2014-0728-03
LRF-2014-0728-04
LRF-2014-0721-01
LRF-2014-0812-03

**Claimants: Dependable Plumbing, Premier Building Supply, International Installations,
and Gunner Heating & Air Conditioning**

Dear Mr. Ishihara:

This letter responds to the conditional denials of the claims noted above regarding Dependable Plumbing, Premier Building Supply, International Installations, and Gunner Heating & Air Conditioning (collectively referred to as "Claimants"). As explained below, the Division should approve the claims because (1) Dependable and Premier were required to release their liens and could not file foreclosure actions under Utah Code § 38-11-204(4)(d)(i), which therefore pushed their filing deadline to the 270-day requirement, or (2) because Utah Code § 38-11-204(4)(d)(i)-(iv) contains the disjunctive "or" and therefore allows Claimants to file their applications within one year after obtaining the judgment required by (4)(d)(ii).

(1) Dependable and Premier were required to release their liens once the Fund issued Certificates of Compliance, which therefore allowed them to file an action against the nonpaying party within 270 days from the Certificates of Occupancy.

Concerning only the claims identified in the table below, the Fund should approve Dependable and Premier’s applications because the Fund’s issuance of Certificates of Compliance required Dependable and Premier to release their liens—thus removing the requirement to file foreclosure actions within 180 days after the lien filings. Utah Code § 38-11-204(4)(d)(i) requires a qualified beneficiary to file an action against the nonpaying party “within the earlier of: (A) 180 days from the date the qualified beneficiary filed a notice of claim under section 38-1a-502; or (B) 270 days from the completion of the original contract pursuant to subsection 38-1a-502(1) (defined as the date of the Certificate of Occupancy). It is no coincidence the Legislature chose the 180-day requirement in paragraph (4)(d)(i) to be the same number of days required to file a foreclosure action on a lien under 38-1a-701. Indeed, it appears the legislative intent with respect to paragraph (4)(d)(i) was to require a qualified beneficiary to timely file a foreclosure action if they held a valid lien; but if they did not hold a valid lien or if they never filed a lien, then they must file against the nonpaying party within 270 days from the Certificate of Occupancy.

Considering this, because Dependable and Premier were required to release their liens after the Fund issued Certificates of Compliance on the subject homes, the proper deadline was 270 days to file an action against the nonpaying party. That is, on the 180th day after Dependable and Premier filed their liens, *they did not have liens* on which to file foreclosure actions. And without liens to foreclose, the proper deadline under (4)(d)(i) was 270 days from the respective Certificates of Occupancy on each home. Those respective dates are as follows:

Qualified Beneficiary	LRF Application Number	Homeowner	Date of Certificate of Occupancy	270 Days from Certificate of Occupancy	Date Qualified Beneficiary filed Confession of Judgment Against Nonpaying Party
Dependable Plumbing	LRF-2014-0731-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Dependable Plumbing	LRF-2014-0731-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-03	Nicol	12/24/2013	9/20/2014	6/2/2014

As shown in this table, Dependable and Premier filed the Confession of Judgments well within the 270-day deadlines. Therefore, the Fund should approve the applications.

(2) The Claimants were allowed to file their application to the Fund within one year after obtaining the judgment required by § 38-11-204(4)(d)(ii) because (4)(d) contains the disjunctive “or” following paragraph (iii).

In the alternative, the Fund should approve the Claimants’ applications because the plain language of Utah Code § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party—regardless of when the action to obtain that judgment was filed. Section 38-11-204(2) states: “To recover from the fund, the application [to the lien recovery fund] shall be filed no later than one year: (a) from the date the judgment required by subsection 4(d) is entered.” Subsection 4(d) requires a qualified beneficiary to establish one of four things:

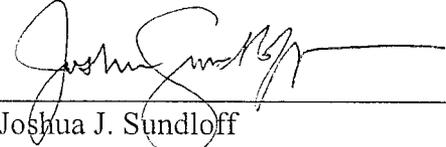
- (i) The qualified beneficiary filed an action to foreclose on a lien within 180 days after filing the lien or filed an action within 270 days after the certificate of occupancy;
- (ii) The qualified beneficiary obtained a judgment against the nonpaying party;
- (iii) The qualified beneficiary obtained an order to ascertain the nonpaying party’s assets; **OR**
- (iv) The qualified beneficiary timely filed a proof of claim if the nonpaying party has filed bankruptcy.

It is critical to note that subsection 4(d) contains the disjunctive “or” at the end of paragraph 4(d)(iii). In other words, under the plain language of the statute and considering that the Legislature uses each word advisedly,¹ a qualified beneficiary is allowed to file its application to the Fund within one year after obtaining the judgment noted in paragraph 4(d)(ii). Accordingly, the Fund should approve Claimants’ applications since they filed their applications well within one year after obtaining judgments under 4(d)(ii).

Thank you for your consideration of this matter.

Sincerely,

BABCOCK SCOTT & BABCOCK



Joshua J. Sundloff
Attorney

¹ *Marion Energy, Inc. v. KFJ Ranch P’ship*, 267 P.3d 863, 866 (Utah 2011).

Claim Report

Informal Claim

Claim Number: LRF-2014-0728-04

December 2, 2014

Claim Examined by: Dane

Claimant: Premier Building Supply LLC

Contractor License # 7492187

Issue Date: 10/28/2009

Expiration Date: 11/30/2015

Claimant Classification: Contractor

Claimant's Attorney: Jason H Robinson

Nonpaying Party: Picasso Custom Homes LLC

Contractor License # 7464077

NPP Classification: Specialty Contractor

Original Contractor: Picasso Custom Homes LLC

Type: Licensed Contractor

Contractor License # 7464077

License Issuance Date: 11/30/2009 License End Date: 11/30/2013

Homeowner: Alys Geertsen

Abstract and Recommendation

Division's recommended disposition: Deny

Having reviewed evidence submitted by the claimant, it is the Division's opinion that the evidence submitted fails to meet the claimant's burden of proof. Specifically, the Division finds that the claimant failed to meet the statutory requirements of Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B).

For these reasons, the Division recommends the application be denied.

Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) requires that a claimant filed action against the nonpaying party within the earlier of 180 days of the notice of lien filing or 270 days from completion of the project. In this case, the notice of lien was filed on November 13, 2013. The action against the nonpaying party was filed on May 29, 2014; 16 days after the applicable deadline.

Relevant Law

Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary within the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Utah Code Ann. § 38-11-204 (2) which requires:

To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

- (a) from the date the judgment required by Subsection (3)(c) is entered;
- (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
- (c) if a laborer, from the date the laborer completed the laborer's qualified services.

Claimant's Evidence

A. Claimant's Evidence (*Exhibit A*)

The claimant appears to argue that that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed.

Division's Analysis

The Division finds the claimant's argument that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed is without merit. The requirements of Utah Code Ann. § 38-11-204 (2) are separate from the requirements of Utah Code Ann. § 38-11-204 (4). Thus, both the action filing and the application filing requirements must be met in order to comply with the requirements of Utah Code Ann. § 38-11-204.

Summary

The claimant missed the filing deadline established in Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B). Additionally, Utah Code Ann. § 38-11-204 (2) and Utah Code Ann. § 38-11-204 (4) are separate requirements and all of the requirements of Utah Code Ann. § 38-11-204 must be satisfied to be reimbursed from the Fund. Thus, the Division recommends that the application be denied.

Claim Report

Informal Claim

Claim Number: LRF-2014-0731-01 & 02

December 3, 2014

Claim Examined by: Dane

Claimant: Dependable Plumbing Inc

Contractor License # 2666888

Issue Date: 9/22/1993

Expiration Date: 11/30/2015

Claimant Classification: Contractor

Claimant's Attorney: Jason H Robinson & Joshua J Sundloff

Nonpaying Party: Picasso Custom Homes LLC

Contractor License # 7464077

NPP Classification: Specialty Contractor

Original Contractor: Picasso Custom Homes LLC

Type: Licensed Contractor

Contractor License # 7464077

License Issuance Date: 11/30/2009 License End Date: 11/30/2013

Homeowners: Scheid & Campbell

Abstract and Recommendation

Division's recommended disposition: Deny

Having reviewed evidence submitted by the claimant, it is the Division's opinion that the evidence submitted fails to meet the claimant's burden of proof. Specifically, the Division finds that the claimant failed to meet the statutory requirements of Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B).

For these reasons, the Division recommends the application be denied.

Detailed Analysis and Findings of Facts

Relevant Law

Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Utah Code Ann. § 38-11-204 (2) which requires:

To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

- (a) from the date the judgment required by Subsection (3)(c) is entered;
- (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
- (c) if a laborer, from the date the laborer completed the laborer's qualified services.

Relevant Evidence

- A. Certificate of Occupancy, Scheid (*Exhibit A*)
- B. Notice of Lien, Scheid (*Exhibit A*)
- C. Certificate of Occupancy, Campbell (*Exhibit B*)
- D. Notice of Lien, Campbell (*Exhibit B*)
- E. Judgment by Confession (*Exhibit C*)

Relevant Dates

<u>Homeowner</u>	<u>Project Completion</u>	<u>270 days from Completion</u>	<u>Lien Filing</u>	<u>180 days from lien filing</u>	<u>Civil Action Filing</u>
Scheid	11/19/2013	8/16/2014	11/7/2013	5/6/2014	6/2/2014
Campbell	10/23/2013	7/20/2014	11/7/2013	5/6/2014	6/2/2014

Claimant's Evidence

- A. Claimant's legal counsel (*Exhibit D*)

The claimant provides two arguments:

- (1) The claimant argues that paragraph (4) (d) (i) is to require a qualified beneficiary to timely file a foreclosure action if they held a valid lien; but if they did not hold a valid lien or if they never filed a lien, then they must file against the nonpaying party within 270 days from the Certificate of Occupancy. Based on this argument the claimant asserts that because the Certificates of Compliance were issued and the claimant was required to remove their lien the proper deadline is 270 days from the date the Certificates of Occupancies were issued.
- (2) The claimant argues that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party – regardless of when the action to obtain the judgment was filed.

Division's Analysis

The Division's finds that the issuance of a Certificate of Compliance does not affect the civil action filing deadline required to recover from the Fund. In this case the earlier of the two dates is 180 days from the Notice of Lien and the claimant filed an action against the nonpaying party 26 days after the applicable deadline. Therefore, it is the Division's opinion that the claimant failed to meet the statutory requirement outlined in Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B).

Additionally, the Division finds the claimants argument that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed is without merit. The requirements of Utah Code Ann. § 38-11-204 (2) are separate from the requirements of Utah Code Ann. § 38-11-204 (4). Thus, both the action filing and the application filing requirements both must be met in order to comply with the requirements of Utah Code Ann. § 38-11-204.

Summary

Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) requires that a claimant filed action against the nonpaying party within 180 days of the notice of lien filing. In this case, the claimant filed action against the nonpaying party 206 days after the notice of lien was filed; missing the action filing deadline by 26 days. Therefore, the Division recommends that the application be denied.

Exhibit A

CERTIFICATE OF OCCUPANCY

*Herriman City
Building Department*

6822 W Buck Ridge Dr

COVE AT HERRIMAN SPRINGS

LOT 5573

Permit: 130345

Group/Division: R-3

Occupant Load: 9

Use of Building: Single Family Dwelling

Fire Sprinklered: No

Type of Construction: Wood Frame

Portion of Floor: Entire Structure

Date: 11/19/2013

Owner: Picasso Custom Homes LLC

727 Aspen Hills

Saratoga Springs, UT 84045


Jesse T. Bullock
Herriman City Building Official

This Certificate is issued pursuant to the requirements of the International Residential Code certifying that at the time of issuance this structure was in compliance for occupancy with the various ordinances of Herriman City regulating building construction or use.

Save with your house documents

Scheid

11750130
11/7/2013 2:44:00 PM \$10.00
Book - 10191 Pg - 1077
Gary W. Ott
Recorder, Salt Lake County, UT
FINANCIAL MANAGEMENT SERVICES
BY: eCASH, DEPUTY - EF 1 P.

WHEN RECORDED RETURN TO:
DEPENDABLE PLUMBING, INC.
1225 SOUTH 1840 WEST
OREM, UT 84058
801-221-11782

NOTICE OF MECHANIC'S LIEN

DEPENDABLE PLUMBING, INC., 1225 SOUTH 1840 WEST, OREM, UT 84058, 801-221-11782, lien claimant, acting through its limited recording agent, Financial Management Services, L.L.C., hereby holds and claims a mechanic's lien, pursuant to Section 38-1-1 et. seq. Utah Code Annotated 1953, as amended, upon the property and improvements owned or reputed to be owned by JOSIAH AND TINA SCHEID AND BOBBY AND ELAINE FEIM and located at approximately 6822 WEST BUCK RIDGE DRIVE, HERRIMAN, SALT LAKE County, Utah and more particularly described as follows:

LEGAL: LOT 5573, COVE AT HERRIMAN SPRINGS, PHASE 5E, SUB., PARCEL # 32-10-380-009

The lien claimant claims a lien upon the above property for amounts owing for furnishing PLUMBING in connection with the improvement of said real property. The lien claimant was employed by STEVE PETERSON, PICASSO CUSTOM HOMES, 727 ASPEN HILLS, SARATOGA SPRINGS, UT 84045 or furnished the aforesaid SERVICES to said company. There is currently believed to be owed \$2,745.001, including lien filing fees plus interest, costs and attorney's fees, which principal amount could change, should additional credits or charges be discovered. DEPENDABLE PLUMBING, INC. furnished the first said PLUMBING on JUNE 11, 2013, and the last SERVICES were furnished on OCTOBER 11, 2103.

NOTICE:

PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-105 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 either section (1) or (2) is met: (1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer; (b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and (c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; or (2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000." (3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing. The application is available at www.dopl.utah.gov/rlf.

Dated 7 November, 2013.

Copy sent to owner of record via Certified Mail # 7009 2250 0001 1727 5046

STATE OF UTAH)

DEPENDABLE PLUMBING, INC., claimant
By limited agent, Financial Management Services, L.L.C.

COUNTY OF SALT LAKE)

By William J. Green
William J. Green

On November 7, 2013, being duly subscribed and sworn and appeared before me, William J. Green, who said he is a member of Financial Management Services, L.L.C., (FMS), executed the above and foregoing instrument as limited agent for the lien claimant and acknowledged to me FMS, executed the same and believes it to be true. IN WITNESS WHEREOF I have herein set my hand and affixed my seal.

Sandra Stevens
NOTARY PUBLIC, Residing in Salt Lake County, UT



Exhibit B

LEHI



PIONEERING UTAH'S FUTURE

BUILDING DEPARTMENT

Certificate of Occupancy

Permit No: 13-410 Date: Wednesday, 23 October 2013

Address of the Building, 1327 SOUTH 825 WEST LEHI, UT 84043

Name of owner PICASSO CUSTOM HOMES, LLC

having completed the building, or described portion of the building, located at 1327 SOUTH 825 WEST LEHI, UT 84043 TIMVIEW MEADOWS 2 LOT 34

in accordance with plans and specifications, and in compliance with the IRC 2012 Building Code, this "Certificate of Occupancy" is hereby issued. (Sec. IRC 2012 Building Code.

This certificate is issued, subject to the following conditions:

An Automatic sprinkler system is provided No, The sprinkler system is required No

Said building is to be used for Residential

The building, or described portion of the building, complies with the requirements of the IRC 2012 Building Code For the group and division of occupancy and the use for which the proposed occupancy is classified. The Certificate shall be posted in a conspicuous place on the premises and shall not be removed except by the Lehi City Building Department.

[Handwritten signature]

Building Official

Remarks:

CERTIFICATE OF OCCUPANCY APPROVAL

(Initials) Approved Building Inspector (TR) YES

Date 10.23/2013

Campbell

103921:2013 PG 1 of 1
Jeffery Smith
Utah County Recorder
2013 Nov 07 02:55 PM FEE 10.00 BY CLS
RECORDED FOR Financial Management Services
ELECTRONICALLY RECORDED

WHEN RECORDED RETURN TO:
DEPENDABLE PLUMBING, INC.
1225 SOUTH 1840 WEST
OREM, UT 84058
801-221-1178

NOTICE OF MECHANIC'S LIEN

DEPENDABLE PLUMBING, INC., 1225 SOUTH 1840 WEST, OREM, UT 84058, 801-221-1178, lien claimant, acting through its limited recording agent, Financial Management Services, L.L.C., hereby holds and claims a mechanic's lien, pursuant to Section 38-1-1 et seq. Utah Code Annotated 1993, as amended, upon the property and improvements owned or reputed to be owned by RYAN G AND JANN E CAMPBELL and located at approximately 1327 SOUTH 825 WEST, LEHI, UTAH County, Utah and more particularly described as follows:

LEGAL: LOT 34, TIMPVIEW MEADOWS, PHASE 2, SUB., PARCEL # 53-359-0034

The lien claimant claims a lien upon the above property for amounts owing for furnishing PLUMBING in connection with the improvement of said real property. The lien claimant was employed by STEVEN PETERSON, PICASSO CUSTOM HOMES, 727 ASPEN HILLS, SARATOGA SPRINGS, UT 84045 or furnished the aforesaid SERVICES to said company. There is currently believed to be owed \$3,710.00, including lien filing fees plus interest, costs and attorney's fees, which principal amount could change, should additional credits or charges be discovered. DEPENDABLE PLUMBING, INC. furnished the first said PLUMBING on JULY 19, 2013, and the last SERVICES were furnished on OCTOBER 24, 2013.

NOTICE:

PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is 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 either section (1) or (2) is met: (1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer; (b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and (c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; or (2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000.
(3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing. The application is available at www.dopl.utah.gov/rlf.

Dated 7 November, 2013,

Copy sent to owner of record via Certified Mail # 7009 2250 0601 1727 5080

STATE OF UTAH

)

DEPENDABLE PLUMBING, INC., claimant
By limited agent, Financial Management Services, L.L.C.

COUNTY OF SALT LAKE

)

By



William J. Green

On November 7, 2013, being duly subscribed and sworn and appeared before me, William J. Green, who said he is a member of Financial Management Services, L.L.C., (FMS), executed the above and foregoing instrument as limited agent for the lien claimant and acknowledged to me FMS, executed the same and believes it to be true. IN WITNESS WHEREOF I have herein set my hand and affixed my seal.

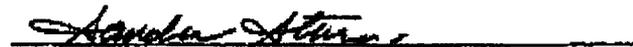

NOTARY PUBLIC, Residing in Salt Lake County, UT



Exhibit C

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

DEPENDABLE PLUMBING vs. PICASSO CUSTOM HOMES LLC

CASE NUMBER 140903719 Jdmt by Confession

CURRENT ASSIGNED JUDGE
ROBERT FAUST

PARTIES

Plaintiff - DEPENDABLE PLUMBING
Represented by: BRIAN J BABCOCK
Represented by: JASON H ROBINSON
Represented by: JOSHUA J SUNDLOFF

Defendant - PICASSO CUSTOM HOMES LLC

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	35.00
	Amount Paid:	35.00
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: JDMT CONFESSION

Amount Due:	35.00
Amount Paid:	35.00
Amount Credit:	0.00
Balance:	0.00

PROCEEDINGS

06-02-14 Filed: Verified Statement for Judgment by Confession
06-02-14 Case filed
06-02-14 Note: discovery tier set to Exempt
06-02-14 Judge ROBERT FAUST assigned.
06-02-14 Fee Account created Total Due: 35.00
06-02-14 JDMT CONFESSION Payment Received: 35.00
06-02-14 Filed: Judgment (Proposed) by Confession
06-02-14 Filed: Return of Electronic Notification
06-03-14 Filed judgment: Judgment by Confession
Judge ROBERT FAUST
Signed June 03, 2014
06-03-14 Judgment #1 Entered \$ 9996.97
Creditor: DEPENDABLE PLUMBING
Debtor: PICASSO CUSTOM HOMES LLC

1,542.42 AttorneyFees
416.44 PreJdmtInt
8,038.11 Principal
9,996.97 Judgment Grand Total
06-03-14 Filed: Return of Electronic Notification
06-04-14 Case Disposition is Judgment
Disposition Judge is ROBERT FAUST
06-13-14 Filed: Motion for Order in Supplemental Proceedings
Filed by: DEPENDABLE PLUMBING,
06-13-14 Filed: Order (Proposed) in Supplemental Proceedings
06-13-14 Filed: Return of Electronic Notification
06-13-14 Filed: Other - Declined to Sign Order (Proposed)
7/1/14Supplemental Proceedings
06-13-14 Note: This is filed with the wrong Document Title and cannot be
issued. It must be titled as SUPP/OSC/BW. Also, service
to Debtor's Attorney does not constitute service for the
purpose of this calendar. The Debtor must be served for
the next appropriate
06-13-14 Note: order should the debtor fail to appear. An LLC must
specify service to a member of the LLC, or Pres. Sec.
Treas. etc. Additionally, you may prepare a "Notice of
Supplemental Hearing" that does not have to be issued by
the court. Please contact the
06-13-14 Note: Debt Collection Dept. for information (801-238-7433).
Thank You.
06-13-14 Filed: Return of Electronic Notification
07-14-14 Filed: Notice of Hearing in Supplemental Proceedings
07-14-14 Filed return: Acceptance of Service of Notice of Hearing in
Supplemental Proceedings S/O 07/17/2014 upon BENJAMIN D.
JOHNSON, ATTORNEY FOR DEFEND for
Party Served: PICASSO CUSTOM HOMES LLC
Service Type: Personal
Service Date: July 11, 2014
07-14-14 Filed: Return of Electronic Notification
07-14-14 SUPPLEMENTAL ORDER scheduled on July 17, 2014 at 02:00 PM in
THIRD FLOOR - W32.
07-16-14 Note: Atty's office called to request the Supplemental Hearing
be Stricken.
07-16-14 SUPPLEMENTAL ORDER Cancelled.
Reason: Hearing stricken - defendant complied

Exhibit D



A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

ROBERT F. BABCOCK
KENT B. SCOTT
BRIAN J. BABCOCK²
JASON H. ROBINSON³
JUSTIN E. SCOTT
CODY W. WILSON¹
JEFFREY R. HANDY
JOSHUA J. SUNDLOFF

¹ ALSO ADMITTED IN COLORADO
² ALSO ADMITTED IN IDAHO
³ ALSO ADMITTED IN WYOMING

WASHINGTON FEDERAL PLAZA
505 EAST 200 SOUTH, SUITE 300
SALT LAKE CITY, UTAH 84102

TELEPHONE 801.531.7000
FACSIMILE 801.531.7060

WWW.BABCOCKSCOTT.COM

JOSHUA J. SUNDLOFF
Attorney at Law
josh@babcockscott.com

November 21, 2014

VIA HAND DELIVERY

Dane Ishihara
DOPL - LRF
PO BOX 146741
Salt Lake City, Utah 84114-6741

Re: Response to Conditional Denial of Claim for Applications Numbered:
LRF-2014-0731-01
LRF-2014-0731-02
LRF-2014-0731-03
LRF-2014-0728-01
LRF-2014-0728-02
LRF-2014-0728-03
LRF-2014-0728-04
LRF-2014-0721-01
LRF-2014-0812-03

**Claimants: Dependable Plumbing, Premier Building Supply, International Installations,
and Gunner Heating & Air Conditioning**

Dear Mr. Ishihara:

This letter responds to the conditional denials of the claims noted above regarding Dependable Plumbing, Premier Building Supply, International Installations, and Gunner Heating & Air Conditioning (collectively referred to as "Claimants"). As explained below, the Division should approve the claims because (1) Dependable and Premier were required to release their liens and could not file foreclosure actions under Utah Code § 38-11-204(4)(d)(i), which therefore pushed their filing deadline to the 270-day requirement, or (2) because Utah Code § 38-11-204(4)(d)(i)-(iv) contains the disjunctive "or" and therefore allows Claimants to file their applications within one year after obtaining the judgment required by (4)(d)(ii).

(1) Dependable and Premier were required to release their liens once the Fund issued Certificates of Compliance, which therefore allowed them to file an action against the nonpaying party within 270 days from the Certificates of Occupancy.

Concerning only the claims identified in the table below, the Fund should approve Dependable and Premier’s applications because the Fund’s issuance of Certificates of Compliance required Dependable and Premier to release their liens—thus removing the requirement to file foreclosure actions within 180 days after the lien filings. Utah Code § 38-11-204(4)(d)(i) requires a qualified beneficiary to file an action against the nonpaying party “within the earlier of: (A) 180 days from the date the qualified beneficiary filed a notice of claim under section 38-1a-502; or (B) 270 days from the completion of the original contract pursuant to subsection 38-1a-502(1) (defined as the date of the Certificate of Occupancy). It is no coincidence the Legislature chose the 180-day requirement in paragraph (4)(d)(i) to be the same number of days required to file a foreclosure action on a lien under 38-1a-701. Indeed, it appears the legislative intent with respect to paragraph (4)(d)(i) was to require a qualified beneficiary to timely file a foreclosure action if they held a valid lien; but if they did not hold a valid lien or if they never filed a lien, then they must file against the nonpaying party within 270 days from the Certificate of Occupancy.

Considering this, because Dependable and Premier were required to release their liens after the Fund issued Certificates of Compliance on the subject homes, the proper deadline was 270 days to file an action against the nonpaying party. That is, on the 180th day after Dependable and Premier filed their liens, *they did not have liens* on which to file foreclosure actions. And without liens to foreclose, the proper deadline under (4)(d)(i) was 270 days from the respective Certificates of Occupancy on each home. Those respective dates are as follows:

Qualified Beneficiary	LRF Application Number	Homeowner	Date of Certificate of Occupancy	270 Days from Certificate of Occupancy	Date Qualified Beneficiary filed Confession of Judgment Against Nonpaying Party
Dependable Plumbing	LRF-2014-0731-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Dependable Plumbing	LRF-2014-0731-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-03	Nicol	12/24/2013	9/20/2014	6/2/2014

As shown in this table, Dependable and Premier filed the Confession of Judgments well within the 270-day deadlines. Therefore, the Fund should approve the applications.

(2) The Claimants were allowed to file their application to the Fund within one year after obtaining the judgment required by § 38-11-204(4)(d)(ii) because (4)(d) contains the disjunctive “or” following paragraph (iii).

In the alternative, the Fund should approve the Claimants’ applications because the plain language of Utah Code § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party—regardless of when the action to obtain that judgment was filed. Section 38-11-204(2) states: “To recover from the fund, the application [to the lien recovery fund] shall be filed no later than one year: (a) from the date the judgment required by subsection 4(d) is entered.” Subsection 4(d) requires a qualified beneficiary to establish one of four things:

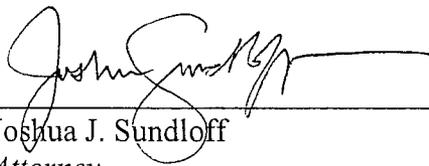
- (i) The qualified beneficiary filed an action to foreclose on a lien within 180 days after filing the lien or filed an action within 270 days after the certificate of occupancy;
- (ii) The qualified beneficiary obtained a judgment against the nonpaying party;
- (iii) The qualified beneficiary obtained an order to ascertain the nonpaying party’s assets; **OR**
- (iv) The qualified beneficiary timely filed a proof of claim if the nonpaying party has filed bankruptcy.

It is critical to note that subsection 4(d) contains the disjunctive “or” at the end of paragraph 4(d)(iii). In other words, under the plain language of the statute and considering that the Legislature uses each word advisedly,¹ a qualified beneficiary is allowed to file its application to the Fund within one year after obtaining the judgment noted in paragraph 4(d)(ii). Accordingly, the Fund should approve Claimants’ applications since they filed their applications well within one year after obtaining judgments under (4)(d)(ii).

Thank you for your consideration of this matter.

Sincerely,

BABCOCK SCOTT & BABCOCK



Joshua J. Sundloff
Attorney

¹ *Marion Energy, Inc. v. KFJ Ranch P’ship*, 267 P.3d 863, 866 (Utah 2011).

Claim Report

Informal Claim

Claim Number: LRF-2014-0731-03

December 2, 2014

Claim Examined by: Dane

Claimant: Dependable Plumbing Inc

Contractor License # 2666888

Issue Date: 9/22/1993

Expiration Date: 11/30/2015

Claimant Classification: Contractor

Claimant's Attorney: Jason H Robinson

Nonpaying Party: Picasso Custom Homes LLC

Contractor License # 7464077

NPP Classification: Specialty Contractor

Original Contractor: Picasso Custom Homes LLC

Type: Licensed Contractor

Contractor License # 7464077

License Issuance Date: 11/30/2009 License End Date: 11/30/2013

Homeowner: Alys Geertsen

Abstract and Recommendation

Division's recommended disposition: Deny

Having reviewed evidence submitted by the claimant, it is the Division's opinion that the evidence submitted fails to meet the claimant's burden of proof. Specifically, the Division finds that the claimant failed to meet the statutory requirements of Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B).

For these reasons, the Division recommends the application be denied.

Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) requires that a claimant filed action against the nonpaying party within the earlier of 180 days of the notice of lien filing or 270 days from completion of the project. In this case, the claimant filed action against the nonpaying party 206 days after the notice of lien was filed and 282 days after completion of the original contract. Thus, the claimant missed the filing deadline.

Relevant Law

Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Utah Code Ann. § 38-11-204 (2) which requires:

To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

- (a) from the date the judgment required by Subsection (3)(c) is entered;
- (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
- (c) if a laborer, from the date the laborer completed the laborer's qualified services.

Claimant's Evidence

A. Claimant's Evidence (*Exhibit A*)

The claimant appears to argue that that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed.

Division's Analysis

The Division finds the claimant's argument that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed is without merit. The requirements of Utah Code Ann. § 38-11-204 (2) are separate from the requirements of Utah Code Ann. § 38-11-204 (4). Thus, both the action filing and the application filing requirements must be met in order to comply with the requirements of Utah Code Ann. § 38-11-204.

Summary

The claimant missed the filing deadlines established in Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B). Additionally, Utah Code Ann. § 38-11-204 (2) and Utah Code Ann. § 38-11-204 (4) are separate requirements and all of the requirements of Utah Code Ann. § 38-11-204 must be satisfied to be reimbursed from the Fund. Thus, the Division recommends that the application be denied.

Claim Report

Informal Claim

Claim Number: LRF-2014-0812-03

December 3, 2014

Claim Examined by: Dane

Claimant: Gunner Heating & Air Conditioning, LLC

LRF Registration # 5854327

Registration Date: 4/1/2005

Expiration Date:

Claimant Classification: Contractor

Claimant's Attorney: Brian Babcock

Nonpaying Party: Picasso Custom Homes LLC

Contractor License # 7464077

NPP Classification: Specialty Contractor

Original Contractor: Picasso Custom Homes LLC

Type: Licensed Contractor

Contractor License # 7464077

License Issuance Date: 11/30/2009 License End Date: 11/30/2013

Homeowner: Alys Geertsen

Abstract and Recommendation

Division's recommended disposition: Deny

Having reviewed evidence submitted by the claimant, it is the Division's opinion that the evidence submitted fails to meet the claimant's burden of proof. Specifically, the Division finds that the claimant failed to meet the statutory requirements of Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B).

For these reasons, the Division recommends the application be denied.

Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B) requires that a claimant filed action against the nonpaying party within the earlier of 180 days of the notice of lien filing or 270 days from completion of the project. In this case, the claimant filed action against the nonpaying party 278 days after completion of the original contract. Thus, the claimant missed the filing deadline.

Relevant Law

Utah Code Ann. § 38-11-204 (4) (d) (i) (A) & (B) require:

To recover from the fund, . . . a qualified beneficiary shall establish that . . . the qualified beneficiary filed an action against the nonpaying party to recover monies owed to the qualified beneficiary within the earlier of:

- (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1-7; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1-7(1);

Utah Code Ann. § 38-11-204 (2) which requires:

To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

- (a) from the date the judgment required by Subsection (3)(c) is entered;
- (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
- (c) if a laborer, from the date the laborer completed the laborer's qualified services.

Claimant's Evidence

A. Claimant's Evidence (*Exhibit A*)

The claimant appears to argue that that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed.

Division's Analysis

The Division finds the claimant's argument that the plain language of Utah Code Ann. § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party - regardless of when the action to obtain the judgment was filed is without merit. The requirements of Utah Code Ann. § 38-11-204 (2) are separate from the requirements of Utah Code Ann. § 38-11-204 (4). Thus, both the action filing and the application filing requirements must be met in order to comply with the requirements of Utah Code Ann. § 38-11-204.

Summary

The claimant missed the filing deadlines established in Utah Code Ann. § 38-11-204(4)(d)(i)(A) & (B). Additionally, Utah Code Ann. § 38-11-204 (2) and Utah Code Ann. § 38-11-204 (4) are separate requirements and all of the requirements of Utah Code Ann. § 38-11-204 must be satisfied to be reimbursed from the Fund. Thus, the Division recommends that the application be denied.

Exhibit A



A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

ROBERT F. BABCOCK
KENT B. SCOTT
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November 21, 2014

VIA HAND DELIVERY

Dane Ishihara
DOPL - LRF
PO BOX 146741
Salt Lake City, Utah 84114-6741

Re: Response to Conditional Denial of Claim for Applications Numbered:
LRF-2014-0731-01
LRF-2014-0731-02
LRF-2014-0731-03
LRF-2014-0728-01
LRF-2014-0728-02
LRF-2014-0728-03
LRF-2014-0728-04
LRF-2014-0721-01
LRF-2014-0812-03

**Claimants: Dependable Plumbing, Premier Building Supply, International Installations,
and Gunner Heating & Air Conditioning**

Dear Mr. Ishihara:

This letter responds to the conditional denials of the claims noted above regarding Dependable Plumbing, Premier Building Supply, International Installations, and Gunner Heating & Air Conditioning (collectively referred to as "Claimants"). As explained below, the Division should approve the claims because (1) Dependable and Premier were required to release their liens and could not file foreclosure actions under Utah Code § 38-11-204(4)(d)(i), which therefore pushed their filing deadline to the 270-day requirement, or (2) because Utah Code § 38-11-204(4)(d)(i)-(iv) contains the disjunctive "or" and therefore allows Claimants to file their applications within one year after obtaining the judgment required by (4)(d)(ii).

(1) Dependable and Premier were required to release their liens once the Fund issued Certificates of Compliance, which therefore allowed them to file an action against the nonpaying party within 270 days from the Certificates of Occupancy.

Concerning only the claims identified in the table below, the Fund should approve Dependable and Premier's applications because the Fund's issuance of Certificates of Compliance required Dependable and Premier to release their liens—thus removing the requirement to file foreclosure actions within 180 days after the lien filings. Utah Code § 38-11-204(4)(d)(i) requires a qualified beneficiary to file an action against the nonpaying party “within the earlier of: (A) 180 days from the date the qualified beneficiary filed a notice of claim under section 38-1a-502; or (B) 270 days from the completion of the original contract pursuant to subsection 38-1a-502(1) (defined as the date of the Certificate of Occupancy). It is no coincidence the Legislature chose the 180-day requirement in paragraph (4)(d)(i) to be the same number of days required to file a foreclosure action on a lien under 38-1a-701. Indeed, it appears the legislative intent with respect to paragraph (4)(d)(i) was to require a qualified beneficiary to timely file a foreclosure action if they held a valid lien; but if they did not hold a valid lien or if they never filed a lien, then they must file against the nonpaying party within 270 days from the Certificate of Occupancy.

Considering this, because Dependable and Premier were required to release their liens after the Fund issued Certificates of Compliance on the subject homes, the proper deadline was 270 days to file an action against the nonpaying party. That is, on the 180th day after Dependable and Premier filed their liens, *they did not have liens* on which to file foreclosure actions. And without liens to foreclose, the proper deadline under (4)(d)(i) was 270 days from the respective Certificates of Occupancy on each home. Those respective dates are as follows:

Qualified Beneficiary	LRF Application Number	Homeowner	Date of Certificate of Occupancy	270 Days from Certificate of Occupancy	Date Qualified Beneficiary filed Confession of Judgment Against Nonpaying Party
Dependable Plumbing	LRF-2014-0731-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Dependable Plumbing	LRF-2014-0731-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-01	Campbell	10/23/2013	7/20/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-02	Scheid	11/19/2013	8/16/2014	6/2/2014
Premier Building Supply	LRF-2014-0728-03	Nicol	12/24/2013	9/20/2014	6/2/2014

As shown in this table, Dependable and Premier filed the Confession of Judgments well within the 270-day deadlines. Therefore, the Fund should approve the applications.

- (2) The Claimants were allowed to file their application to the Fund within one year after obtaining the judgment required by § 38-11-204(4)(d)(ii) because (4)(d) contains the disjunctive “or” following paragraph (iii).**

In the alternative, the Fund should approve the Claimants’ applications because the plain language of Utah Code § 38-11-204 allows a qualified beneficiary to file within one year after obtaining a judgment against the nonpaying party—regardless of when the action to obtain that judgment was filed. Section 38-11-204(2) states: “To recover from the fund, the application [to the lien recovery fund] shall be filed no later than one year: (a) from the date the judgment required by subsection 4(d) is entered.” Subsection 4(d) requires a qualified beneficiary to establish one of four things:

- (i) The qualified beneficiary filed an action to foreclose on a lien within 180 days after filing the lien or filed an action within 270 days after the certificate of occupancy;
- (ii) The qualified beneficiary obtained a judgment against the nonpaying party;
- (iii) The qualified beneficiary obtained an order to ascertain the nonpaying party’s assets; **OR**
- (iv) The qualified beneficiary timely filed a proof of claim if the nonpaying party has filed bankruptcy.

It is critical to note that subsection 4(d) contains the disjunctive “or” at the end of paragraph 4(d)(iii). In other words, under the plain language of the statute and considering that the Legislature uses each word advisedly,¹ a qualified beneficiary is allowed to file its application to the Fund within one year after obtaining the judgment noted in paragraph 4(d)(ii). Accordingly, the Fund should approve Claimants’ applications since they filed their applications well within one year after obtaining judgments under (4)(d)(ii).

Thank you for your consideration of this matter.

Sincerely,

BABCOCK SCOTT & BABCOCK



Joshua J. Sundloff
Attorney

¹ *Marion Energy, Inc. v. KFJ Ranch P’ship*, 267 P.3d 863, 866 (Utah 2011).

APPLICATION FOR PAYMENT

RECOMMENDED FOR APPROVAL

- NO EXPLANATION REQUIRED-

Claim Report

Informal Claim

Claim Number LRF-2014-0828-01

December 4, 2014

Claim Examined by: Dane

Claimant: Reeve Built LLC

LRF Registration #:	Registration Date:	Expiration Date:
Contractor License #: 7280607	Issue Date: 3/31/2009	Expiration Date: 11/30/2015
Claimant Classification: Contractor		

Claimant's Attorney: Nathan D Miller

Nonpaying Party: SMA Enterprises Inc dba Elite Building Group

Contractor License # 6527637	NPP Classification: Specialty Contractor
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Original Contractor: SMA Enterprises Inc dba Elite Building Group

Type: Licensed Contractor	Contractor License #: 6527637
License Issuance Date: 03/21/2007	License End Date: 11/30/2013

Homeowner(s) Morgan Humphries

Abstract and Recommendation

Division's recommended disposition: Approve Partial Payment

Detailed Analysis and Findings of Facts

Date Claimant Recorded Lien 3/13/2013

Evidence in support of date: Lien

Date Claimant file civil action or NPP filed bankruptcy: 5/9/2013

Evidence in support of date: Complaint

Number of days difference: 56

Did Claimant obtain judgment against NPP? Yes

Date Claimant obtained judgment or NPP filed for bankruptcy 10/1/2013

Evidence in support of date: Judgment

Is Claimant a qualified beneficiary? Yes

Did Homeowner enter into a written contract with Original Contractor for the performance of qualified services? Yes

Evidence of a written contract Certificate of Compliance

Was Original Contractor Licensed on contract date? Yes

Did Homeowner pay Original Contractor in full? Yes

Evidence of full payment: Certificate of Compliance

Does residence qualify as "owner-occupied"? Yes

Evidence of Owner Occupancy: Certificate of Compliance

Did Claimant provide qualified services? Yes

Evidence of qualified services: Invoice

Was NPP Licensed? Yes

Did NPP pay Claimant for qualified services? No

Evidence of nonpayment: Judgment

Did Claimant exhaust collection remedies? Yes

Payment Checklist

	<u>Claimed</u>		<u>Approved</u>		<u>Difference*</u>
Qualified Services:	\$ 11,390.00	\$	11,390.00	\$	0.00
Pre-judgment Atty Fees:	1,000.00		1,000.00		0.00
Pre-judgment Costs:	360.00		360.00		0.00
Post-judgment Atty Fees:	0.00		0.00		0.00
Post-judgment Costs:	0.00		0.00		0.00
Interest:	455.60		441.16		-14.44
Totals	\$ 13,205.60	\$	13,191.16	\$	-14.44

* Positive differences denote amounts approved in excess of amounts claimed; negative differences denote amounts denied.

Evidence of qualified services amount: Judgment

No evidence was submitted that established the payment due date. Thus, the date the judgment was obtained was used to calculate the interest payable.

Evidence of pre-judgment attorney fee amount: Judgment

Attorney fees limit per Utah Code Ann. § 38-11-203(3)(f) \$1,708.50

Evidence of pre-judgment costs: Judgment

Evidence of post-judgment attorney fees: Other (see comments)

None Claimed

Explanation of post-judgment costs:

None Claimed

Explanation of interest:

Interest calculated per Utah Code Ann. § 38-11-203(3)(c) in effect on date claim was filed. See attached schedule for details of interest calculations.

**Schedule of Interest
All Payments Due in Same Calendar Year
LRF-2014-0828-01**

Terms of Sale:
Claim Filing Date: 8/2/2014
Payment Due Date: 10/1/2013
Interest Rate per UCA 38-11-203(3)(c): 3.250%
Daily Interest Rate: 0.0089%

Total Interest Allowed per UCA 38-11-203(3)(c): \$ 441.16

<u>Event Date</u>	<u>Stop</u>	<u>Event Description</u>	<u>Changes to Qualified Service Balance</u>	<u>Qualified Service Balance</u>	<u>Number of Days Since Last Event</u>	<u>Interest Accrued Since Last Event</u>
10/1/2013	N	Claimant obtained judgment against NPP	\$ 11,390.00	11,390.00	0	\$ -
8/28/2014	N	Claimant filed application for payment		11,390.00	331	335.69
12/10/2014	N	Division director authorizes payment		11,390.00	104	105.47
	N			-	0	-

Claim Report

Informal Claim

Claim Number LRF-2014-0911-01

November 14, 2014

Claim Examined by: Dane

Claimant: ProBuild Company LLC

LRF Registration #:

Registration Date:

Expiration Date:

Contractor License #: 7919125

Issue Date: 2/24/2011

Expiration Date: 11/30/2015

Claimant Classification: Contractor

Claimant's Attorney: Darwin Bingham

Nonpaying Party: Picasso Custom Homes LLC

Contractor License # 7464077

NPP Classification: Home Builder

Original Contractor: Picasso Custom Homes LLC

Type: Licensed Contractor

Contractor License #: 7464077

License Issuance Date: 11/30/2009

License End Date: 11/30/2013

Homeowner(s) Allyson Geertsen

Abstract and Recommendation

Division's recommended disposition: Approve Partial Payment

Detailed Analysis and Findings of Facts

Date Claimant Recorded Lien

12/4/2013

Evidence in support of date: Lien

Date Claimant file civil action or NPP filed bankruptcy: 2/4/2014

Evidence in support of date: Complaint

Number of days difference: 61

Did Claimant obtain judgment against NPP? Yes

Date Claimant obtained judgment or NPP filed for bankruptcy 4/16/2014

Evidence in support of date: Judgment

Is Claimant a qualified beneficiary? Yes

Did Homeowner enter into a written contract with Original Contractor for the performance of qualified services? Yes

Evidence of a written contract Certificate of Compliance

Was Original Contractor Licensed on contract date? Yes

Did Homeowner pay Original Contractor in full? Yes

Evidence of full payment: Certificate of Compliance

Does residence qualify as "owner-occupied"? Yes

Evidence of Owner Occupancy: Certificate of Compliance

Did Claimant provide qualified services? Yes

Evidence of qualified services: Invoice

Was NPP Licensed? Yes

Did NPP pay Claimant for qualified services? No

Evidence of nonpayment: Judgment

Did Claimant exhaust collection remedies? Yes

Payment Checklist

	<u>Claimed</u>		<u>Approved</u>		<u>Difference*</u>
Qualified Services:	\$ 3,670.46	\$	3,670.46	\$	0.00
Pre-judgment Atty Fees:	1,000.50		550.57		-449.93
Pre-judgment Costs:	688.08		688.08		0.00
Post-judgment Atty Fees:	598.00		0.00		-598.00
Post-judgment Costs:	69.79		0.00		-69.79
Interest:	173.21		141.82		-31.39
Totals	\$ 6,200.04	\$	5,050.93	\$	-1,149.11

* Positive differences denote amounts approved in excess of amounts claimed; negative differences denote amounts denied.

Evidence of qualified services amount: Invoice

Evidence of pre-judgment attorney fee amount: Judgment

Attorney fees limit per Utah Code Ann. § 38-11-203(3)(f) \$550.57

Evidence of pre-judgment costs:

Evidence of post-judgment attorney fees:

Explanation of post-judgment costs:

No evidence submitted

Explanation of interest:

Interest calculated per Utah Code Ann. § 38-11-203(3)(c) in effect on date claim was filed. See attached schedule for details of interest calculations.

**Schedule of Interest
All Payments Due in Same Calendar Year
LRF-2014-0911-01**

Terms of Sale: 15th
 Claim Filing Date: 9/11/2014
 Payment Due Date: 8/15/2013
 Interest Rate per UCA 38-11-203(3)(c) 3.250%
 Daily Interest Rate 0.0089%

Total Interest Allowed per UCA 38-11-203(3)(c) \$ 141.82

<u>Event Date</u>	<u>Stop Interest?</u>	<u>Event Description</u>	<u>Changes to Qualified Service Balance</u>	<u>Qualified Service Balance</u>	<u>Number of Days Since Last Event</u>	<u>Interest Accrued Since Last Event</u>
8/15/2013	N	Credit received	\$ (65.18)	(65.18)	0	\$ -
9/15/2013	N	Payment due	\$ 1,415.59	1,350.41	31	-
9/15/2013	N	Payment due	\$ 170.96	1,521.37	0	-
9/15/2013	N	Payment due	\$ 65.71	1,587.08	0	-
10/15/2013	N	Payment due	\$ 416.39	2,003.47	30	4.24
10/15/2013	N	Payment due	\$ 77.10	2,080.57	0	-
10/15/2013	N	Payment due	\$ 1,589.89	3,670.46	0	-
12/4/2013	N	Claimant filed lien on residence		3,670.46	50	16.34
2/4/2014	N	Claimant filed complaint against NPP		3,670.46	62	20.26
4/16/2014	N	Claimant obtained judgment against NPP		3,670.46	71	23.20
9/11/2014	N	Claimant filed application for payment		3,670.46	148	48.37
12/10/2014	N	Division director authorizes payment		3,670.46	90	29.41