

2007

Stevensen 3rd East, L.C. v. Russell K. Watts : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STEVENSEN 3 RD EAST, L.C., a Utah	:	
limited liability company,	:	
	:	
Plaintiff and Appellee,	:	CASE NO. 20070765
	:	
vs.	:	District Court No. 010904107
	:	
RUSSELL K. WATTS, an individual,	:	
	:	
Defendant and Appellant.	:	

**APPEAL OF THE JURY VERDICT ENTERED FEBRUARY 1, 2007
IN THE THIRD DISTRICT COURT
AND RELATED PRE-TRIAL AND POST-TRIAL ORDERS
OF THE TRIAL COURT**

**ADDENDUM TO
BRIEF OF APPELLANT RUSSELL K. WATTS**

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**FILED
UTAH APPELLATE COURTS
SEP - 2 2008**

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ADDENDUM

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Westlaw.

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UTAH CODE, 1953
TITLE 48. PARTNERSHIP
CHAPTER 2b. UTAH LIMITED LIABILITY COMPANY ACT

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48-2b-119 Records.

(1) Each limited liability company shall keep at its principal place of business the following:

(a) a current list in alphabetical order of the full name and last known business street address of each member;

(b) a copy of the stamped articles of organization and all certificates of amendment to them, collectively referred to as the "certificate of organization," together with executed copies of any powers of attorney pursuant to which any certificate of amendment has been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(d) copies of any financial statements of the limited liability company, if any, for the three most recent years;

(e) a copy of the limited liability company's operating agreement, if any; and

(f) unless otherwise set forth in the articles of organization, a written statement setting forth:

(i) the amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member;

(ii) the times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made;

(iii) any right of a member to receive distributions which include a return of all or any of the member's contributions; and

(iv) any event upon the happening of which the limited liability company is to be dissolved and its affairs wound up.

UT ST § 48-2b-119
U.C.A. 1953 § **48-2b-119**

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(2) Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any member during ordinary business hours. The division may subpoena any of these records if a limited liability company denies any member access to the records.

History: C. 1953, **48-2b-119**, enacted by L. 1991, ch. 258, § 20; 1992, ch. 168, § 6.

NOTES, REFERENCES, AND ANNOTATIONS

Amendment Notes. -- The 1992 amendment, effective April 27, 1992, inserted Subsection (1)(e), redesignated former Subsection (1)(e) as Subsection (1)(f), added the second sentence in Subsection (2), and made stylistic changes.

Effective Dates. -- Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

U.C.A. 1953 § **48-2b-119**

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Westlaw.

UT ST § 48-2b-128
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UTAH CODE, 1953
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48-2b-128 Conditions for property **distribution**.

From time to time, the **limited liability company** may distribute its property to the members of the **limited liability company** upon the basis stipulated in the operating agreement if, after **distribution** is made, the fair value of the assets of the **limited liability company** is in excess of all liabilities of the **limited liability company** except liabilities to members on account of their contributions.

History: C. 1953, 48-2b-128, enacted by L. 1991, ch. 258, § 29.

NOTES, REFERENCES, AND ANNOTATIONS

Effective Dates. -- Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

U.C.A. 1953 § 48-2b-128

UT ST § 48-2b-128

END OF DOCUMENT

ADDENDUM NO. A-3

Westlaw.

UT ST § 48-2b-155
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UTAH CODE, 1953
TITLE 48. PARTNERSHIP
CHAPTER 2b. UTAH LIMITED LIABILITY COMPANY ACT

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48-2b-155 Indemnification of a manager.

To the extent that a manager has been successful on the merits or otherwise in defense of any action, suit, or proceeding brought against the manager under Section 48-2b-150, or in defense of any claim, issue, or matter therein, the manager shall be indemnified by the members against expenses, including attorneys' fees, that the manager actually and reasonably incurred.

History: C. 1953, 48-2b-155, enacted by L. 1991, ch. 258, § 56.

NOTES, REFERENCES, AND ANNOTATIONS

Effective Dates. -- Laws 1991, ch. 258, § 58 makes the act effective on July 1, 1991.

U.C.A. 1953 § 48-2b-155

UT ST § 48-2b-155

END OF DOCUMENT

ADDENDUM NO. A-4

PART VII. JUDGMENT

Rule 54. Judgments; costs.

(d) *Costs.*

(d)(1) *To whom awarded.* Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the action, other than costs in connection with such appeal or other proceeding for review, shall abide the final determination of the cause. Costs against the state of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(d)(2) *How assessed.* The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court.

A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, shall nevertheless be considered as served and filed on the date judgment is entered.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Advisory Committee Note. — The text of this rule is Rule 402, Uniform Rules of Evidence (1974) except that prior to the word “statute” the words “Constitution of the United States” have been added.

Compiler’s Notes. — The Utah rule also adds the words “or the Constitution of the state of Utah” to Rule 402, Uniform Rules of Evidence (1974).

ADDENDUM NO. A-6

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Advisory Committee Note. — This rule is the federal rule, verbatim, and is substantively comparable to Rule 45, Utah Rules of Evidence (1971) except that “surprise” is not included as a basis for exclusion of relevant evidence. The change in language is not one of substance, since “surprise” would be within the concept of “unfair prejudice” as contained in Rule 403. See also Advisory Committee Note to Federal Rule 403 indicating that a continuance in most instances would be a more appropriate method of

dealing with “surprise.” See also *Smith v. Estelle*, 445 F. Supp. 647 (N.D. Tex. 1977) (surprise use of psychiatric testimony in capital case ruled prejudicial and violation of due process). See the following Utah cases to the same effect. *Terry v. Zions Coop. Mercantile Inst.*, 605 P.2d 314 (Utah 1979); *State v. Johns*, 615 P.2d 1260 (Utah 1980); *Reiser v. Lohner*, 641 P.2d 93 (Utah 1982).

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ADDENDUM NO. B-1

Westlaw

Not Reported in P.3d
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Jonsson v. Bromley
Utah App.,2001.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

Court of Appeals of Utah.
Keith JONSSON, Plaintiff and Appellee,

v.

Reed BROMLEY; Bromley Farms, a Utah corpora-
tion; and Utah Valley Egg & Poultry, Inc., a Utah
corporation, Defendants and Appellants.

No. 990970-CA.

May 10, 2001.

J. Thomas Beckett and Ellen Kitzmiller, Salt Lake
City, for appellants.
Mark C. McLachlan, Salt Lake City, for appellee.

Before JACKSON, DAVIS, and ORME, JJ.

MEMORANDUM DECISION

DAVIS.

*1 Defendants claim that the trial court erred by (1) arithmetically miscalculating Plaintiff's damages, and (2) by awarding prejudgment interest on Plaintiff's damages.

The trial court correctly found that the appropriate measure of damages for aggrieved buyers is: "(1) the amount [Plaintiff] paid Defendants for goods he did not receive, (2) the difference between the market and contract prices for the goods, and (3) incidental damages [Plaintiff] has incurred as a result of his performance under the breached contract." See Utah Code Ann. § § 70A-2-711, -713, -715 (1999).^{FN1} Although the trial court accurately stated this formula, it calculated the second prong—the difference between the market and contract prices for the goods—incorrectly. The court found that the market price of the generator was \$30,000,

the market price of the switching unit was \$8,000, and the contract price was \$5,900. However, the court attributed the amount of the second prong as \$38,000—the total market price—and failed to subtract the contract price of \$5,900. Thus, the correct figure for the second prong is \$32,100 (the difference between \$38,000 and \$5,900) and \$40,500 for the total amount of damages.

FN1.Utah Code Ann. §§ 70A-2-711, -713, -715 (1999) adopted the Uniform Commercial Code.

Defendant next argues that the trial court erred by granting prejudgment interest on Plaintiff's damages. "[A] court may only award prejudgment interest if damages are calculable within a mathematical certainty." *Lefavi v. Berloch*, 2000 UT App 5, ¶ 24, 994 P.2d 817. Damages must be determined through a "procedure allowing the court or the jury to fix the amount by following 'fixed rules of evidence and known standards of value ... rather than be[ing] guided by their best judgment in assessing the amount' or evaluating elements lacking fixed standards by which to measure their value." *Andreason v. Aetna Cas & Sur. Co.*, 848 P.2d 171, 177 (Utah Ct.App.1993) (citations omitted) (alteration in original). "In Utah, courts have allowed prejudgment interest in contract actions when the fact finder works with set numbers and percentages." FN2 *Lefavi*, 2000 UT App 5 at ¶ 25. However, prejudgment interest is inappropriate " 'where "damages are incomplete and are peculiarly within the province of the jury to assess at the time of trial..." ' " *Andreason*, 848 P.2d at 177 (citations omitted).

FN2."Conversely, courts have generally not allowed prejudgment interest in cases such as personal injury, wrongful death, false imprisonment, and defamation, because the amount of damages is uncertain and must be ascertained by the fact finder." *Lefavi*, 2000 UT App 5 at ¶ 25.

Not Reported in P.3d
Not Reported in P.3d, 2001 WL 495915 (Utah App.), 2001 UT App 149

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The fact finder in this case, the trial court, determined the damages based upon its “ ‘best judgment in assessing the amount.’ “ *Id.* (citations omitted). Experts testified for each party and suggested that a similar used generator would sell for between \$24,000 and \$35,000, and the switching unit would sell for between \$6,000 and \$8,000. Based upon that testimony, the court determined the market value of the two items, picking yet a third value for the generator. This finding was not based upon fixed numbers that could merely be plugged into a formula, but instead upon the court's judgment. Because damages in this case were not “calculable within a mathematical certainty,” an award of prejudgment interest was inappropriate. *Lefavi*, 2000 UT App 5 at ¶ 24; *see also Cornia v. Wilcox*, 898 P.2d 1379, 1387 (Utah 1995) (finding prejudgment interest not appropriate where expert testimony differed on price of cattle). Thus, prejudgment interest is not appropriate in this case.

*2 Thus, we reverse and remand for entry of an amended order awarding judgment to Plaintiff in the sum of \$40,500, together with post-judgment interest on that amount from October 13, 1999 until paid.

JACKSON, Associate Presiding Judge, and ORME, Judge, concur.

Utah App., 2001.
Jonsson v. Bromley
Not Reported in P.3d, 2001 WL 495915 (Utah App.), 2001 UT App 149

END OF DOCUMENT

ADDENDUM NO. C-1

against Defendants and for causes of action allege as follows:

JURISDICTION AND VENUE

1. The jurisdiction of this Court is properly invoked pursuant to Utah Code Ann. § 78-3-4 (1953, as amended).

2. Venue is properly laid in this Court pursuant to Utah Code Ann. §§ 78-13-4 and 78-13-7 (1953, as amended).

PARTIES

3. Plaintiffs Ted Stevensen and Barbara Stevensen are individuals residing in Salt Lake County, State of Utah. Ted Stevensen is the manager of Stevensen 3rd East, L.C.

4. Plaintiff Stevensen 3rd East, L.C. is a Utah limited liability company with its principle place of business in Salt Lake County, State of Utah. Said company is a member of the Club Condominium, L.C.

5. Defendant Russell K. Watts is an individual residing Salt Lake County, State of Utah. Russell K. Watts is the manager of R.K.W. 96, L.C. and the manager of the Club Condominium, L.C.

6. Defendant R.K.W 96, L.C. is a limited liability company with its principle place of business in Salt Lake County, State of Utah. Said company is a member of the Club Condominium, L.C.

7. Defendant the Club Condominium, L.C. is a Utah limited liability company with its principle place of business in Salt Lake County, State of Utah.

8. Defendant Bryan Todd, identified in the original

Complaint as John Doe 1, is an individual residing Salt Lake County, State of Utah. Bryan Todd acted as the attorney for plaintiffs and for certain defendants. Bryan Todd was also the beneficial owner of a membership interest in the Club Condominium, L.C.

9. Defendants John Does 2-100 are individuals or entities whose identities and/or acts are not now known, whose identities and actions shall be alleged hereafter.

GENERAL ALLEGATIONS

10. On August 9, 1996, Ted Stevensen and Barbara Stevensen formed Stevensen 3rd East, L.C., Russell K. Watts was the manager of R.K.W. 96, L.C. and the parties together formed the Club Condominium, L.C. A true and correct copy of the operating agreement between the parties for the Club Condominium, L.C. is attached hereto as Exhibit "A" (the "Operating Agreement").

11. Bryan Todd drafted the Articles of Organization and Operating Agreements for Stevensen 3rd East, L.C. and the Club Condominium, L.C. and acted as the attorney for Plaintiffs Ted Stevensen, Barbara Stevensen and Stevensen 3rd East, L.C. with regard to the negotiating and drafting of said documents and in advising Plaintiffs concerning said documents and the business plans of the Club Condominiums, L.C.

12. On or about October 21, 1996, Ted Stevensen and Barbara Stevensen conveyed to the Club Condominium, L.C. pursuant to the

deeds attached hereto as Exhibit "C" the real property located in Salt Lake County, State of Utah at 154-158 South 300 East, Salt Lake City, formerly known as the Salt Lake Athletic Club, and more particularly described in said deeds (the "Real Property").

13. Pursuant to paragraph 6.1 of the Operating Agreement Ted Stevensen and Barbara Stevensen contributed the Real Property valued at \$770,000.00 to the Club Condominium, L.C. with certain encumbrances of approximately \$100,000.00 on behalf of Stevensen 3rd East, L.C. Pursuant to paragraph 6.1, Stevensen 3rd East, L.C. was given a 50% interest in the Club Condominium, L.C.

14. Pursuant to paragraph 6.1 of the Operating Agreement, the parties agreed that R.K.W. 96, L.C. would contribute cash and certain profits to be earned in the future pursuant to services to be rendered. Pursuant to paragraph 6.1 of the Operating Agreement, R.K.W. 96, L.C. was to receive a 50% membership interest in the Club Condominium, L.C. Pursuant to paragraph 7.1 of the Operating Agreement, the contribution of cash and services by R.K.W. 96, L.C. pursuant to paragraph 6.1 was not to be included in the capital account of R.K.W. 96, L.C. or otherwise returned to R.K.W. 96, L.C. and instead R.K.W. 96, L.C. would earn a fee associated with a construction contract between the Club Condominium, L.C. and the Watts Corporation.

15. On or about September 25, 1996, Bryan Todd prepared an Amendment to the Operating Agreement which was executed by the

Members for the purpose of adding an arbitration provision.

16. On information and belief, Bryan Todd caused approximately \$35,000 to be paid from the IRA accounts for himself and his wife to the Club Condominium, L.C. in exchange for which the parties adopted an amendment to the Operating Agreement of the Club Condominium, L.C. to include the custodian of said accounts (with Bryan Todd and his wife being the beneficial interest holders therein) as a Member.

17. On January 14, 1999, the Club Condominium, L.C. began to offer for sale completed condominium units. Pursuant to paragraph 10.4 of the Operating Agreement and the agreement among the members, Ted Stevensen and Russell Watts shared floor time equally and received a 3% commission with respect to each of their respective sales of condominium units on behalf of the Club Condominium, L.C.

18. On or about March 25, 1999, Russell Watts suggested to Ted Stevensen that Ted Stevensen should no longer participate in the sales of the units. On the basis of such suggestion, representations by Russell K. Watts concerning the financial condition of the Club Condominium, L.C., and the representation by Russell K. Watts that Greg Watts and Bob Whitney would sell the units, the parties executed the agreement dated March 25, 1999 attached hereto as Exhibit "B" (the "Commission Agreement").

19. Paragraph 6.1 of the Operating Agreement of the Club

Condominium, L.C. and paragraph 8 of the Commission Agreement provided that the Club Condominium, L.C. would pay to Ted Stevensen the amount of \$5,000.00 per month, until such time that Stevensen 3rd East, L.C. began to be reimbursed with respect to the capital contribution of Stevensen 3rd East, L.C., from which time Stevensen 3rd East, L.C. would thereafter receive pro rata distributions of profits as the same were made by the Club Condominiums, L.C. The required disbursements were made to Ted Stevensen from October 21, 1996 to March 5, 1999.

20. Pursuant to the Commission Agreement, the parties agreed that Ted Stevensen would not participate in floor time for selling the condominium units, but that he would be paid a 1% commission for each condominium unit sold, while the Watts Group received a 3% commission for each condominium unit sold. Ted Stevensen was paid the 1% commission for each condominium unit sold from March 14, 1999 to September 4, 1999. At the direction of Russell K. Watts, the Club Condominium, L.C. employed Greg Watts and Bob Whitney to sell the majority of the units but failed to require the effort necessary to sell the units in a reasonable amount of time.

21. The Commission Agreement provides that Ted Stevensen's written consent is required with respect to each sale of each condominium unit by the Club Condominium, L.C. From March 25, 1999 to September 4, 1999, the consent of Ted Stevensen was

secured with respect to each said sale. Nonetheless, during such time period and thereafter, Russell K. Watts failed to provide Ted Stevensen with various material information or otherwise altered the terms of such sales without Stevensen's consent.

22. Paragraph 6.1 of the Operating Agreement for the Club Condominium, L.C. provided that the company would endeavor to borrow money to fund all of its operating expenses. The Operating Agreement further provided that the parties would contribute equally to the operating expenses of the company to the extent that the company was unable to borrow the money necessary to meet its operating expense requirements.

23. Paragraph 4.1 and 6.1 of the Operating Agreement between the parties provided that the budget for the construction of the condominium units of the Club Condominium, L.C. would not exceed \$4,510,000.00 without the prior written consent of Stevensen and that the scope of the construction would not change without the prior written consent of Stevensen.

24. Russell K. Watts and the Club Condominium, L.C. failed to provide to Ted Stevensen and Stevensen 3rd East, L.C. a detailed accounting with respect to the construction expenses for the condominium units of the Club Condominium, L.C.

25. On or about August 9, 1996, Defendants Russell K. Watts and the Club Condominium, L.C. represented to Ted Stevensen and Stevensen 3rd East, L.C. that the construction of the condominium

units would cost approximately \$4,510,000.00. From approximately September 1, 1996 to October 30, 1998, the Defendants delivered to Ted Stevensen summary projections with respect to the Club Condominium, L.C., showing net profit after repayment of the value of the land contributed by Stevensen equal to in excess of \$800,000.00.

26. On or about September 5, 1999, Defendants Russell K. Watts and the Club Condominium, L.C provided Ted Stevensen and Stevensen 3rd East, L.C. with projections showing profits of only approximately \$50,000.00 after repayment of the value of the land contributed by Stevensen. In response to Ted Stevensen's request for detailed accounting with respect to the sudden change in projected profits, Defendants Russell K. Watts and the Club Condominium, L.C. failed and refused to provide such accounting, Defendants Russell K. Watts and the Club Condominium, L.C stopped paying commissions and loans to Ted Stevensen, Defendant Russell K. Watts alleged millions of dollars in cost overruns, and without any basis Defendants Russell K. Watts and the Club Condominium, L.C further asserted that they would make no further distribution to Stevensen 3rd East, L.C. with respect to said member's capital contribution or any future profits of the Club Condominium, L.C. On information and belief, the accounting and other information provided was materially inaccurate.

27. On information and belief, Russell K. Watts has

misstated or otherwise inappropriately altered financial records of the Club Condominium, L.C., as part of a practice of diverting profits of the Club Condominium, L.C. to Russell K. Watts, the Watts Corporation, and/or to other third parties owned by, employed by or otherwise, directly or indirectly, related to Russell K. Watts.

28. On information and belief, Russell K. Watts has made inappropriate and/or excessive payments to Kevin Watts Architects, Watts Corporation, Watts Enterprises and other third parties, and has otherwise neglected his responsibility as the manager of the Club Condominium, L.C. to hold said entities to industry standards for construction management and record keeping, all of which have contributed to construction delays and cost overruns which have reduced the profits of the Club Condominium, L.C., and for which the Russell K. Watts has the responsibility as the manager of the Club Condominium, L.C. to make legal claims.

29. On or about December 11, 2000, Russell K. Watts and Bryan Todd, without the consent and without notice to Plaintiffs, caused \$50,349.77 from the bank account of the Club Condominium, L.C. to be transferred to the IRA accounts in which Bryan Todd and his wife held a beneficial interest. Russell K. Watts and Bryan Todd knew or should have known at the time of their action that the transfer of money was not permitted under the terms of

the Operating Agreement.

30. On information and belief, Defendants Russell K. Watts and the Club Condominium, L.C. have misrepresented to Ted Stevensen and Stevensen 3rd East, L.C. the expenditures with regard to the construction of the condominium units, have diverted and misappropriated funds belonged to the Club Condominium, L.C., have mismanaged the business of the Club Condominium, L.C. and have otherwise misled and misrepresented to Ted Stevensen and Stevensen 3rd East, L.C., the business and financial status of the Club Condominium, L.C., including without limitation as described above.

31. As an example of misappropriation Russell Watts used the money of the Club Condominium, L.C. to pay his personal attorney's fees and/or those of his companies.

32. In or about October 1999, Ted Stevensen and Stevensen 3rd East, L.C. hired attorneys to represent them for purposes of obtaining an accounting from Defendants with respect to the business of the Club Condominium, L.C. and to otherwise address the resolution of problems which had arisen between the parties.

33. Defendants failed and refused to provide information or cooperation necessary to resolve the problems between the parties, and otherwise caused Plaintiffs to incur thousands of dollars of attorney's fees.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

34. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 33, above.

35. Plaintiffs are entitled to a declaratory judgment and order requiring the monthly payment by the Club Condominium, L.C. and/or Russell K. Watts to Ted Stevensen, including without limitation back payment, of not less than \$5,000.00 per month as provided by paragraph 6.1 of the Operating Agreement of the Club Condominium, L.C. and paragraph no. 8 of the Commission Agreement.

36. Plaintiffs are entitled to a declaratory judgment and order requiring payment by the Club Condominium, L.C. and/or Russell K. Watts to Ted Stevensen of his 1% commission, including but not limited to back commissions owing, as provided by the Commission Agreement.

37. Plaintiffs are entitled to a declaratory judgment and order requiring the written consent of Ted Stevensen with respect to each sale of each condominium unit or before the closing thereof, as required by paragraph 7 of the Commission Agreement.

38. Plaintiffs are entitled to a declaratory judgment and order prohibiting Defendants from making any disbursement of funds belonging to the Club Condominium, L.C. or otherwise

generated by the sale of lease of any condominium units by Defendants, except as stipulated by the parties and/or approved by the Court, including without limitation disbursements to Russell K. Watts, R.K.W. 96, L.C., creditors of either of them (as opposed to third-party creditors of the Club Condominium, L.C.), or any other distribution other than closing costs earned by third parties (other than Watts family members and their companies) with respect to the sale of condominium units.

39. Plaintiffs are entitled to a declaratory judgment and order prohibiting Russell K. Watts from acting on behalf of the Club Condominium, L.C. without stipulation among the parties and/or further order from the Court.

40. Plaintiff Stevensen 3rd East, L.C. is entitled to declaratory judgment and order determining the extent to which the interest of R.K.W. 96, L.C. was based on future services, that said consideration was inadequate as a matter of law, and that the ownership interest of R.K.W. 96, L.C. is diminished to the extent thereof.

41. Plaintiff Stevensen 3rd East, L.C. is entitled to declaratory judgment and order determining the extent to which the capital contribution of services by R.K.W. 96, L.C. was not made, and that the ownership interest of R.K.W. 96, L.C. be diminished to the extent thereof.

42. Plaintiffs are entitled to a declaratory judgment and

order requiring the Club Condominium, L.C. to pursue repayment of all inappropriate payments to Russell K. Watts, Bryan Todd (including but not limited to those IRAs in which he and his spouse held a beneficial interest), R.K.W.96, L.C., the Watts Corporation, Watts Enterprises, and Kevin Watts Architects to be returned to the Club Condominium, L.C. and for the distribution of the assets of the Club Condominium, L.C. to be made as provided by the Operating Agreement of the Club Condominium, L.C. and other applicable law after payment of appropriate damages as may be awarded herein.

SECOND CAUSE OF ACTION
(Breach of Contract)

43. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 42, above.

44. The Operating Agreement of the Club Condominium, L.C., and the applicable amendments thereto, constitute a written agreement by and among, Stevensen 3rd East, L.C., R.K.W. 96, L.C. and those entities in which Bryan Todd and his wife held a beneficial interest with respect to the business and affairs of the Club Condominium, L.C. The authority of Russell K. Watts as the manager of the Club Condominium, L.C. is also governed thereby. Defendants Russell K. Watts, R.K.W. 96, L.C., and the Club Condominium, L.C. have breached, and Bryan Todd has caused to be breached, the terms of the Operating Agreement, as

described above.

45. The Commission Agreement of the Club Condominium, L.C. is a written agreement by and among, Ted Stevensen and Stevensen 3rd East, L.C. and Russell K. Watts, R.K.W. 96, L.C. and the Club Condominium, L.C. with respect to the business and affairs of the Club Condominium, L.C. The authority of Russell K. Watts as the manager of the Club Condominium, L.C. is also governed thereby. Defendants Russell K. Watts and the Club Condominium, L.C. have breached the terms of the Commission Agreement, as described above.

46. There was a written agreement between Bryan Todd and plaintiffs, that Bryan Todd would act as the attorney for plaintiffs. Bryan Todd owed a duty of care as the attorney for plaintiffs to diligently represent and advise plaintiffs with regard to the documents drafted by Bryan Todd and with regard to the business plan of the Club Condominium, L.C. in accordance with the standard of care applicable to attorneys in Salt Lake County, State of Utah.

47. Bryan Todd breached his agreement with the plaintiffs by failing to provide legal service in accordance with the required standard of care.

48. As a result of the breaches of Defendants, described herein, Plaintiffs have been damaged in an amount to be proven at trial, but expected to exceed \$1,500,000.00.

49. Plaintiffs are further entitled to a full, detailed accounting of the income and expenditures and other financial affairs of the Club Condominium, L.C. during the term of management by Russell K. Watts.

50. In the alternative, Plaintiffs may be entitled to rescission of the conveyances to the Club Condominium, L.C. and damages associated therewith.

51. Plaintiffs are further entitled to an award of their costs, including reasonable attorney's fees incurred as a result of Defendants' breach of contract.

THIRD CAUSE OF ACTION

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

52. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 51, above.

53. The Operating Agreement of the Club Condominium, L.C., and the applicable amendments thereto, constitute a written agreement by and among the parties described above with respect to the business and affairs of the Club Condominium, L.C. As described above, Defendants Russell K. Watts, R.K.W. 96, L.C., the Club Condominium, L.C., and Bryan Todd have breached or caused to be breached the implied covenant of good faith and fair dealing which is a term of the Operating Agreement.

54. The Commission Agreement of the Club Condominium, L.C. is a written agreement by and among, Ted Stevensen and Stevensen

3rd East, L.C. and Russell K. Watts, R.K.W. 96, L.C. and the Club Condominium, L.C. with respect to the business and affairs of the Club Condominium, L.C. As described above, Defendants Russell K. Watts, R.K.W. 96, L.C., and the Club Condominium, L.C. have breached the implied covenant of good faith and fair dealing which is a term of the Commission Agreement.

55. There was an agreement between Bryan Todd and plaintiffs that Bryan Todd would represent plaintiffs as their attorney. As described above, Bryan Todd has breached the implied covenant of good faith and fair dealing which is a term of his agreement with the plaintiffs.

56. As a result of the breaches of Defendants, described herein, Ted Stevensen and Stevensen 3rd East, L.C. have been damaged in an amount to be proven at trial, but expected to exceed \$1,500,000.00.

57. In the alternative, Plaintiffs may be entitled to rescission of the conveyances to the Club Condominium, L.C. and damages associated therewith.

58. Plaintiffs are further entitled to an award of their costs, including reasonable attorney's fees incurred as a result of Defendants' breach.

FOURTH CAUSE OF ACTION
(Unjust Enrichment/Conversion)

59. Plaintiffs reallege and incorporate by reference herein

paragraphs 1 through 58, above.

60. From November 29, 1995 to October 30, 1998, Russell K. Watts made various representations to Ted Stevensen, Barbara Stevensen and Stevensen 3rd East, L.C. with respect to the budget and anticipated profits of the Club Condominium, L.C., including without limitation with respect to the interests of Stevensen 3rd East, L.C. therein and the money to be paid directly to Ted Stevensen.

61. Based on the representations of Russell K. Watts, Ted Stevensen, Barbara Stevensen and Stevensen 3rd East, L.C. entered into agreements and permitted Russell K. Watts to manage the Club Condominium, L.C. on behalf of the parties.

62. On information and belief, Russell K. Watts has used his position as the manager of the Club Condominium, L.C. to obtain various benefits to himself, his companies and his family members which were not made available on an equal basis to Ted Stevensen and/or Stevensen 3rd East, L.C., and which have otherwise misappropriated or diminished the profit and return of capital to Stevensen 3rd East, L.C. as a result thereof.

63. Russell K. Watts has used his position as the manager of the Club Condominium, L.C. to avoid holding third parties responsible for their obligations to the Club Condominium, L.C., including but not limited to industry standard practices owed by Watts Corporation, Watts Enterprises, Inc. and Kevin Watts

Architects. Said entities, and likely others, have other liabilities to the Club Condominium, L.C. that have not been pursued as a result of the actions of Russell K. Watts.

64. As a result of the actions of Russell K. Watts, Defendants Russell K. Watts and R.K.W. 96, L.C., as well as Bryan Todd and his spouse, Watts Corporation, Watts Enterprises, Inc. and John Does 2-100 have been unjustly enriched.

65. As a result of the unjust enrichment of said Defendants, Plaintiffs have been damaged in an amount to be proven at trial, but expected to exceed \$1,500,000.00.

66. Plaintiffs are further entitled to an award of their costs, including reasonable attorney's fees incurred as a result of Defendants' unjust enrichment.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

67. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 66, above.

68. At all times relevant to the allegations of this complaint, Russell K Watts was the manager of the Club Condominium, L.C.

69. As the manager of the Club Condominium, L.C., Russell K Watts had a fiduciary duty to Stevensen 3rd East, L.C, Ted Stevensen and Barbara Stevensen.

70. Russell K. Watts breached his fiduciary duty to

Stevensen 3rd East, L.C. and Ted Stevensen by failing and refusing to provide a full detailed accounting to Stevensen 3rd East, L.C., by failing to provide other information necessary and appropriate to allow Stevensen East, L.C., Ted Stevensen and Barbara Stevensen to participate in the management of business activities of the company as necessary to mitigate the loss of profit to the company caused by Defendants, by unilaterally increasing the construction budget of the company in violation of paragraphs 4.1 and 6.1 of the Operating Agreement, by misleading the appraiser and construction lender concerning the construction budget and business plans concerning the construction, by mismanaging the business of the company and/or acting with reckless indifference to the interests of Stevensen 3rd East, Ted Stevensen and Barbara Stevensen, by engaging in self-dealing between the Club Condominium, L.C. and other entities or individuals owned by or related to Russell K. Watts to the detriment of the interests of Stevensen 3rd East, L.C., Ted Stevensen and Barbara Stevensen, and by otherwise breaching the obligations of the Club Condominium, L.C., misappropriating the resources of the Club Condominium, L.C. and diminishing the profit and return of capital to Stevensen 3rd East, L.C.

71. As the attorney for plaintiffs, Bryan Todd owed a fiduciary duty to the plaintiffs.

72. Bryan Todd breached his fiduciary duty to Plaintiffs by

failing to represent Plaintiffs' interest and counsel them in accordance with the standard of care required of an attorney and by causing money to be removed from the account of the Club Condominium, L.C. inappropriately.

73. As a result of the breach of Russell K. Watts and Bryan Todd, Plaintiffs have been damaged in an amount to be proven at trial, but expected to exceed \$1,500,000.00.

74. Plaintiffs are further entitled to an award of their costs, including reasonable attorney's fees incurred as a result of the breach of fiduciary duty by Russell K. Watts and Bryan Todd.

75. Plaintiffs are entitled to punitive damages in an amount to be proven at trial, but not less than \$1,500,000.00, with respect to the breach of fiduciary duty by Russell K. Watts and Bryan Todd.

SIXTH CAUSE OF ACTION
(Fraud)

76. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 75, above.

77. From November 28, 1995 to September 4, 1999, Defendant Russell K. Watts made various representations to Plaintiffs, including without limitation representations made on or about July 19, 1996, September 1, 1996, July 7, 1997 and October 30, 1998, concerning the construction costs and that the anticipated

profit from the Club Condominium, L.C. business venture was in excess of \$800,000.00 after repayment of capital to Stevensen 3rd East, L.C. Russell K. Watts also omitted to provide certain material information to Plaintiffs that was necessary to make his statements not misleading.

78. On information and belief, such statements and omissions were false and otherwise misleading, and Defendant Russell K. Watts knew such statements and omissions were false and misleading at the time they were made. On information and belief, Defendants Russell K. Watts made such statements for the purpose of inducing Plaintiffs to invest with Defendants in the business of the Club Condominium, L.C., to induce Plaintiffs to permit Defendant Russell K. Watts to manage business of the Club Condominium, L.C., to withhold other relevant information from Plaintiffs, and to otherwise limit the participation of Plaintiffs in the business of the Club Condominium, L.C.

79. Ted Stevensen, Barbara Stevensen and Stevensen 3rd East, L.C. acted reasonably and in reliance upon the representations of Defendant Russell K. Watts, and were thereby induced to invest with Defendants in the business of the Club Condominium, L.C., to permit Defendant Russell K. Watts to manage business of the Club Condominium, L.C., and to otherwise limit the information sought by and the participation of Ted Stevensen, Barbara Stevensen and Stevensen 3rd East, L.C. in the business of

the Club Condominium, L.C.

80. As a result thereof, Plaintiffs have been damaged in an amount to be proven at trial, but in any event not less than \$1,500,000.00.

81. In the alternative, Plaintiffs may be entitled to rescission of the conveyances to the Club Condominium, L.C. and damages associated therewith.

82. Plaintiffs are further entitled to an award of their costs, including reasonable attorney's fees incurred as a result of Defendant Russell K. Watts' fraud.

83. Plaintiffs are entitled to punitive damages against Russell K. Watts in an amount to be proven at trial, but not less than \$1,500,000.00.

SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)

84. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 83, above.

85. From November 28, 1995 to September 4, 1999, Defendant Russell K. Watts made various representations to Plaintiffs, including without limitation representations made on or about July 19, 1996, September 1, 1996, July 7, 1997 and October 30, 1998, concerning the construction costs and that the anticipated profit from the Club Condominium, L.C. business venture was in excess of \$800,000.00 after repayment of capital to Stevensen 3rd

East, L.C. Russell K. Watts also omitted to provide certain material information to Plaintiffs that was necessary to make his statements not misleading.

86. On information and belief, such statements and omissions were false and otherwise misleading, and Defendant Russell K. Watts made the statements negligently or recklessly and knew or should have known that he lacked sufficient information concerning the accuracy of such statements at the time they were made.

87. Defendant Russell K. Watts had a pecuniary interest in the matters affected by the representations and information provided to plaintiffs and he was in a superior position to know the truth or falsity of the statements and information given to the Plaintiffs, and Defendant Russell K. Watts should have reasonably foreseen that the Plaintiffs would rely on the statements and information.

88. Ted Stevensen, Barbara Stevensen and Stevensen 3rd East, L.C. acted reasonably and in reliance upon the representations of Defendants, and were thereby induced to invest with Defendants in the business of the Club Condominium, L.C., to permit Defendant Russell K. Watts to manage business of the Club Condominium, L.C., and to otherwise limit the information sought by and the participation of Ted Stevensen, Barbara Stevensen and Stevensen 3rd East, L.C. in the business of the Club Condominium,

L.C.

89. As a result thereof, Plaintiffs have been damaged in an amount to be proven at trial, but in any event not less than \$1,500,000.00.

90. In the alternative, Plaintiffs may be entitled to rescission of the conveyances to the Club Condominium, L.C. and damages associated therewith.

91. Plaintiffs are further entitled to an award of their costs, including reasonable attorney's fees incurred as a result of Defendant Russell K. Watts' negligent misrepresentations.

92. Plaintiffs are entitled to punitive damages against Russell K. Watts in an amount to be proven at trial, but not less than \$1,500,000.00.

EIGHTH CAUSE OF ACTION
(Negligence)

93. Plaintiffs reallege and incorporate by reference herein paragraphs 1 through 92 above.

94. As the attorney for Plaintiffs, Bryan Todd owed plaintiffs a duty of care.

95. As described above, Bryan Todd breached his duty of care to Plaintiffs.

96. As a result of the negligence of Bryan Todd, Plaintiffs have been damaged in an amount to be proven at trial, but in any event not less than \$1,500,000.00.

97. Plaintiffs are further entitled to an award of their costs, including reasonable attorney's fees incurred as a result of Defendant Bryan Todd's negligence.


JURY DEMAND

Plaintiff demands a jury trial of the foregoing causes of action and renews its tender of jury fees herein.

PRAYER

WHEREFORE, Plaintiff prays that pursuant to the foregoing Complaint that they be awarded damages against Defendants, in an amount to be proven at trial, not less than \$1,500,000.00; punitive damage to be determined at trial as pleaded above, not less than \$1,500,000.00; costs incurred herein and reasonable attorney's fees; an accounting as described herein, and for such other and further relief as the Court deems just and equitable in the premises.

DATED this 1 day of July, 2003.



Thor B. Roundy

**OPERATING AGREEMENT
FOR
THE CLUB CONDOMINIUM, L.C.**

THIS OPERATING AGREEMENT (this "Agreement") is made and entered into as of ~~9~~ August, 1996 by and among R.K.W. 96, L.L.C., a Utah limited liability company ("Watts"), and STEVENSEN 3RD EAST L.C., a Utah limited liability company ("Stevensen") (collectively, the "Members"), who desire to form a limited liability company pursuant to the laws of the State of Utah. Accordingly, in consideration of the mutual covenants contained herein, the Members agree and certify as follows:

**ARTICLE I
THE LIMITED LIABILITY COMPANY**

1.1 **Formation; Applicability of the Act.** The Members hereby form a limited liability company (the "Company") pursuant to the provisions of the Utah Limited Liability Company Act as currently or hereinafter in effect in the State of Utah (the "Act"). On any matter upon which this Agreement is silent, the Act shall control. No provision of this Agreement shall be in violation of the Act and to the extent any provision of this Agreement is in violation of the Act, such provision shall be void and of no effect.

1.2 **Filing.** In connection with the execution of this Agreement, the Members shall cause Articles of Organization that comply with the requirements of the Act to be properly filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce, and shall execute such further documents and instruments and take such further action as is appropriate to comply with the requirements of law for the formation and operation of a limited liability company in all states and counties where the Company may conduct its business.

1.3 **Registered Office; Registered Agent.** The street address of the initial registered office of the Company is 5200 South Highland Dr., SLC, UT 84117, and thereafter at such other location as the Members may designate. The name of the Company's registered agent at such address is Russell K. Watts.

1.4 **Principal Place of Business.** The location of the principal place of business of the Company shall be at 5200 South Highland Dr., SLC, UT 84117, or at such other place as the Members from time to time may determine.

**ARTICLE II
NAME OF THE COMPANY**

The name of the Company shall be: **THE CLUB CONDOMINIUM, L.C.**

EXHIBIT "A"

**ARTICLE III
TERM**

3 1 **Term of the Company.** The Company shall commence on the date of the filing of the Articles of Organization with the Secretary of State of the State of Utah and shall be dissolved 30 years from such date, provided that the Company shall be dissolved prior to such date upon the occurrence of any of the following events:

- a. upon the unanimous vote of all the members;
- b. any event that makes it unlawful for the business of the Company to be carried on by the Members;
- c. the death, retirement, resignation, expulsion, bankruptcy, incapacity or dissolution of a Member or the occurrence of any other event that terminates the continued eligibility for membership of a Member in the Company; or
- d. any other event causing a dissolution of a limited liability company under the Act.

3 2 **Continuance of the Company.** Notwithstanding the foregoing, upon the occurrence of an event of dissolution as described above, the Company shall not terminate or dissolve but shall continue if the remaining Members unanimously elect to continue the business of the Company within 90 days following such event. Otherwise, the Company shall dissolve and wind up its affairs and the assets of the Company shall be distributed pursuant to Article XI of this Agreement. For the purposes of this Article, bankruptcy shall include a general assignment for the benefit of creditors. The successors in interest of any Member whose death, retirement, resignation, expulsion, bankruptcy, incapacity or dissolution might cause a dissolution of the Company shall become substituted Members of the Company only if they first consent in writing to be bound by the provisions of this Agreement, and then only if the remaining Members unanimously consent in writing to such substitution. Without such consent, the successors in interest shall be treated as unauthorized assignees.

**ARTICLE IV
PURPOSE OF COMPANY**

4.1 The sole purpose of the Company is the acquisition, development, ownership, management, sale and/or leasing of the real property legally described on Exhibit A (the "Property"), and other related business within the State of Utah. In connection therewith, and as Company expenses, (1) Watts shall receive a development fee equal to 10% of the total Project costs for managing the development of the Project, (2) the Company shall hire The Watts Corporation, an affiliate of Watts, or its designee to act as the general contractor for the construction of all improvements erected in connection with the development of the Property (the "Project"), for which such general contractor shall be paid its normal and customary fees charged on an arms-length basis to third parties for similar services, and (3) the Company shall hire Kevin

Watts as the architect and designer for the Project, for which he shall be paid his normal and customary fees charged on an arms-length basis to third parties for similar services. The nature and scope of the Project are described on **Exhibit B**, which also contains the preliminary budget for the Project. Neither the scope and nature of the Project nor such budget shall be subject to change unless such change is agreed to in writing by the holders of a majority of the Interests (as defined below) and both Watts and Stevensen.

ARTICLE V NAMES AND RESIDENCES OF MEMBERS

The name and place of residence of each Member of the Company are as follows:

R. K. W. 96, L. L.C., 5200 So. Highland Dr., SLC, UT 84117

STEVENSEN 3RD EAST L.C., 895 G Donner Circle, SLC, UT 84108

ARTICLE VI CAPITAL CONTRIBUTIONS

6.1 **Contributions to Capital.** The initial capital contributions of the respective Members and the respective initial interests of the Members in the capital of the Company (the “Interests”) are set forth on **Exhibit C**. Stevensen shall promptly contribute the Property to the Company. The Members agree that such contribution shall be valued at \$670,000.00 (a gross value of \$770,000.00, less \$100,000.00 in existing encumbrances). Watts agrees to contribute an estimated \$631,100.00 to the Company, to consist of the following, after which all contributions of operating funds shall be made on a pro-rata basis in accordance with the respective Interests: the 10% development fee described above, currently estimated to be \$451,000.00; \$100,000.00 to pay off existing encumbrances against the Property as described in **Article XIII**, and \$80,000.00. The Members shall endeavor to obtain one or more loans to cover all operating costs to the greatest extent possible, and both Watts and Stevensen shall sign whatever documents may be reasonably necessary to obtain such financing, including any required personal guarantees. If and to the extent any Member fails to contribute its share of necessary operating costs, the other Member may advance the same, and such advance shall be treated as a loan to the Borrowing Member bearing interest at a rate 2% in excess of the nationally prevailing prime rate (or equivalent) in effect from time to time while such loan is outstanding, which loan (including the interest thereon) shall be repaid out of the Borrowing Member’s first shares of profits accrued until repaid in full. It is also agreed that Stevensen shall receive a loan from the Company against his share of profits in the form of an interest-free draw in the amount of \$5,000.00 per month, which shall be repaid from Stevensen’s share of profits as they accrue.

6.2 **Interest on Contributions.** No interest shall be paid on the initial contributions to the capital of the Company or on any subsequent capital contributions made by the Members.

6.3 **Withdrawal of Capital.** No withdrawals of the Company capital will be permitted except on the affirmative vote of those Members holding a majority of the Interests.

ARTICLE VII
CAPITAL ACCOUNTS; DRAWING ACCOUNTS

7.1 **Capital Accounts.** *An individual capital account shall be maintained for each Member. Each Member's capital account shall consist of his initial capital contribution to the Company, increased by (1) his additional contributions to capital (other than the contributions Watts is obligated to make as described in Section 6.1), and (2) his share of Company profits transferred to capital, and decreased by (a) distributions to him in reduction of his Company capital, and (b) his share of Company losses, if transferred from his drawing account. Notwithstanding the foregoing or the fact that the balances in said capital accounts may change from time to time, the respective Interests of the members shall not be subject to change unless agreed to in writing by the Members.*

7.2 **Drawing Accounts.** *An individual drawing account shall be maintained for each Member. All withdrawals made by a Member shall be charged to his drawing account. Each Member's share of profits and losses shall be credited or charged to his drawing account.*

7.3 **Distribution of Profits.** *If the Manger determines that any portion of the credit balances in the Members' drawing accounts should be retained for the reasonable needs of the business, such portion shall be retained in the Company. The Members shall endeavor to establish and maintain a \$25,000.00 reserve fund during the first two years of Company operations. Any portion of the Members' drawing accounts which is not so retained for the reasonable needs of the business, shall be distributed to the Members in accordance with their respective Interests no less often than annually.*

7.4 **Transfers from Drawing Accounts to Capital Accounts.** *The Members may transfer all or part of any credit balances or debit balances in the Members' drawing accounts to the Members' capital accounts at any time, provided the transfers are made proportionately to each Member's Interest.*

ARTICLE VIII
PROFITS AND LOSSES

8.1 **Allocation of Profits and Losses.** *The net profits and net losses of the Company shall be credited or charged to the Members at the end of each fiscal year of the Company in accordance with the respective Interests.*

8.2 **Liability of Members.** *No Member shall be personally liable for any of the losses of the Company beyond its Interest.*

8.3 **Interim Rents.** *75% of Interim rents from the Property (i.e., until project construction begins) shall be distributed to Stevensen as an advance against its share of profits. The remainder shall be maintained in a tax reserve account.*

**ARTICLE IX
ACCOUNTING FOR THE COMPANY**

9.1 **Accounting Methods; Fiscal Year.** The Company shall keep its accounting records and shall report for income tax purposes on an accrual basis. The fiscal year of the Company, both for accounting and tax reporting purposes, shall be the calendar year.

**ARTICLE X
MANAGEMENT OF THE LIMITED COMPANY**

10.1 **Management of the Company.** The Company shall be managed by a manager (the "Manager"), who shall be Russell K. Watts. If Ted Stevensen ever ceases to actively manage Stevensen for any reason, the appointment of Russell K. Watts, which is coupled with an interest, shall be irrevocable and Russell K. Watts shall then have sole management authority in all respects over the Company. If Russell K. Watts shall ever cease to manage the Company while Stevensen is the owner of at least 25% thereof, Ted Stevensen and Kevin Watts shall jointly succeed as Manager.

10.2 **Tax Matters Member.** The Tax Matters Member shall be the Manager. The Tax Matters Member shall have the following rights and duties: (1) to provide the Internal Revenue Service any or all information which is within the knowledge of the Tax Matters Member as to the organization operations and/or liquidation of the Company; (2) to adjust, arbitrate, negotiate, compromise, sue or defend, abandon or otherwise deal with and settle any and all federal tax matters or claims in favor of or against the Members and the Company as the Tax Matters Member shall deem proper; and (3) do all other things which may be permitted or required of tax matters partners pursuant to Internal Revenue Code Sections 6221 through 6232 as amended.

10.3 **Bank Accounts.** The Manager shall maintain checking or other accounts in such bank or banks as he shall determine and all funds received by the Company shall be deposited therein. Withdrawals shall be made on such funds as may be designated by the Manager from time to time, provided that all checks shall require the signatures of both Stevensen and Watts.

10.4 **Brokerage.** Stevensen shall have the right to participate in the marketing of the project, and shall receive a customary commission for any units Stevensen sells. Stevensen agrees, however, that the Manager will be primarily responsible for marketing decisions and strategy, and agrees to operate within such marketing plans and guidelines as the Manager may implement from time to time.

ARTICLE XI LIQUIDATION

11.1 **Events Causing Liquidation.** The Company shall be dissolved and terminated when any one or more of the following occurs:

- a. The term of the Company expires;
- b. The Members unanimously vote to dissolve the Company; or
- c. Subject to the provisions of **Article III**, there is a death, retirement, resignation, expulsion, dissolution, incapacity or bankruptcy of a Member.

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11.2 **Method of Liquidation.** Upon any such dissolution and termination of this Company, the Company shall immediately commence to wind up its affairs. The remaining Members shall act as liquidators. The liquidators shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the Company's business, assets and affairs in an orderly and prudent manner.

11.3 **Settlement Upon Dissolution.** The Members shall continue to share profits and losses during the period of liquidation in the same proportions as before dissolution. Any gain or loss in disposition of the Company properties in the process of liquidation shall be credited or charged to the Members in the ratio of their Interests. The proceeds from the liquidation shall be applied in the following order:

- 2
- a. To creditors of the Company, including Members who are creditors of the Company;
 - b. To Members in respect to their share of any undrawn profits; and
 - c. To Members in respect to their contributions to the capital of the Company.

11.4 **Distribution in Kind.** If the liquidators shall determine that a portion of the Company's assets should be distributed in kind to the Members, the liquidators shall distribute such assets to the Members in undivided interests as tenants-in-common in proportion to the Members' Sharing Ratios.

11.5 **Completion of Dissolution.** Upon the completion of the distribution of the Company assets, the Company shall be terminated and the Members shall cause the Company to execute Articles of Dissolution and take such other actions as may be necessary or appropriate to terminate the Company.

**ARTICLE XII
MISCELLANEOUS**

12.1 **Notices.** Any notices to or between the Members shall be in writing and shall be sent registered mail, return receipt requested, to the address of each Member as the same appears in the books and records of the Company. Notice shall be deemed to be received on the earlier of the day actually received or the fifth day after being deposited in the United States mail as above described.

12.2 **Amendment of Agreement.** This Agreement may be amended, altered, supplemented, or modified by the majority vote of the Members, provided that no provision of this Agreement requiring a decision to be made or action to be taken upon the unanimous vote or agreement of the Members may be amended to allow a decision to be made or action to be taken upon the vote or agreement of less than all of the Members.

12.3 **Invalidity.** If any part of this Agreement is or shall be invalid or unenforceable for any reason, the same shall be deemed severable from the remainder hereof, and shall in no way affect or impair the validity of this Agreement, or any other portion thereof.

12.4 **Gender.** The masculine includes the feminine and the neuter, the singular includes the plural, and vice versa, as the context may require.

12.5 **Execution of Further Instruments.** The Members shall cooperate with each other in good faith to accomplish the objectives and purposes hereof and to that end, from time to time, they shall make, execute, and deliver such other and further instruments as may be necessary or convenient in the fulfillment of this Agreement.

12.6 **Headings.** The headings of this Agreement are included solely for convenience of reference and shall not be construed as limiting or in any other way modifying the text of the Agreement.

12.7 **Agreement to be Binding.** This Agreement is the entire agreement between the Members regarding the Property and/or the Project, and completely supersedes all other agreements related thereto, including the Agreement/Statement of Understanding dated 11/23/95 between Ted Stevensen and Russell K. Watts. This Agreement shall be governed by the laws of the State of Utah and shall inure to the benefit of and shall be binding upon each of the Members and their respective personal representatives, executors, heirs, successors, and assigns (including successors and assigns by operation of law and involuntary event, as well as by voluntary act).

**ARTICLE XIII
CONDITION PRECEDENT**

This Agreement is subject to Watts receiving acceptable evidence, in its sole discretion, that upon payment of back taxes of approximately \$50,000 and payment to First Interstate Bank of

indebtedness of approximately \$50,000, both of which are secured against the Property, Ted Stevensen will be discharged from bankruptcy and the Property will be free and clear of all liens and claims. Upon such determination by Watts, Watts shall deposit \$100,000.00 into escrow with Bryan B. Todd, Esq., to be applied to the satisfaction of the above listed debts upon full discharge thereof and of all other current claims that could reasonably affect the Property, and the payment thereof shall constitute a capital contribution on the part of Watts under Section 6.1 hereof. In addition, if any liens not consented to in writing by Watts, other than those securing the two \$50,000 obligations specified above, are determined by Watts to affect the Property at any time (or if the liens specified above are determined to secure debts in excess of \$100,000), Watts shall have the right to pay off and release the same, and all funds expended in so doing shall be treated as a loan to Stevensen (in addition to any other loans under this Agreement) bearing interest at a rate 2% in excess of the nationally prevailing prime rate (or equivalent) in effect from time to time while such loan is outstanding, which loan (including the interest thereon) shall be repaid out of Stevensen's first shares of profits accrued until repaid in full.

ARTICLE XIV BUY-SELL PROVISIONS

14.1 Restriction Against Transfer. No Member shall transfer all or any part of its Interest at any time except in accordance with the provisions of this Article. Any purported transfer in violation thereof shall be void and shall not transfer all or any part of any Interest. Any Member may, however, transfer any or all of its Interest to a trust or entity that is and remains controlled by such Member without any prior consent or approval as long as the transferring Member is the only representative of the transferee for purposes of participating in the management of the Company, but such transferred Interest shall remain subject to all the terms and provisions of this Agreement and shall be treated as if it continued to be owned by the Member personally.

14.2 Right of First Refusal. In the event any Member shall at any time desire to transfer all or any of its Interest (a "Subject Interest"), other than by a transfer permitted under Section 14.1, such Member (the "Transferor") shall give written notice thereof (the "Offer Notice") to the other Member (the "Optionee"), and the Optionee shall have the first right and option to purchase the Subject Interest. The Offer Notice shall set forth a description of the proposed transfer, including the name of the proposed transferee, the nature and amount of the Subject Interest, and the purchase price and any other terms and conditions of the proposed transfer. If the Optionee exercises such option to purchase the Subject Interest, the purchase price and terms of sale for the Subject Interest shall be the same as those set forth in the Offer Notice. If and to the extent any consideration to be received by the Transferor for the Subject Interest pursuant to the Offer Notice is property other than cash, the price of the Subject Interest set forth in the Offer Notice shall be measured to such extent by the value of such non-cash consideration and shall be the sum of (1) the fair market value of any non-cash consideration offered for the Subject Interest, plus (2) the value of any special benefits to the Transferor of receiving such non-cash consideration to the extent that such value can be reasonably identified and evaluated, plus (3) the amount of any expense or cost (including additional taxes) saved by the Transferor in accepting non-cash consideration, in each case based upon a realistic appraisal of such non-cash consideration, special benefits, expense or cost, as agreed upon by the Transferor and the

Optionee, as the case may be, or, if no agreement can be reached, as determined by the averaged appraisals of two independent qualified appraisers, one being selected by the Transferor and the other by the Optionee. If the Optionee does not exercise its right to purchase the Subject Interest within 30 days after receiving an Option Notice, the Transferor, within a period of 90 days from the expiration of the Exercise Period, may transfer the Subject Interest as proposed in the Offer Notice; provided that unless the remaining Members consent in writing to allow the transferee to participate in the management of the affected Company, the transferee shall have no right to participate in the management of said Company and shall be entitled only to participate in the profits and losses thereof, and returns of contributions therefrom; and provided further that any person acquiring the Subject Interest must, as a condition of such acquisition, agree to be bound by the provisions of this Agreement.

14.3. **Buy Out.**

a. **Offer.** Any Member (the "Offeror") may at any time make a firm offer (the "Offer") to the other Member (the "Offeree") to purchase all of the Offeree's Interest. The Offer shall be in writing and shall set forth the purchase price per Interest and the terms for payment thereof.

b. **Acceptance/Rejection.** The Offeree shall have a period of 30 days from receipt of the Offer within which to elect in writing to purchase the Offeror's Interest at the same price per Interest and upon the same terms as are contained in the Offer. If the Offeree does not elect to purchase the Interest of the Offeror, all of the Offerees shall be deemed to have elected to sell their Interests to the Offeror in accordance with the Offer.

c. **Closing.** The closing of any sale and purchase pursuant to this Section shall take place within 30 days after the end of the Offeree's 30 day election period described above.

14.4 **Necessary Documents.** If, pursuant to this Article, the Interest of any Member is purchased, the Member selling such Interest (or the legal representatives of any deceased or disabled Member) shall execute and deliver all necessary documents that may reasonably be required to accomplish the transfer of such Interest.

14.5 **New Members.** Any Interest transferred in contravention of this Article, by operation of law or otherwise, shall remain subject to the provisions of this Article, which shall be binding on any transferee.

14.6 **Specific Performance.** The Members agree that it is impossible to measure in money the damages which will accrue to a party hereto or to its personal representative by reason of the failure by any party or personal representative of such party to perform any of its obligations under this Article. Therefore, any party aggrieved by the breach or threatened breach of any of the provisions hereof shall be entitled to seek from any court of competent jurisdiction an order for specific performance of all the terms and conditions hereof, and the defendant or defendants in any such action or proceeding hereby waive the claim or defense that the plaintiff is not entitled to

the remedy of specific performance, and such defendant or defendants shall not raise such claim or defense in any such action or proceeding.

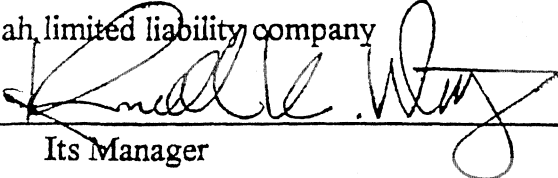
IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first appearing above.

MEMBERS:

R.K.W. 96, L.L.C.,

a Utah limited liability company

By:

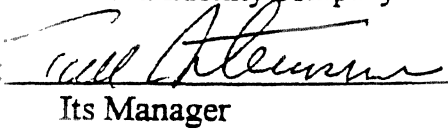


Its Manager

STEVENSEN 3RD EAST L.C.,

a Utah limited liability company

By:



Its Manager

EXHIBIT C

MEMBER:	CONTRIBUTION:	INTEREST:
R.K.W. 96, L.L.C.	\$50.00	50%
STEVENSEN 3RD EAST L.C.	\$50.00	50%

TO: Ted Stevensen
FROM: Russ Watts, The Club Condominium L.C.

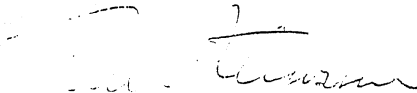
DATE: March 25, 1999
RE: The Club Marketing Fee Structure

Ted Stevensen and Russ Watts agree on the following:

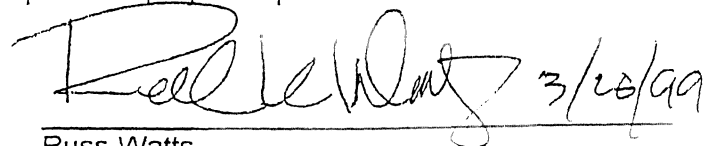
- 1) During the time-frame between March 25, 1999 and a future date when all debt for the Club Condominium Project is retired (see paragraph #9): Stevensen L.C. will receive a fee of 1%(one percent) of the sales price of every condo unit sold/closed to buyers through the Watts Group.
- 2) During the time-frame referenced in paragraph #1: for any real estate condo contract written and closed by the Watts Group, The Club will pay 3%(three percent) of the sales price as a fee to the Watts Group and 1%(one percent) of the sales price as a fee to Stevensen.
- 3) During the time-frame referenced in paragraph #1: If the Watts Group coordinates the sale of a condo unit with an outside real estate broker, 3%(three percent) of the sales price will be paid to the outside broker, 3%(three percent) of the sales price will be paid as a fee to the Watts Group, and 1%(one percent) of the sales price will be paid as a fee to Stevensen.
- 4) During the time-frame referenced in paragraph #1: The Stevensens will not have any responsibility for marketing/selling the units, and agree not to engage in the selling/marketing of the units with any clients. The Stevensens will not be involved in any previewing or "floor time" at The Club. All phone calls to the Stevensen real estate agents or customers will be referred to the Watts Group. Any customers who have visited The Club previous to March 25, 1999, shall become the full responsibility of the Watts Group. If any person shall enter into a condo purchase contract during the time-frame referenced in paragraph #1, Stevensen's compensation shall be limited to the 1%(one percent) fee referenced in paragraphs #1, #2, #3.
- 5) During the time frame referenced in paragraph #1: Continuing with the original Club Condominium L.C. agreement, the pricing of any/all condo units will not be adjusted without the mutual agreement of Ted Stevensen and Russ Watts.

The fees referenced in paragraphs #1 and #2 will not be paid on any condo unit(s) purchased by either Ted Stevensen or Russ Watts.

- 7) Ted Stevensen and Russ Watts will both review each Earnest Money offer and closing, and must both initial and approve each condo closing for the transaction to be valid.
- 8) The fees (detailed in paragraphs #1, #2, #3) being distributed to Stevensen will be credited towards (or offset) a monthly \$5,000 (five-thousand dollar) draw to Stevensen that is detailed in The Club Condominium L.C. Agreement. The \$5,000 shall be a minimum monthly payment to Stevensen, and will stop when Stevensen has been reimbursed for the land value (\$631,000: six-hundred-and-thirty-one thousand dollars) he contributed to the Club Project. The accumulation of the 1%(one-percent) fees due Stevensen will be totaled to meet or exceed \$5,000 monthly draw paid to Stevensen.
- 9) All disbursements from the selling of The Club L.C. condo units will first be used to pay back bank debt, construction draws, partnership contributed capital, and interest on borrowed funds from partners and the bank. When these entities have been paid, condo sale revenue will then be evenly distributed between paying for the land (due Stevensen) and the development fee (due Watts Corporation.) When the land and development fees have been paid, Ted Stevensen and Russ Watts will split any profits 50/50 (fifty-fifty). Additionally, when all debt is retired, Ted Stevensen and Russ Watts have the option of accepting condo units in lieu of profit, and marketing/selling them as they individually desire.
- 10) As described in The Club L.C. Agreement, interest is accruing on monies contributed by Russ Watts, the Watts Corporation, and R.K.W. 96 on the balance over \$631,000 (Stevensen's land value contribution) at a rate of 9%(nine percent). A full accounting of the contributed capital and project expenses will be outlined/detailed and given to Ted Stevensen and Russ Watts.



Ted Stevensen



Russ Watts

EXHIBIT "B"

12

0467216

6487216
10/22/96 4:48 PM
NANCY WORKM,
RECORDER, SALT LAKE COUNTY; I
AMERICA WEST TITLE
REC BY: B GRAY , DEPUTY

WHEN RECORDED, MAIL TO:
Bryan B. Todd, Esq
310 East 4500 So., Suite 520,
Salt Lake City, Utah 84107

Space Above for Recorder's Use

WARRANTY DEED

TED STEVENSEN ("Grantor"), for and in consideration of the sum of \$10.00 and other valuable consideration received from THE CLUB CONDOMINIUM, L.C., a Utah limited liability company ("Grantee"), hereby CONVEYS AND WARRANTS to Grantee the real property located in the County of Salt Lake, State of Utah, which is legally described on EXHIBIT A.

IN WITNESS WHEREOF, Grantor has signed this Deed on October 21, 1996.

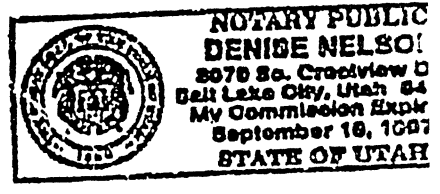
Ted Stevenson
TED STEVENSEN

STATE OF UTAH;

COUNTY OF SALT LAKE:

On October 21, 1996 personally appeared before me TED STEVENSEN who duly acknowledged to me that he executed the foregoing instrument.

NOTARY PUBLIC: Denise Nelson



AWT 96-1033

Exhibit "C"

EXHIBIT A

Commencing 7 1/2 rods South of the Northeast corner of Lot 1, Block 72, Plat "A", Salt Lake City Survey, and running thence South 2 1/2 rods; thence West 10 rods; thence North 2 1/2 rods; thence East 10 rods to the place of beginning. (Tax Parcel No. 16-06-177-004)

6487217
10/22/96 4:48 PM
NANCY WORKM
RECORDER, SALT LAKE COUNTY,
AMERICA WEST TITLE
REC BY: J GRAY DEPUT

WHEN RECORDED, MAIL TO:
Bryan B. Todd, Esq.
310 East 4500 So., Suite 520,
Salt Lake City, Utah 84107

Space Above for Recorder's Use

6487217

WARRANTY DEED

OLAF T. STEVENSEN, also known as OLAF T. STEVENSEN, JR. and/or TED STEVENSEN, and BARBARA ANN STEVENSEN, husband and wife ("Grantors"), for and in consideration of the sum of \$10.00 and other valuable consideration received from THE CLUB CONDOMINIUM, L.C., a Utah limited liability company ("Grantee"), hereby CONVEY AND WARRANT to Grantee the real property located in the County of Salt Lake, State of Utah, which is legally described on EXHIBIT A.

IN WITNESS WHEREOF, Grantors have signed this Deed on October 21, 1996.

Olaf T. Stevenson Jr.

OLAF T. STEVENSEN, also known
as OLAF T. STEVENSEN, JR. and/or
TED STEVENSEN

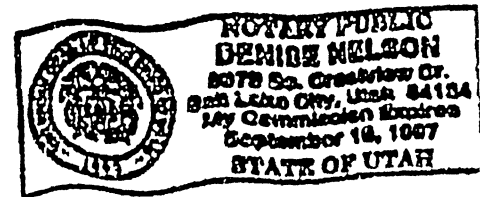
Barbara Ann Stevenson
BARBARA ANN STEVENSEN

STATE OF UTAH;

COUNTY OF SALT LAKE:

On October 21, 1996 personally appeared before me OLAF T. STEVENSEN and BARBARA ANN STEVENSEN who duly acknowledged to me that they executed the foregoing instrument.

NOTARY PUBLIC: Denise Nelson



AWT 96-1033

EXHIBIT A

Parcel 1:

Beginning at the Northeast corner of Lot 1, Block 72, Plat "A", Salt Lake City and running thence South 82.5 feet; thence West 165 feet; thence North 82.5 feet thence East 165 feet to the place of beginning. (Tax Parcel No. 16-06-117-002)

Parcel 2:

Beginning 82.5 feet South of the Northeast corner of Lot 1, Block 72, Plat "A", Lake City Survey, and running thence South 41.25 feet; thence West 165 feet; thence North 41.25 feet; thence East 165 feet to the point of beginning. (Tax Parcel No. 16-06-177-003)

Parcel 3:

Beginning at the Northeast corner of said Lot 2, Block 72 and running thence South 72.39 feet; thence East 134.58 feet along the East line of Lot 2; thence North 45 degrees 58 minutes 35 seconds West 100.74 feet; thence North 0 degrees 02 minutes 51 seconds West 64.50 feet to the North line of Lot 2; thence along said North line North 89 degrees 56 minutes 44 seconds East 72.39 feet to the point of beginning. (Tax Parcel No. 16-06-177-008)

Less and Excepting Therefrom:

Beginning at a point South 89 degrees 58 minutes 22 seconds West along the lot line 72.39 feet from the Northeast corner of Lot 2, Block 72, Plat "A" Salt Lake City Survey and running thence North 89 degrees 58 minutes 22 seconds East along the lot line, 57.50 feet; thence South 0 degrees 02 minutes 04 seconds East 0.50 feet to the North side of a concrete and block building; thence South 89 degrees 52 minutes 04 seconds West along said North side of building, 57.50 feet; thence North 0 degrees 02 minutes 04 seconds West 0.50 feet to the point of beginning and

Also Less and Excepting Therefrom:

Beginning at a point South 0 degrees 02 minutes 04 seconds East along the lot line 134.58 feet from the Northeast corner of Lot 2, Block 72, Plat "A" Salt Lake City Survey and running thence North 45 degrees 57 minutes 29 seconds West 100.76 feet to a point which is South 89 degrees 58 minutes 22 seconds West along the lot line 72.39 feet and South 0 degrees 02 minutes 04 seconds East 64.50 feet from said Northeast corner of Lot 2; thence North 0 degrees 02 minutes 04 seconds West 33.77 feet; thence South 7 degrees 53 minutes 51 seconds East 13.56 feet; thence South 1 degree 20 minutes 29 seconds East 19.28 feet; thence South 44 degrees 37 minutes 29 seconds East 99.08 feet to the point of beginning.

motion by memorandum filed November 30. Finally, Defendants' reply was received by the Court on December 13, 2004. The parties submitted all of these motions for decision on January 31, 2005.

The court, because of the complexity of these matters and the indication of the parties that insufficient time had been allocated for trial, continued the trial date which had been scheduled for March 7, 2005. Oral argument was scheduled and heard March 14, 2005. The court took the matters under advisement. Having considered the case file, the motions, the memoranda submitted by the parties, and argument in open court, the Court enters the following decision:

BACKGROUND

Plaintiff Stevensen 3rd East Development L.C. partnered with Defendant RKW 96 L.C. to form Defendant Club Condominium L.C. ("the Club") in August 1996 for the purpose of developing property owned by Ted and Barbara Stevensen into a condominium complex. The parties agreed that the donation of the Stevensen's land would constitute Plaintiff's capital contribution, and then valued the land at \$770,000, less existing encumbrances, for a net estimated value of \$670,000. Watts and RKW would contribute capital, and its 10% development fee, for a total contribution valued at \$631,000. Under the agreement, Plaintiffs were to receive \$5,000 monthly in

the form of interest-free loans from the Club, which were to be repaid by reduction of plaintiffs' profit distribution. Defendants' initial capital contribution was to consist of payment of 10% of the development fee, removal of existing encumbrances on the land, and funding of the \$5,000 monthly loan draws to be paid to Plaintiffs. The profits, based upon equal ownership in the L.C., were to be divided equally.

On or about March 25, 1999, Ted Stevensen and Russell Watts signed a memorandum which by its own terms was an agreement for payment to Stevensen L.C. of "a fee of 1% (one percent) of the sales price of every condo unit sold/closed to buyers through the Watts Group[,]" beginning on March 25, 1999 until "all debt for the Club Condominium Project is retired." March 25 Agreement at ¶1. As the memorandum sets forth the agreement to pay is accompanied by the Stevensens' agreement that they would not participate in the marketing aspects of the Club, including their promise "not to engage in the selling/marketing of the units with any clients," and that they would "not be involved in any previewing or 'floor time' at the Club." Id. at ¶4.

As the development phase of the project neared completion, the costs associated with development were claimed by the Defendants to be greater than the Plaintiffs had anticipated—and as is alleged in the complaint, greater than Plaintiffs were informed they would be.

In the early stages of development, profit calculations provided to Plaintiffs by Defendants exceeded \$800,000, with costs being projected at over \$6.6 million. Until the sale of the first condo units, the profit projections varied, but never dipped far below the \$800,000 mark.¹ The cost projections, however, rose steadily, finally reaching nearly \$9.1 million five months before the first units were sold. After the sale of some condo units, the September 1999 projection predictably revealed an increase in the anticipated cost to just over \$9.6 million, while reducing the profit figure by more than 93% from the October 1998 projection, to \$53,635. Plaintiffs thereafter insisted upon a detailed accounting, which was allegedly resisted, followed by cessation of the payments of the one-percent fee which was the subject of the March 1999 agreement, and the monthly \$5,000 loan disbursements from the company. Later, the Defendants claimed that there remained no profit to disburse.

The Plaintiffs filed this action seeking (1) declaratory relief; and damages resulting from (2) Breach of Contract; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4) Unjust Enrichment/Conversion; (5) Breach of Fiduciary Duty; (6) Fraud; (7) Negligent Misrepresentation; and (8) Negligence.

¹The lowest projection prior to the sale of the condo units was \$785,601, in October of 1997.

In March 2004, the Court granted the Defendants' motion for partial summary judgment dismissing the Plaintiffs' claims for fraud, conversion and unjust enrichment. A subsequent Motion by Defendants for partial summary judgment, seeking dismissal of Plaintiffs' seventh claim for negligent misrepresentation was denied in July 2004.

DISCUSSION

Plaintiffs' Motion for Summary Judgment-Contract Value of Land

Plaintiff seeks to establish by this motion that the amount listed in the contract (\$770,000 less \$118,954, or \$651,046) is the value of the land for purposes of determining Plaintiff's capital contribution to the L.C. Defendants' only objection is that the March 25, 1999 agreement, referring to the value as being only \$631,000, thus creates an issue of material fact, precluding summary judgment. In reply, to avoid the issue of fact, the Plaintiffs agree to \$631,000 as the value of the land, and agree that the jury may be so instructed. While there are other arguments regarding the propriety of valuing the property either at the \$651,000 amount or at the \$631,000, which is addressed below under the Motions in Limine, in asserting the presence of a dispute of material fact precluding this motion, the only evidence referred to for that purpose was the March 25 agreement. Based upon the lack of any material dispute, and the agreement of the parties at

oral argument, the Court hereby GRANTS Plaintiff's Motion for Summary Judgment on the value of the land.

Plaintiffs' Motion for Summary Judgment—Treatment of Unit Sales

By this motion, which calls for the interpretation of the March 25 agreement, Plaintiffs seek an order affirming Plaintiffs' entitlement to all unpaid fees arising under that agreement. Defendants contend that paragraphs 8 and 9 render the agreement ambiguous as to the meaning of the 1% fee.² Paragraph 8 of the agreement states:

The fees (detailed in paragraph #1, #2,#3) being distributed to Stevensen will be credited towards (or offset) the monthly \$5,000 (five-thousand dollar) draw to Stevensen that is detailed in The Club Condominium L.C. Agreement. The \$5,000 shall be a minimum monthly payment to Stevensen, and will stop when Stevensen begins to be reimbursed for the land value (\$631,000: six-hundred-and-thirty-one thousand dollars) he contributed to The Club Project. The accumulation of the 1% (one-percent) fees due Stevensen will be totaled to meet or exceed the \$5,000 monthly draw paid to Stevensen.

Id.

All disbursements from the selling of The Club L.C. condo units will first be used to pay

²The Court declines Defendants' invitation to characterize the 1% payments as "commission payments"—primarily because in no instance does the March 1999 agreement so characterize them.

back bank debt, construction draws, partnership contributed capital, and interest on borrowed funds from partners and the bank. When these entities have been paid, condo sale revenue will then be evenly distributed between paying for the land (due Stevensen) and the development fee (due Watts Corporation). When the land and development fees have been paid, Ted Stevensen and Russ Watts will split any profits 50/50 (fifty-fifty).

March 1999 Agreement at ¶9. Rather than create ambiguity, these provisions actually clarify what events must occur for all debt for the project to be retired—in other words, they clarify the term during which the one-percent payments are to be made. For instance, if there had been any ambiguity in the first paragraph as to whether the “debt” to be retired included any or all of the parties’ capital contribution, paragraph 9 clarifies the matter by addressing “partnership capital” separately from “paying for the land” and reimbursing the “development fee.” Not only is that apparent from the reading of paragraph 9, but where paragraph 1 references the “future date when all debt . . . is retired”, it specifically refers the reader to paragraph 9 for clarification.

In short, the unambiguous terms of the March 1999 agreement provide that a one percent payment is to be made to Stevensen L.C. for every condominium unit sold, and that those payments were to continue until Stevensen L.C. began to receive reimbursement payments for the value of land. These payments were not to be in

addition to the loan disbursements to be repaid out of Plaintiffs' share of the profits, but rather were to replace or reduce those disbursements so that Plaintiff received at least \$5,000 per month. In other words, these 1% fees were structured to be funded at the real estate closing transaction for each condo unit—separately from the \$5,000 disbursements funded by Defendants' capital contribution. The one percent fees were not designed, in the unambiguous terms of the agreement, to be repaid by the Plaintiffs.³

Because the agreement is unambiguous, the question the Court must turn to before determining whether it must be enforced is whether consideration was paid. To this end, Defendants contend that because Plaintiff Ted Stevensen was not a licensed real estate agent, his agreement not to participate in the sale of units cannot constitute consideration because it was not a right to which he was legally entitled. The court disagrees with defendants.

The owner-sale exception found at Utah Code Ann. § 61-2-3(1)(a)(I), which is cited by both Defendants and Plaintiffs, excepts owners who sell their own real property from the general rule that a person must be licensed in order to sell real estate.

³For the sake of clarity, while the Court does not address specifically Defendants' contention that the 1% fee is an illegal distribution of future profits, the different funding mechanisms for the \$5,000 loans against Plaintiffs future profits on the one hand and the one-percent fee on the other make clear the parties' intent that they be treated distinctly.

Defendants contend that the exemption is not available because it is the Club L.C. which owned and was selling the condominium units, and not the Stevensens. Thus, if the exception were to apply, it would, according to Defendants, apply only to the Club L.C. What this argument fails to consider is that under the Utah Revised Limited Liability Companies Act, an L.L.C. may "sell, convey, assign, encumber, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets" and "have and exercise the same powers as an individual, and all powers necessary or convenient to effect or carry out any or all of the purposes for which the company is organized." Utah Code Ann. § 48-2c-110(3) and (18). Thus, an L.L.C. may, to the same extent as an individual owner, sell his own property without possessing a licence. The specific authority for one of its members to engage in the sale on behalf of the L.L.C. is governed by an Operating Agreement.

In this case, the Operating Agreement delegates to Stevensen 3rd East L.C. "the right to participate in the marketing of the project, and [to] receive a customary commission for any units Stevensen [3rd East L.C.] sells." By way of the March 1999 agreement, Stevensen 3rd East L.C., for the consideration of receipt of a 1% fee on each subsequent sale, sacrificed that legal right—a legal detriment which qualifies under the law as valid

consideration.

Because the relinquishment of the right granted under The Club L.C. Operating Agreement to participate in the marketing of the project constitutes valid consideration, and because the language of the March 1999 agreement is unambiguous, Plaintiffs' Motion for Summary Judgment is GRANTED insofar as it applies to the damages claimed by Stevensen 3rd East L.C.

Plaintiff's Motion for Summary Judgment—Prejudgment Interest

Plaintiff contends that any amounts awarded in judgment at trial be subject to pre-judgment interest, calculated from the time of the loss. Defendant contends that because neither party has been awarded a judgment in this case, it is inappropriate for the Court to render a decision on whether it will award prejudgment interest. Absent a justiciable controversy, a court may not weigh in on a question presented by the parties before it. See Shipman v. Evans, 2004 UT 44, ¶32, 100 P.3d 1151. In the present matter, because neither party has been awarded judgment, there is no controversy as to whether such judgment should be subject to prejudgment interest. Not only is the Court without sufficient information to determine at present whether damage is complete as of a particular time, the Court cannot say that either party was damaged at all. The court simply is not convinced at this point

that under the agreed standard of Fell v. Union Pacific Railway Co.,, 88 p. 1003 (Utah 1907), the injury is complete as of certain time, and the damages are ascertainable. The facts will have to be developed to see if an instruction should be given as to damages and pre-judgment interest. Should either party obtain a judgment at trial in this matter, the Court would be willing to entertain a proper motion, consider any relevant evidence (including expert opinion) and argument concerning the application of this state's pre-judgment interest jurisprudence to the judgment so awarded. However, at best the matter is not ripe for the Court's present consideration. Accordingly, Plaintiffs' Motion for Summary Judgment on the subject of pre-judgment interest is DENIED.

Defendants' Motion for Summary Judgment

Defendants' Motion seeks dismissal of claims alleged on behalf of both Stevensen L.C. and the Stevensens individually. The Court first addresses the viability of the claims in general, and then whether those claims may continue to be maintained by the individual plaintiffs.

Plaintiffs Claims in General

As for the Negligent Misrepresentation claim, Defendants split the misrepresentation alleged into two parts, one regarding the

statement of Defendants about the costs, and the second about the anticipated profits. Defendants argue that the Plaintiffs' claims relating to the misrepresentation of anticipated costs was waived at least up to October 21, 1997, because Ted Stevensen, in his deposition testimony, stated that as of October 21, 1997 he "didn't care what it would necessarily cost." On summary judgment, the court must construe the evidence presented to it in the light most favorable to the non-moving party. Furthermore, as the Defendants have noted, waiver must be determined from the totality of the circumstances. See IHC Health Svc., Inc. v. D&K Management, Inc., 2003 UT 5, ¶¶ 7-9, 73 P.3d 320. In this light, Mr. Stevensen's statement may not be construed as a waiver. It is clear that Mr. Stevensen, with his understanding that the Defendants controlled not only the construction, but also the marketing and selling of the units, could not have anticipated, on October 21, 1997, that the L.C., and he as a member, would be required to absorb the increased costs resulting in his damage. Indeed, the profit projection figures, being only slightly lower than previous projections, would have led Plaintiff to conclude that the increased costs would not result in damage to him. Waiver exists only where there is "a known right, benefit, or advantage." Id. at ¶7. Plaintiff could not have known of a right to sue Defendants for his damages resulting from the higher costs based

upon the information given in the October 21, 1997 projection, as there appeared to be, at most, minimal impact upon the projected profits.

Defendants attack Plaintiffs' claim regarding misrepresentation of profits by reference to law which makes clear that "expressions of opinion, hope, or expectation" do not give rise to a claim for negligent misrepresentation. The court accepts for purposes of this motion that as a fair statement of the law. However, as it must construe the facts in this case in the light most favorable to the Plaintiffs, the court does not reach the conclusion which the Defendants suggest. It is true that the projections provided to the Plaintiffs contained cautionary language, indicating that they were merely projections, and that they could change. Financial projections are opinion statements, as Defendants correctly note. However, in the context of a fiduciary relationship, as is alleged here, where a party places an individual in trust of their pecuniary interests, relying upon the fiduciary's special knowledge and skill in managing those interests, the person so entrusted must act reasonably to ensure that his statements of opinion are supported. In this case, the jury is entitled to consider whether those statements were properly supported by adequate research. Simply put, as a matter of law, these statements were more than "mere expressions of opinion, hope,

or expectation." Rather, the statements alleged necessarily implied the existence of research and information which would have placed Defendants "in a superior position to know the material facts, and [who] should have reasonably foreseen that the injured party was likely to rely upon the fact." Hafen v. Strebeck, 338 F. Supp. 1257, 1264 (D. Utah 2004) (citations omitted).

On Plaintiffs breach of the duty of good faith and fair dealing and breach of fiduciary duty claims, Defendants assert that Plaintiffs cannot prove that Defendants' actions were grossly negligent or constitutes willful misconduct, and thus, under the Utah Limited Liability Company Act, Watts cannot be personally liable. The Court recognizes that this is the law, but disagrees with how this applies in the present case. It is primarily a factual determination for the jury whether certain conduct rises to the level which would allow a plaintiff to recover against Watts individually, and the court declines, based upon its deferential consideration of the facts in this case, to remove from the jury its right to consider these claims against Watts.

Defendants also argue that the declaratory relief seeking the court's ruling that Ted Stevensen was entitled to \$5,000 monthly payments should be dismissed. The court agrees. First, the plaintiffs would like the court to identify this as an individual right arising under the contract. The language of the contract is

clearly to the contrary, because it defines the use of "Stevensen" to mean "Stevensen 3rd East L.C." Second, because the clear language of the contract identifies the \$5,000 disbursements as interest-free loans to be repaid out of Stevensen's share of profits, to count them as separate right would make them a double recovery of profit. This is not what the contract requires. Accordingly, the Motion for Summary Judgment on the issue of the claim for declaratory relief regarding the \$5,000 payments is hereby GRANTED.

Defendants final request for summary judgment regards characterization of the 1% fee. As addressed in the context of Plaintiffs' Motion for Summary Judgment on the same matter, under the March 25, 1998 agreement the 1% fee is treated and funded distinctly from the \$5,000 loan disbursements, and thus cannot be considered an advance on profits and distributions.

Thus, Stevensen LLC's claims against Watts and RKW remain and are dismissed as above indicated.

Plaintiffs' Individual Claims

The primary defense for the individual claims for breach of fiduciary duty is that on November 28, 1995, Ted Stevensen (on behalf of both himself and Barbara) and Russell K. Watts, individually, signed an agreement, which the Stevensens claim gave

rise to fiduciary duties. This agreement, according to the argument, was to the benefit of the parties individually, and not to any of the LLCs, which were not established until August 1996. Thus, Plaintiffs argue, the Defendants, by way of the misrepresentations which led them to relinquish their individual property rights by transferring the real estate to Stevensen 3rd East L.C., breached their attendant duties to them individually. The court cannot agree.

The November 1995 agreement cannot be read as establishing a fiduciary duty, because in no way is requisite trust repositied in Watts or his companies by way of that agreement. It is, by its very terms, merely an agreement to agree, with the particulars to be handled by subsequent agreement. The contract states that "[t]his is not a final agreement between the parties—but merely a general overall view of our intentions." Throughout the contract is language which clearly anticipates actions to be taken later. For instance, the second paragraph states that the idea of turning Stevensens' property into a condominium development, "has great merit and should be considered for a joint venture for the Watts and the Stevensens." Also the prevalent use of the word "would" in the third, fourth and fifth paragraphs indicate that (1) this agreement does not place Stevensens' land in Watts trust for development; and (2) the bond between the parties which would

result from engaging in the joint venture would not be formed until a later time. Considering this document, Plaintiffs' claim for individual damages based upon breach of fiduciary duty must be rejected.

As for Plaintiffs claim for negligent misrepresentation, as addressed above, the November 1995 agreement established nothing more than an arms-length relationship which the parties anticipated would become more formalized at a later date. While it would appear that any representations made during the intervening months prior to creation of the LLCs and transfer of the property could be construed as potentially giving rise to a claim for negligent misrepresentation, where the relationship between the parties establishes nothing more than a simple contractual duty, the court may not impose tort sanctions where the resulting damage is merely economic in nature. Case law applying Utah's rendition of the economic loss rule to a negligent misrepresentation case has been cited by both parties (Hafen v. Strebeck, cited above, at 1264). The court agrees with the statement of law as it is contained in that case and in applying it to the present case, must reject Plaintiffs' suggestion that the facts here are distinguishable because of the nature of the relationship of these parties. As stated in Hafen, "a party suffering only economic loss from the breach of an express or implied contractual duty may not assert a

tort claim for such a breach absent an independent duty of care under tort law." As addressed above, the independent fiduciary duty did not arise until after execution of the August 1996 agreements. Accordingly, the court must hold that the economic loss rule prevents the Plaintiffs' individual recovery on their claim for negligent misrepresentation. ✓

Defendants' Motion in Limine

As with all motions in limine, the court's comments are somewhat guarded. The court will offer the following comments, but in fact believes that it must reserve final determinations until the court more fully sees the issues at trial, sees the context in which the opinions are sought, and can more fully make the necessary determinations under the rules of evidence as to whether a particular opinion is based on proper information and will be helpful to the trier of fact. The discussion below assumes that the necessary expertise is shown, there has been reliance on proper data, and proper authentication of documents has taken place.

Defendants argue that the testimonies of three experts of plaintiffs should be excluded for a variety of reasons. The court addresses the merit of Defendants' argument as it applies to each expert's report.

Henry Kesler's Expert Opinion

Defendants assert that portions of Mr Kesler's opinion are both irrelevant and highly prejudicial, and thus, should not be presented to the jury at trial. Mr. Kesler's report, while expressing strong opinion on the honesty of Mr. Watts in his dealings with Bank loans, offers that testimony for the purpose of showing that Defendant failed to adequately fund the project, which thereby resulted in cost overruns related to the payment of late fees, loan extensions, and self-funding the out-of-balance condition. The testimony attacks Mr. Watts' representations to the banks as deliberately dishonest, and for the purpose of driving up costs, which ultimately decimated the profit margin, and breached his fiduciary duties to the Club L.C. and its members, including Stevensen 3rd East, L.L.C. Mr. Kesler's opinion in this regard is not likely to be admissible as a comment on the honesty of another. The opinion may be important to assist the trier of fact in understanding that Mr. Watts as the Club's manager, who thus owed a specific duty of honesty and loyalty to the L.C., did not behave according to industry standards, and thus breached his duty. The opinion may be admissible at least in part to the extent it does not attempt to invade the province of the jury who is to make the ultimate determination as to credibility of witnesses. There is nothing in that testimony which is not essential to assisting the jury to understand the interplay between the actions admitted and

the damages alleged. A witness can give an opinion as to the truthfulness of another witness. That opinion will not be allowed as an expert opinion, but any witness can opine on the character trait of truthfulness concerning another witness. URE, rules 405, 608(a). Accordingly, Defendants' Motion in Limine to limit Mr. Kesler's opinion testimony is hereby RESERVED.

Michael J. Teuscher's Expert Opinion

In general, the court notes that recitation of specific provisions of a contract which form the basis for a damages expert's calculations is not objectionable per se. Any time a damages expert offers testimony, that expert's opinion necessarily includes an assumption that there are damages resulting from action charged to the defendant. If this were sufficient reason to exclude an expert's opinion, either the jury would never have the assistance of such experts in their determination of damages, or every trial would be required to be bifurcated, with trial on the liability separate from the trial on damages. This, in the Court's opinion, does not serve the policy of judicial economy.

While Mr. Teuscher's opinion requires the indulgence of the court and the trier of fact in assuming that Defendants have been found liable, the opinion is not of such a nature that it will be

confused with telling the trier of fact what it should decide. Where an expert, such as Mr. Teuscher, provides separate calculations to meet different scenarios, the opinion is much more useful. Mr. Teuscher's report provides three separate damages summaries. The first is simply a figure assigned as actual profit (adjusted for certain items which may be controversial as an accounting matter, but not as a matter of law) less the sum of all draws, plus commissions (upon the assumption that Stevensen was entitled to the 1% commissions on all sales of developed units) plus reimbursement of the value of the land, plus the "Time Value of Money."⁴ While it is apparent that the award of each of these elements of damages is contingent upon determinations by the finder of fact, the manner in which these elements are presented is amenable to adjustment in the event that the court excludes them or the jury reduces them. For instance, had the court concluded that 1% payments were not fees, but were, rather, draws against future profit, then it would not be difficult to make the proper adjustment as to that damage item. The value of land could be similarly addressed. The second damages scenario adds a calculation of the one-half of the cost of delay. While importantly Mr. Teuscher does not presume to instruct the court why

⁴This element, which is actually an inappropriate assessment of pre-judgment interest, should be presented to the Court following judgment, if any, and will be addressed at that time.

this element is included in this scenario, its inclusion is consistent with the theory, pled in the complaint, that the untimely completion of the project breached a duty which was owed Plaintiffs, and resulted in damages. Certainly, if the jury should determine that the delay did not result either (1) from the actions of the Defendants, or (2) in damages to the Plaintiffs, the court would exclude that element of damages from the jury's consideration. The third and largest damages scenario bases its calculations upon the budgeted profit and expense calculations made at the outset of the project. The use of this baseline for damages reflects a shift from the "loss of investment"-based theories underlying the other two scenarios, to a "loss of bargain" baseline. The Defendants' sole attack on this portion of the report is that it is tantamount to an instruction to a jury that Watts breached the contract because he failed to obtain Stevensen's approval on budget changes.

Mr. Teuscher's report contains one damages element which is more properly considered after judgment is entered, as addressed above in the context of Plaintiff's Motion for Summary Judgment on the issue of pre-judgment interest.⁵ In short, the Defendants have

⁵The Court notes that Mr. Teuscher's pre-judgment interest calculation, under the rubric "Time Value of Money", is not transparent, making impossible any assessment of whether the calculation is proper. At a minimum, a prevailing party must demonstrate when interest on each element of damage began to accrue, and whether the interest is calculated simply, as the law requires. These matters would need to be included in any post-judgment

provided no real basis for the court's exclusion of Mr. Teuscher's report, except as pertains to the Time Value of Money and so it, like the Kesler report, will not be excluded at this point. Some aspects are clearly admissible at this point, and others are more questionable. The court again RESERVES final ruling on the motion in limine.

Lynn B. Larsen's Expert Opinion

Mr. Larsen's opinion addresses the common practices of the construction industry. Defendants objection to this lengthy report attacks it, as with the other two, because Defendants believe it can be read as instructing the jury to disregard other evidence which will be presented in this case. Certainly, however, the jury must be allowed to consider whether the Defendants followed the generally acceptable practices of the construction industry according to an expert opinion. The jury can, of course, wight the merit of any expert's opinion. The jury will hear facts that may entitle it to find that where Watts was the developer, a principal in the contractor, and his father was the architect, the normal construction methods were not followed. This may be an informative opinion, designed to demonstrate to the jury what should normally happen in a construction project and to identify where this project

discussion on pre-judgment interest.

varied from that industry standard if the jury should find there was a variance from the standard practice. If those variations can be explained by a particular contract term which required the variation, certainly the Defendants have had the opportunity to offer expert opinion which clarifies that it is construction industry standard practice to follow the contract over normal procedures. There is nothing identified by the Defendants as being specifically wrong with the report, and the court has not found any portion which it considers objectionable at this point. Subject to the general comments above, which will allow the trial court to rule on the admissibility of an opinion at the time of trial, and based upon the foregoing, Defendants' Motion in Limine is hereby DENIED, except as specifically identified above.

Plaintiffs' Motion in Limine

Plaintiffs contend that Defendants' expert, L. Deane Smith, inappropriately included in his report matters which are not the appropriate subject of expert opinion. The defects, Plaintiffs argue, require that the Court limit the testimony offered by the accounting expert. Mr. Smith's report was solicited, in part, as rebuttal to the Plaintiffs' experts' report, which is one of the targets of the Defendants' Motion in Limine, as addressed above.

The court largely agrees with Plaintiffs' assessment that

language under the Damages Rationale portion of the report consists of impermissible legal testimony, opening with the phrase: "the only rational basis for calculating Stevensen's alleged damages. . . [.]". Unlike the Plaintiffs' experts' testimony addressed above, which merely assumed that Plaintiffs' position would be established, Mr. Smith's testimony reads like argument in support of a Motion in Limine, providing purely legal rationalization for why the underlying theories of recovery are wrong. Of course, the court and jury require assistance in understanding the financial reasons why the opposing expert's opinion is wrong, and an opinion of an expert can be elicited regarding the validity of the opinion of another.

This anticipated testimony seems to leaves the realm of a financial expert's opinion, and attempts to dictate to the trier of fact what the only rational considerations might be. This is inappropriate as it is a matter of instruction which the court will undertake. The court will base its decision regarding the rational bases for calculating Stevensen's alleged damages based upon the facts presented and the parties' well-reasoned arguments related to the relevant factors for calculating damages, and not upon the testimony found in Mr. Smith's report.

There are portions of the testimony which are acceptable, including some providing specific information regarding the

commission payments, including analysis which identifies some errors in accounting which result in changes to the amounts of damages which should be claimed. Likewise, his identification of duplicate costs under the heading "Inappropriate Costs Charged" could assist the trier of fact, as well as similar assessments under "Construction Costs," "Warranty Costs," "Contractor Fees," and "Reimbursements." While the report slips back into argument mode for the majority of the section entitled "Profits," its final paragraph is not objectionable save for the expert's expressed belief that the classification of the "commissions" be changed.

In sum, other than those few instances which are identified above, as well as the exhibits which are attached to the report, the opinion based on the report will not assist the trier of fact, and thus will probably be properly excluded. Accordingly, Plaintiffs' Motion in Limine is hereby GRANTED in part, DENIED in part, and the court RESERVES until the time of trial..

CONCLUSION

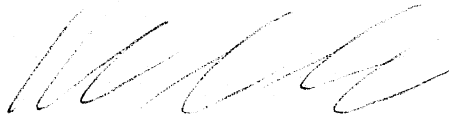
Based upon the foregoing, Plaintiffs Motion for Summary Judgment regarding the contract value of land is GRANTED as Plaintiffs have conceded that the March 25, 1999 contract valuation governs; Plaintiffs Motion for Summary Judgment on the treatment of unit sales is also GRANTED, because the March 25, 1999 Contract

language clearly identifies the payments as fees, not loan disbursements. Plaintiffs' Motion for Summary Judgment on the issue of pre-judgment interest is DENIED, as the matter is not ripe. Defendants' Motion for Summary Judgment is DENIED in part and GRANTED in part as stated above. Defendants' Motions in Limine seeking to limit expert testimony are RESERVED, except as pertains to the issue of pre-judgment interest. Plaintiffs' Motion in Limine is GRANTED and DENIED and RESERVED as specifically addressed above.

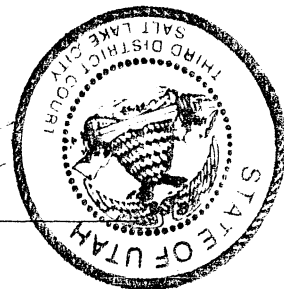
This Ruling and Order is the Order of the court and no other order is required.

Counsel are to contact the court's scheduling clerk to obtain a date for a scheduling conference so that a trial date may be fixed as soon as practicable.

DATED this 16 day of March, 2005.



BRUCE C. LUBECK
District Court Judge




CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 010904107 by the method and on the date specified.

METHOD	NAME
Mail	JAMES R BLAKESLEY ATTORNEY DEF 2595 E 3300 S SALT LAKE CITY, UT 84109
Mail	DENNIS K POOLE ATTORNEY DEF 4543 S 700 E STE 200 SALT LAKE CITY UT 84107
Mail	THOR B ROUNDY ATTORNEY PLA 448 E 400 S STE 100 SALT LAKE CITY UT 84111

Dated this 16 day of MARCH, 2005.



Deputy Court Clerk

ADDENDUM NO. C-3

DENNIS K. POOLE (2625)
ELIZABETH M. EVANS (7256)
POOLE & ASSOCIATES, L.C.
Attorneys for Defendants Russell K.
Watts and R.K.W. 96, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107
Telephone: (801) 263-3344
Telecopier: (801) 263-1010

FILED DISTRICT COURT
Third Judicial District

DEC 06 2006

SALT LAKE COUNTY

By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

STEVENSEN 3RD EAST, L.C., a Utah
limited liability company,

Plaintiff,

vs.

RUSSELL K. WATTS, an individual,
R.K.W. 96, L.C. and THE CLUB
CONDOMINIUM, L.C., Utah limited
liability companies, and John Does
1-100,

Defendants.

ORDER

CIVIL NO. 010904107

JUDGE JOHN PAUL KENNEDY

This matter came before the Honorable John Paul Kennedy on Wednesday, November 15, 2006, at the hour of 8:30 a.m., Thor B. Roundy appearing for the Plaintiff and Dennis K. Poole and Elizabeth Evans appearing for Defendants Russell K. Watts ("Watts") and R.K.W. 96, L.C. ("R.K.W. 96"). The Court considered Plaintiff's Objection to the Proposed Order from the September 6, 2006 hearing and the parties' briefs and

arguments regarding the standard of liability for a manager of a limited liability company to the company and its members.

The Court, having reviewed the pleadings, and having heard the arguments of counsel, and based upon the following grounds and good cause appearing, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Court finds that the proposed Order submitted by Defendants accurately reflects the September 6, 2006 hearing and, therefore, overrules Plaintiff's Objection to Proposed Order. Specifically as to the Plaintiff's continuing objections regarding the Court's finding that the initial burden of proof to establish a breach of fiduciary duty is upon the Plaintiff because of the authorized self dealing and therefore an absence of a presumption of unfairness, the Court also finds the burden of proof may shift to the fiduciary in instances where the fiduciary has not kept accurate records or has destroyed records, but such is not the case here; to the contrary, Mr. Watts has maintained records of the Club, the same have been made available to the Plaintiff, and therefore it is not unreasonable for the Plaintiff to bear the burden of proving breach of fiduciary duty by the applicable standard of care or liability as set forth in paragraph 2 herein below.

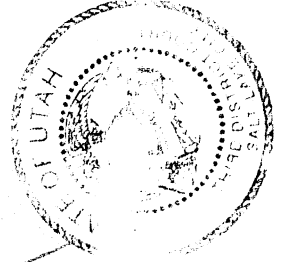
2. The Court finds accurate and persuasive Defendants' arguments supporting Defendants' claims that the standard of liability applicable to a manager of a limited liability company, to the company and its members, at the time 3rd East and R.K.W 96 executed the Operating Agreement for the Club Condominium, L.C., is gross negligence or willful misconduct, which arguments include, but are not necessarily limited to: (a) the Limited Liability Company Act in effect at the time the parties' executed the Operating Agreement was silent as to manager liability to the company and its members: (b) the common law

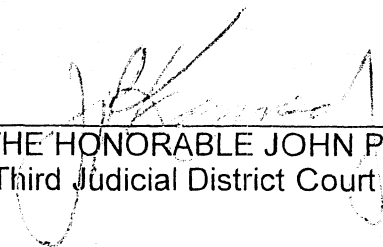
at the time the parties' executed the Operating Agreement established that the liability of an officer of a corporation to such officer's corporation was gross negligence or willful misconduct; (c) that this Court should look to the analogous law of corporations when determining the liability of a manager of a limited liability company to the company and its members; (d) that 3rd East did not have a vested right to a claim for simple negligence against Mr. Watts as manager of the Club, and therefore, section 48-2c-807 of the Utah Revised Limited Liability Company Act effective as of July 1, 2001, which limits a manager's liability to circumstances of gross negligence or willful misconduct (unless the parties have elected a greater standard, which is not present in this case) may be applied retroactively to the Club and its manager and members; (e) Section 48-2c-1902(2) of the Utah Revised Limited Liability Company Act specifies that "all domestic companies formed prior to July 1, 2001, under the laws of this state, as well as their managers, members, and assignees of members, as applicable, shall have all the rights and privileges and shall be subject to all the requirements, restrictions, duties, liabilities, and remedies prescribed in this chapter" requires the application of Section 48-2c-807 to the parties to the Club Operating Agreement; and (f) the parties to the Club Operating Agreement specifically agreed that they were forming the Club pursuant to the Utah Limited Liability Company Act as currently or "hereinafter in effect" thus intending to be bound by changes in the Utah Limited Liability Act.

3. Therefore, the jury will be instructed that Mr. Watts, as manager of the Club Condominium, L.C., may be held liable to the company or its members only upon a finding of gross negligence or willful misconduct.

DATED this 6 day of ~~November~~ ^{December}, 2006.

BY THE COURT:





THE HONORABLE JOHN PAUL KENNEDY
Third Judicial District Court

Approved as to form:

THOR B. ROUNDY
Attorney for Plaintiff

Approved as to form:

JAMES R. BLAKESLEY
Attorney for The Club Condominium, L.C.

DATED this ____ day of November, 2006.

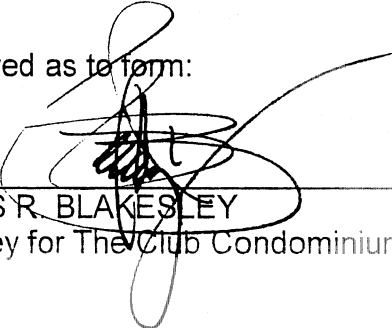
BY THE COURT:

THE HONORABLE JOHN PAUL KENNEDY
Third Judicial District Court

Approved as to form:

THOR B. ROUNDY
Attorney for Plaintiff

Approved as to form:


JAMES R. BLAKESLEY
Attorney for The Club Condominium, L.C.

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the above and foregoing ORDER in Case No. 010904107 was mailed, postage prepaid, United States Mail, the 20th day of November, 2006, to the following:

James R. Blakesley, Esq.
1305 N. Commerce Drive, Suite 230
Saratoga Springs, Utah 84045

Thor B. Roundy, Esq.
448 East 400 South, Suite 100
Salt Lake City, Utah 84111

Eileen K. Snideman

ADDENDUM NO. C-4

IN THE THIRD JUDICIAL DISTRICT COURT

FEB 01 2007

SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE COUNTY

Deputy Clerk

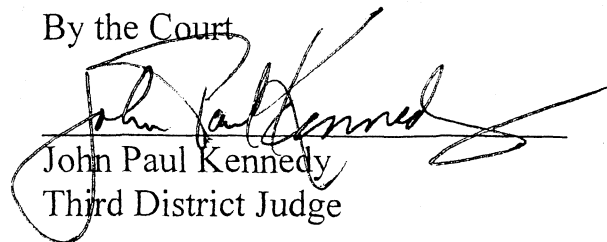
STEVENSEN 3RD EAST, L.C., a : **Final and Complete Set of Jury**
Utah Limited Liability Company, : **Instructions**
:
Plaintiff, :
:
: Civil No. 010904107
v. :
: Judge Kennedy
RUSSELL K. WATTS, an individual, :
R.K.W. 96, L.C. and THE CLUB :
CONDOMINIUM, L.C., Utah :
Limited Liability Companies, :

Members of the Jury:

Attached hereto are Jury Instructions 1 through 60. These are the final Jury Instructions and replace the first set you received at the start of the trial. The Court has modified Instruction No. 7 to update and conform to the claims of the parties. Also, Instruction No. 15 has been modified by combining it with the prior duplicate number 18, which has been deleted as no longer being necessary.

Dated: January 30, 2007

By the Court



John Paul Kennedy
Third District Judge

1. GENERAL INSTRUCTION

There are certain laws and rules which apply to this case. I'll explain them to you from time to time during these proceedings in order to give you the information that you need to fulfill your role as jurors at each stage of the trial. I will give you the first set of instructions at this point. You will receive further instructions before evidence is presented and the final set of instructions after the close of evidence. Please pay careful attention. Each of you has been given a copy of these instructions. This copy is yours to keep. As I read these instructions to you, you may follow along on your copy, or not, as you wish. Keep in mind the following points:

Obey Instructions. Some of these instructions give you information about how the trial will proceed, the rules that govern this process, and the roles of the participants, including your role as jurors. Other instructions tell you what the law is that you are to apply in reaching your verdict in this case. If any attorney makes statements of the law that differ from the instructions on the law that I give to you, you should disregard such statements and rely entirely on these instructions.

Many Instructions. There will be many instructions. All are important. Don't pick out one and ignore the rest. Think about each instruction in the context of all the others.

Gender – Singular/Plural. In these instructions, any references to “she” or “her” also include “he” or “him,” or *vice versa*, as appropriate to this case; and the singular, such as “Defendant” includes the plural “Defendants,” when appropriate.

Note Taking. The Bailiff has provided you with notepads and pens. You may take notes during the trial, but don't over do it, and don't let it distract you from following the evidence. The lawyers will review the evidence in their closing arguments and help you focus on what is most relevant to your **decision**. I also caution that notes are not evidence. Use them only to aid personal memory or concentration. Keep in mind that you must each arrive at a verdict independently, and one juror's memory of the evidence or opinion should not be given excessive consideration solely because that juror has taken notes.

Keep an Open Mind. Don't form or express an opinion about the ultimate issues in this case until you have listened to all the evidence and the lawyers' summaries, along with the final instructions on the law. Keep an open mind until your deliberations are completed.

2. The Instructions are to be considered as a whole.

These instructions, though numbered separately, are to be considered and construed by you as one connected whole: Each instruction should be read and understood in reference to and as a part of the entire charge, and not as though any one sentence or instruction separately were intended to state the whole law of the case upon any particular point.

If in these instructions any rule, direction or idea has been stated in varying ways, no emphasis thereon is intended, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

3. WHAT RULES APPLY TO RECESSES

From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. During recesses, do not talk about this case with anyone; not family, friends or even with each other. The bailiff may ask you to wear a badge identifying yourself as a juror so that people will not try to discuss the case with you. Don't mingle with the lawyers, the parties, the witnesses or anyone else connected with the case. You may say "hello" or exchange similar brief civilities with these persons, in passing, but don't engage in any conversation. Don't accept from or give to any of these persons any favors, however slight, such as rides or food.

The lawyers and parties are naturally concerned to avoid any hint of improper contact with you, so don't think that they are being purposely rude if they avoid any interaction with you during the course of this trial. If anyone tries to talk to you about the case, let the bailiff know immediately. You may communicate with the bailiff or among yourselves about topics other than a subject of the trial. Don't read about this case in the newspaper or listen to any reports on television or radio, if there are any. Finally, don't form or express an opinion regarding any subject of the trial until you are sent out for deliberation at the end of the trial. These restraints are necessary for a fair trial.

4. THE ROLE OF THE JUDGE, THE JURY AND THE LAWYERS

The judge, the jury and the lawyers are all officers of the Court and play important roles in the trial.

Judge. It is my role as judge to decide all legal issues, supervise the trial and instruct the jury on the LAW that it must apply.

Jury. It is your role as the jury to follow that law and decide the factual issues. Factual issues generally relate to WHO, WHAT, WHEN, WHERE, HOW or similar things concerning which evidence will be presented.¹

Lawyers. It is the role of the lawyers to present evidence, generally by calling and questioning witnesses and presenting exhibits. It is the responsibility of each side to be an advocate, and each has a duty to try to persuade you to accept their version of the facts and to decide the case in favor of their position.

The ethical rules and the standards of professionalism adopted in this state are very important to this proceeding. Those rules and standards require that lawyers demonstrate courtesy, candor, and cooperation. Consistent with their duties, each side must diligently advance their legitimate

¹ In the case of alternate juror(s): An alternate juror has the same responsibilities as any other juror, as he may be required to take the place of one of the jurors in the panel in the event an original juror is unable to complete her service. Any alternate juror selected will be identified as such once the case has been presented and the jury is ready to retire to deliberate on a verdict.

interests. They should do so with energy and courage. At the same time, each side should not engage in conduct that is uncivil, abrasive, abusive, hostile, or obstructive. Instead, each side should treat others in a courteous and dignified manner. We all have the right to expect civil and professional conduct from all participants involved in this case.

Keep in mind that neither the lawyers, the parties, nor I actually decide the facts of this case, because that is your role. Don't be influenced by what you think our personal opinions are; rather, you decide the case based upon the law explained in these instructions and the evidence presented in court.

5. ALL PARTIES ARE EQUAL BEFORE THE LAW.

The fact that a party may be an individual and that another party may be a corporation should make no difference whatever to you. It is your duty to hear and determine this case the same as if it were between two individuals.

Also, remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

6. OUTLINE OF THE TRIAL

The trial will generally proceed as follows:

Opening Statements. Each side will outline what the case is all about, and they will indicate what they think the evidence will show.

Presentation of Evidence. The Plaintiff will offer its evidence first, followed by the Defendant. Each side may also offer rebuttal evidence after hearing the witnesses and seeing the exhibits offered by the other side. If an exhibit is given to you to examine, you should examine it carefully, individually, and without any comment.

Recesses and Breaks. During the trial there will be periods of time when the court recesses. During those times you must not discuss the case with anyone, including fellow jurors; you should not allow anyone to discuss the case with you. If any attempt is made to do so, you should report that to the bailiff immediately. You should not read, hear, or see media coverage of this trial.

Additional instructions on the Law. After each side has presented its evidence, I will give you additional instructions on the law that applies to this case.

Closing Arguments. Each side will then summarize and argue the case. They will share with you their respective views of the evidence, how it relates to the law and how they think you should decide the case.

Jury Deliberation. The final step is for you to retire to the jury room and deliberate until you reach a verdict, and you will be given additional instructions about how you are to do that later. During your deliberations, we will not be able to provide you with transcripts of the trial testimony; you will have to rely on your memory. Thus it is important, whether you take notes or not, that you observe the witnesses carefully and listen carefully to the testimony.

7. THE CLAIMS OF THE PARTIES.

The parties who bring a lawsuit are called plaintiffs. In this action the plaintiff is Stevensen 3rd East, L.C., a Utah limited liability company. Ted and Barbara Stevensen were the members of Stevensen 3rd East, L.C. When I refer to Stevensen, I mean the plaintiff Stevensen 3rd East, L.C.

The parties against whom the suit is brought are called defendants. In this action the defendants are Russell K. Watts, an individual, and R.K.W. 96, L.C., and The Club Condominium, L.C., both Utah limited liability companies. When I refer to R.K.W.96 or The Club, I mean the defendant companies.

Stevensen 3rd East seeks recovery for damages which it alleges it suffered as a result of the grossly negligent acts, or willful misconduct of Russell Watts. R.K.W.96 and The Club are companies through which some of those actions were taken. The defendants deny that they acted wrongfully or that they are responsible for the damages claimed by Stevensen 3rd East.

Russell Watts was acting as the manager of The Club at the time the events in this case occurred. Russell Watts and his father, Kevin Watts, were the owners of Watts Corporation and Watts Enterprises, the entities responsible for construction of The Club Condominiums. Kevin Watts' company was the architect on the project.

There are several separate and distinct claims asserted by Stevensen 3rd East against the Defendants which arise out of the construction and the sale of The Club Condominiums. Essentially, Stevensen 3rd East's claims are:

(1) Breach of contract. There were written agreements, between the parties. You will be given copies of those agreements during the trial. Stevensen 3rd East claims that the defendants violated specific provisions in those agreements.

(2) Breach of the covenant of good faith and fair dealing. Every contract requires the parties to treat each other with fairness and in good faith. Stevensen 3rd East claims that the defendants did not act in good faith and that the defendants' actions deprived Stevensen 3rd East of the benefits it expected under the contracts.

(3) Breach of fiduciary duty. The manager of a company has a fiduciary duty to the members. Fiduciary duty involves the duties of good faith, honesty, loyalty and care. In addition, a manager is required to use good business judgment in managing the affairs of the company. However, under Utah law, a manager of a limited liability company may not be held liable for breach of fiduciary duty unless he has engaged in gross negligence or willful misconduct. Stevensen 3rd East claims that Russell Watts grossly mismanaged the company and that he thereby breached his fiduciary duties stated above.

Stevensen 3rd East also claims entitlement to punitive damages against Russell Watts for willful and malicious conduct or conduct which constituted a reckless disregard of Stevensen 3rd East's rights in the construction and sale of units within The Club condominiums.

Defendants deny each of the plaintiff's claims. Watts maintains that he complied fully with his fiduciary duties at all times by looking out for the best interests of both The Club and its members, Stevensen 3rd East and R.K.W.96.

8. WHAT IS THE JURY'S ROLE IN THIS CASE?

You must decide whether or not the Plaintiff's claim has been established under the standard set for the Plaintiff's burden of proof. Your decision is called a VERDICT. Your verdict must be based only on the evidence produced here in court. It must be based on facts, not on speculation. Don't guess about any fact. However, you may draw reasonable inferences or arrive at reasonable conclusions from the evidence presented. You should perform your duty to be a jury uninfluenced by passion or prejudice in favor of or against either party. You must not allow yourselves to be biased for or against the Defendant simply because the Plaintiff has brought this case in court. Nor should you allow yourselves to be biased for or against the Plaintiff simply because the Defendant has answered, denying Plaintiff's claims.

You are to be governed in your deliberations solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the Plaintiff and the Defendant have a right to demand and they do demand and expect that you will conscientiously and dispassionately consider and weigh the evidence and apply the law of the case, that you will reach a just verdict regardless of what the consequences of such verdict may be. The verdict must represent the individual opinion of each juror. Three-fourths, or six, of the members of the jury must agree upon the verdict.

9. WHAT IS EVIDENCE?

Evidence is anything that tends to prove or disprove the existence of a disputed fact. Evidence includes testimony, documents, objects, photographs, recordings, stipulations, certain qualified opinions, and/or any combination of these things. Sometimes the lawyers may agree that certain facts exist; this is called a stipulation. You should accept any stipulated facts as having been proved. In limited instances, I may take “judicial notice” of a well-known fact. If that happens, I will explain how you should treat it.

10. OPINION TESTIMONY

Under certain circumstances, witnesses are allowed to express an opinion. A person who by education, study or experience has become an expert in any art, science or profession, may give an opinion and the reason for it. In evaluating such testimony, consider the reasons, if any, given for it. You are not bound by such an opinion. Give it the weight you think it deserves. If you should decide that the opinions of an expert witness are not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that such opinion is outweighed by other evidence, you may disregard the opinion entirely.

A layperson (a non-expert) is also allowed to express an opinion if it is based on personal observations and it is helpful to understanding such person's testimony or other aspects of the case. You are not bound to believe anyone's opinion. Consider it as you would any other evidence, and give it the weight you think it deserves.

In determining whether a particular statement was a statement of fact or an expression of opinion, you may consider the surrounding circumstances under which it was made, the manner in which the statement was made, and the ordinary effect of the words used. You may also consider the relationship of the parties and the subject matter with which the statement was concerned.

11. WHAT IS NOT TO BE CONSIDERED OR USED AS EVIDENCE?

I've explained to you what evidence is. Now I'll tell you about some things which do not qualify as evidence or which, for some other good reason, you should not consider in reaching your verdict.

Complaint and Answer. The fact that a formal complaint has been filed asserting a claim against the Defendant is not evidence of liability. The Defendant has filed an Answer, denying any liability. This Answer is also not evidence. As I will discuss in more detail later in these instructions, it is the Plaintiff's burden to prove to you that the Defendant is liable by a preponderance of the evidence. Likewise, the Defendant must prove any affirmative defenses by a preponderance of the evidence.

Lawyer Statements. What the lawyers say is not evidence. Their purpose is to give you a preview of expected evidence and to help you understand the evidence from their viewpoint. If a lawyer makes a statement about the evidence which is different from your own recollection of the evidence, you should rely on your own memory.

Personal Investigation. Evidence is not what you can find out on your own. You should not make any investigation about the facts in this case. Do not make personal inspections, observations or experiments. Do not view premises, things or articles not produced in court. Don't let anyone else do anything like this for you. Don't look for information in law books, dictionaries or public or private records which are not produced in court.

Out of Court Information. Do not consider anything you may have heard or read about this case in the media or by word of mouth or other out-of-court communication. You must rely solely on the evidence that is produced and received in court.

12. DEPOSITION TESTIMONY

In the present action, certain testimony may be presented to you by way of deposition. Depositions contain sworn testimony, with the lawyer for each party being entitled to ask questions. Testimony provided in a deposition may be read to you in open court or may be seen on a video monitor.

You are not to discount this testimony for the sole reason that it comes to you in the form of a deposition. It is entitled to the same consideration as if the witness testifying at the deposition had personally appeared and testified under oath at trial.

13. THE JUDGE DECIDES WHAT EVIDENCE IS ADMISSIBLE

Sometimes a question will be raised about whether certain evidence is proper for the jury to consider. This type of question is called an OBJECTION. I rule on objections. If an objection is SUSTAINED the evidence is kept out and you should not consider it, nor should you guess as to what the evidence might have been or what was the reason for the objection. If an objection is OVERRULED the evidence comes in and you may consider it. If evidence which you have heard or seen is STRICKEN you must ignore it.

My decisions regarding the admission of evidence involve issues of law, and I am not giving any opinion as to which witnesses are or are not worthy of belief or as to which party should prevail in the case. Don't be concerned about the reasons for my rulings, and don't try to infer anything about the case from those rulings.

Further, if I do or say anything during the course of this trial that suggests to you that I favor the position of either party, whether in my rulings or otherwise, it is entirely unintentional; and you must not be influenced by that in any way.

14. Charts and Summaries

Certain charts and summaries have been shown to you in order to help explain the facts disclosed by the books, records, and other documents which are in evidence in the case. However, such charts or summaries are not by themselves evidence or proof of any facts. If such charts or summaries do not correctly reflect facts or figures shown by the evidence in the case, you should disregard them.

15. WHO IS RESPONSIBLE TO CONVINCING THE JURY?

Plaintiff must prove, by a preponderance of the evidence, its claims regarding breach of contract, breach of the covenant of good faith and fair dealing, and breach of fiduciary duty.

The Defendants have raised several defenses regarding Plaintiff's claims. These specific defenses will be discussed later. At this point, you should be aware that the Defendants bear the burden of proving by the required degree of the evidence ~~those facts~~ which support the defenses upon which Defendants rely. The degree of evidence required will be described in later instructions.

16. WHAT IS MEANT BY “PREPONDERANCE OF THE EVIDENCE?”

Unless otherwise indicated, to be successful, the Party bearing the burden of proof must prove certain facts to you by a preponderance of the evidence. “Preponderance of the evidence” means the greater weight of the evidence; or, that evidence which is more convincing as to its truth. As is sometimes stated, “preponderance of the evidence” means such degree of proof that the greater probability of truth lies therein.

The preponderance of the evidence is not necessarily determined by the number of witnesses, or the number of documents, or the amount of testimony, but rather by the convincing character of the evidence, weighed impartially, fairly, and honestly by you. If the evidence is evenly balanced as to its convincing force on any allegation, you must find that such allegation has not been proved.

17. Burden of Proof-Clear and Convincing

Defendants are required to prove mistake by clear and convincing evidence. Plaintiff must also establish liability for punitive damages, if any, by clear and convincing evidence.

“Clear and convincing evidence” is evidence that produces in your mind a firm belief as to the matter at issue. This involves a greater degree of persuasion than is necessary to meet the preponderance of the evidence standard, but not so great as is necessary to prove something beyond a reasonable doubt.

For evidence to be clear and convincing, it must at least have reached the point where there remains no substantial doubt as to the truth or correctness of the conclusion based upon the evidence.

18. Circumstantial Evidence.

A fact may be proved by circumstantial evidence. Circumstantial evidence consists of facts or circumstances that give rise to a reasonable inference of the truth of the facts sought to be proved.

19. HOW TO MAKE DECISIONS ABOUT THE EVIDENCE

It will be your duty to determine your verdict relying solely on the evidence presented during the trial. For that purpose you should consider all of the evidence together, fairly, impartially and conscientiously, putting aside any bias, prejudice, or preconceptions.

Once evidence is admitted, you must decide three things about it: Whether it should be believed, how important it is, and what you can reasonably infer or conclude from it. An inference is a conclusion that logic, reason, or common sense leads you to draw from a fact or group of facts that the evidence has established.

Use your common sense as a reasonable person in making these decisions. Review all the evidence. Don't imagine things which have no evidence to back them up. Consider the evidence fairly without any bias or sympathy toward either side.

Where there is conflicting evidence, you should try to reconcile the conflict so far as you reasonably can. Where the conflict cannot be reconciled, you are the final judges and must determine from the evidence what the facts are.

20. DECIDING WHETHER TO BELIEVE A WITNESS

You are the sole judges of the importance of the evidence, the believability of the witnesses and the facts. There is no firm rule that I can give you for determining whether a witness is truthful. As each witness testifies, you must decide how accurate that testimony is and what weight to give it, using your own good judgment and experience in life. In evaluating testimony, it may help you to ask yourself questions such as these, giving the weight you feel is reasonable for each issue:

Personal Interest. Does the witness have a personal interest in how the trial comes out?

Other Bias. Does the witness have some other bias or motive to testify a certain way?

Demeanor. What impression is made by the witness's appearance and conduct while answering questions?

Consistency. Did the witness make conflicting statements or contradict other evidence?

Knowledge and Memory. Did the witness have a good opportunity to know the facts and the ability to remember them?

Reasonableness. Is the testimony reasonable in light of human experience?

You may also apply any other common sense yardstick to the testimony you hear and the other evidence you receive. You are not required to believe any witness or all that a witness says. You are entitled to believe one witness as against many or many as against one, in accordance with your honest convictions.

21. WHAT IF A WITNESS PURPOSELY GIVES FALSE OR INCONSISTENT TESTIMONY?

If you believe a witness has previously made inconsistent statements or has purposely given false testimony about anything relevant to the case, you may disregard not only the inconsistent or false testimony but any of the remaining testimony from that witness, or you may give the remaining testimony whatever weight you think it deserves.

22. WHAT TO TAKE WITH YOU INTO THE JURY ROOM

You may take the following things with you when you go into the jury room to discuss this case:

- a. All exhibits admitted in evidence;
- b. Your notes (if any);
- c. Your copy of these instructions; and
- d. The verdict form or forms that will be given to you.

23. WHAT TO DO IN THE JURY ROOM

The first thing you should do in the jury room is choose a person to be in charge. This person is called the FOREPERSON. The Foreperson's duties are:

- a. To keep order and allow everyone a chance to speak;
- b. To represent the jury in any communications you make;
and
- c. To sign your verdict and bring it back to court.

In deciding what the verdict should be, all jurors are equal. The Foreperson has no more power than any other juror.

**24. YOUR VERDICT MUST BE YOUR OWN DECISION
ARRIVED AT AFTER OPEN AND HONEST
DELIBERATION.**

Consider each other's opinions, then reach your own decision based upon honest deliberation. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of opinion or to announce a determination to stand for a certain verdict. When that is done at the outset, a person's sense of pride may block appropriate consideration of the case. Use your common memory, your common understanding and your common sense. Talk about the case with each other as you ponder and deliberate.

In the end, your verdict must be your own. Don't make a decision just to agree with everyone else. You should, however, respect and consider the opinions of the other jurors. If you are persuaded that a decision you initially made was wrong, don't hesitate to change your mind. Help each other arrive at the truth. Your decision need not be unanimous. Only six of you need to agree upon the verdict. In an attempt to reach a decision, you may not resort to chance or any form of decision-making other than honest deliberation.

25. WHAT TO DO IF YOU HAVE QUESTIONS DURING DELIBERATION

If you think you need more information or a clarification, write a note and give it to the bailiff. I will review it with the lawyers. We will answer your question whenever appropriate. However, these instructions should contain all the information you need to reach a verdict based upon the evidence that has been presented to you. You should understand that no further evidence can be provided to you.

26. FOCUS ON THIS CASE ALONE

Your duty is to decide this case and this case alone. You should not use this case as a forum for correcting perceived wrongs in other cases or in the broader society, or as a means of expressing views about anything other than whether this Defendant is liable or not, and if so, the amount of that liability, if any. Your verdict should reflect the law given to you in these instructions applied to the facts that you find to be supported by the evidence. Your decision should not be distorted by any outside factors or objectives.

The final test of the quality of your service will be the verdict you return. You will make an important contribution to justice and your community if you focus exclusively on this case and return a just and proper verdict.

27. REACHING A VERDICT

In determining any fact in this case you should not consider nor be influenced by any statement made or act done by the Court which you may interpret as indicating its views thereon. You are the sole and final judges of all questions of fact submitted to you, and you must determine such questions for yourselves from the evidence, without regard to what you believe the Court thinks thereon. The Court has not intended to express, or intimate, or be understood as giving any opinion on what the proof shows or does not show, or what are or what are not the facts in the case. Indeed, it is immaterial what the Court thinks about it. You must follow your own views and not be influenced by the views of the Court.

As I have said, this being a civil case, your verdict must represent the view of three-fourths, or six members of the jury. When six of you are in agreement, then you have reached a verdict and your work is finished. At least six of you must agree on each issue presented to you. If there is more than one issue, the six in agreement need not be the same six on each issue.

28. HOW TO REPORT YOUR VERDICT

When you retire to deliberate, you will be provided with a Verdict Form, which is self-explanatory. After your deliberations have been completed and you have reached a verdict, the Foreperson should fill out and sign the Verdict form in accordance with the decision of the jury.

Once the Verdict form is completed, dated, and signed, notify the bailiff that you are ready to return to court. The Foreperson should present the Verdict Form to the bailiff, at the direction of the judge, when you return to the courtroom to deliver your verdict.

29. WHAT HAPPENS AFTER THE VERDICT HAS BEEN REPORTED

After you have given your verdict to the judge, the clerk will read the jury's verdict. After that, the judge or the clerk may ask each of you about the verdict to make sure you agree with it. Then you will be released from your jury service and you may leave at any time.

After you are excused, you may talk about the case with anyone. Likewise, you are not required to talk about it, if you don't want to. If anyone attempts to talk to you about the case when you don't want to do that, please tell the Bailiff or the Court Clerk. Finally, if you do decide to discuss the case with anyone, keep in mind that your fellow jurors freely stated their opinions in the jury room with the understanding that they were speaking in confidence. Please respect the privacy of the views of your fellow jurors.

30. LIMITED LIABILITY COMPANY – CONTROL OF MANAGER

A limited liability company is an association of two or more persons to carry on as co-owners of a business for profit. The manager of the company has the authority to operate, manage, and control the daily affairs of the business subject to, and as prescribed by, the terms of the operating agreement of the company. The rights of the members are those rights that are established by the operating agreement of the company.

31. COMPANIES ACT THROUGH THEIR AGENTS

Stevensen 3rd East, L.C., R.K.W.96, L.C., and The Club Condominium, L.C., are limited liability companies and, as such, can act only through their managers and others designated by them as their agents.

Any act or omission of a manager, or an agent ⁱⁿ of the performance of his duties or within the scope of the authority of the manager or agent, is the act or omission of the limited liability company. A member or manager of a limited liability company shall not be liable or accountable to the company of the members for any action or inaction unless the action or inaction constitutes (a) gross negligence or (b) willful misconduct. }

By agreeing to act as the manager of the Club, Russell Watts ^{of} undertook an obligation to conduct the affairs of the Club as agreed by the parties pursuant to the grossly negligent or willful misconduct standard established by Utah law.

Under Utah law, an Operating Agreement may modify the rights, duties, powers, and qualifications of, and relations between and among, the members and the managers of a limited liability company. The Articles of Organization of The Club, L.C., and The Club Operating Agreement did not contain a higher standard of conduct than already stated above, which would result in greater liability for the manager.

An Operating Agreement may not eliminate the obligation of good faith and fair dealing.

32. SELF-DEALING BY A MANAGER MAY BE PERMITTED.

The members of a limited liability company may authorize self-dealing in its Operating Agreement by its members and managers. Furthermore, if self-dealing is permitted in the Operating Agreement of a company, the self-dealing is not presumed to be wrongful.

Because The Club Operating Agreement permitted Watts to engage in self-dealing, the Plaintiff in this case must prove by a preponderance of the evidence that Russell Watts, as manager of the Club Condominium, breached one or more of his duties through his gross negligence or willful misconduct regarding the manner in which he transacted business involving any self-dealing.

33. BREACH OF CONTRACT

A breach of contract occurs when a party to the contract fails to perform as promised. The breach may occur with regard to either an express or an implied provision of the contract.

To prevail on the Plaintiff's claims against the Defendants R.K.W.96 and/or The Club Condominium in this case, the Plaintiff must prove that the Defendants R.K.W.96 and/or The Club Condominium breached their obligations under the contracts by failing to perform one or more of the terms of their agreements. Defendants' breach of contract, if any, is excused if Defendants adequately prove one or more of the defenses which they assert.

34. GROSS NEGLIGENCE.

“Gross negligence” is the failure to exercise even slight care. In other words, it is actions taken with reckless disregard and which are outside the bounds of reason. It is a devil-may-care attitude or indifference to duty amounting to recklessness.

Gross negligence is the failure to observe even slight care; it is carelessness or recklessness to a degree that shows utter indifference to the consequences that may result.

35. WILLFUL

“Willful” misconduct is the intentional doing of an act, or an intentional failure to do an act, in reckless disregard of the consequences, and under such circumstances and conditions that a reasonable person would know, or have reason to know, that such conduct would, in a high degree of probability, result in harm to another.

36. EVIDENCE REGARDING STANDARD OF CARE

In determining whether the Defendants complied with the applicable standard of care, you may not rely on your own ideas as to what learning, skill, and care builders and developers ordinarily exercise. You must determine the standard of care solely from the evidence presented in this trial by expert witnesses, who have testified about standards applicable to builders and developers in the same or similar community as the Defendants.

37. A PARTY IS CHARGED WITH THE KNOWLEDGE OF THE DOCUMENTS WHICH HE/SHE/IT SIGNS

When a party enters into a contract, that party has the burden to read and understand the terms of the contract before that party signs it. Consequently, a party may not sign a contract and thereafter claim as a defense that he/she/it is ignorant as to its terms or failed to read the contract.

38. BREACH OF CONTRACT - DEFENSES

If the Plaintiff proves by a preponderance of the evidence that the Defendants breached the contracts between the parties, you must then consider the defenses raised by the Defendants. The Defendants have the burden of adequately proving each of their own defenses.

The Defendants have raised the following legal defenses: Mutual Mistake; Unilateral Mistake; Estoppel; Acquiescence; and Waiver.

39. MUTUAL MISTAKE

When both parties, at the time of entering into a contract, share a mutual mistake about an assumption or a fact upon which they based the contract, and such assumption or fact has a material effect on the agreed performance, the contract may be reformed to correct the mistake.

A “mistake” is a belief that is not in accord with the facts.

Mutual mistake must be proved by clear and convincing evidence.

40. UNILATERAL MISTAKE

A “unilateral mistake” is a mistake made by only one of the two parties to a contract. A contract may be reformed based upon unilateral mistakes when the nonmistaken party knows of or produced the mistake by fraud or other inequitable conduct.

Unilateral mistake must be proved by clear and convincing evidence.

41. ESTOPPEL

Another defense asserted by Defendants is the defense of estoppel. “Estoppel” is conduct by one party which leads another party, in reliance thereon, to adopt a course of action resulting in detriment or damage if the first party is permitted to repudiate his conduct.

To find that Defendants are protected by the defense of estoppel, three elements must be present:

- (1) a representation, act, or omission must have been made by Plaintiff,
- (2) Defendants justifiably relied on that representation, and,
- (3) Defendants changed their position to ~~his~~ ^{their} detriment based on that reliance.

Estoppel must be proved by a preponderance of the evidence.

42. ACQUIESCENCE

A party claiming a right ought not to appear to acquiesce in non-performance by the other party until the time has gone by for such performance and then claim damages. If a party who has an interest in a transaction, engages in long-continued acquiescence in a course of conduct, you may refuse to grant that party relief to re-establish the right.

It would be contrary to equity and good conscience to enforce such rights if a party has been led to suppose by the word, or action of the other party that there was no objection to his operations.

“Acquiescence” is conduct from which there may be inferred assent or agreement. Acquiescence must be proved by a preponderance of the evidence.

43. WAIVER

Defendants have also asserted the defense of waiver with respect to Stevensen 3rd East's breach of contract claims. "Waiver" is the intentional relinquishment of a known right. In order for a waiver to occur, there must be an existing right, benefit, or advantage, a knowledge of its existence, and an intention to relinquish it. The party's actions or conduct must be inconsistent with any other intent.

Defendants bear the burden of proving Stevensen 3rd East's intent to waive a known right by a preponderance of the evidence.

44. Implied Duty of Good Faith and Fair Dealing

Whether expressed or not in written contract language, every contract imposes upon each party a duty of good faith and fair dealing with respect to dealings between the parties. The parties to a contract must deal fairly and honestly with each other. This duty of good faith and fair dealing does not create any implied obligations contradictory to the express provisions of the contract. Also, the duty of good faith and fair dealing does not mean that a party is obligated to exercise any of the party's contract rights to the party's own detriment for the purpose of benefitting another party to the contract.

The purpose of the duty is to protect the reasonable expectations of all the parties as to their rights and obligations under the contract. The obligation of good faith and fair dealing prohibits a party to a contract from acting to destroy or injure the other parties' right to receive the fruits of the agreement, or to act in a manner inconsistent with the agreed common purpose of the contract.

However, a party's contractual promises or commitments cannot be enlarged and expanded by means of the implied covenant of good faith and fair dealing to include other promises not fairly implied in the promises actually made. Moreover, *Stevensen 3rd East* cannot establish a valid claim for breach of the duty of good faith and fair dealing if such claim is also based on exactly the same acts which you find to be in breach of express contract covenants.

If you find by a preponderance of the evidence that the Defendants did not deal fairly and honestly with Plaintiff, then you may find that the Defendants breached their duty of good faith and fair dealing unless Defendants have established by a preponderance of the evidence one or more of their asserted defenses.

45. Duty to Fellow Members and to the Company

A member owes a duty of loyalty and a duty of care to other members and to the Company unless such duties are otherwise modified or eliminated by the members' agreements, including the Operating Agreement.

46. FIDUCIARY DUTY DEFINED

Russell Watts, as Manager of The Club, owed Stevensen 3rd East and R.K.W. 96 a fiduciary duty. Fiduciary duty includes the duties of good faith, honesty, loyalty, and due care.

The duty of honesty, or candor, requires that Russell Watts disclose all material information to Stevensen 3rd East when seeking approval from Stevensen 3rd East.

The duty of good faith, for example, requires Russell Watts to have: 1) disclosed his business with The Club when necessary; 2) not used confidential information of The Club to further his own interests; and 3) not withheld ideas from The Club that would have increased the value of The Club.

The duty of loyalty requires that a manager not take any unauthorized action which would result in harm to a member of the Company.

In order to establish liability against Russell Watts, Stevensen 3rd East must prove that Russell Watts not only acted with bad faith, but his bad faith constituted gross negligence and/or willful misconduct. Bad faith is proven by a showing that Russell Watts knowingly or deliberately withheld information he knew to be material for the purpose of misleading Stevensen 3rd East.

The duty of care in this case requires that Russell Watts exercise ordinary care, skill and diligence.

The fiduciary duty owed by a manager includes duties of good faith, sound business judgment, candor, forthrightness, and fairness.

This requires that Russell Watts should have given such care and attention as an ordinary businessman in this line of work would give to his own concerns under similar circumstances. In this case Stevensen 3rd East must show that Russell Watts failed to use such care and that he was grossly negligent or that his misconduct, if any, was willful.

47. Fiduciary Duty of Manager

The relationship of a manager to a member of a limited liability company is one of loyalty, trust, disclosure, protection and confidence, calling for good faith and permitting no unfair benefits to the manager as against the members of the company. Such association is referred to in the law as a fiduciary relationship. A manager is held to a higher standard than the morals of the marketplace expected between two persons of equal standing in business.

A manager has an obligation under the law to conduct the company business for the benefit of the members, according to their agreement.

48. Manager's Duty to Protect Company Interests

Under the law of fiduciary duty, a manager also has an obligation to conduct the affairs of the company in such a manner as to avoid damage to the interests of the members of the company, or damage to the company's interests.

49. Manager's Duty of Full Disclosure

Under the law of fiduciary duty, a manager also has an obligation to make a true and full disclosure of all information affecting the affairs of the company if the information is relevant and material to the manager's dealings with the member.

50. Property of the Company

All money, services, and other and property originally contributed into the limited liability company, or subsequently acquired by purchase or otherwise on account of the company, is company property.

51. Manager's Standard of Care

The standard of care which a Defendant manager, who is also a builder and a real estate developer, must exercise is that amount of skill and learning ordinarily possessed and exercised by other members of the defendant's profession practicing in the same or similar community and under similar circumstances. In applying that skill and learning, the Defendant has a duty not to act in a manner which would constitute gross negligence or willful misconduct by a builder and real estate developer practicing his profession in this community.

As a builder and real estate developer, Russell Watts is not held to a standard of perfection, nor to a degree of skill and learning of an extraordinarily skillful or learned real estate developer or an extraordinarily cautious one. While exceptional skill, learning, and caution are admired and encouraged, the law does not demand them as a general standard of conduct.

Russell Watts may make an error of judgment or a mistake in the performance of services, or disagree with other members of the builder and real estate development community without being grossly negligent or engaging in willful misconduct.

52. Manager's Reliance Upon Experts

Unless a manager has contrary knowledge, he shall be fully protected from personal liability if he relies in good faith upon information, opinions, reports, or statements from someone whom the manager believes to be a professional or expert with respect to the information.

53. Damages

If, after considering the evidence in this case and the instructions I have given, you find in favor of Stevensen 3rd East on Stevensen 3rd East's claims, you should award such damages as you find Stevensen 3rd East incurred as a proximate result of the wrongful action or inaction, if any, of Defendants.

The fact that the precise amount of damages may be difficult to ascertain does not impair Stevensen 3rd East's right to recover damages.

While the law places a burden upon Stevensen 3rd East to prove such facts as will enable you to arrive at the amount of damages with reasonable certainty, it is not necessary that Stevensen 3rd East prove the amount of those damages with mathematical precision. It is only required that Stevensen 3rd East present such evidence as might reasonably be expected to be available under the circumstances. Damages are not recoverable for loss beyond an amount that the evidence permits to be established with reasonable certainty. Reasonable certainty means that the evidence needs to rise above mere speculation, but it does not need to be precise.

You are permitted to determine the amount of damages by estimation or approximation, so long as there is a reasonable basis for such estimate or approximation ~~is shown~~. You may use any formula or theory for determining damages which is based upon the evidence of the case and which you believe to be reasonable; you are not bound to reject a formula or theory simply because it does not measure damages to the exact dollar and cent.

54. DAMAGES TRACEABLE TO THE WRONG

The damages claimed by Stevensen 3rd East must be traceable to the wrongs complained of by Stevensen 3rd East. In other words, Stevensen 3rd East must prove that the Club caused the wrongs complained of by Stevensen 3rd East for breach of contract and/or breach of the duty of good faith and fair dealing and that Russell Watts caused the wrongs complained of by Stevensen 3rd East for breach of fiduciary duty, and those wrongs caused damage to Stevensen 3rd East.

55. Mitigation of Damages

In the case of breach of contract by one party, the other party who faces injury is expected to avoid losses if he can do so without unreasonable effort or expense, and his damages are limited accordingly.

56. No implication from Damage Instructions

The fact that I have instructed you concerning damages should not be taken as an indication that I believe or not believe that damages in any particular amount should or should not be awarded to Plaintiff. The instructions in reference to damages are given as a guide in case you find from a preponderance of the evidence that damages should be awarded to Plaintiff. However, if you find that there should be no damages awarded, then you may disregard the instructions you receive on the matter of damages.

(or clear and convincing evidence if applicable)

57. Attorney's Fees and Interest

You are not to concern yourselves with the question of whether either party to this lawsuit is entitled to attorneys' fees or interest. Depending on your verdict, the court will determine whether attorneys' fees or interest should be awarded to either party and the amount thereof.

58. Prior Ruling of the Court

The Court has previously ruled that the document entitled “Agreement/Statement of Understanding” dated November 28, 1995, (and admitted as Exhibit No. 1) may not be enforced in this case.

Plaintiff makes no claim under that agreement.

59. Other Findings: Intentional and Malicious

In addition to the other findings you are required to make, you may also be asked to determine whether Stevensen 3rd East established by clear and convincing evidence whether certain acts or omissions of Russell Watts were a result of (1) willful and malicious conduct, or (2) intentionally fraudulent conduct, or (3) conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of Stevensen 3rd East.

A person engages in conduct intentionally, or with intent or willfully with respect to the nature of the person's conduct or with respect to a result of the person's conduct, when it is the person's conscious objective or desire to engage in the conduct or cause the result.

A person engages in conduct recklessly or maliciously, with respect to circumstances surrounding the person's conduct or the result of the person's conduct when the person is aware of, but consciously disregards, a substantial and unjustified risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

60. The Verdict Form.

Upon the jury's reaching a verdict, the foreperson shall complete and sign the verdict form. That form states:

MEMBERS OF THE JURY: Please answer the following questions:

1. Do you find from a preponderance of the evidence that The Club Condominium, L.C. (the "Club"), breached section 4.1 of the Club Operating Agreement (Exhibit 4) which requires an agreement in writing signed by Stevensen 3rd East, L.C., and R.K.W. 96, L.C. ("R.K.W. 96") to change the scope, nature and budget of the Club Condominium Project as set forth on Exhibit B to the Club Operating Agreement?

ANSWER: Yes _____ No _____

If you answered "No" to Question No. 1, skip to Question No. 5.

If you answered "Yes" to Question No. 1, continue to the next question.

2. Do you find from a preponderance of the evidence that The Club Condominium, L.C., was excused from any breach of section 4.1 because of any of the defenses proved by Defendants (waiver, estoppel, or acquiescence)?

ANSWER: Yes _____ No _____

If you answer Question No. 2 "Yes," skip to Question No. 5. If you answer Question No. 2 "No," continue to the next question.

3. Do you find from a preponderance of the evidence that The Club's breach, if any, of section 4.1 of the Operating Agreement caused damage to Stevensen 3rd East?

ANSWER: Yes _____ No _____

If you answered "No" to Question No. 3, skip to Question No. 5.

If you answered "Yes" to Question No. 3, continue to the next question.

4. If you answered "Yes" to Questions No. 1 and 3, answer the following: Considering that Stevensen 3rd East is only a one-half owner of the Club, set forth the amount of damage, if any, suffered by Stevensen 3rd East, which has been established with reasonable certainty, as a result of the Club's breach of section 4.1 of the Operating Agreement.

TOTAL: \$ _____

Continue to the next question.

5. Do you find that the Defendants proved by clear and convincing evidence that the Agreements of the parties (dated August 9, 1996 [Exhibit 4], and March 25, 1999 [Exhibit 7]) should be reformed (or judicially changed) to provide that R.K.W.96 should be granted a credit to its capital account in the amounts of \$451,000 (for its 10% development fee) and/or \$180,000 (for its cash contribution to capital)?

Answer: Yes _____ No _____

If your answer to Question No. 5 is “Yes,” skip to Question No. 9. If you answer Question No. 5 “No,” then go to the next question.

6. Do you find from a preponderance of the evidence that The Club breached sections 6.1, 7.1, and/or 13 of The Club Operating Agreement by giving credit to R.K.W. 96 for the ten-percent (10%) development fee and/or the \$180,000 cash contribution to capital?

ANSWER: Yes _____ No _____

If you answered “No” to Question No. 6, skip to Question No. 10.

If you answered “Yes” to Question No 6, continue to the next question.

7. Do you find by a preponderance of the evidence that The Club was excused from any breach in granting a credit to the R.K.W.96 capital account for the 10% development fee and/or the \$180,000 cash contribution to capital based on Defendants’ defenses of waiver, estoppel, and acquiescence?

ANSWER: Yes _____ No _____

If your answer to Question No. 7 is “Yes,” skip to Question No. 10. If your answer to Question No. 7 is “No,” continue on with Question No. 8.

8. Do you find from a preponderance of the evidence that The Club’s breach, if any, of the Operating Agreement by giving R.K.W. 96 credit for the ten percent (10%) development fee and/or the \$180,000 cash contribution to capital has caused Stevensen 3rd East damage?

ANSWER: Yes _____ No _____

If you answered “No” to Question No. 8, skip to Question No. 10.

If you answered “Yes” to Question No. 8, continue to the next question.

9. Considering Stevensen 3rd East is only a one-half owner of The Club, set forth the amount of damage suffered by Stevensen 3rd East, which has been established by a preponderance of the evidence with reasonable certainty, as a result of The Club’s breach of the Operating Agreement by giving R.K.W. 96 credit for the ten percent (10%) development fee and/or the \$180,000 cash contribution to capital.

TOTAL: \$ _____

Continue to the next question.

10. Do you find from a preponderance of the evidence that The Club breached its duty of good faith and fair dealing to Stevensen 3rd East?

Answer: Yes _____ No _____

If you answered “No” to Question No. 10, skip to Question No. 15.

If you answered “Yes” to Question No. 10, continue to the next question.

11. Do you find that The Club’s breach of the duty of good faith and fair dealing caused damage to Stevensen 3rd East?

Answer: Yes _____ No _____

If you answered “No” to Question No. 11, skip to Question No. 15 .

If you answered “Yes” to Question No. 11, continue to the next question.

12. Considering that Stevensen 3rd East is only a one-half owner of the Club, set forth the amount of damage that Stevensen 3rd East suffered which has been established with reasonable certainty, as a result of the Club’s breach of its duty of good faith and fair dealing.

TOTAL: \$ _____

13. Review the damage awards, if any, that you may have calculated in Questions 4 and 9. Do you find that the damages awarded in either of those questions are the same or duplicate damages, even in part, awarded under question 12?

Answer: Yes _____

No _____

14. If you answered “Yes” to Question No. 12, answer the following:

If you awarded damages in Questions No. 4 and/or No. 9, how much, if any, of such damage award(s) is duplicated by the damages that you may have awarded under question 12?

Duplicate award (if any) \$ _____

GO TO THE NEXT SECTION FOR BREACH OF FIDUCIARY DUTY

BREACH OF FIDUCIARY DUTY

Please answer the following questions:

15. Do you find from a preponderance of the evidence that Russell Watts was grossly negligent and/or engaged in willful misconduct in the execution of his duties as manager of The Club?

ANSWER: Yes _____ No _____

If you answered “No” to Question No. 15, you do not answer any of the remaining questions. Date and sign this Verdict and return it to the Court. If you answered “Yes” to Question No. 15, continue to the next question.

16. If you answered “Yes” to Question No. 15, answer the following: Did Russell Watts’ gross negligence and/or willful misconduct cause damage to Stevensen 3rd East?

ANSWER: Yes _____ No _____

If you answered “No” you do not need to answer any of the remaining questions. Date and Sign this Verdict and return it to the Court. If you answered Yes, continue to the next question.

17. If you answered “Yes” to Question No. 16, answer the following: Considering that Stevensen 3rd East is only a one-half owner of The Club, set forth the amount of damage that Stevensen 3rd East has suffered as a

result of Russell Watts' gross negligence and/or willful misconduct that has been established by a preponderance of the evidence.

TOTAL: \$ _____

Dated: _____

Foreperson

ADDENDUM NO. C-5

FEB 01 2007

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

STEVENSEN 3RD EAST, L.C., a	:	JURY VERDICT
Utah Limited Liability Company,	:	
	:	
Plaintiff,	:	Civil No. 010904107
	:	
v.	:	Judge Kennedy
	:	
RUSSELL K. WATTS, an individual,	:	
R.K.W. 96, L.C. and THE CLUB	:	
CONDOMINIUM, L.C., Utah	:	
Limited Liability Companies,	:	

MEMBERS OF THE JURY: Please answer the following questions:

- Do you find from a preponderance of the evidence that The Club Condominium, L.C. (the "Club"), breached section 4.1 of the Club Operating Agreement (Exhibit 4) which requires an agreement in writing signed by Stevensen 3rd East, L.C., and R.K.W. 96, L.C. ("R.K.W. 96") to change the scope, nature and budget of the Club Condominium Project as set forth on Exhibit B to the Club Operating Agreement?

ANSWER: Yes _____

No X

If you answered "No" to Question No. 1, skip to Question No. 5.

If you answered "Yes" to Question No. 1, continue to the next question.

2. Do you find from a preponderance of the evidence that The Club Condominium, L.C., was excused from any breach of section 4.1 because of any of the defenses proved by Defendants (waiver, estoppel, or acquiescence)?

ANSWER: Yes _____ No _____

If you answer Question No. 2 "Yes," skip to Question No. 5. If you answer Question No. 2 "No," continue to the next question.

3. Do you find from a preponderance of the evidence that The Club's breach, if any, of section 4.1 of the Operating Agreement caused damage to Stevensen 3rd East?

ANSWER: Yes _____ No _____

If you answered "No" to Question No. 3, skip to Question No. 5.

If you answered "Yes" to Question No. 3, continue to the next question.

4. If you answered "Yes" to Questions No. 1 and 3, answer the following:
Considering that Stevensen 3rd East is only a one-half owner of the Club, set forth the amount of damage, if any, suffered by Stevensen 3rd East, which has been established with reasonable certainty, as a result of the Club's breach of section 4.1 of the Operating Agreement.

TOTAL: \$ _____

Continue to the next question.

5. Do you find that the Defendants proved by clear and convincing evidence that the Agreements of the parties (dated August 9, 1996 [Exhibit 4], and March 25, 1999 [Exhibit 7]) should be reformed (or judicially changed) to provide that R.K.W.96 should be granted a credit to its capital account in the amounts of \$451,000 (for its 10% development fee) and/or \$180,000 (for its cash contribution to capital)?

Answer: Yes _____ No X _____

If your answer to Question No. 5 is “Yes,” skip to Question No. 9. If you answer Question No. 5 “No,” then go to the next question.

6. Do you find from a preponderance of the evidence that The Club breached sections 6.1, 7.1, and/or 13 of The Club Operating Agreement by giving credit to R.K.W. 96 for the ten-percent (10%) development fee and/or the \$180,000 cash contribution to capital?

ANSWER: Yes X _____ No _____

If you answered “No” to Question No. 6, skip to Question No. 10.

If you answered “Yes” to Question No 6, continue to the next question.

7. Do you find by a preponderance of the evidence that The Club was excused from any breach in granting a credit to the R.K.W.96 capital account for the 10% development fee and/or the \$180,000 cash contribution to capital based on Defendants' defenses of waiver, estoppel, and acquiescence?

ANSWER: Yes X No _____

If your answer to Question No. 7 is "Yes," skip to Question No. 10. If your answer to Question No. 7 is "No," continue on with Question No. 8.

8. Do you find from a preponderance of the evidence that The Club's breach, if any, of the Operating Agreement by giving R.K.W. 96 credit for the ten percent (10%) development fee and/or the \$180,000 cash contribution to capital has caused Stevensen 3rd East damage?

ANSWER: Yes _____ No _____

If you answered "No" to Question No. 8, skip to Question No. 10.

If you answered "Yes" to Question No. 8, continue to the next question.

9. Considering Stevensen 3rd East is only a one-half owner of The Club, set forth the amount of damage suffered by Stevensen 3rd East, which has been established by a preponderance of the evidence with reasonable certainty, as a result of The Club's breach of the Operating Agreement by giving R.K.W. 96 credit for the ten percent (10%) development fee and/or the \$180,000 cash contribution to capital.

TOTAL: \$ _____

Continue to the next question.

10. Do you find from a preponderance of the evidence that The Club breached its duty of good faith and fair dealing to Stevensen 3rd East?

Answer: Yes X No _____

If you answered “No” to Question No. 10, skip to Question No. 15.

If you answered “Yes” to Question No. 10, continue to the next question.

11. Do you find that The Club’s breach of the duty of good faith and fair dealing caused damage to Stevensen 3rd East?

Answer: Yes X No _____

If you answered “No” to Question No. 11, skip to Question No. 15 .

If you answered “Yes” to Question No. 11, continue to the next question.

12. Considering that Stevensen 3rd East is only a one-half owner of the Club, set forth the amount of damage that Stevensen 3rd East suffered which has been established with reasonable certainty, as a result of the Club’s breach of its duty of good faith and fair dealing.

TOTAL: \$ 26,240

13. Review the damage awards, if any, that you may have calculated in Questions 4 and 9. Do you find that the damages awarded in either of those questions are the same or duplicate damages, even in part, awarded under question 12?

Answer: Yes _____ No X

14. If you answered “Yes” to Question No. 12, answer the following:

If you awarded damages in Questions No. 4 and/or No. 9, how much, if any, of such damage award(s) is duplicated by the damages that you may have awarded under question 12?

Duplicate award (if any) \$ _____

GO TO THE NEXT SECTION FOR BREACH OF FIDUCIARY DUTY

BREACH OF FIDUCIARY DUTY

Please answer the following questions:

15. Do you find from a preponderance of the evidence that Russell Watts was grossly negligent and/or engaged in willful misconduct in the execution of his duties as manager of The Club?

ANSWER: Yes X No _____

If you answered “No” to Question No. 15, you do not answer any of the remaining questions. Date and sign this Verdict and return it to the Court. If you answered “Yes” to Question No. 15, continue to the next question.

16. If you answered “Yes” to Question No. 15, answer the following: Did Russell Watts’ gross negligence and/or willful misconduct cause damage to Stevensen 3rd East?

ANSWER: Yes X No _____

If you answered “No” you do not need to answer any of the remaining questions. Date and Sign this Verdict and return it to the Court. If you answered Yes, continue to the next question.

17. If you answered "Yes" to Question No. 16, answer the following:
Considering that Stevensen 3rd East is only a one-half owner of The Club,
set forth the amount of damage that Stevensen 3rd East has suffered as a
result of Russell Watts' gross negligence and/or willful misconduct that has
been established by a preponderance of the evidence.

TOTAL: \$ 474,000

Dated: Feb 1, 2007



Foreperson

ADDENDUM NO. C-6

FEB 01 2007

SALT LAKE COUNTY

By [Signature] Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

STEVENSEN 3RD EAST, L.C., a	:	JURY VERDICT FOR PUNITIVE
Utah Limited Liability Company,	:	DAMAGES
	:	
Plaintiff,	:	
	:	Civil No. 010904107
v.	:	
	:	Judge Kennedy
RUSSELL K. WATTS, an individual,	:	
R.K.W. 96, L.C. and THE CLUB	:	
CONDOMINIUM, L.C., Utah	:	
Limited Liability Companies,	:	

MEMBERS OF THE JURY: Please answer the following questions:

18. Do you find from clear and convincing evidence that the acts and/or omissions of Russell Watts were a result of
- (1) willful and malicious conduct, or
 - (2) intentionally fraudulent conduct, or
 - (3) conduct that manifested a knowing and reckless indifference toward, and a disregard of, the rights of Stevensen 3rd East?

ANSWER: Yes _____

No X _____

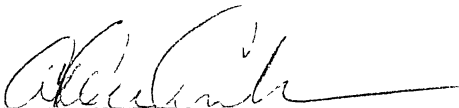
19. If you answered Question No. 18 "No," then date and sign this Verdict and return it to the Court. If you answered Question No. ¹⁹~~18~~ "Yes," then answer the following: *19*

State the amount of damages which in your judgment would be

- (1) reasonable and proper as a punishment to Russell Watts for such wrongs, and as a wholesome warning to others not to offend in like manner; and
- (2) only for the purpose just stated and not to be considered the measure of actual damages.

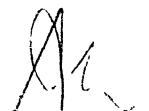
ANSWER: \$ _____

Dated: Feb 1, 2007



Foreperson

Thor B. Roundy (Bar No. 6435)
Attorney for Plaintiff
448 East 400 South, Suite 100
Salt Lake City, Utah 84111
Telephone (801) 364-3229
Facsimile (801) 364-4721



IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

STEVENSEN 3RD EAST, L.C., a Utah Limited Liability Company,	:	AFFIDAVIT OF THOR B. ROUNDY AS TO COSTS, EXPENSES AND ATTORNEY FEES
Plaintiff,	:	
v.	:	Civil No. 010904107
RUSSELL K. WATTS, an individual, R.K.W. 96, L.C. and THE CLUB CONDOMINIUM, L.C., Utah Limited Liability Companies,	:	Judge Kennedy
Defendants.	:	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Thor B. Roundy, being first duly sworn upon oath, hereby depose and say that:

1. I am an attorney licensed to practice in the State of Utah and am counsel for plaintiff in the above-entitled matter. I testify to these matters of my own personal knowledge.

2. Plaintiff has incurred taxable costs in this matter totaling \$2,723.20, consisting of the filing fee of \$170.00, witness fees of \$36.50, service of process fees of \$329.50, and


deposition costs of \$2,187.20, which costs were reasonable and necessary to the present litigation. The witness fees were those paid to Russell Watts for the trial that went forward, as well as one of the prior scheduled trials. Service of process fees included serving of trial and discovery subpoenas essential to the development of the case. The deposition costs included the depositions of Ted Stevensen (\$280.40) and Russell Watts (\$1,616.75) which were used extensively during trial and were essential to the case, as well as Bryan Todd (\$290.05). While Bryan Todd did not appear as a witness at trial, his deposition was taken in good faith and was essential to discovery concerning the meaning of the Operating Agreement he drafted for the parties and the work he did relative to the land contributed by Stevensen to the Club, which were subjects of considerable testimony at trial.

2. Plaintiff has incurred additional expenses in this matter totaling \$49,384.78, consisting of copy charges paid to Litigators Overnight, Dennis Poole, Liddle & Waite and Kinkos of \$8724.08, and expert witness fees of \$40,660.70, which costs were reasonably foreseeable consequences of the breach of fiduciary duty of Russell K. Watts in this action and which were reasonably and necessarily incurred in the present litigation. The expenses incurred are broken down as follows: Litigators Overnight \$5,790.92, Kinkos \$1,293.56, Liddle, Waite & Assoc. \$279.80, Dennis Poole \$1,395.80, Henry Kesler \$2,950.00, Lynn Larsen \$9,760.00, and Michael Teuscher \$27,950.00.

3. Plaintiff's counsel has spent 1,308.4 hours of attorney time in the prosecution of the above-captioned action, which time was reasonable and necessary to the litigation of the matter. The attached spreadsheet provides a detailed description of the work performed.

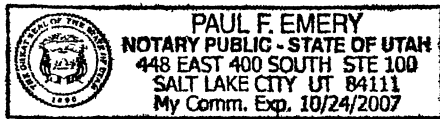
4. The normal hourly rate at which I currently bill attorney services in this type of case, and which is reasonable, customary and usual for this type of litigation in the legal community in and about Salt Lake City, Utah, is \$200 per hour. I will be paid in this case on a contingency fee basis, and I reasonably anticipate that after the judgment is augmented for interest, cost and attorney fees, my attorney fees will exceed the amount of the hourly calculation of attorney fees which would equal \$261,680.00.

FURTHER AFFIANT SAYETH NAUGHT.




Thor B. Roundy
Attorney for Plaintiff

SUBSCRIBED AND SWORN TO before me this 16 day of February, 2007.



My Commission Expires: 10 24-'07




NOTARY PUBLIC
Residing at SALT LAKE CO

Certificate of Service

I hereby certify that I caused to be mailed a true and correct copy of the foregoing Affidavit of Thor B. Roundy as to Costs, Expenses and Attorney Fees, by United States mail, first class, postage prepaid, this 16 day of February, 2007, to the following:

Dennis K. Poole
POOLE SULLIVAN & ADAMS, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107

James R. Blakesley
1305 N. Commerce Drive, Suite 230
Saratoga Springs, Utah 84045



STEVENSEN 2001 HOURS

10-Jan-01	Meeting with Client	2.6
11-Jan-01	Contract	0.1
14-Jan-01	Meeting with Client	3.6
15-Jan-01	Complaint	1.0
16-Jan-01	Meeting with Client	2.0
22-Jan-01	Review Documents	3.0
23-Jan-01	Meeting with Client	3.4
24-Jan-01	Telephone Call with Client	0.1
25-Jan-01	Telephone Call with Client	0.1
28-Jan-01	Complaint	0.4
1-Feb-01	Meeting with Client	0.1
13-Feb-01	Meeting with Client	2.1
18-Feb-01	Notice Substitutions	0.5
25-Feb-01	Complaint	0.2
28-Feb-01	Meeting with Client	0.1
1-Mar-01	Telephone Call with Client	0.1
4-Mar-01	Meeting with Client	1.8
8-Mar-01	Telephone Call with Client	0.2
15-Mar-01	Organize Documents	0.2
25-Mar-01	Telephone Call with Client	0.1
26-Mar-01	Meeting with Client	0.2
28-Mar-01	Research	0.3
29-Mar-01	Research	0.5
10-Apr-01	Meeting with Client	0.1
15-Apr-01	Complaint	2.0
16-Apr-01	Research	0.9
17-Apr-01	Meeting with Client	2.5
19-Apr-01	Complaint	0.2
22-Apr-01	Complaint	0.1
24-Apr-01	Meeting with Client	0.4
3-May-01	Telephone Call with Client	0.1
6-May-01	Research; Answer	1.2
7-May-01	Complaint; Summons	0.9
22-May-01	Meeting with Client	0.4
24-May-01	Notice of Hearing	0.1
30-May-01	Letter to Opposing Counsel	0.1
5-Jun-01	Summons	0.1
5-Jun-01	Disclosures	0.4
11-Jun-01	Meeting with Client	0.2
12-Jun-01	Telephone Call to Opposing Counsel	0.6
17-Jun-01	Lis Pendens	0.5
18-Jun-01	Meeting with Client	0.4
24-Jun-01	Documents from Court; Answer	0.5
25-Jun-01	Meeting with Client	0.2
27-Jun-01	Letter from Opposing Counsel	0.2
1-Jul-01	Letter to Opposing Counsel	0.2
4-Jul-01	Letter to Opposing Counsel	0.1
8-Jul-01	Notice to Submit	0.1
15-Jul-01	Default Set Aside	0.1
16-Jul-01	Telephone Call with Opposing Counsel	0.1

STEVENSEN 2001 HOURS

22-Jul-01	Letter to Opposing Counsel	0.2
29-Jul-01	Meeting with Client	0.6
31-Jul-01	Interrogatories	0.5
13-Aug-01	Letter from Opposing Counsel	0.1
14-Aug-01	Letter to Opposing Counsel	0.2
26-Aug-01	Letter to Opposing Counsel	0.1
29-Aug-01	Meeting with Client	0.3
4-Sep-01	Meeting with Client	0.2
11-Sep-01	Disclosures	0.6
12-Sep-01	Interrogatories	0.2
13-Sep-01	Interrogatories	0.4
16-Sep-01	Interrogatories	0.1
18-Sep-01	Disclosures	0.5
19-Sep-01	Interrogatories	0.4
25-Sep-01	Letter from Opposing Counsel	1.0
1-Oct-01	Meeting with Client	0.3
9-Oct-01	Interrogatories	1.6
11-Oct-01	Meeting with Client	0.1
14-Oct-01	Stipulation	0.2
16-Oct-01	Interrogatories	0.9
17-Oct-01	Interrogatories	0.6
21-Oct-01	Meeting with Client	0.2
22-Oct-01	Telephone Call with Client	0.1
23-Oct-01	Letter from Opposing Counsel	0.2
29-Oct-01	Meeting with Client	0.7
31-Oct-01	Disclosures	0.2
5-Nov-01	Meeting with Client	0.2
13-Nov-01	Stipulation	0.1
14-Nov-01	Meeting with Client	0.1
17-Nov-01	Complaint	1.6
18-Nov-01	Complaint; Summons	0.8
22-Nov-01	Meeting with Client	0.2
25-Nov-01	Admits; Motion to Compel	0.3
27-Nov-01	Interrogatories	0.6
2-Dec-01	Motion to Compel	0.4
6-Dec-01	Meeting with Client	0.1
12-Dec-01	Meeting with Client	0.2
18-Dec-01	Telephone Call with Opposing Counsel	0.1
19-Dec-01	Meeting with Client	0.3
20-Dec-01	Opposition	0.2
23-Dec-01	Interrogatories	0.6
30-Dec-01	Opposition	0.2

TOTAL 2001 HRS.

51.9

STEVENSEN 2002 HOURS

2-Jan-02	Meeting with Client	0.1
3-Jan-02	Letter to Opposing Counsel	0.1
6-Jan-02	Notice Hearing	0.1
7-Jan-02	Meeting with Client	1.5
13-Jan-02	Cancel Hearing	0.1
17-Jan-02	Meeting with Client	0.2
21-Jan-02	Meeting with Client	0.3
23-Jan-02	Letter from Opposing Counsel	0.1
25-Jan-02	Review Documents	2.0
28-Jan-02	Meeting with Client	0.5
29-Jan-02	Review Documents	1.7
25-Feb-02	Meeting with Client	0.1
3-Mar-02	Letter to Opposing Counsel	0.3
4-Mar-02	Letter to Opposing Counsel	0.1
5-Mar-02	Telephone Call with Opposing Counsel	0.2
6-Mar-02	Meeting with Client	0.6
10-Mar-02	Facsimile from Opposing Counsel	0.1
13-Mar-02	calls with client; mtg prep; travel; mtg with defendant; ltrs to oc; mtg with marcel; int.p2	3.9
18-Mar-02	Letter to Opposing Counsel	0.3
20-Mar-02	Meeting with Client	1.8
24-Mar-02	Facsimile from Opposing Counsel	0.3
1-Apr-02	Facsimile from Opposing Counsel	0.9
2-Apr-02	Review Documents	0.4
7-Apr-02	Telephone Call with Opposing Counsel	0.2
10-Apr-02	Meeting with Client	0.4
11-Apr-02	Letter from Opposing Counsel	0.3
14-Apr-02	Meeting with Accountant	0.3
15-Apr-02	Telephone Call with Opposing Counsel	0.3
16-Apr-02	Telephone Call with Opposing Counsel	0.1
21-Apr-02	Meeting with Client	0.2
22-Apr-02	Meeting with Client	0.5
25-Apr-02	Interrogatories	0.4
30-Apr-02	Meeting with Opposing Counsel	1.8
1-May-02	Telephone Call with Client	0.2
2-May-02	Telephone Call with Client	0.3
8-May-02	Deposition Preparation	6.4
9-May-02	Letter to Opposing Counsel	0.5
12-May-02	Facsimilees with Opposing Counsel	0.3
13-May-02	Facsimilees with Opposing Counsel	0.1
14-May-02	Check Deadlines	0.1
15-May-02	Letter to Opposing Counsel	0.1
16-May-02	Letter to Opposing Counsel	0.3
21-May-02	Telephone Call with Opposing Counsel	0.2
22-May-02	Meeting with Client	0.1
27-May-02	Interrogatories	2.2
28-May-02	Interrogatories	0.5
29-May-02	Meeting with Client	0.4
30-May-02	Meeting with Client	1.0
2-Jun-02	Meeting with Client	0.4
9-Jun-02	Meeting with Client	0.4

STEVENSEN 2002 HOURS

16-Jun-02	Opposition Production	0.2
17-Jun-02	Reply	0.8
23-Jun-02	Reply	0.9
27-Jun-02	Meeting with Client	0.7
30-Jun-02	Meeting with Client	0.4
7-Jul-02	Meeting with Client	0.2
8-Jul-02	Letter to Opposing Counsel	0.9
9-Jul-02	Letter to Opposing Counsel	0.2
11-Jul-02	Letter to Opposing Counsel	0.7
15-Jul-02	Letter from Opposing Counsel	0.1
16-Jul-02	Interrogatories	0.2
17-Jul-02	Telephone Call with Opposing Counsel	0.5
21-Jul-02	Facsimilees with Opposing Counsel	0.6
22-Jul-02	Meeting with Client	0.2
23-Jul-02	Letter to Opposing Counsel	2.1
24-Jul-02	Interrogatories	0.8
25-Jul-02	Telephone Call with Client	0.5
28-Jul-02	Telephone Call with Client	0.3
29-Jul-02	Telephone Call with Client	0.3
30-Jul-02	Meeting with Client	2.1
1-Aug-02	Letter from Opposing Counsel	0.6
4-Aug-02	Meeting with Client	0.2
8-Aug-02	Letter from Opposing Counsel	0.1
11-Aug-02	Meeting with Client	3.2
13-Aug-02	Notice to Submit	0.1
22-Aug-02	Meeting with Client	0.3
29-Aug-02	Notice Hearing	0.1
8-Sep-02	Meeting with Client	0.2
10-Sep-02	Milestones	0.5
16-Sep-02	Meeting with Client	0.6
19-Sep-02	Meeting with Client	0.2
26-Sep-02	Meeting with Client	0.2
29-Sep-02	Hearing Preparation	3.0
1-Oct-02	Telephone Call with Experts	0.1
3-Oct-02	Meeting with Client	6.4
6-Oct-02	Letter to Opposing Counsel	0.9
7-Oct-02	Meeting with Experts	1.1
9-Oct-02	Meeting with Experts	1.2
13-Oct-02	Meeting with Experts	0.1
14-Oct-02	Telephone Call with Experts	0.9
15-Oct-02	Meeting with Experts	1.6
18-Oct-02	Motion to Compel	0.2
23-Oct-02	Telephone Call with Experts	0.2
24-Oct-02	Telephone Call with Experts	1.0
27-Oct-02	Meeting with Client	1.9
28-Oct-02	Telephone Call with Experts	0.6
29-Oct-02	Stipulation	2.3
3-Nov-02	Review Files	0.3
4-Nov-02	Review Files	1.9
5-Nov-02	Review Files	0.7

STEVENSEN 2002 HOURS

6-Nov-02	Review Files	0.8
7-Nov-02	Review Files	0.5
8-Nov-02	Review Files	0.5
10-Nov-02	Review Files	1.5
11-Nov-02	Review Files	0.2
12-Nov-02	Meeting with Client	0.4
13-Nov-02	Review Files	0.1
21-Nov-02	Review Files	0.6
24-Nov-02	Review Files	0.6
25-Nov-02	Review Files	0.3
26-Nov-02	Review Files	0.2
28-Nov-02	Facsimile from Opposing Counsel	0.2
1-Dec-02	Review Files	0.5
2-Dec-02	Review Files	0.4
3-Dec-02	Review Files	0.3
4-Dec-02	Review Files	0.2
8-Dec-02	Review Files	0.1
12-Dec-02	Review Files	0.3
15-Dec-02	Review Files	0.4
16-Dec-02	Review Files	2.4
23-Dec-02	Review Files	0.3
26-Dec-02	Review Files	0.3
TOTAL 2002 HRS.		88.2

STEVENSEN 2003 HOURS

1-Jan-03	Review Files	0.6
2-Jan-03	Review Files	0.6
5-Jan-03	Meeting with Client	1.3
6-Jan-03	Review Files	0.2
7-Jan-03	Review Files	0.1
16-Jan-03	Meeting with Opposing Counsel	0.2
19-Jan-03	Review Files	0.1
20-Jan-03	Review Files	0.1
21-Jan-03	Review Files	1.5
23-Jan-03	Review Files	1.1
4-Mar-03	Writ of Execution	0.3
5-Mar-03	Meeting with Client	1.2
9-Mar-03	Letter to Opposing Counsel	0.7
16-Mar-03	Letter to Opposing Counsel	1.5
19-Mar-03	Meeting with Client	0.6
20-Mar-03	Letter to Opposing Counsel	0.4
24-Mar-03	Reply	2.1
25-Mar-03	Reply	0.3
26-Mar-03	Opposition to Quash	1.0
30-Mar-03	Meeting with Client	1.6
31-Mar-03	Notice of Deposition	0.1
3-Apr-03	<i>Meeting with Client</i>	0.9
9-Apr-03	Hearing Notice	0.2
10-Apr-03	Meeting with Client	1.8
17-Apr-03	Facsimile from Opposing Counsel	0.1
22-Apr-03	Telephone Call with Court	0.5
23-Apr-03	Telephone Call with Court	0.1
24-Apr-03	Hearing Preparation	2.4
27-Apr-03	Order; Summons	0.2
29-Apr-03	Deposition Outline	0.5
4-May-03	Supplemental Memorandum	2.0
5-May-03	Preparation	2.0
12-May-03	Preparation	2.4
13-May-03	Deposition Outline	5.0
19-May-03	Notice of Deposition	0.6
20-May-03	Notice of Deposition	0.2
21-May-03	Notice of Deposition	0.7
22-May-03	Facsimile from Opposing Counsel	0.6
25-May-03	Interrogatories	1.9
27-May-03	Meeting with Client	0.4
29-May-03	Preparation	0.4
30-May-03	Preparation	6.0
2-Jun-03	Telephone Call with Client	0.2
2-Jun-03	Watts Deposition; Deposition Preparation	9.0
3-Jun-03	Watts Deposition; Deposition Preparation; Letter to Opposing Counsel; Stipulation, Notice Deposition; Subpoena; Motion	7.2
5-Jun-03	Call EPreparationerts	0.2
6-Jun-03	Notice Deposition; Subpoena; Call with HK; Calls and E-Mail with LL; Facsimile from LL	0.9
10-Jun-03	Meeting with Client	0.4
13-Jun-03	Amended Complaint; Amended Motion; Subpoenas; Meeting with Client, Call Reporter; Motion to Compel	3.3
16-Jun-03	Subpoenas; Review Transcripts; Call and Meeting with Client	1.4

STEVENSEN 2003 HOURS

17-Jun-03	Amended Complaint; Amended Motion; Subpoenas; Transcripts; Calls and E-Mail with DB and LL and HK; Meeting with	3.4
18-Jun-03	Meeting with LL; Meeting Preparation; E-Mail with LL; Review Deposition; Inspect nx; Calls with DB	2.0
19-Jun-03	Meeting with Client; Call from SS; Inspect Notice; Calls with DB	0.7
23-Jun-03	Calls with Client and Opposing Counsel	0.2
24-Jun-03	Todd Deposition; Deposition Preparation; Meetings with Client	5.0
27-Jun-03	Review Deposition; Inspect Notice; Motion to Amend and Compel; Letter to Todd; Letter to Opposing Counsel; Follow-u	1.0
30-Jun-03	Meeting to Compel; Letter to Opposing Counsel and Accountant; Follow-up EPreparationerts; Calls with BT, Accountan	4.2
1-Jul-03	Motion to Compel; Review Depositions; Motion to Amend; Follow-up Experts Meeting with Larsen	6.8
2-Jul-03	Meeting with HK; Meeting Preparation	2.3
7-Jul-03	E-Mail with HK; Call HK and DB; Letters to BT and Opposing Counsel	0.7
9-Jul-03	Meeting with Client	0.9
10-Jul-03	Facsimile to Opposing Counsel; Call with Accountant; Review Records	0.8
15-Jul-03	Call with Client; Facsimile Opposing Counsel	0.4
16-Jul-03	Calls with Opposing Counsel; Review Records; Meeting with Client; Letter with BT	0.9
17-Jul-03	Calls with Opposing Counsel; Documents	0.3
21-Jul-03	Letter to Opposing Counsel; Stipulation; Submit Amend	0.7
22-Jul-03	Call with Experts and Opposing Counsel; Documents; Meeting with Client	0.9
23-Jul-03	Documents; E-Mail with Expert	1.8
26-Jul-03	Trial Preparation	3.1
28-Jul-03	Letter to Opposing Counsel; Stipulation; Submit Amend; Order	0.4
29-Jul-03	Calls and E-Mail with Experts; Trial Preparation	1.1
30-Jul-03	Calls and E-Mail with Experts; Trial Preparation; Meeting with Client	1.0
31-Jul-03	Calls with Experts; Trial Preparation; Meeting with HK	2.6
1-Aug-03	Call and Meetings with Experts; 26a3 Disclosure; Trial Preparation	5.3
1-Aug-03	Calls and Meetings with Experts 26a3 Disclosure; Trial Preparation	5.3
4-Aug-03	Calls with HK	0.1
5-Aug-03	Calls with Experts; Trial Preparation; Letters with BT	1.4
6-Aug-03	Calls with Experts; Letters with BT	0.4
12-Aug-03	Notice Change of Address	0.1
12-Aug-03	Motion for Summary Judgment; Opposition	1.3
13-Aug-03	Calls with Experts; Meeting with Client	0.4
13-Aug-03	Serving of Paperwork	
13-Aug-03	Todd Deposition	
13-Aug-03	Watts Deposition	
14-Aug-03	Order; Summons	0.2
21-Aug-03	Motion to Continue; Opposition Motion for Summary Judgment	0.7
25-Aug-03	Meeting with Haynie; Call and Facsimile from Opposing Counsel; Calls with Experts	2.6
26-Aug-03	Calls with Experts	0.3
27-Aug-03	Call with Expert; Trial Preparation; Return Service; Meeting with Expert; E-Mail Haynie; Opposition Motion for Summary	5.6
28-Aug-03	Calls with Expert; Trial Preparation; Meeting with Kesler; Opposition Motion for Summary Judgment	2.6
29-Aug-03	Opposition Motion for Summary Judgment; Meeting with Client	1.6
1-Sep-03	Meeting with Kesler; Opposition Motion for Summary Judgment	8.2
2-Sep-03	Opposition Motion for Summary Judgment; Affidavits; Calls and Meeting with Client; Calls with Experts	5.7
3-Sep-03	Letter to Opposing Counsel	0.2
4-Sep-03	Letter to Opposing Counsel; Calls with Accountant; Meeting with Client	0.8
8-Sep-03	Letter from Opposing Counsel; Calls with Accountant and Opposing Counsel	0.6
9-Sep-03	Calls and Meeting with Expert	2.7
10-Sep-03	E-Mail Depositions; Calls and Meetings with Experts	2.5
11-Sep-03	Meeting with Client	0.4
12-Sep-03	Calls with Opposing Counsel; Letters with Opposing Counsel; Calls and Meeting with Experts	3.3

STEVENSEN 2003 HOURS

15-Sep-03	Expert Opinions; Calls and Meetings with Experts; Calls with Opposing Counsel	4.6
16-Sep-03	Legal Expert; Mediation; Meetings with Experts; Call from and Letter to Opposing Counsel	6.0
17-Sep-03	Letter to Opposing Counsel; Meeting with Client	1.2
22-Sep-03	Motion for Summary Judgment Reply; Motion to Strike; Opposition Strike	1.0
23-Sep-03	Call from Opposing Counsel	0.2
24-Sep-03	Scheduling Order; Call with Opposing Counsel	0.2
25-Sep-03	Scheduling Order; Opposition Strike	0.6
26-Sep-03	Follow-up Opposing Counsel	0.1
29-Sep-03	Call with Client and Opposing Counsel	0.2
30-Sep-03	Call with Opposing Counsel; Meeting with TS and BS	2.0
2-Oct-03	Meeting s with Opposing Counsel and Clients; Call from Opposing Counsel; Scheduling Stipulation; Facsimile to Oppos	1.4
3-Oct-03	Motion Default	0.2
6-Oct-03	Opposition Strike; Default Certificate	1.5
7-Oct-03	Default Certificate; Default Motion; Meeting with Client	0.9
9-Oct-03	Answer; Stipulation; Client with Opposing Counsel	0.4
10-Oct-03	Follow-up Teuscher; Calls with Opposing Counsel and Rigtrup; Letter to Opposing Counsels	0.8
13-Oct-03	Calls with Mediator and Opposing Counsel; Letters to Opposing Counsel	0.5
15-Oct-03	Call with Opposing Counsel	0.1
23-Oct-03	Calls with Rigtrup and Opposing Counsel; Facsimilees to Opposing Counsel	0.5
24-Oct-03	Calls with Opposing Counsel	0.1
27-Oct-03	Stipulation	0.1
28-Oct-03	Meeting with Client	0.7
3-Nov-03	Call with Client and Rigtrip; Letter to Opposing Counsel	0.9
4-Nov-03	Letters to Opposing Counsels; Meeting with Client	1.7
17-Nov-03	Letter from Opposing Counsel; Disclosure Documents; Interrogatories	0.4
18-Nov-03	Interrogatories; Meeting with Ted Stevensen	1.2
19-Nov-03	Letter to Opposing Counsel	0.1
20-Nov-03	Letter to Opposing Counsel	0.1
24-Nov-03	Letter and Documents for Mediation	0.4
25-Nov-03	Mediation Preparation; Travel; Mediation	4.5
28-Nov-03	Counter Complaint	0.4
2-Dec-03	Meeting with Client	0.7
3-Dec-03	Call with Client	0.2
8-Dec-03	Letter from Opposing Counsel; Call with Client	0.3
9-Dec-03	Meeting with Client; Letter to Opposing Counsel	1.2
10-Dec-03	Letter to Opposing Counsel; Interrogatories; Counter Complaint; Reply/Dismiss	1.5
11-Dec-03	Meeting with Expert; Calls with Title Company and Opposing Counsel	0.4
12-Dec-03	Interrogatories; Call with Title Company and Opposing Counsel	0.2
16-Dec-03	Facsimile from Expert	0.1
19-Dec-03	Counter Complaint reply; Motion Quash Lis Pendens	0.6
29-Dec-03	Opposition Motion Quash Lis Pendens; Hearing; Release	1.8

TOTAL 2003 HRS. - 200.6

STEVENSEN 2004 HOURS

5-Jan-04	Interrogatories; Faxes with Opposing Counsel; Release Lis Pendens	0.6
6-Jan-04	Follow-up Teuscher; Cals with Title re LP; Faxes to Title; Meeting with Client	1.6
7-Jan-04	Settlement Offer; Letter to Opposing Counsel	0.5
9-Jan-04	Letter to Opposing Counsel; Settlement Documents; Certificate Readiness	0.6
13-Jan-04	Meeting with Client; Call with Opposing Counsel	0.8
14-Jan-04	Letter from Opposing Counsel	0.1
15-Jan-04	Fax from Opposing Counsel	0.2
16-Jan-04	Faxes with Opposing Counsel; Meeting with Client; Call with Opposing Counsel	1.0
20-Jan-04	Certificate Readiness Trial; Meetings with Clients; Calls with Opposing Counsels; Faxes with Opposing Counsels	1.8
22-Jan-04	Call from Opposing Counsel; Faxes with Opposing Counsel; Scheduling Order	0.4
27-Jan-04	Calls with Opposing Counsel, Meeting w. Clients	0.4
28-Jan-04	Letter from Opposing Counsel; Opposition Certificate Readiness; Notice Submit	0.3
30-Jan-04	Call and Meeting with Clients	0.7
3-Feb-04	Letter to Opposing Counsel; Certificate Readiness for Trial Reply; Correct Notice to Submit	1.1
10-Feb-04	Case review Ordered Deadlines; Meeting with Client	2.3
17-Feb-04	Research; Reply Certificate Readiness for Trial; Meeting with Client	1.9
18-Feb-04	Reply Certificate Readiness for Trial	2.0
19-Feb-04	Scheduling Conference; Preparation; Travel; Calendar Dates	1.3
23-Feb-04	Notice of Hearing	0.1
24-Feb-04	Meeting with Clients	0.6
25-Feb-04	Witness List and Summary	0.3
26-Feb-04	<i>Witness List and Summary</i>	0.9
12-Mar-04	Meeting with Clients; Call from Opposing Counsel	1.1
15-Mar-04	Witness Disclosure; E-Mail from Opposing Counsel	0.3
16-Mar-04	Meeting with Client; Review Expert Reports	1.0
19-Mar-04	Courtesy Copies	1.0
22-Mar-04	Courtesy Copies; Letter from Opposing Counsel; Expert Draft	0.6
23-Mar-04	Meeting with Client; Courtesy Copies	0.9
24-Mar-04	Telephone Call with Client; Courtesy Copies; Call with Opposing Counsel	1.2
26-Mar-04	Motion for Summary Judgment; Prepartation	1.6
29-Mar-04	Hearing Preparation; Motion for Summary Judgment Hearing; Call Client	2.9
31-Mar-04	Meeting with Client	0.8
12-Apr-04	Order; Letter from Opposing Counsel	0.1
20-Apr-04	Meeting with Client; Letters from Opposing Counsel	0.6
27-Apr-04	Meeting with Client	0.6
4-May-04	Meeting with Client	0.5
13-May-04	Meeting with Client	0.1
18-May-04	Meeting with Client; Expert	0.8
18-May-04	Meeting with Client; Review Contract	0.5
20-May-04	Telephone Calls with Susan Singleton	0.1
28-May-04	Motion Exclude	0.9
1-Jun-04	Motion to Exclude; Motion for Summary Judgment; Meeting with Client	1.2
2-Jun-04	Meeting with Client	0.2
3-Jun-04	Telephone Call with Client	0.1
8-Jun-04	Meeting with Client and Daughter	1.0
9-Jun-04	Opposition Motion for Summary Judgment	0.2
9-Jun-04	Review pages from loan contract	0.3
11-Jun-04	Opposition Motion for Summary Judgment	1.1
11-Jun-04	Telephone Call with Client	0.1
14-Jun-04	Research Opposition Motion for Summary Judgment	14.0

STEVENSEN 2004 HOURS

14-Jun-04	Telephone Call with Client; Meeting with Client; Loan Contract	0.5
16-Jun-04	Meeting with Client	1.0
16-Jun-04	Review loan document; Trust Deed and Deed and Trust; Telephone Call with Client; Meeting with Client, \$500	0.9
17-Jun-04	Letters to Experts; Docket	0.3
18-Jun-04	Letters to Experts; Opposition Exclude	0.3
22-Jun-04	Meeting with Client	0.6
23-Jun-04	Letters to Experts	0.1
24-Jun-04	Meeting with Client; Telephone Call with Client	0.3
25-Jun-04	Reply Exclude; Notice	2.0
28-Jun-04	Motion for Summary Judgment 2; Reply	0.2
29-Jun-04	Meeting with Client	0.4
29-Jun-04	Meeting with Client; Call insurance	0.2
30-Jun-04	Telephone Call with Court	0.1
6-Jul-04	Notice to Submit; Meeting with Client	1.4
7-Jul-04	Motion in Limine	0.2
9-Jul-04	Letters to Experts; Follow up Docket	0.5
12-Jul-04	Trial Preparation; Exhibit Preparation; Jury Instructions; Telephone Calls with Experts	5.8
13-Jul-04	Meeting with Client	0.3
13-Jul-04	Trial Preparation; Exhibit Preparation; Meeting with Client	1.6
15-Jul-04	Trial Preparation; Exhibit Preparation	0.3
16-Jul-04	Trial Preparation; Exhibit Preparation; Jury Instructions	1.2
17-Jul-04	Trial Preparation	6.8
19-Jul-04	Trial Preparation; Exhibit Preparation	0.6
19-Jul-04	Trial Preparation; Exhibit Preparation	0.6
20-Jul-04	Meeting with Client	0.5
20-Jul-04	Trial Preparation; Exhibit Preparation; Jury Instructions; Opposition Limine; Meeting with Client	4.1
21-Jul-04	Trial Preparation; Exhibit Preparation	9.4
22-Jul-04	Exhibit Preparation; Exchange Exhibits; Trial Preparation; Letters to Opposing Counsel; Courtesy Copies to Court; Opp	5.7
23-Jul-04	Trial Preparation; Meeting with Kesler; Opposition Limine Trial Subpoenas; Motions in Limine	4.8
24-Jul-04	Limine; Damages; Trial Plan; Jury Instructions; Brief; Question/Answer/Exhibit Lists; Opening	6.3
26-Jul-04	Limine regarding Expert; Damages Preparation; Jury Instructions	6.0
27-Jul-04	Limine regarding Experts; Damages Preparation; Jury Instructions; Meetings with Expert and Client; Telephone Calls w	9.2
28-Jul-04	Hearing Preparation; Limine regarding Expert; Notice to Submit; Trial Subpoenas; Research; Trial Plan; Trial Brief; Que	7.0
29-Jul-04	Hearing Preparation; Trial Subpoenas; Trial Plan	1.0
30-Jul-04	Hearing Preparation; Hearing; Meeting with Clients; Letters to Experts	4.5
3-Aug-04	Meeting with Client	0.2
3-Aug-04	Order; Telephone Call from Expert; Facsimiles; Meeting with Client	1.3
4-Aug-04	Facsimile from Opposing Counsel; Order	0.2
5-Aug-04	Orders	0.1
9-Aug-04	Order; Telephone Call with Opposing Counsel	0.3
10-Aug-04	Minute Entry; Meeting with Client	0.4
10-Aug-04	Research; Meeting with Client	1.5
12-Aug-04	Research; Meeting with Client; Demand Letter	2.0
13-Aug-04	Telephone Call with Client	0.1
16-Aug-04	Letter to Beehive	0.1
17-Aug-04	Judgment Search	0.1
19-Aug-04	Research	0.2
23-Aug-04	Telephone Call with Client	0.1
24-Aug-04	Request Transcripts; Letter to Opposing Counsel	0.4
25-Aug-04	Meeting with Client and Family	1.6

STEVENSEN 2004 HOURS

1-Sep-04	Letter to CU	0 1
7-Sep-04	Opposition Limine Meeting with Client	0 6
13-Sep-04	Limine Reply	0 9
14-Sep-04	Limine Reply Meeting with Client	1 0
16-Sep-04	Letter from Opposing Counsel	0 1
20-Sep-04	Limine Reply Scheduling Stipulation Motion for Summary Judgment	3 1
21-Sep-04	Meeting with Client	0 4
24-Sep-04	Fax from Opposing Counsel Letter to Counsel	0 2
28-Sep-04	Meeting with Client	0 4
1-Oct-04	Letter from Opposing Counsel, Telephone Call with Client	0 1
4-Oct-04	Docket	0 1
5-Oct-04	Meeting with Client	0 2
6-Oct-04	Complaint Letter to Opposing Counsel	0 4
12-Oct-04	Meeting with Client	0 2
20-Oct-04	Meeting with Client	0 2
26-Oct-04	Meeting with Client	0 1
26-Oct-04	Meeting with Client	0 2
4-Nov-04	Hearing Scheduling Order, Telephone Call with Client and Opposing Counsel	1 1
5-Nov-04	Scheduling Order, Telephone Call with Client with Opposing Counsel	0 1
9-Nov-04	Telephone Call with Client and Fax from Opposing Counsel Scheduling Order Meeting with Client	0 6
13-Nov-04	Stipulations	3 1
16-Nov-04	Meeting with Client, Limine	0 6
23-Nov-04	Opposition Limine, Letter to Opposing Counsels	1 1
24-Nov-04	Opposition Limine	0 1
30-Nov-04	Opposition Limine, Prejudgment Interest, Motion for Summary Judgment, Telephone Call with Client	3 0
1-Dec-04	Prejudgment Interest Motion for Summary Judgment	2 2
2-Dec-04	Service of Process	0 1
6-Dec-04	Follow-up Docket	0 1
8-Dec-04	Letter from Opposing Counsel, Order	0 2
10-Dec-04	Limine Reply	0 3
14-Dec-04	Telephone Call with Client	0 1
23-Dec-04	Scheduling	0 2
31-Dec-04	Trial Preparation, Motion for Summary Judgment	6 6

TOTAL 2004 HRS - 174.4

STEVENSEN 2005 HOURS

3-Jan-05	Motion for Summary Judgments; Research	3.9
4-Jan-05	Watts Motion for Summary Judgment; Meeting with Client	1.4
5-Jan-05	Telephone Call from Opposing Counsel	0.1
6-Jan-05	Telephone Call with Opposing Counsel; Research	0.3
11-Jan-05	Letters to Experts	0.1
17-Jan-05	Trial Subpoenas for Watts and Liddiard	0.2
18-Jan-05	Opposition Motion for Summary Judgment; Trial Subpoenas, Meeting with Client	0.8
19-Jan-05	Opposition Motion for Summary Judgment	3.9
20-Jan-05	Motion for Summary Judgments Opposition Due	9.2
21-Jan-05	Expert Witness Updates	0.4
24-Jan-05	Opposition Motion for Summary Judgments, Letter from Opposing Counsel	0.3
27-Jan-05	Motions for Summary Judgment	0.6
28-Jan-05	Fact Stipulations; Jury Instructions; Telephone Call with Client and Court; Replies	1.4
31-Jan-05	Fact Stipulations; Jury Instructions; Motion for Summary Judgment Replies; Facsimile with Opposing Counsel	6.8
2-Feb-05	Jury Instructions; Reply	2.4
8-Feb-05	Notice; Telephone Call with Court; Resubmit; Meeting with Client	0.6
9-Feb-05	Resubmit; Docket	0.2
10-Feb-05	Facsimile from Court; Telephone Call from Opposing Counsel	0.4
11-Feb-05	Memoto Court; Memos from Opposing Counsel	1.1
14-Feb-05	Facsimile from Opposing Counsel	0.1
14-Feb-05	Submit; Facsimile with Opposing Counsel	0.2
15-Feb-05	Meeting with Client	0.2
17-Feb-05	Order; Request Scheduling	0.1
18-Feb-05	Order; Pleading from Opposing Counsel	0.2
22-Feb-05	Meeting with Client	0.3
23-Feb-05	Letters to Experts	0.1
25-Feb-05	Docket	0.1
28-Feb-05	Court	0.4
8-Mar-05	Meeting with Client	0.2
10-Mar-05	Courtesy Copies; Telephone Call with Expert; Affidavit	0.6
14-Mar-05	Affidavit; Hearing Preparation; Hearing; Meeting with Clients	5.8
17-Mar-05	Order; Telephone Calls with Clerk and Opposing Counsel and Client	1.7
22-Mar-05	Notice; Meeting with Clients	0.5
29-Mar-05	Meeting with Client	0.3
11-Apr-05	Telephone Call with Client	0.1
12-Apr-05	Meeting with Client	0.4
13-Apr-05	Scheduling Conference; Hearing Preparation; Telephone Call with Client; Order	0.7
14-Apr-05	Order; Copies to Opposing Counsel	0.2
19-Apr-05	Meeting with Client	0.6
20-Apr-05	Letter to Opposing Counsel	0.1
26-Apr-05	Meeting with Client; Letter to Opposing Counsel	0.6
29-Apr-05	Letter to Opposing Counsel; Letters to Experts; Trial Plan	0.2
2-May-05	Letters to Experts	0.1
3-May-05	Meeting with Client	0.3
11-May-05	Meeting with Client	0.9
24-May-05	Meeting with Client	0.6
27-May-05	Letter from Opposing Counsel	0.1
31-May-05	Meeting with Client	0.6
2-Jun-05	Motion Stay; Response	0.2
7-Jun-05	Opposition Stay; Meeting with Client	1.0

STEVENSEN 2005 HOURS

16-Jun-05	Opposition Stay	2.4
17-Jun-05	Opposition Stay	1.2
21-Jun-05	Meeting with Client	0.4
24-Jun-05	Docket	0.1
27-Jun-05	Reply	0.2
28-Jun-05	Submit; Meeting with Client	0.4
13-Jul-05	Meeting with Client	0.2
14-Jul-05	Docket; Resubmit	0.1
29-Jul-05	Docket	0.1
1-Aug-05	Telephone Call with Court	0.1
2-Aug-05	Meeting with Client; Telephone Call with Court; Scheduling Order	0.9
4-Aug-05	Telephone Call with Client; Notice Hearing	0.1
5-Aug-05	Notice Hearing	0.1
9-Aug-05	Meeting with Client; Scheduling Order	0.4
11-Aug-05	Meeting with Client	0.1
15-Aug-05	Hearing; Trave;' Order; Letter to Opposing Counsel	0.9
16-Aug-05	Scheduling Order; Letter to Opposing Counsels; Meeting with Client	0.8
17-Aug-05	Scheduling Order	0.1
19-Aug-05	Letter from Opposing Counsel	0.1
23-Aug-05	Meeting with Client	0.1
26-Aug-05	Fax from Opposing Counsel	0.1
29-Aug-05	Letter to Opposing Counsels; Order	0.1
30-Aug-05	Meeting with Client	0.6
6-Sep-05	Meeting with Client	0.4
12-Sep-05	Order	0.1
21-Sep-05	Meeting with Client	0.4
27-Sep-05	Stipulation; Meeting with Client; Telephone Calls with Opposing Counsel	0.9
28-Sep-05	Stipulation; Order; Telephone Call from SS	0.3
29-Sep-05	Stipulation; Faxes with Opposing Counsel	0.5
30-Sep-05	Stipulation; Faxes with Opposing Counsel	0.2
3-Oct-05	Follow up Docket regarding Stipulation; Letter to Opposing Counsel	0.3
4-Oct-05	Fax from Opposing Counsel; Meeting with Client	0.3
5-Oct-05	Letter to Expert	0.2
11-Oct-05	Meeting with Client; Telephone Call with Expert; Letter to Opposing Counsel; Letters to Experts	0.8
12-Oct-05	Letter to Opposing Counsel; Letters to Experts	0.1
19-Oct-05	Fax from Opposing Counsel; Letters to Expert and Opposing Counsel	0.1
20-Oct-05	Letters to Expert and Opposing Counsel	0.1
8-Nov-05	Telephone Call and Meeting with Client	0.1
11-Nov-05	Meeting with Client	0.2
15-Nov-05	Meeting with Client	0.2
21-Nov-05	Trial Preparation	0.2
23-Nov-05	Letters to Opposing Counsel; Meeting with Client	0.4
28-Nov-05	Letter to Opposing Counsel	0.1
1-Dec-05	Meeting with Client; Fax from Opposing Counsel	0.3
13-Dec-05	Telephone Calls with Court	0.3
21-Dec-05	Meeting with Client	0.3
23-Dec-05	Telephone Call with Court	0.1
27-Dec-05	Exhibit List; Witness List; Opposition Limine; Telephone Calls with Court	1.0

TOTAL 2005 HRS. - 69.1

STEVENSEN 2006 HOURS

3-Jan-06	Opposition Limine; Meeting with Client	0.9
10-Jan-06	Meeting with Client; Limine Reply	0.6
11-Jan-06	Letters with Opposing Counsel	0.4
13-Jan-06	Opposition Limine; Meeting with Client	0.9
16-Jan-06	Letter to Opposing Counsel	0.1
24-Jan-06	Meeting with Client; Trial Preparation; Stipulations; Letter to Opposing Counsel; Jury Instructions	6.2
25-Jan-06	Trial Preparations; Stipulations; Jury Instructions; Trial Brief	6.3
26-Jan-06	Faxes with Opposing Counsels; Subpoenas; Trial Preparations; Stipulations; Jury Instructions; Voir Dire; Trial Brief	6.1
27-Jan-06	Faxes to Opposing Counsels; Trial Preparations; Stipulations; Jury Instructions; Trial Brief	5.6
28-Jan-06	Jury Instructions	5.9
30-Jan-06	Trial Brief; Jury Instructions; Telephone Calls with Opposing Counsels; Trial Preparations	4.0
31-Jan-06	Pretrial; Trial Preparations; Meeting with Client	1.9
1-Feb-06	Trial Preparation	6.0
2-Feb-06	Trial Preparation	6.0
3-Feb-06	Meeting with Opposing Counsel; Trial Preparation	5.0
4-Feb-06	Jury Instructions; Special Verdict; Voir Dire	4.4
6-Feb-06	Jury Instructions; Special Verdict; Voir Dire; Research; Faxes Opposing Counsel; Telephone Calls Court & Opposing Counsel	10.2
7-Feb-06	Jury Instructions, Special Verdict, Voir Dire ; Research; Faxes Opposing Counsel; Calls & E-Mail Court & Opposing Counsel	12.4
10-Feb-06	Trial Preparation; Response	1.1
11-Feb-06	Trial Preparation	7.0
13-Feb-06	Trial Preparation; Trial Brief; Objections and Responses; Telephone Call with Clients with Court and Experts	8.6
14-Feb-06	Trial Preparation; Trial Brief; Opening; Meetings with SS and Client; Telephone Calls with Court and Experts and SS	7.0
16-Feb-06	Trial Preparation; Trial Brief; Telephone Calls with Court and Experts and Client	3.9
17-Feb-06	Telephone Calls with Expert, Private Investigator and Client; Trial Brief; Meeting with Client; Follow-up Data	3.8
18-Feb-06	Motions for Summary Judgment	1.6
21-Feb-06	Motions for Summary Judgment; Meeting with Client	1.1
22-Feb-06	Telephone Call and Letter to DL; Motions for Summary Judgment	0.3
23-Feb-06	Motions for Summary Judgment	2.5
27-Feb-06	Motions for Summary Judgment; Subpoena	1.6
28-Feb-06	Motions for Summary Judgment; Subpoena; Meeting w Client; Objection to JI	8.6
1-Mar-06	Motion for Summary Judgment	4.6
2-Mar-06	Motion for Summary Judgment	1.8
6-Mar-06	Records Deposition	0.1
7-Mar-06	Letter to Opposing Counsel; Motion to Quash; Meeting with Client	2.6
8-Mar-06	Motion for Summary Judgment	3.8
9-Mar-06	Opposition Motion to Quash; Motion for Summary Judgment	4.8
10-Mar-06	Opposition Motion to Quash; Motion for Summary Judgment	5.1
16-Mar-06	Letter to Opposing Counsel	0.1
20-Mar-06	Motion for Summary Judgment; Minutes	0.1
21-Mar-06	Meeting with Client	0.4
22-Mar-06	Reply Motion to Quash	0.2
24-Mar-06	Reply Compel; Submit; Motion for Summary Judgment	0.5
28-Mar-06	Reply Compel; Submit Motion for Summary Judgment; Meeting with Client	3.6
29-Mar-06	Reply Compel; Submit	0.4
4-Apr-06	Motion for Summary Judgment; Meeting with Client and Shelley Stevenson	4.8
7-Apr-06	Motion for Summary Judgment	1.8
8-Apr-06	Motion for Summary Judgment	1.0
17-Apr-06	Notice of Hearing	0.1
18-Apr-06	Meeting with Client	0.3
21-Apr-06	Motion for Summary Judgment	0.6

STEVENSEN 2006 HOURS

25-Apr-06	Motion for Summary Judgment	2 0
26-Apr-06	Motion for Summary Judgment	2 0
28-Apr-06	Motion for Summary Judgment	1 6
29-Apr-06	Motion for Summary Judgment	6 2
1-May-06	Motion for Summary Judgment	2 8
3-May-06	Motion for Summary Judgment, Research	3 8
4-May-06	Motion for Summary Judgment	6 0
5-May-06	Motion for Summary Judgment	1 0
6-May-06	Motion for Summary Judgment	1 9
8-May-06	Telephone Calls with Family, Hearing Preparation, Hearing Motion to Quash, Motion for Summary Judgment, Subpoena	6 3
9-May-06	Telephone Calls with Family and Client, Motion for Summary Judgment	6 3
10-May-06	Motion for Summary Judgment	9 8
11-May-06	Motion for Summary Judgment	4 8
12-May-06	Motion for Summary Judgment	6 0
13-May-06	Motion for Summary Judgment	6 4
15-May-06	Motion for Summary Judgment	6 3
16-May-06	Fax with Opposing Counsel	0 1
17-May-06	Subpoena	0 1
22-May-06	Letter to Opposing Counsel, Research, Motion	3 8
24-May-06	Letter to Opposing Counsel, Meeting with Client, Telephone Call with Opposing Counsel	0 7
26-May-06	Fax from Opposing Counsel	0 1
1-Jun-06	Motion Contempt, Affidavits	1 6
2-Jun-06	Motion Contempt, Telephone Calls with Doctors, Affidavits	0 7
5-Jun-06	Motion Contempt, Affidavits, Motion for Summary Judgment Replies, Telephone Calls with Doctors	1 6
6-Jun-06	Motion Contempt, Telephone Calls with Wood	1 0
8-Jun-06	Motion Contempt, Telephone Calls with Wood	0 7
9-Jun-06	Motion Contempt, Affidavits, Telephone Calls with Wood	0 6
12-Jun-06	Motion Contempt, Affidavits, Telephone Calls with Murray	0 4
13-Jun-06	Telephone Calls with Murray and Huish, Fax to Mariani, Meeting with Client	1 3
15-Jun-06	Opposition Motion for Summary Judgment, Replies	0 3
16-Jun-06	Opposition Motion for Summary Judgment, Reply, Telephone Call with Mariani, Subpoena, Notice Deposition	0 6
19-Jun-06	Motion for Summary Judgment Opposition, Motion for Summary Judgment Replies, Faxes with Opposing Counsel, Tele	11 4
20-Jun-06	MSJ Replies, Fax Opposing Counsel, Motion Contempt, Affidavits, Calls Mariani & Affleck, Notice Deposition, Subpoena	3 8
21-Jun-06	Motion for Summary Judgment Replies, Faxes with Opposing Counsel, Telephone Call with Affleck	3 2
22-Jun-06	Motion for Summary Judgment Replies, Meeting with Affleck	0 8
26-Jun-06	Motion for Summary Judgment Replies Motion Contempt, Affidavit, Telephone Call with Affleck, Letters with Opposing	1 5
27-Jun-06	Motion for Summary Judgment Replies, Motion Contempt, Telephone Calls with Affleck, Letters with Opposing Counsel	3 3
28-Jun-06	Motion for Summary Judgment Replies, Telephone Calls and Meeting with Affleck, Motion Contempt	0 8
29-Jun-06	Motion for Summary Judgment Replies, Motion Contempt	1 8
30-Jun-06	Motion for Summary Judgment Replies	1 8
3-Jul-06	Motion for Summary Judgment Replies	1 4
5-Jul-06	Motion for Summary Judgment Replies, Meeting with Client	4 5
10-Jul-06	Research Replies	16 1
11-Jul-06	Supplemental Exhibits, Notice to Submit	0 4
12-Jul-06	Meeting with Client	1 4
18-Jul-06	Opposition Contempt, Limine, Reply, Opposition	2 6
19-Jul-06	Reply Contempt, Opposition Limine, Meeting with Client	1 2
20-Jul-06	Reply Contempt, Opposition Limine	2 0
21-Jul-06	Reply Contempt, Opposition Limine	3 1
25-Jul-06	Reply Contempt, Opposition Limine, Telephone Call with Court	4 4

STEVENSEN 2006 HOURS

26-Jul-06	Notice of Hearing, Opposition Limine	0 1
27-Jul-06	Pretrial, Travel, Courtesy Copies	0 8
2-Aug-06	Hearing Preparation, Opposition Limine	8 4
3-Aug-06	Hearing Preparation, Order to Show Cause, Motion for Summary Judgment Hearing, Meeting with Client	6 0
7-Aug-06	Fax from Opposing Counsel	0 1
8-Aug-06	Opening Statement, Letter from Opposing Counsel	4 4
9-Aug-06	Opening Statement	3 6
10-Aug-06	Opposition Order, Brief	0 2
11-Aug-06	Opposition Order, Letter to Opposing Counsel	0 3
14-Aug-06	Brief	4 6
15-Aug-06	Meeting with Client	0 5
16-Aug-06	Jury Instructions	0 1
17-Aug-06	E-Mail from Opposing Counsel and Court	0 3
21-Aug-06	Motion Bifurcate, Telephone Call from Opposing Counsel	0 2
22-Aug-06	Jury Instructions, Meeting with Client	1 4
23-Aug-06	E-Mail Court	0 2
24-Aug-06	Trial Preparation	4 4
25-Aug-06	Opening, Question-Answer-Exhibit Lists, Jury Exhibit Binder	4 6
28-Aug-06	Question-Answer-Exhibit Lists, Jury Exhibit Binder	6 4
29-Aug-06	Opening, Closing, Question-Answer-Exhibit Lists, Jury Exhibit Binder	4 1
30-Aug-06	Opening, Question-Answer-Exhibit Lists, Jury Exhibit Binder	3 1
1-Sep-06	Trial Preparation	4 1
5-Sep-06	Research, Opposition Bifurcate, Hearing Preparation, Trial Preparation	6 1
6-Sep-06	Hearing, Hearing Preparation, Telephone Call with Client	4 5
8-Sep-06	Motion for Summary Judgment	0 8
12-Sep-06	Meeting with Client, Motion for Summary Judgment	1 8
13-Sep-06	Motion for Summary Judgment	3 1
14-Sep-06	Motion for Summary Judgment	3 0
20-Sep-06	Order	0 1
25-Sep-06	Order, Letter to Opposing Counsel	0 8
26-Sep-06	Research, Supplemental Brief, Motion for Summary Judgment, Opposition Order, Meeting with Client	3 3
28-Sep-06	Supplemental Brief, Motion for Summary Judgment	4 0
29-Sep-06	Research, Supplemental Brief, Motion for Summary Judgment	3 2
2-Oct-06	Watts Supplemental Brief	0 6
4-Oct-06	Meeting with Client	0 5
10-Oct-06	Meeting with Client	0 6
13-Oct-06	Motion for Summary Judgment, Opposition Watts Supplement Research	4 0
16-Oct-06	Opposition Watts Supplement, Motion Overlength Pleading, Order	3 3
18-Oct-06	Motion for Summary Judgment	3 6
19-Oct-06	Motion for Summary Judgment	1 4
20-Oct-06	Defendants' Response, Motion for Summary Judgment	2 6
23-Oct-06	Motion for Summary Judgment	0 8
25-Oct-06	Motion for Summary Judgment	4 8
31-Oct-06	Meeting with Client	0 6
6-Nov-06	Telephone Call with Client, Motion for Summary Judgment	2 3
7-Nov-06	Motion for Summary Judgment	3 1
8-Nov-06	Motion for Summary Judgment	3 3
14-Nov-06	Motion for Summary Judgment Hearing Preparation, Meeting with Client	1 4
15-Nov-06	Hearing, Motion for Summary Judgment	3 7
16-Nov-06	Telephone Call with Client, Motion for Summary Judgment	5 0

STEVENSEN 2006 HOURS

21-Nov-06	Meeting with Client	1.0
22-Nov-06	Motion for Summary Judgment	3.4
28-Nov-06	Meeting with Client	0.6
4-Dec-06	Opposition Strike; Submit; Faxes with Opposing Counsel	0.5
5-Dec-06	Faxes from Opposing Counsel; Telephone Call with Clerk; Hearing Preparation; Telephone Conference	0.7
11-Dec-06	Notice of Hearing	0.1
13-Dec-06	Opposition Motion for Summary Judgment; Reply	2.2
14-Dec-06	Motion for Summary Judgment Reply	3.3
15-Dec-06	Motion for Summary Judgment Reply	2.2
16-Dec-06	Motion for Summary Judgment Reply	1.8
18-Dec-06	Motion for Summary Judgment Reply	3.3
19-Dec-06	Motion for Summary Judgment Reply	4.9
20-Dec-06	Hearing Preparation	0.4
21-Dec-06	Motion for Summary Judgment Hearing; Hearing Preparation	4.7
22-Dec-06	Fax from Opposing Counsel; Trial Preparation	1.1
27-Dec-06	Order; Notice of Hearing; Trial Preparation; Meeting with Client; Letters to Experts; Trial Subpoena	6.0
28-Dec-06	Trial Subpoena; Trial Preparation	5.5
29-Dec-06	Trial Preparation	3.6
TOTAL 2006 HRS. -		494.5

STEVENSEN 2007 HOURS

2-Jan-07	Trial Preparation, Meeting with Client	7.0
3-Jan-07	Trial Preparation	4.4
4-Jan-07	Trial Preparation	4.8
5-Jan-07	Trial Preparation	6.0
6-Jan-07	Trial Preparation	9.4
8-Jan-07	Trial Preparation	12.0
9-Jan-07	Trial Preparation, Meeting with Client, Fax to Opposing Counsel	7.0
10-Jan-07	Pretrial Conference, Trial Preparation, Fax to Opposing Counsel	4.0
11-Jan-07	Trial Preparation	0.6
12-Jan-07	Trial Preparation, Fax from Opposing Counsel	6.5
13-Jan-07	Trial Preparation	3.4
15-Jan-07	Trial Preparation	6.0
16-Jan-07	Trial Preparation	6.0
17-Jan-07	Trial Preparation	6.0
18-Jan-07	Telephone Call with Experts, Trial Preparation	6.6
19-Jan-07	Meeting with Kesler, Trial Preparation	6.5
22-Jan-07	Trial Preparation, Trial	18.0
23-Jan-07	Trial Preparation, Trial	17.0
24-Jan-07	Trial Preparation, Trial	18.0
25-Jan-07	Trial Preparation, Trial	18.0
26-Jan-07	Trial Preparation, Trial	15.8
27-Jan-07	Trial Preparation	8.9
29-Jan-07	Trial Preparation, Trial	14.4
30-Jan-07	Trial Preparation, Trial	14.9
31-Jan-07	Trial Preparation, Trial	8.5

TOTAL 2007 HRS. - 229.7

STEVENSEN 2001-2007 SUMMARY

Stevensen Total Hrs. 2001	51.9
Stevensen Total Hrs. 2002	88.2
Stevensen Total Hrs. 2003	200.6
Stevensen Total Hrs. 2004	174.4
Stevensen Total Hrs. 2005	69.1
Stevensen Total Hrs. 2006	494.5
Stevensen Total Hrs. 2007	229.7

GRAND TOTAL HRS. - **1308.4**

ADDENDUM NO. C-8

Thor B. Roundy (Bar No. 6435)
Attorney for Plaintiff
448 East 400 South, Suite 100
Salt Lake City, Utah 84111
Telephone (801) 364-3229
Facsimile (801) 364-4721

FILED
1007-11-0000
07 JUL 13 PM 4:17
SALT LAKE COUNTY
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

STEVENSEN 3RD EAST, L.C., a Utah : **AFFIDAVIT OF THOR B. ROUNDY AS**
Limited Liability Company, : **TO COSTS, EXPENSES AND**
 : **ATTORNEY FEES**
Plaintiff, :
 :
v. : Civil No. 010904107
 :
RUSSELL K. WATTS, an individual, : Judge Kennedy
R.K.W. 96, L.C. and THE CLUB :
CONDOMINIUM, L.C., Utah Limited :
Liability Companies, :
 :
Defendants. :
 :

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, Thor B. Roundy, being first duly sworn upon oath, hereby depose and say that:

1. I am an attorney licensed to practice in the State of Utah and am counsel for plaintiff in the above-entitled matter. I testify to these matters of my own personal knowledge.
2. Attached hereto as Exhibit "A" is a true and correct copy of the available record of costs for photocopies referenced in my affidavit, dated February 16, 2007, consisting of copy

charges paid to Litigators Overnight \$5,790.92, Kinkos \$1,293.56, Liddle, Waite & Assoc. \$279.80, and Dennis Poole/Watts Corporation \$1,395.80. The approximate cost per copy charged by each entity was Litigators Overnight \$.14/copy, Kinkos \$.04/copy (as to \$330.33) and \$.15/copy (as to \$963.23), Liddle, Waite & Assoc. \$.20/copy, and Dennis Poole/Watts Corporation \$.20/copy. The total cost for photocopies charged by said entities was \$8,724.08.

3. This affidavit is also intended to address the factors that may be considered by the Court in determining the appropriate amount of attorneys fees in this case. I have reviewed the case of Dixie State Bank v. Bracken, 64 P.2d 985 (Utah 1988) as a source for factors to be considered.

4. I believe that several of the factors which are appropriately considered by the Court are the subject of observation by the Court, and do not require my affidavit to establish, including but not limited to, the difficulty of the litigation, the efficiency of the attorneys in presenting the case, the amount involved in the case, and the result obtained.

5. This affidavit appropriately addresses the following matters referenced by the Utah Supreme Court in Dixie State Bank: (a) the legal work actually performed, (b) the reasonableness of the work performed relative to the necessity of adequate presentation of the case, (c) whether the billing rate is consistent with rates customarily charged in the locality for similar services, and (d) other circumstances which warrant consideration.

6. As to the first factor, I have spent 1,347.6 hours of attorney time in the prosecution of the above-captioned action, through June 30, 2007, which time was reasonable and necessary to the litigation of the matter. The attached spreadsheet provides a detailed

description of the work performed. The spreadsheet has been augmented since my affidavit of February 16, 2007 to include time spent from February 1, 2007 to June 30, 2007.


7. As to the second factor, I have carefully analyzed the time spent and allocated the time into various categories. I have allocated the time spent as follows: communication with client 115 hours, communication with opposing counsel 95.9 hours, discovery 121.1 hours, legal research 39.5 hours, pleading and successful pretrial motions 348.7 hours, unsuccessful pretrial motions 102.1 hours, trial preparation and trial presentation 487.3 hours, and post trial motions 38 hours. I did not allocate time associated with pleading and resolving claims against Bryan Todd to a specific category, because it appeared to involve fewer than 10 hours.

8. The time likely to be challenged by defendants as to reasonableness or necessity is the 102.1 hours relating to unsuccessful pretrial motions. It should be understood that such time included plaintiff's motion regarding prejudgment interest; motions for summary judgment or in limine which resulted in dismissal of various claims by plaintiff; a motion regarding a lis pendens filed by plaintiff; and motions regarding the injury allegedly sustained by Mr. Watts which resulted in continuation of the trial. Nonetheless, plaintiff submits that even though it was not successful with respect to those motions, or limit aspects of other successful motion practice, that all of said activity was necessitated by the very conduct of Russell Watts that required the above-captioned litigation. While the lis pendens was lifted by the court, for example, Mr. Stevensen did establish that the written agreement between the parties required The Club to obtain the approval of Mr. Stevensen as to each condominium sale. While the Court did not hold Mr. Watts in contempt with regard to his allegations that resulted in continuation of the trial, Mr. Stevensen did show that Mr. Watts went to the gym the day following his injury, that he was not

taking pain medication other than ibuprofen, and that he continued to work as usual during the time originally scheduled for trial. Likewise, the motions for summary judgment were part of a larger picture of trial preparation and narrowing of issues which are a part of every case. They were argued in conjunction with motions that benefited plaintiff's case and moved the matter forward. Plaintiff submits that in no case is one party successful as to each and every argument, but that resolving disputed issues of law are an essential and foreseeable part of all litigation.

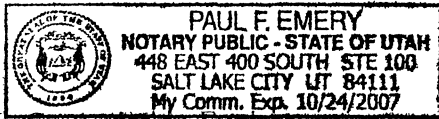
9. As to the third and fourth factors, the normal hourly rate at which I currently bill attorney services in this type of case, and which is reasonable, customary and usual for this type of litigation in the legal community in and about Salt Lake City, Utah, is \$200 per hour. An hourly fee of \$269,520 is a very conservative fee for a case of the complexity of the present case. I will be paid in this case on a contingency fee basis, and I reasonably anticipate that after the judgment is augmented for interest, cost and attorney fees, my attorney fees will exceed the amount of the hourly calculation of attorney fees which would equal \$269,520. In fact, assuming an award of \$8,000 in copy costs and only \$249,100 in attorney fees (reflecting a potential hourly reduction of 102.1 hours x \$200 = \$20,420), my contingency fee will be one-third of approximately \$973,800 or \$324,600 that will be charged to plaintiff. Contingency fees are reasonable, customary and foreseeable in the State of Utah. Billings v. Union Bankers Ins. Co., 918 P.2d 461, 468 (Utah 1996). Therefore, an attorney's fee of \$324,600 is reasonable and foreseeable and appropriate fee in this instance.

FURTHER AFFIANT SAYETH NAUGHT.



Thor B. Roundy
Attorney for Plaintiff

SUBSCRIBED AND SWORN TO before me this 13 day of July, 2007.



My Commission Expires:

10-24-07

A handwritten signature in cursive script, appearing to read "Paul F. Emery", written over a horizontal line.

NOTARY PUBLIC

Residing at SALT LAKE CO.

Certificate of Service

I hereby certify that I caused to be mailed a true and correct copy of the foregoing Affidavit of Thor B. Roundy as to Costs, Expenses and Attorney Fees, by United States mail, first class, postage prepaid, this 13 day of July, 2007, to the following:

Dennis K. Poole
POOLE SULLIVAN & ADAMS, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107

James R. Blakesley
1305 N. Commerce Drive, Suite 230
Saratoga Springs, Utah 84045

A handwritten signature in cursive script, written over a horizontal line.

STATEMENT

Thor Roundy
 275 East South Temple
 Suite #150
 Salt Lake City, UT 84111

DATE
5/7/03

AMOUNT REMITTED

\$

Page 1

DATE	INVOICE NO	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
12/18/02	00026339	Thor Roundy	\$1,357.87		\$1,357.87
12/18/02	00026366	Thor Roundy	\$207.40		\$207.40
12/24/02	00026433	Thor Roundy	\$65.22		\$65.22
12/31/02	00026454	Thor Roundy - Trevor Miller	\$1,684.47		\$1,684.47
1/22/03	00026520	Thor Roundy - Trevor Miller	\$2,475.96		\$2,475.96

WE WOULD APPRECIATE YOUR PAYMENT TODAY!

THOR B. ROUNDY 9/94 1729
 340 E 400 S STE 100
 SALT LAKE CITY, UT 84111 Date 2/4/04 31-7955/3240 25

Pay to the Order of Litigators Overnight \$ 5790⁹²
Five Thousand Seven Hundred Ninety & 92/100 Dollars

MOUNTAIN AMERICA CREDIT UNION
 P.O. Box 45001 • Salt Lake City, UT 84145-0001
 www.mtncu.com

For _____

⑆324079555⑆50100609863⑆01729

5/7/03	Finance Charge	\$0.00	\$0.00
CURRENT	30 DAYS	60 DAYS	60+ DAYS
			AMOUNT DUE
			\$5,790.92
			\$5,790.92

EXHIBIT 'A'

FedEx Kinko's

FedEx Kinko's
19 E 200 S
Salt Lake City, UT 84111-1905
(801) 533-9444

Order Date: 01/20/2007 Branch: 2401
Order Time: 13:34:29 Register: 012
Pickup Date: 01/21/2007
Pickup Time: 11:00:00
Team Member: Shawn M.



240100QTF1

Customer: Paul Emery

Project Name:
HC_huge stack of papers 309.88
 5 @ 134.00
 FS BW SS8.5x11/14 3H 8375 @ 0.08

Deposit 0.00

Sub-Total 670.00
Discount 360.12

Tax 20.45

Total Amount 330.33



240100QTF1

This is not a receipt
All prices shown are estimates

Thank you for visiting

FedEx Kinko's
Make It. Print It. Pack It. Ship It.
www.fedexkinkos.com

CERTIFIED PUBLIC ACCOUNTANTS
LITTLE, WAITE & ASSOCIATES, P.C.
240 EAST MORRIS AVENUE SUITE 500
SALT LAKE CITY, UTAH 84115-5200

TELEPHONE 468-6730
AREA CODE 801

WILLIAM W LITTLE
L BERT WAITE

Thor B Roundy
340 East 400 South, Suite 100
Salt Lake City, Utah 84111

S T A T E M E N T

<u>Description</u>	<u>Amount</u>
1,399 copies at \$.20 per copy	<u>\$279 80</u>

8490

INVOICE

REMIT TO: WATTS ENTERPRISES INC.
5200 SOUTH HIGHLAND DRIVE
SALT LAKE CITY, UTAH 84117
801-272-7111

SOLD TO: THOR B. ROUNDY
275 EAST SOUTH TEMPLE
SUITE 150
SALT LAKE CITY, UT 84111

* THIS INVOICE IS 60 DAYS OVERDUE. PLEASE PAY IMMEDIATELY. *

Invoice Number: 000350-000001
Date of Invoice: Mar. 20, 2002
Due Date: Mar. 25, 2002

Quantity Ordered	Description	Unit Price	Extended Price
1.00	3 HOURS LABOR	75.00000	75.00
1.00	171 COPIES @.20	34.20000	34.20
TOTAL AMOUNT DUE:			\$109.20

8495

INVOICE

REMIT TO: WATTS ENTERPRISES INC.
5200 SOUTH HIGHLAND DRIVE
SALT LAKE CITY, UTAH 84117
801-272-7111

SOLD TO: THOR B. ROUNDY
275 EAST SOUTH TEMPLE
SUITE 150
SALT LAKE CITY, UT 84111

Invoice Number: 000350-000002
Date of Invoice: May. 16, 2002
Due Date: May. 17, 2002

Quantity Ordered	Description	Unit Price	Extended Price
1.00	1,643 COPIES @.20	328.60000	328.
1.00	10.5 HOURS @25.00 LABOR	262.50000	262.
TOTAL AMOUNT DUE:			<u>\$591.</u>

8496

STEVENSEN 2001 HOURS

10-Jan-01	Meeting with Client	2.6
11-Jan-01	Contract	0.1
14-Jan-01	Meeting with Client	3.6
15-Jan-01	Complaint	1.0
16-Jan-01	Meeting with Client	2.0
22-Jan-01	Review Documents	3.0
23-Jan-01	Meeting with Client	3.4
24-Jan-01	Telephone Call with Client	0.1
25-Jan-01	Telephone Call with Client	0.1
28-Jan-01	Complaint	0.4
1-Feb-01	Meeting with Client	0.1
13-Feb-01	Meeting with Client	2.1
18-Feb-01	Notice Substitutions	0.5
25-Feb-01	Complaint	0.2
28-Feb-01	Meeting with Client	0.1
1-Mar-01	Telephone Call with Client	0.1
4-Mar-01	Meeting with Client	1.8
8-Mar-01	Telephone Call with Client	0.2
15-Mar-01	Organize Documents	0.2
25-Mar-01	Telephone Call with Client	0.1
26-Mar-01	Meeting with Client	0.2
28-Mar-01	Research	0.3
29-Mar-01	Research	0.5
10-Apr-01	Meeting with Client	0.1
15-Apr-01	Complaint	2.0
16-Apr-01	Research	0.9
17-Apr-01	Meeting with Client	2.5
19-Apr-01	Complaint	0.2
22-Apr-01	Complaint	0.1
24-Apr-01	Meeting with Client	0.4
3-May-01	Telephone Call with Client	0.1
6-May-01	Research; Answer	1.2
7-May-01	Complaint; Summons	0.9
22-May-01	Meeting with Client	0.4
24-May-01	Notice of Hearing	0.1
30-May-01	Letter to Opposing Counsel	0.1
5-Jun-01	Summons	0.1
5-Jun-01	Disclosures	0.4
11-Jun-01	Meeting with Client	0.2
12-Jun-01	Telephone Call to Opposing Counsel	0.6
17-Jun-01	Lis Pendens	0.5
18-Jun-01	Meeting with Client	0.4
24-Jun-01	Documents from Court; Answer	0.5
25-Jun-01	Meeting with Client	0.2
27-Jun-01	Letter from Opposing Counsel	0.2
1-Jul-01	Letter to Opposing Counsel	0.2
4-Jul-01	Letter to Opposing Counsel	0.1
8-Jul-01	Notice to Submit	0.1
15-Jul-01	Default Set Aside	0.1
16-Jul-01	Telephone Call with Opposing Counsel	0.1

STEVENSEN 2001 HOURS

22-Jul-01	Letter to Opposing Counsel	0.2
29-Jul-01	Meeting with Client	0.6
31-Jul-01	Interrogatories	0.5
13-Aug-01	Letter from Opposing Counsel	0.1
14-Aug-01	Letter to Opposing Counsel	0.2
26-Aug-01	Letter to Opposing Counsel	0.1
29-Aug-01	Meeting with Client	0.3
4-Sep-01	Meeting with Client	0.2
11-Sep-01	Disclosures	0.6
12-Sep-01	Interrogatories	0.2
13-Sep-01	Interrogatories	0.4
16-Sep-01	Interrogatories	0.1
18-Sep-01	Disclosures	0.5
19-Sep-01	Interrogatories	0.4
25-Sep-01	Letter from Opposing Counsel	1.0
1-Oct-01	Meeting with Client	0.3
9-Oct-01	Interrogatories	1.6
11-Oct-01	Meeting with Client	0.1
14-Oct-01	Stipulation	0.2
16-Oct-01	Interrogatories	0.9
17-Oct-01	Interrogatories	0.6
21-Oct-01	Meeting with Client	0.2
22-Oct-01	Telephone Call with Client	0.1
23-Oct-01	Letter from Opposing Counsel	0.2
29-Oct-01	Meeting with Client	0.7
31-Oct-01	Disclosures	0.2
5-Nov-01	Meeting with Client	0.2
13-Nov-01	Stipulation	0.1
14-Nov-01	Meeting with Client	0.1
17-Nov-01	Complaint	1.6
18-Nov-01	Complaint; Summons	0.8
22-Nov-01	Meeting with Client	0.2
25-Nov-01	Admits; Motion to Compel	0.3
27-Nov-01	Interrogatories	0.6
2-Dec-01	Motion to Compel	0.4
6-Dec-01	Meeting with Client	0.1
12-Dec-01	Meeting with Client	0.2
18-Dec-01	Telephone Call with Opposing Counsel	0.1
19-Dec-01	Meeting with Client	0.3
20-Dec-01	Opposition	0.2
23-Dec-01	Interrogatories	0.6
30-Dec-01	Opposition	0.2

TOTAL 2001 HRS. -

51.9

STEVENSEN 2002 HOURS

2-Jan-02	Meeting with Client	0.1
3-Jan-02	Letter to Opposing Counsel	0.1
6-Jan-02	Notice Hearing	0.1
7-Jan-02	Meeting with Client	1.5
13-Jan-02	Cancel Hearing	0.1
17-Jan-02	Meeting with Client	0.2
21-Jan-02	Meeting with Client	0.3
23-Jan-02	Letter from Opposing Counsel	0.1
25-Jan-02	Review Documents	2.0
28-Jan-02	Meeting with Client	0.5
29-Jan-02	Review Documents	1.7
25-Feb-02	Meeting with Client	0.1
3-Mar-02	Letter to Opposing Counsel	0.3
4-Mar-02	Letter to Opposing Counsel	0.1
5-Mar-02	Telephone Call with Opposing Counsel	0.2
6-Mar-02	Meeting with Client	0.6
10-Mar-02	Facsimile from Opposing Counsel	0.1
13-Mar-02	calls with client; mtg prep; travel; mtg with defendant; ltrs to oc; mtg with marcel; int.p2	3.9
18-Mar-02	Letter to Opposing Counsel	0.3
20-Mar-02	Meeting with Client	1.8
24-Mar-02	Facsimile from Opposing Counsel	0.3
1-Apr-02	Facsimile from Opposing Counsel	0.9
2-Apr-02	Review Documents	0.4
7-Apr-02	Telephone Call with Opposing Counsel	0.2
10-Apr-02	Meeting with Client	0.4
11-Apr-02	Letter from Opposing Counsel	0.3
14-Apr-02	Meeting with Accountant	0.3
15-Apr-02	Telephone Call with Opposing Counsel	0.3
16-Apr-02	Telephone Call with Opposing Counsel	0.1
21-Apr-02	Meeting with Client	0.2
22-Apr-02	Meeting with Client	0.5
25-Apr-02	Interrogatories	0.4
30-Apr-02	Meeting with Opposing Counsel	1.8
1-May-02	Telephone Call with Client	0.2
2-May-02	Telephone Call with Client	0.3
8-May-02	Deposition Preparation	6.4
9-May-02	Letter to Opposing Counsel	0.5
12-May-02	Facsimilees with Opposing Counsel	0.3
13-May-02	Facsimilees with Opposing Counsel	0.1
14-May-02	Check Deadlines	0.1
15-May-02	Letter to Opposing Counsel	0.1
16-May-02	Letter to Opposing Counsel	0.3
21-May-02	Telephone Call with Opposing Counsel	0.2
22-May-02	Meeting with Client	0.1
27-May-02	Interrogatories	2.2
28-May-02	Interrogatories	0.5
29-May-02	Meeting with Client	0.4
30-May-02	Meeting with Client	1.0
2-Jun-02	Meeting with Client	0.4
9-Jun-02	Meeting with Client	0.4

8499

STEVENSEN 2002 HOURS

16-Jun-02	Opposition Production	0.2
17-Jun-02	Reply	0.8
23-Jun-02	Reply	0.9
27-Jun-02	Meeting with Client	0.7
30-Jun-02	Meeting with Client	0.4
7-Jul-02	Meeting with Client	0.2
8-Jul-02	Letter to Opposing Counsel	0.9
9-Jul-02	Letter to Opposing Counsel	0.2
11-Jul-02	Letter to Opposing Counsel	0.7
15-Jul-02	Letter from Opposing Counsel	0.1
16-Jul-02	Interrogatories	0.2
17-Jul-02	Telephone Call with Opposing Counsel	0.5
21-Jul-02	Facsimilees with Opposing Counsel	0.6
22-Jul-02	Meeting with Client	0.2
23-Jul-02	Letter to Opposing Counsel	2.1
24-Jul-02	Interrogatories	0.8
25-Jul-02	Telephone Call with Client	0.5
28-Jul-02	Telephone Call with Client	0.3
29-Jul-02	Telephone Call with Client	0.3
30-Jul-02	Meeting with Client	2.1
1-Aug-02	Letter from Opposing Counsel	0.6
4-Aug-02	Meeting with Client	0.2
8-Aug-02	Letter from Opposing Counsel	0.1
11-Aug-02	Meeting with Client	3.2
13-Aug-02	Notice to Submit	0.1
22-Aug-02	Meeting with Client	0.3
29-Aug-02	Notice Hearing	0.1
8-Sep-02	Meeting with Client	0.2
10-Sep-02	Milestones	0.5
16-Sep-02	Meeting with Client	0.6
19-Sep-02	Meeting with Client	0.2
26-Sep-02	Meeting with Client	0.2
29-Sep-02	Hearing Preparation	3.0
1-Oct-02	Telephone Call with Experts	0.1
3-Oct-02	Meeting with Client	6.4
6-Oct-02	Letter to Opposing Counsel	0.9
7-Oct-02	Meeting with Experts	1.1
9-Oct-02	Meeting with Experts	1.2
13-Oct-02	Meeting with Experts	0.1
14-Oct-02	Telephone Call with Experts	0.9
15-Oct-02	Meeting with Experts	1.6
18-Oct-02	Motion to Compel	0.2
23-Oct-02	Telephone Call with Experts	0.2
24-Oct-02	Telephone Call with Experts	1.0
27-Oct-02	Meeting with Client	1.9
28-Oct-02	Telephone Call with Experts	0.6
29-Oct-02	Stipulation	2.3
3-Nov-02	Review Files	0.3
4-Nov-02	Review Files	1.9
5-Nov-02	Review Files	0.7

STEVENSEN 2002 HOURS

6-Nov-02	Review Files	0.8
7-Nov-02	Review Files	0.5
8-Nov-02	Review Files	0.5
10-Nov-02	Review Files	1.5
11-Nov-02	Review Files	0.2
12-Nov-02	Meeting with Client	0.4
13-Nov-02	Review Files	0.1
21-Nov-02	Review Files	0.6
24-Nov-02	Review Files	0.6
25-Nov-02	Review Files	0.3
26-Nov-02	Review Files	0.2
28-Nov-02	Facsimile from Opposing Counsel	0.2
1-Dec-02	Review Files	0.5
2-Dec-02	Review Files	0.4
3-Dec-02	Review Files	0.3
4-Dec-02	Review Files	0.2
8-Dec-02	Review Files	0.1
12-Dec-02	Review Files	0.3
15-Dec-02	Review Files	0.4
16-Dec-02	Review Files	2.4
23-Dec-02	Review Files	0.3
26-Dec-02	Review Files	0.3

TOTAL 2002 HRS. - 88.2

STEVENSEN 2003 HOURS

1-Jan-03	Review Files	0.6
2-Jan-03	Review Files	0.6
5-Jan-03	Meeting with Client	1.3
6-Jan-03	Review Files	0.2
7-Jan-03	Review Files	0.1
16-Jan-03	Meeting with Opposing Counsel	0.2
19-Jan-03	Review Files	0.1
20-Jan-03	Review Files	0.1
21-Jan-03	Review Files	1.5
23-Jan-03	Review Files	1.1
4-Mar-03	Writ of Execution	0.3
5-Mar-03	Meeting with Client	1.2
9-Mar-03	Letter to Opposing Counsel	0.7
16-Mar-03	Letter to Opposing Counsel	1.5
19-Mar-03	Meeting with Client	0.6
20-Mar-03	Letter to Opposing Counsel	0.4
24-Mar-03	Reply	2.1
25-Mar-03	Reply	0.3
26-Mar-03	Opposition to Quash	1.0
30-Mar-03	Meeting with Client	1.6
31-Mar-03	Notice of Deposition	0.1
3-Apr-03	Meeting with Client	0.9
9-Apr-03	Hearing Notice	0.2
10-Apr-03	Meeting with Client	1.8
17-Apr-03	Facsimile from Opposing Counsel	0.1
22-Apr-03	Telephone Call with Court	0.5
23-Apr-03	Telephone Call with Court	0.1
24-Apr-03	Hearing Preparation	2.4
27-Apr-03	Order; Summons	0.2
29-Apr-03	Deposition Outline	0.5
4-May-03	Supplemental Memorandum	2.0
5-May-03	Preparation	2.0
12-May-03	Preparation	2.4
13-May-03	Deposition Outline	5.0
19-May-03	Notice of Deposition	0.6
20-May-03	Notice of Deposition	0.2
21-May-03	Notice of Deposition	0.7
22-May-03	Facsimile from Opposing Counsel	0.6
25-May-03	Interrogatories	1.9
27-May-03	Meeting with Client	0.4
29-May-03	Preparation	0.4
30-May-03	Preparation	6.0
2-Jun-03	Telephone Call with Client	0.2
2-Jun-03	Watts Deposition; Deposition Preparation	9.0
3-Jun-03	Watts Deposition; Deposition Preparation; Letter to Opposing Counsel; Stipulation; Notice Deposition; Subpoena; Motion	7.2
5-Jun-03	Call EPreparationerts	0.2
6-Jun-03	Notice Deposition; Subpoena; Call with HK; Calls and E-Mail with LL; Facsimile from LL	0.9
10-Jun-03	Meeting with Client	0.4
13-Jun-03	Amended Complaint; Amended Motion; Subpoenas; Meeting with Client; Call Reporter; Motion to Compel	3.3
16-Jun-03	Subpoenas; Review Transcripts; Call and Meeting with Client	1.4

STEVENSEN 2003 HOURS

17-Jun-03	Amended Complaint, Amended Motion, Subpoenas, Transcripts, Calls and E-Mail with DB and LL and HK Meeting with	3.4
18 Jun-03	Meeting with LL, Meeting Preparation, E-Mail with LL, Review Deposition, Inspect nx, Calls with DB	2.0
19-Jun-03	Meeting with Client, Call from SS, Inspect Notice, Calls with DB	0.7
23 Jun 03	Calls with Client and Opposing Counsel	0.2
24-Jun-03	Todd Deposition, Deposition Preparation, Meetings with Client	5.0
27-Jun-03	Review Deposition, Inspect Notice, Motion to Amend and Compel, Letter to Todd, Letter to Opposing Counsel, Follow-u	1.0
30 Jun-03	Meeting to Compel, Letter to Opposing Counsel and Accountant, Follow-up EPreparationerts, Calls with BT Accountan	4.2
1-Jul-03	Motion to Compel, Review Depositions, Motion to Amend, Follow-up Experts Meeting with Larsen	6.8
2-Jul 03	Meeting with HK, Meeting Preparation	2.3
7-Jul-03	E-Mail with HK, Call HK and DB, Letters to BT and Opposing Counsel	0.7
9-Jul 03	Meeting with Client	0.9
10-Jul-03	Facsimile to Opposing Counsel, Call with Accountant, Review Records	0.8
15-Jul-03	Call with Client, Facsimile Opposing Counsel	0.4
16-Jul 03	Calls with Opposing Counsel, Review Records, Meeting with Client, Letter with BT	0.9
17-Jul-03	Calls with Opposing Counsel, Documents	0.3
21-Jul-03	Letter to Opposing Counsel, Stipulation, Submit Amend	0.7
22-Jul-03	Call with Experts and Opposing Counsel, Documents, Meeting with Client	0.9
23-Jul-03	Documents, E-Mail with Expert	1.8
26-Jul-03	Trial Preparation	3.1
28-Jul-03	Letter to Opposing Counsel, Stipulation, Submit Amend, Order	0.4
29-Jul-03	Calls and E-Mail with Experts, Trial Preparation	1.1
30-Jul-03	Calls and E-Mail with Experts, Trial Preparation, Meeting with Client	1.0
31-Jul-03	Calls with Experts, Trial Preparation, Meeting with HK	2.6
1-Aug-03	Call and Meetings with Experts, 26a3 Disclosure, Trial Preparation	5.3
1-Aug-03	Calls and Meetings with Experts 26a3 Disclosure, Trial Preparation	5.3
4-Aug-03	Calls with HK	0.1
5-Aug-03	Calls with Experts, Trial Preparation, Letters with BT	1.4
6-Aug-03	Calls with Experts, Letters with BT	0.4
12-Aug-03	Notice Change of Address	0.1
12-Aug-03	Motion for Summary Judgment, Opposition	1.3
13-Aug-03	Calls with Experts, Meeting with Client	0.4
13-Aug-03	Serving of Paperwork	
13-Aug-03	Todd Deposition	
13-Aug-03	Watts Deposition	
14-Aug-03	Order, Summons	0.2
21 Aug-03	Motion to Continue, Opposition Motion for Summary Judgment	0.7
25-Aug-03	Meeting with Haynie, Call and Facsimile from Opposing Counsel, Calls with Experts	2.6
26-Aug-03	Calls with Experts	0.3
27-Aug-03	Call with Expert, Trial Preparation, Return Service, Meeting with Expert, E-Mail Haynie, Opposition Motion for Summary	5.6
28-Aug-03	Calls with Expert, Trial Preparation, Meeting with Kesler, Opposition Motion for Summary Judgment	2.6
29-Aug-03	Opposition Motion for Summary Judgment, Meeting with Client	1.6
1-Sep 03	Meeting with Kesler, Opposition Motion for Summary Judgment	8.2
2-Sep-03	Opposition Motion for Summary Judgment, Affidavits, Calls and Meeting with Client, Calls with Experts	5.7
3-Sep-03	Letter to Opposing Counsel	0.2
4-Sep-03	Letter to Opposing Counsel, Calls with Accountant, Meeting with Client	0.8
8-Sep-03	Letter from Opposing Counsel, Calls with Accountant and Opposing Counsel	0.6
9-Sep-03	Calls and Meeting with Expert	2.7
10-Sep-03	E-Mail Depositions, Calls and Meetings with Experts	2.5
11-Sep 03	Meeting with Client	0.4
12-Sep-03	Calls with Opposing Counsel, Letters with Opposing Counsel, Calls and Meeting with Experts	3.3

STEVENSEN 2003 HOURS

15-Sep-03	Expert Opinions; Calls and Meetings with Experts; Calls with Opposing Counsel	4.6
16-Sep-03	Legal Expert; Mediation; Meetings with Experts; Call from and Letter to Opposing Counsel	6.0
17-Sep-03	Letter to Opposing Counsel; Meeting with Client	1.2
22-Sep-03	Motion for Summary Judgment Reply; Motion to Strike; Opposition Strike	1.0
23-Sep-03	Call from Opposing Counsel	0.2
24-Sep-03	Scheduling Order; Call with Opposing Counsel	0.2
25-Sep-03	Scheduling Order; Opposition Strike	0.6
26-Sep-03	Follow-up Opposing Counsel	0.1
29-Sep-03	Call with Client and Opposing Counsel	0.2
30-Sep-03	Call with Opposing Counsel; Meeting with TS and BS	2.0
2-Oct-03	Meetings with Opposing Counsel and Clients; Call from Opposing Counsel; Scheduling Stipulation, Facsimile to Oppos	1.4
3-Oct-03	Motion Default	0.2
6-Oct-03	Opposition Strike; Default Certificate	1.5
7-Oct-03	Default Certificate; Default Motion; Meeting with Client	0.9
9-Oct-03	Answer; Stipulation; Client with Opposing Counsel	0.4
10-Oct-03	Follow-up Teuscher; Calls with Opposing Counsel and Rigtrup; Letter to Opposing Counsels	0.8
13-Oct-03	Calls with Mediator and Opposing Counsel; Letters to Opposing Counsel	0.5
15-Oct-03	Call with Opposing Counsel	0.1
23-Oct-03	Calls with Rigtrup and Opposing Counsel; Facsimiles to Opposing Counsel	0.5
24-Oct-03	Calls with Opposing Counsel	0.1
27-Oct-03	Stipulation	0.1
28-Oct-03	Meeting with Client	0.7
3-Nov-03	Call with Client and Rigtrup; Letter to Opposing Counsel	0.9
4-Nov-03	Letters to Opposing Counsels; Meeting with Client	1.7
17-Nov-03	Letter from Opposing Counsel; Disclosure Documents; Interrogatories	0.4
18-Nov-03	Interrogatories; Meeting with Ted Stevensen	1.2
19-Nov-03	Letter to Opposing Counsel	0.1
20-Nov-03	Letter to Opposing Counsel	0.1
24-Nov-03	Letter and Documents for Mediation	0.4
25-Nov-03	Mediation Preparation; Travel; Mediation	4.5
28-Nov-03	Counter Complaint	0.4
2-Dec-03	Meeting with Client	0.7
3-Dec-03	Call with Client	0.2
8-Dec-03	Letter from Opposing Counsel; Call with Client	0.3
9-Dec-03	Meeting with Client; Letter to Opposing Counsel	1.2
10-Dec-03	Letter to Opposing Counsel; Interrogatories; Counter Complaint; Reply/Dismiss	1.5
11-Dec-03	Meeting with Expert; Calls with Title Company and Opposing Counsel	0.4
12-Dec-03	Interrogatories; Call with Title Company and Opposing Counsel	0.2
16-Dec-03	Facsimile from Expert	0.1
19-Dec-03	Counter Complaint reply; Motion Quash Lis Pendens	0.6
29-Dec-03	Opposition Motion Quash Lis Pendens; Hearing; Release	1.8

TOTAL 2003 HRS.

200.6

STEVENSEN 2004 HOURS

5-Jan-04	Interrogatories; Faxes with Opposing Counsel; Release Lis Pendens	0.6
6-Jan-04	Follow-up Teuscher; Cals with Title re LP; Faxes to Title; Meeting with Client	1.6
7-Jan-04	Settlement Offer; Letter to Opposing Counsel	0.5
9-Jan-04	Letter to Opposing Counsel; Settlement Documents; Certificate Readiness	0.6
13-Jan-04	Meeting with Client; Call with Opposing Counsel	0.8
14-Jan-04	Letter from Opposing Counsel	0.1
15-Jan-04	Fax from Opposing Counsel	0.2
16-Jan-04	Faxes with Opposing Counsel; Meeting with Client; Call with Opposing Counsel	1.0
20-Jan-04	Certificate Readiness Trial; Meetings with Clients; Calls with Opposing Counsels; Faxes with Opposing Counsels	1.8
22-Jan-04	Call from Opposing Counsel; Faxes with Opposing Counsel; Scheduling Order	0.4
27-Jan-04	Calls with Opposing Counsel; Meeting w. Clients	0.4
28-Jan-04	Letter from Opposing Counsel; Opposition Certificate Readiness; Notice Submit	0.3
30-Jan-04	Call and Meeting with Clients	0.7
3-Feb-04	Letter to Opposing Counsel; Certificate Readiness for Trial Reply; Correct Notice to Submit	1.1
10-Feb-04	Case review Ordered Deadlines; Meeting with Client	2.3
17-Feb-04	Research; Reply Certificate Readiness for Trial; Meeting with Client	1.9
18-Feb-04	Reply Certificate Readiness for Trial	2.0
19-Feb-04	Scheduling Conference; Preparation; Travel; Calendar Dates	1.3
23-Feb-04	Notice of Hearing	0.1
24-Feb-04	Meeting with Clients	0.6
25-Feb-04	Witness List and Summary	0.3
26-Feb-04	Witness List and Summary	0.9
12-Mar-04	Meeting with Clients; Call from Opposing Counsel	1.1
15-Mar-04	Witness Disclosure; E-Mail from Opposing Counsel	0.3
16-Mar-04	Meeting with Client; Review Expert Reports	1.0
19-Mar-04	Courtesy Copies	1.0
22-Mar-04	Courtesy Copies; Letter from Opposing Counsel; Expert Draft	0.6
23-Mar-04	Meeting with Client; Courtesy Copies	0.9
24-Mar-04	Telephone Call with Client; Courtesy Copies; Call with Opposing Counsel	1.2
26-Mar-04	Motion for Summary Judgment; Preparation	1.6
29-Mar-04	Hearing Preparation; Motion for Summary Judgment Hearing; Call Client	2.9
31-Mar-04	Meeting with Client	0.8
12-Apr-04	Order; Letter from Opposing Counsel	0.1
20-Apr-04	Meeting with Client; Letters from Opposing Counsel	0.6
27-Apr-04	Meeting with Client	0.6
4-May-04	Meeting with Client	0.5
13-May-04	Meeting with Client	0.1
18-May-04	Meeting with Client; Expert	0.8
18-May-04	Meeting with Client; Review Contract	0.5
20-May-04	Telephone Calls with Susan Singleton	0.1
28-May-04	Motion Exclude	0.9
1-Jun-04	Motion to Exclude; Motion for Summary Judgment; Meeting with Client	1.2
2-Jun-04	Meeting with Client	0.2
3-Jun-04	Telephone Call with Client	0.1
8-Jun-04	Meeting with Client and Daughter	1.0
9-Jun-04	Opposition Motion for Summary Judgment	0.2
9-Jun-04	Review pages from loan contract	0.3
11-Jun-04	Opposition Motion for Summary Judgment	1.1
11-Jun-04	Telephone Call with Client	0.1
14-Jun-04	Research Opposition Motion for Summary Judgment	14.0

STEVENSEN 2004 HOURS

14-Jun-04	Telephone Call with Client; Meeting with Client; Loan Contract	0.5
16-Jun-04	Meeting with Client	1.0
16-Jun-04	Review loan document; Trust Deed and Deed and Trust; Telephone Call with Client; Meeting with Client, \$500	0.9
17-Jun-04	Letters to Experts; Docket	0.3
18-Jun-04	Letters to Experts; Opposition Exclude	0.3
22-Jun-04	Meeting with Client	0.6
23-Jun-04	Letters to Experts	0.1
24-Jun-04	Meeting with Client; Telephone Call with Client	0.3
25-Jun-04	Reply Exclude; Notice	2.0
28-Jun-04	Motion for Summary Judgment 2; Reply	0.2
29-Jun-04	Meeting with Client	0.4
29-Jun-04	Meeting with Client; Call insurance	0.2
30-Jun-04	Telephone Call with Court	0.1
6-Jul-04	Notice to Submit; Meeting with Client	1.4
7-Jul-04	Motion in Limine	0.2
9-Jul-04	Letters to Experts; Follow up Docket	0.5
12-Jul-04	Trial Preparation; Exhibit Preparation; Jury Instructions; Telephone Calls with Experts	5.8
13-Jul-04	Meeting with Client	0.3
13-Jul-04	Trial Preparation; Exhibit Preparation; Meeting with Client	1.6
15-Jul-04	Trial Preparation; Exhibit Preparation	0.3
16-Jul-04	Trial Preparation; Exhibit Preparation; Jury Instructions	1.2
17-Jul-04	Trial Preparation	6.8
19-Jul-04	Trial Preparation; Exhibit Preparation	0.6
19-Jul-04	Trial Preparation; Exhibit Preparation	0.6
20-Jul-04	Meeting with Client	0.5
20-Jul-04	Trial Preparation; Exhibit Preparation; Jury Instructions; Opposition Limine; Meeting with Client	4.1
21-Jul-04	Trial Preparation; Exhibit Preparation	9.4
22-Jul-04	Exhibit Preparation; Exchange Exhibits; Trial Preparation; Letters to Opposing Counsels; Courtesy Copies to Court; Opp	5.7
23-Jul-04	Trial Preparation; Meeting with Kesler; Opposition Limine Trial Subpoenas; Motions in Limine	4.8
24-Jul-04	Limine; Damages; Trial Plan; Jury Instructions; Brief; Question/Answer/Exhibit Lists; Opening	6.3
26-Jul-04	Limine regarding Expert; Damages Preparation; Jury Instructions	6.0
27-Jul-04	Limine regarding Experts; Damages Preparation; Jury Instructions; Meetings with Expert and Client; Telephone Calls w	9.2
28-Jul-04	Hearing Preparation; Limine regarding Expert; Notice to Submit; Trial Subpoenas; Research; Trial Plan, Trial Breif; Que	7.0
29-Jul-04	Hearing Preparation; Trial Subpoenas; Trial Plan	1.0
30-Jul-04	Hearing Preparation; Hearing; Meeting with Clients; Letters to Experts	4.5
3-Aug-04	Meeting with Client	0.2
3-Aug-04	Order, Telephone Call from Expert; Facsimiles; Meeting with Client	1.3
4-Aug-04	Facsimile from Opposing Counsel; Order	0.2
5-Aug-04	Orders	0.1
9-Aug-04	Order; Telephone Call with Opposing Counsel	0.3
10-Aug-04	Minute Entry; Meeting with Client	0.4
10-Aug-04	Research; Meeting with Client	1.5
12-Aug-04	Research; Meeting with Client; Demand Letter	2.0
13-Aug-04	Telephone Call with Client	0.1
16-Aug-04	Letter to Beehive	0.1
17-Aug-04	Judgment Search	0.1
19-Aug-04	Research	0.2
23-Aug-04	Telephone Call with Client	0.1
24-Aug-04	Request Transcripts; Letter to Opposing Counsel	0.4
25-Aug-04	Meeting with Client and Family	1.6

STEVENSEN 2004 HOURS

1-Sep-04	Letter to CU	0.1
7-Sep-04	Opposition Limine; Meeting with Client	0.6
13-Sep-04	Limine Reply	0.9
14-Sep-04	Limine Reply; Meeting with Client	1.0
16-Sep-04	Letter from Opposing Counsel	0.1
20-Sep-04	Limine Reply, Scheduling Stipulation; Motion for Summary Judgment	3.1
21-Sep-04	Meeting with Client	0.4
24-Sep-04	Fax from Opposing Counsel; Letter to Counsel	0.2
28-Sep-04	Meeting with Client	0.4
1-Oct-04	Letter from Opposing Counsel; Telephone Call with Client	0.1
4-Oct-04	Docket	0.1
5-Oct-04	Meeting with Client	0.2
6-Oct-04	Complaint; Letter to Opposing Counsel	0.4
12-Oct-04	Meeting with Client	0.2
20-Oct-04	Meeting with Client	0.2
26-Oct-04	Meeting with Client	0.1
26-Oct-04	Meeting with Client	0.2
4-Nov-04	Hearing; Scheduling Order; Telephone Call with Client and Opposing Counsel	1.1
5-Nov-04	Scheduling Order, Telephone Call with Client with Opposing Counsel	0.1
9-Nov-04	Telephone Call with Client and Fax from Opposing Counsel; Scheduling Order, Meeting with Client	0.6
13-Nov-04	Stipulations	3.1
16-Nov-04	Meeting with Client; Limine	0.6
23-Nov-04	Opposition Limine; Letter to Opposing Counsels	1.1
24-Nov-04	Opposition Limine	0.1
30-Nov-04	Opposition Limine; Prejudgment Interest; Motion for Summary Judgment; Telephone Call with Client	3.0
1-Dec-04	Prejudgment Interest Motion for Summary Judgment	2.2
2-Dec-04	Service of Process	0.1
6-Dec-04	Follow-up Docket	0.1
8-Dec-04	Letter from Opposing Counsel; Order	0.2
10-Dec-04	Limine Reply	0.3
14-Dec-04	Telephone Call with Client	0.1
23-Dec-04	Scheduling	0.2
31-Dec-04	Trial Preparation; Motion for Summary Judgment	6.6

TOTAL 2004 HRS. - 174.4

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STEVENSEN 2005 HOURS

3-Jan-05	Motion for Summary Judgments; Research	3.9
4-Jan-05	Watts Motion for Summary Judgment; Meeting with Client	1.4
5-Jan-05	Telephone Call from Opposing Counsel	0.1
6-Jan-05	Telephone Call with Opposing Counsel; Research	0.3
11-Jan-05	Letters to Experts	0.1
17-Jan-05	Trial Subpoenas for Watts and Liddiard	0.2
18-Jan-05	Opposition Motion for Summary Judgment; Trial Subpoenas; Meeting with Client	0.8
19-Jan-05	Opposition Motion for Summary Judgment	3.9
20-Jan-05	Motion for Summary Judgments Opposition Due	9.2
21-Jan-05	Expert Witness Updates	0.4
24-Jan-05	Opposition Motion for Summary Judgments; Letter from Opposing Counsel	0.3
27-Jan-05	Motions for Summary Judgment	0.6
28-Jan-05	Fact Stipulations; Jury Instructions; Telephone Call with Client and Court; Replies	1.4
31-Jan-05	Fact Stipulations; Jury Instructions; Motion for Summary Judgment Replies; Facsimile with Opposing Counsel	6.8
2-Feb-05	Jury Instructions; Reply	2.4
8-Feb-05	Notice; Telephone Call with Court; Resubmit; Meeting with Client	0.6
9-Feb-05	Resubmit; Docket	0.2
10-Feb-05	Facsimile from Court; Telephone Call from Opposing Counsel	0.4
11-Feb-05	Memoto Court; Memos from Opposing Counsel	1.1
14-Feb-05	Facsimile from Opposing Counsel	0.1
14-Feb-05	Submit; Facsimile with Opposing Counsel	0.2
15-Feb-05	Meeting with Client	0.2
17-Feb-05	Order; Request Scheduling	0.1
18-Feb-05	Order; Pleading from Opposing Counsel	0.2
22-Feb-05	Meeting with Client	0.3
23-Feb-05	Letters to Experts	0.1
25-Feb-05	Docket	0.1
28-Feb-05	Court	0.4
8-Mar-05	Meeting with Client	0.2
10-Mar-05	Courtesy Copies; Telephone Call with Expert; Affidavit	0.6
14-Mar-05	Affidavit; Hearing Preparation; Hearing; Meeting with Clients	5.8
17-Mar-05	Order; Telephone Calls with Clerk and Opposing Counsel and Client	1.7
22-Mar-05	Notice; Meeting with Clients	0.5
29-Mar-05	Meeting with Client	0.3
11-Apr-05	Telephone Call with Client	0.1
12-Apr-05	Meeting with Client	0.4
13-Apr-05	Scheduling Conference; Hearing Preparation; Telephone Call with Client; Order	0.7
14-Apr-05	Order; Copies to Opposing Counsel	0.2
19-Apr-05	Meeting with Client	0.6
20-Apr-05	Letter to Opposing Counsel	0.1
26-Apr-05	Meeting with Client; Letter to Opposing Counsel	0.6
29-Apr-05	Letter to Opposing Counsel; Letters to Experts; Trial Plan	0.2
2-May-05	Letters to Experts	0.1
3-May-05	Meeting with Client	0.3
11-May-05	Meeting with Client	0.9
24-May-05	Meeting with Client	0.6
27-May-05	Letter from Opposing Counsel	0.1
31-May-05	Meeting with Client	0.6
2-Jun-05	Motion Stay; Response	0.2
7-Jun-05	Opposition Stay; Meeting with Client	1.0

STEVENSEN 2005 HOURS

16-Jun-05	Opposition Stay	2.4
17-Jun-05	Opposition Stay	1.2
21-Jun-05	Meeting with Client	0.4
24-Jun-05	Docket	0.1
27-Jun-05	Reply	0.2
28-Jun-05	Submit, Meeting with Client	0.4
13-Jul-05	Meeting with Client	0.2
14-Jul-05	Docket; Resubmit	0.1
29-Jul-05	Docket	0.1
1-Aug-05	Telephone Call with Court	0.1
2-Aug-05	Meeting with Client; Telephone Call with Court; Scheduling Order	0.9
4-Aug-05	Telephone Call with Client; Notice Hearing	0.1
5-Aug-05	Notice Hearing	0.1
9-Aug-05	Meeting with Client; Scheduling Order	0.4
11-Aug-05	Meeting with Client	0.1
15-Aug-05	Hearing; Trave;' Order; Letter to Opposing Counsel	0.9
16-Aug-05	Scheduling Order; Letter to Opposing Counsels; Meeting with Client	0.8
17-Aug-05	Scheduling Order	0.1
19-Aug-05	Letter from Opposing Counsel	0.1
23-Aug-05	Meeting with Client	0.1
26-Aug-05	Fax from Opposing Counsel	0.1
29-Aug-05	Letter to Opposing Counsels; Order	0.1
30-Aug-05	Meeting with Client	0.6
6-Sep-05	Meeting with Client	0.4
12-Sep-05	Order	0.1
21-Sep-05	Meeting with Client	0.4
27-Sep-05	Stipulation; Meeting with Client; Telephone Calls with Opposing Counsel	0.9
28-Sep-05	Stipulation; Order; Telephone Call from SS	0.3
29-Sep-05	Stipulation; Faxes with Opposing Counsel	0.5
30-Sep-05	Stipulation; Faxes with Opposing Counsel	0.2
3-Oct-05	Follow up Docket regarding Stipulation; Letter to Opposing Counsel	0.3
4-Oct-05	Fax from Opposing Counsel; Meeting with Client	0.3
5-Oct-05	Letter to Expert	0.2
11-Oct-05	Meeting with Client; Telephone Call with Expert; Letter to Opposing Counsel, Letters to Experts	0.8
12-Oct-05	Letter to Opposing Counsel; Letters to Experts	0.1
19-Oct-05	Fax from Opposing Counsel; Letters to Expert and Opposing Counsel	0.1
20-Oct-05	Letters to Expert and Opposing Counsel	0.1
8-Nov-05	Telephone Call and Meeting with Client	0.1
11-Nov-05	Meeting with Client	0.2
15-Nov-05	Meeting with Client	0.2
21-Nov-05	Trial Preparation	0.2
23-Nov-05	Letters to Opposing Counsel; Meeting with Client	0.4
28-Nov-05	Letter to Opposing Counsel	0.1
1-Dec-05	Meeting with Client; Fax from Opposing Counsel	0.3
13-Dec-05	Telephone Calls with Court	0.3
21-Dec-05	Meeting with Client	0.3
23-Dec-05	Telephone Call with Court	0.1
27-Dec-05	Exhibit List; Witness List; Opposition Limine; Telephone Calls with Court	1.0

TOTAL 2005 HRS. - 69.1

STEVENSEN 2006 HOURS

3-Jan-06	Opposition Limine; Meeting with Client	0.9
10-Jan-06	Meeting with Client; Limine Reply	0.6
11-Jan-06	Letters with Opposing Counsel	0.4
13-Jan-06	Opposition Limine; Meeting with Client	0.9
16-Jan-06	Letter to Opposing Counsel	0.1
24-Jan-06	Meeting with Client; Trial Preparation; Stipulations; Letter to Opposing Counsel; Jury Instructions	6.2
25-Jan-06	Trial Preparations; Stipulations; Jury Instructions; Trial Brief	6.3
26-Jan-06	Faxes with Opposing Counsels; Subpoenas; Trial Preparations; Stipulations; Jury Instructions; Voir Dire; Trial Brief	6.1
27-Jan-06	Faxes to Opposing Counsels; Trial Preparations; Stipulations; Jury Instructions; Trial Brief	5.6
28-Jan-06	Jury Instructions	5.9
30-Jan-06	Trial Brief; Jury Instructions; Telephone Calls with Opposing Counsels; Trial Preparations	4.0
31-Jan-06	Pretrial; Trial Preparations; Meeting with Client	1.9
1-Feb-06	Trial Preparation	6.0
2-Feb-06	Trial Preparation	6.0
3-Feb-06	Meeting with Opposing Counsel; Trial Preparation	5.0
4-Feb-06	Jury Instructions; Special Verdict; Voir Dire	4.4
6-Feb-06	Jury Instructions; Special Verdict; Voir Dire; Research; Faxes Opposing Counsel; Telephone Calls Court & Opposing C	10.2
7-Feb-06	Jury Instructions, Special Verdict, Voir Dire ; Research; Faxes Opposing Counsel; Calls & E-Mail Court & Opposing Cou	12.4
10-Feb-06	Trial Preparation; Response	1.1
11-Feb-06	Trial Preparation	7.0
13-Feb-06	Trial Preparation; Trial Brief; Objections and Responses; Telephone Call with Clients with Court and Experts	8.6
14-Feb-06	Trail Preparation; Trial Brief; Opening; Meetings with SS and Client; Telephone Calls with Court and Experts and SS	7.0
16-Feb-06	Trial Preparation; Trial Brief; Telephone Calls with Court and Experts and Client	3.9
17-Feb-06	Telephone Calls with Expert, Private Investigator and Client; Trial Brief; Meeting with Client; Follow-up Data	3.8
18-Feb-06	Motions for Summary Judgment	1.6
21-Feb-06	Motions for Summary Judgment; Meeting with Client	1.1
22-Feb-05	Telephone Call and Letter to DL; Motions for Summary Judgment	0.3
23-Feb-06	Motions for Summary Judgment	2.5
27-Feb-06	Motions for Summary Judgment; Subpoena	1.5
28-Feb-05	Motions for Summary Judgment; Subpoena; Meeting w Client; Objection to JI	8.6
1-Mar-06	Motion for Summary Judgment	4.6
2-Mar-06	Motion for Summary Judgment	1.8
6-Mar-06	Records Deposition	0.1
7-Mar-06	Letter to Opposing Counsel; Motion to Quash; Meeting with Client	2.6
8-Mar-06	Motion for Summary Judgment	3.8
9-Mar-06	Opposition Motion to Quash; Motion for Summary Judgment	4.8
10-Mar-06	Opposition Motion to Quash; Motion for Summary Judgment	5.1
16-Mar-06	Letter to Opposing Counsel	0.1
20-Mar-06	Motion for Summary Judgment; Minutes	0.1
21-Mar-06	Meeting with Client	0.4
22-Mar-06	Reply Motion to Quash	0.2
24-Mar-06	Reply Compel; Submit; Motion for Summary Judgment	0.5
28-Mar-06	Reply Compel; Submit Motion for Summary Judgment; Meeting with Client	3.6
29-Mar-06	Reply Compel; Submit	0.4
4-Apr-06	Motion for Summary Judgment; Meeting with Client and Shelley Stevenson	4.8
7-Apr-06	Motion for Summary Judgment	1.8
8-Apr-06	Motion for Summary Judgment	1.0
17-Apr-06	Notice of Hearing	0.1
18-Apr-06	Meeting with Client	0.3
21-Apr-06	Motion for Summary Judgment	0.6

STEVENSEN 2006 HOURS

25-Apr-06	Motion for Summary Judgment	2.0
26-Apr-06	Motion for Summary Judgment	2.0
28-Apr-06	Motion for Summary Judgment	1.6
29-Apr-06	Motion for Summary Judgment	6.2
1-May-06	Motion for Summary Judgment	2.8
3-May-06	Motion for Summary Judgment; Research	3.8
4-May-06	Motion for Summary Judgment	6.0
5-May-06	Motion for Summary Judgment	1.0
6-May-06	Motion for Summary Judgment	1.9
8-May-06	Telephone Calls with Family; Hearing Preparation; Hearing Motion to Quash, Motion for Summary Judgment, Subpoena	6.3
9-May-06	Telephone Calls with Family and Client; Motion for Summary Judgment	6.3
10-May-06	Motion for Summary Judgment	9.8
11-May-06	Motion for Summary Judgment	4.8
12-May-06	Motion for Summary Judgment	6.0
13-May-06	Motion for Summary Judgment	6.4
15-May-06	Motion for Summary Judgment	6.3
16-May-06	Fax with Opposing Counsel	0.1
17-May-06	Subpoena	0.1
22-May-06	Letter to Opposing Counsel; Research; Motion	3.8
24-May-06	Letter to Opposing Counsel; Meeting with Client; Telephone Call with Opposing Counsel	0.7
26-May-06	Fax from Opposing Counsel	0.1
1-Jun-06	<i>Motion Contempt; Affidavits</i>	1.6
2-Jun-06	Motion Contempt; Telephone Calls with Doctors; Affidavits	0.7
5-Jun-06	Motion Contempt; Affidavits; Motion for Summary Judgment Replies; Telephone Calls with Doctors	1.6
6-Jun-06	Motion Contempt; Telephone Calls with Wood	1.0
8-Jun-06	Motion Contempt; Telephone Calls with Wood	0.7
9-Jun-06	Motion Contempt; Affidavits; Telephone Calls with Wood	0.6
12-Jun-06	Motion Contempt; Affidavits; Telephone Calls with Murray	0.4
13-Jun-06	Telephone Calls with Murray and Huish; Fax to Mariani; Meeting with Client	1.3
15-Jun-06	Opposition Motion for Summary Judgment; Replies	0.3
16-Jun-06	Opposition Motion for Summary Judgment; Reply; Telephone Call with Mariani; Subpoena; Notice Deposition	0.6
19-Jun-06	Motion for Summary Judgment Opposition; Motion for Summary Judgment Replies; Faxes with Opposing Counsel, Tele	11.4
20-Jun-06	MSJ Replies; Fax Opposing Counsel; Motion Contempt; Affidavits; Calls Mariani & Affleck; Notice Deposition; Subpoena	3.8
21-Jun-06	Motion for Summary Judgment Replies; Faxes with Opposing Counsel; Telephone Call with Affleck	3.2
22-Jun-06	Motion for Summary Judgment Replies; Meeting with Affleck	0.8
26-Jun-06	Motion for Summary Judgment Replies; Motion Contempt; Affidavit; Telephone Call with Affleck; Letters with Opposing	1.5
27-Jun-06	Motion for Summary Judgment Replies; Motion Contempt; Telephone Calls with Affleck; Letters with Opposing Counsel	3.3
28-Jun-06	Motion for Summary Judgment Replies; Telephone Calls and Meeting with Affleck; Motion Contempt	0.8
29-Jun-06	Motion for Summary Judgment Replies; Motion Contempt	1.8
30-Jun-06	Motion for Summary Judgment Replies	1.8
3-Jul-06	Motion for Summary Judgment Replies	1.4
5-Jul-06	Motion for Summary Judgment Replies; Meeting with Client	4.5
10-Jul-06	Research Replies	16.1
11-Jul-06	Supplemental Exhibits; Notice to Submit	0.4
12-Jul-06	Meeting with Client	1.4
18-Jul-06	Opposition Contempt; Limine; Reply; Opposition	2.6
19-Jul-06	Reply Contempt; Opposition Limine; Meeting with Client	1.2
20-Jul-06	Reply Contempt; Opposition Limine	2.0
21-Jul-06	Reply Contempt; Opposition Limine	3.1
25-Jul-06	Reply Contempt; Opposition Limine; Telephone Call with Court	4.4

STEVENSEN 2006 HOURS

26 Jul 06	Notice of Hearing, Opposition Limine	0 1
27-Jul-06	Pretrial, Travel, Courtesy Copies	0 8
2-Aug-06	Hearing Preparation, Opposition Limine	8 4
3-Aug-06	Hearing Preparation, Order to Show Cause, Motion for Summary Judgment Hearing, Meeting with Client	6 0
7-Aug-06	Fax from Opposing Counsel	0 1
8-Aug 06	Opening Statement, Letter from Opposing Counsel	4 4
9-Aug-06	Opening Statement	3 6
10-Aug 06	Opposition Order, Brief	0 2
11-Aug 06	Opposition Order, Letter to Opposing Counsel	0 3
14-Aug-06	Brief	4 6
15-Aug-06	Meeting with Client	0 5
16-Aug 06	Jury Instructions	0 1
17-Aug-06	E-Mail from Opposing Counsel and Court	0 3
21-Aug-06	Motion Bifurcate, Telephone Call from Opposing Counsel	0 2
22-Aug-06	Jury Instructions, Meeting with Client	1 4
23-Aug-06	E-Mail Court	0 2
24-Aug-06	Trial Preparation	4 4
25-Aug-06	Opening, Question-Answer-Exhibit Lists, Jury Exhibit Binder	4 6
28-Aug-06	Question-Answer-Exhibit Lists, Jury Exhibit Binder	6 4
29-Aug-06	Opening, Closing, Question-Answer-Exhibit Lists, Jury Exhibit Binder	4 1
30-Aug-06	Opening, Question-Answer-Exhibit Lists, Jury Exhibit Binder	3 1
1-Sep-06	Trial Preparation	4 1
5-Sep-06	Research, Opposition Bifurcate, Hearing Preparation, Trial Preparation	6 1
6 Sep-06	Hearing, Hearing Preparation, Telephone Call with Client	4 5
8-Sep-06	Motion for Summary Judgment	0 8
12-Sep-06	Meeting with Client; Motion for Summary Judgment	1 8
13-Sep-06	Motion for Summary Judgment	3 1
14-Sep-06	Motion for Summary Judgment	3 0
20-Sep-06	Order	0 1
25-Sep-06	Order, Letter to Opposing Counsel	0 8
26-Sep-06	Research, Supplemental Brief, Motion for Summary Judgment, Opposition Order, Meeting with Client	3 3
28-Sep-06	Supplemental Brief, Motion for Summary Judgment	4 0
29-Sep-06	Research, Supplemental Brief, Motion for Summary Judgment	3 2
2-Oct-06	Watts Supplemental Brief	0 6
4-Oct-06	Meeting with Client	0 5
10-Oct-06	Meeting with Client	0 6
13-Oct-06	Motion for Summary Judgment, Opposition Watts Supplement, Research	4 0
16-Oct-06	Opposition Watts Supplement, Motion Overlength Pleading, Order	3 3
18-Oct-06	Motion for Summary Judgment	3 6
19-Oct-06	Motion for Summary Judgment	1 4
20-Oct-06	Defendants' Response, Motion for Summary Judgment	2 6
23-Oct-06	Motion for Summary Judgment	0 8
25-Oct-06	Motion for Summary Judgment	4 8
31-Oct-06	Meeting with Client	0 6
6-Nov 06	Telephone Call with Client, Motion for Summary Judgment	2 3
7-Nov-06	Motion for Summary Judgment	3 1
8-Nov-06	Motion for Summary Judgment	3 3
14-Nov-06	Motion for Summary Judgment, Hearing Preparation, Meeting with Client	1 4
15-Nov-06	Hearing, Motion for Summary Judgment	3 7
16-Nov-06	Telephone Call with Client, Motion for Summary Judgment	5 0

STEVENSEN 2006 HOURS

21-Nov-06	Meeting with Client	1.0
22-Nov-06	Motion for Summary Judgment	3.4
28-Nov-06	Meeting with Client	0.6
4-Dec-06	Opposition Strike; Submit; Faxes with Opposing Counsel	0.5
5-Dec-06	Faxes from Opposing Counsel; Telephone Call with Clerk; Hearing Preparation; Telephone Conference	0.7
11-Dec-06	Notice of Hearing	0.1
13-Dec-06	Opposition Motion for Summary Judgment; Reply	2.2
14-Dec-06	Motion for Summary Judgment Reply	3.3
15-Dec-06	Motion for Summary Judgment Reply	2.2
16-Dec-06	Motion for Summary Judgment Reply	1.8
18-Dec-06	Motion for Summary Judgment Reply	3.3
19-Dec-06	Motion for Summary Judgment Reply	4.9
20-Dec-06	Hearing Preparation	0.4
21-Dec-06	Motion for Summary Judgment Hearing; Hearing Preparation	4.7
22-Dec-06	Fax from Opposing Counsel; Trial Preparation	1.1
27-Dec-06	Order; Notice of Hearing; Trial Preparation; Meeting with Client; Letters to Experts; Trial Subpoena	6.0
28-Dec-06	Trial Subpoena; Trial Preparation	5.5
29-Dec-06	Trial Preparation	3.6

TOTAL 2006 HRS. - 494.5

STEVENSEN 2007 HOURS

2-Jan-07	Trial Preparation; Meeting with Client	7.0
3-Jan-07	Trial Preparation	4.4
4-Jan-07	Trial Preparation	4.8
5-Jan-07	Trial Preparation	6.0
6-Jan-07	Trial Preparation	9.4
8-Jan-07	Trial Preparation	12.0
9-Jan-07	Trial Preparation; Meeting with Client; Fax to Opposing Counsel	7.0
10-Jan-07	Pretrial Conference; Trial Preparation; Fax to Opposing Counsel	4.0
11-Jan-07	Trial Preparation	0.6
12-Jan-07	Trial Preparation; Fax from Opposing Counsel	6.5
13-Jan-07	Trial Preparation	3.4
15-Jan-07	Trial Preparation	6.0
16-Jan-07	Trial Preparation	6.0
17-Jan-07	Trial Preparation	6.0
18-Jan-07	Telephone Call with Experts; Trial Preparation	6.6
19-Jan-07	Meeting with Kesler; Trial Preparation	6.5
22-Jan-07	Trial Preparation; Trial	18.0
23-Jan-07	Trial Preparation; Trial	17.0
24-Jan-07	Trial Preparation; Trial	18.0
25-Jan-07	Trial Preparation; Trial	18.0
26-Jan-07	Trial Preparation; Trial	15.8
27-Jan-07	Trial Preparation	8.9
29-Jan-07	Trial Preparation; Trial	14.4
30-Jan-07	Trial Preparation; Trial	14.9
31-Jan-07	Trial Preparation; Trial	8.5
01-Feb-07	Telephone Call from Client, Court and Opposing Counsel; Trial	0.6
02-Feb-07	Judgment; Motion for Interest and Costs	0.7
05-Feb-07	Telephone Call from Client and Opposing Counsel; Judgment; Motions regarding Interest and Costs	0.6
06-Feb-07	Telephone Call from Client and Opposing Counsel; Meeting with Client; Judgment; Post Judgment Motions; Research;	3.8
08-Feb-07	Letters with Expert	0.1
12-Feb-07	Judgment; Post-Trial Motions	3.8
13-Feb-07	Meeting with Client	0.1
14-Feb-07	Post Judgment Motion	0.9
15-Feb-07	Post Judgment Motion	3.3
16-Feb-07	Post Judgment Motion	2.6
26-Feb-07	Opposition Judgment; Follow-up Docket	0.7
02-Mar-07	Reply in Support of Proposed Judgment	2.9
05-Mar-07	Opposition Judgment Notwithstanding Verdict	4.1
07-Mar-07	Reply regarding Interest Costs and Fees	0.2
09-Mar-07	Reply regarding Interest Costs and Fees	2.0
12-Mar-07	Follow-up Judgment Lien	0.2
13-Mar-07	Follow-up Judgment; Meeting with Client	0.6
15-Mar-07	Abstract Judgment; Judgment Lien	0.6
16-Mar-07	Judgment Notwithstand Veridct Reply	0.3
20-Mar-07	Letter from Court; Notice of Judgment	0.2
27-Mar-07	Notice of Hearing	0.1
30-Apr-07	Hearing Preparation; Hearing; Meeting with Client	4.8
01-May-07	Order	0.6
04-May-07	Supplemental Motion; Supplemental Form	0.4
07-May-07	Meeting with Client	0.2

STEVENSEN 2007 HOURS

08-May-07 Telephone Call with Court; Supplemental Order; Objection; Response; Submit
15-May-07 Motion for Stay; Telephone Call with Opposing Counsel; Opposition to Stay
17-May-07 Letter from Opposing Counsel; Fax to Opposing Counsel; Opposition to Stay
18-May-07 Faxes with Opposing Counsel
22-May-07 Order; Meeting with Client
23-May-07 Letter to Opposing Counsel; Notice of Hearing; Telephone Call regarding Hearing Date
29-May-07 Meeting with Client
12-Jun-07 Telephone Call with Court
13-Jun-07 Notice Hearing; Meeting with Client
28-Jun-07 Meeting with Client

1.6
1.1
1.0
0.1
0.4
0.2
0.1
0.1
0.1
0.1

TOTAL 2007 HRS. - **268.9**

8515

STEVENSEN 2001-2007 SUMMARY

Stevensen Total Hrs 2001	51.9
Stevensen Total Hrs 2002	88.2
Stevensen Total Hrs 2003	200.6
Stevensen Total Hrs 2004	174.4
Stevensen Total Hrs 2005	69.1
Stevensen Total Hrs 2006	494.5
Stevensen Total Hrs 2007	268.9

GRAND TOTAL HRS. - 1347.6

Thor B. Roundy (Bar No. 6435)
Attorney for Plaintiff
448 East 400 South, Suite 100
Salt Lake City, Utah 84111
Telephone (801) 364-3229
Facsimile (801) 364-4721

FILED DISTRICT COURT
Third Judicial District
SEP 04 2007
By [Signature]
SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

STEVENSEN 3RD EAST, L.C., a Utah : **FINAL JUDGEMENT**
Limited Liability Company, :
 :
Plaintiff, : Civil No. 010904107
 :
v. : Judge Kennedy
 :
RUSSELL K. WATTS, an individual, :
R.K.W. 96, L.C. and THE CLUB :
CONDOMINIUM, L.C., Utah Limited :
Liability Companies, :
 :
Defendants. :

On August 13, 2007, the above-captioned matter came before the Honorable John Paul Kennedy for hearings as to Plaintiff Stevensen 3rd East, L.C.'s Post-Judgment Motion for Costs and Attorney Fees. Plaintiff was represented by Thor B. Roundy and defendant was represented by Dennis K. Poole and Elizabeth Evans. The issues being fully briefed and argued to the Court, including pursuant to oral argument held July 5, 2007 and April 30, 2007, and for good cause appearing, the Court enters the following Findings of Fact, Conclusions of Law and Judgment in the matter.

Final Judgment @J



JD21711900

pages:

010904107 STEVENSEN, TED

8558

FINDINGS OF FACT

1. Sufficient evidence of liability and damages was introduced at trial to support the verdict returned by the jury in this action.

2. Plaintiff has incurred taxable costs in this action in the sum of \$2,723.20, consisting of the filing fee of \$170.00, service of process fees of \$329.50, witness fees of \$36.50, and deposition costs of \$2,187.20, as set forth in the Affidavit of Thor B. Roundy as to Costs, Expenses and Attorney Fees, dated February 16, 2007 (the "Affidavit of Thor B. Roundy"). Said costs are reasonable and were necessary to the prosecution of this action.

3. Based on Trial Exhibit no. 28, as stipulated by the parties, the date upon which the last condominium unit was sold by The Club Condominium, L.C. was November 6, 2002.

4. All sums payable to plaintiff Stevensen 3rd East, L.C., upon which the verdict of the jury was based, should have been paid no later than December 1, 2002.

5. Interest on the sum of \$474,000 at the rate of 10% per annum from December 1, 2002 through February 13, 2007 is \$199,317.

6. Based on the jury's finding that Russell K. Watts breached his fiduciary duties by a standard gross negligence or willful misconduct, Russell K. Watts should have foreseen that plaintiff would incur attorney fees and expenses in the prosecution of an action for breach of fiduciary duty at the time that Russell K. Watts entered into his relationship with plaintiff as the manager of The Club Condominium, L.C.

7. The attorney fees and litigation expenses incurred in this action were the reasonably foreseeable consequences of the breach of fiduciary duty of Russell K. Watts in this action.

8. Plaintiff incurred litigation expenses for expert witness fees, as set forth in the Affidavit of Thor B. Roundy, and expert witnesses fees in the amount of \$2,950 as to Henry Kesler, \$9,760 as to Lynn Larsen, and \$24,000 as to Michael Teuscher were reasonable and necessary to the prosecution of this action given the nature and complexity of the evidence presented to the jury.

9. Plaintiff incurred litigation expenses in this action consisting of copy charges paid to Litigators Overnight, Dennis Poole, Liddle & Waite and Kinkos, and charges in the amount of \$8,400 were reasonable and necessary to the prosecution of this action given the nature and complexity of the evidence presented to the jury.

10. Plaintiff's counsel spent 1,347.6 hours in the prosecution of this action from January 10, 2001 through June 30, 2007, as set forth in the Affidavit of Thor B. Roundy. The work performed by plaintiff's counsel was extremely detailed, complicated and laborious, and properly reflected the nature of the case. The work was reasonable and necessary in terms of the ultimate outcome of the case. The evidence and issues in the case were complex. Plaintiff prevailed substantially in the case, and the claims upon which plaintiff prevailed at trial reflected a successful strategy despite the fact that some overlapping theories of damages were dismissed or dropped. For the most part, all of plaintiff's claims had some merit and related to damages amount awarded by the jury at trial. Notwithstanding the foregoing, the issue of the lis pendens that was addressed prior to trial, the time spent in mediation or settlement discussion, and some of the time which proved unsuccessful in pretrial motions is not appropriately included in the Court's determination of an appropriate attorneys fee award. Likewise, the Court does not

consider the contingency fee arrangement between plaintiff and its counsel to be the guiding factor in determining the value of the work performed.

11. Plaintiff's counsel's regular hourly billing rate of \$200 per hour is consistent with the fees customarily billed by attorney's in Salt Lake County, Utah and reasonable in this instance. Plaintiff's counsel's responsibilities in the above-captioned action required counsel to decline other work that was available to him during the course of the action.

12. Based on the foregoing findings concerning the relevant factors in this case, the amount of attorney fees that were reasonably incurred and awardable against Russell K. Watts in this action is \$226,400.

CONCLUSIONS OF LAW

1. Plaintiff is entitled to taxable costs pursuant to Utah Rules of Civil Procedure, Rule 54.

2. Plaintiff is entitled to prejudgment interest at the legal rate of ten percent per annum, pursuant to the standard set forth in Fell v. Union Pacific Railway Co., 88 P. 1003 (Utah 1907) and the provisions of Utah Code Ann., Section 15-1-1(2) (2002), from the date of December 1, 2002 through February 13, 2007.

3. Plaintiff is entitled to reasonable attorney fees and expenses of litigation as consequential damages against Russell K. Watts under the specific facts of this case. The Court further holds that The Club Condominium, L.C., on the basis of its present assets, is jointly and severally liable for the attorneys fees awarded in paragraph 12. above

ORDER AND FINAL JUDGMENT

1. Defendant's Motion for Judgment Notwithstanding the Verdict is hereby DENIED.

2. Plaintiff's Post-Judgment Motion for Interest, Costs and Attorney Fees is hereby GRANTED, and the following amounts are awarded as against defendant Russell K. Watts, in addition to the principle sum of \$474,000 established by the Judgment on Special Verdict of the Jury, executed February 13, 2007, and post-judgment interest thereon from that date:

- a. Plaintiff is hereby awarded taxable costs in the amount of \$2,723.20.
- b. Plaintiff is hereby awarded prejudgment interest in the amount of \$199,317.
- c. Plaintiff is hereby awarded expert witness fees in the sum of 36,710.00.
- d. Plaintiff is hereby awarded photocopy expenses in the amount of \$8,400.
- e. Plaintiff is hereby awarded attorney's fees in the amount of \$226,400.

3. Based on the foregoing, the principle sum of the judgment against defendant Russell K. Watts in favor of plaintiff Stevensen 3rd East, L.C., not including any post-judgment interest accrued to date, is \$947,550.20.

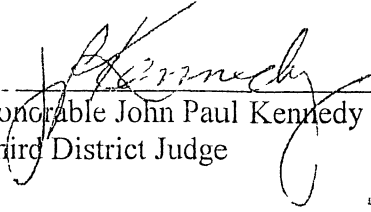
4. The additional sums awarded pursuant to paragraphs 2.a through 2.e., above, shall bear post-judgment interest at the legal rate from the date of execution by the Court, below.

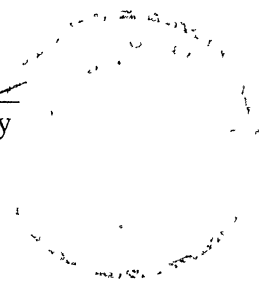
5. Plaintiff shall be entitled to costs and reasonable attorneys fees incurred in any effort to collect the judgment set forth herein.

6. Defendant's motion for Stay of Execution is GRANTED. The letter of credit referenced in the Stipulation and Order, dated May 25, 2007, shall include as a condition of payment that appeal (if any) in this matter has been decided by the applicable appellate court, and that the time for any further appeal in this action (including any request for certiorari or motion for reconsideration) shall have expired, or on such other terms as the matter may be remitted by the applicable appellate court.

DATED this ^{September} 7 day of ~~August~~, 2007.

BY THE COURT:


Honorable John Paul Kennedy
Third District Judge




Certificate of Service

I hereby certify that I caused to be hand-delivered a true and correct copy of the foregoing Final Judgment, this 13 day of August, 2007, to the following:

Dennis K. Poole
POOLE SULLIVAN & ADAMS, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107

I hereby certify that I caused to be mailed a true and correct copy of the foregoing Final Judgment, by United States mail, first class, postage prepaid, this 13 day of August, 2007, to the following:

James R. Blakesley
1305 N. Commerce Drive, Suite 230
Saratoga Springs, Utah 84045



ADDENDUM NO. C-10

FILED
CLERK OF COURT
17 SEP 17 PM 3:32
J. M. BULLOCK
CLERK OF COURT

DENNIS K POOLE (2625)
ELIZABETH M. EVANS (7256)
POOLE & ASSOCIATES, L.C.
Attorneys for Defendants Russell K.
Watts and R.K.W. 96, L.C.
4543 South 700 East, Suite 200
Salt Lake City, Utah 84107
Telephone: (801) 263-3344
Telecopier: (801) 263-1010

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

STEVENSEN 3RD EAST, L.C., a Utah
limited liability company,

Plaintiffs,

vs.

RUSSELL K. WATTS, an individual,
R.K.W. 96, L.C. and THE CLUB
CONDOMINIUM, L.C., Utah limited
liability companies, and John Does
1-100,

Defendants.

NOTICE OF APPEAL

CIVIL NO. 010904107


JUDGE JOHN PAUL KENNEDY

Notice is hereby given that Defendant and Appellant Russell K. Watts ("Mr. Watts")
by and through his attorneys, Dennis K. Poole and Elizabeth Evans, and pursuant to Rule
4 of the Utah Rules of Appellate Procedure, hereby appeals to the Utah Supreme Court
the Final Judgment entered in this matter on September 4, 2007. The appeal is taken from

85121

the entire judgment against him, including, but not necessarily limited to: 1) the jury award entered against him in the amount of \$474,000.00 in favor of the Plaintiff Stevensen 3rd East, L.C. ("3rd East"); 2) the award of taxable costs; 3) the award of prejudgment interest; 4) the award of expert witness fees; 5) the award of photocopy expenses; 6) the award of attorney's fees; and 7) all of the jury instructions, rulings, and orders issued by the District Court.

DATED this 17 day of September, 2007.

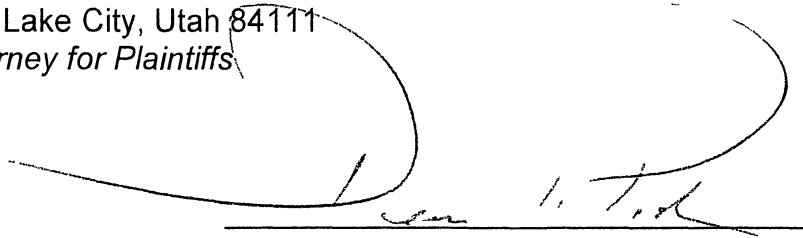
A handwritten signature in black ink, appearing to read "Dennis K. Poole", written over a horizontal line.

DENNIS K. POOLE
POOLE & ASSOCIATES, L.C.
Attorneys for Defendants
Russell K. Watts and R.K.W. 96, L.C.

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the above and foregoing NOTICE OF APPEAL in Case No 010904107 was sent by U.S. mail, postage prepaid, the 17 day of September, 2007, to the following:

Thor B. Roundy, Esq.
THOR B. ROUNDY, P.C.
448 East 400 South, Suite 100
Salt Lake City, Utah 84111
Attorney for Plaintiffs

A handwritten signature in black ink, appearing to read "Thor B. Roundy", is written over a horizontal line. The signature is stylized and includes a large loop.

OPERATING AGREEMENT
FOR
THE CLUB CONDOMINIUM, L.C.

THIS OPERATING AGREEMENT (this "Agreement") is made and entered into as of 9 August, 1996 by and among R.K.W. 96, L.L.C., a Utah limited liability company ("Watts"), and STEVENSEN 3RD EAST L.C., a Utah limited liability company ("Stevensen") (collectively, the "Members"), who desire to form a limited liability company pursuant to the laws of the State of Utah. Accordingly, in consideration of the mutual covenants contained herein, the Members agree and certify as follows:

ARTICLE I
THE LIMITED LIABILITY COMPANY

1.1 **Formation; Applicability of the Act.** The Members hereby form a limited liability company (the "Company") pursuant to the provisions of the Utah Limited Liability Company Act as currently or hereinafter in effect in the State of Utah (the "Act"). On any matter upon which this Agreement is silent, the Act shall control. No provision of this Agreement shall be in violation of the Act and to the extent any provision of this Agreement is in violation of the Act, such provision shall be void and of no effect.

1.2 **Filing.** In connection with the execution of this Agreement, the Members shall cause Articles of Organization that comply with the requirements of the Act to be properly filed with the Division of Corporations and Commercial Code of the Utah Department of Commerce, and shall execute such further documents and instruments and take such further action as is appropriate to comply with the requirements of law for the formation and operation of a limited liability company in all states and counties where the Company may conduct its business.

1.3 **Registered Office; Registered Agent.** The street address of the initial registered office of the Company is 5200 South Highland Dr., SLC, UT 84117, and thereafter at such other location as the Members may designate. The name of the Company's registered agent at such address is Russell K. Watts.

1.4 **Principal Place of Business.** The location of the principal place of business of the Company shall be at 5200 South Highland Dr., SLC, UT 84117, or at such other place as the Members from time to time may determine.

ARTICLE II
NAME OF THE COMPANY

The name of the Company shall be THE CLUB CONDOMINIUM, L.C.

ARTICLE III
TERM

3.1 **Term of the Company.** The Company shall commence on the date of the filing of the Articles of Organization with the Secretary of State of the State of Utah and shall be dissolved 30 years from such date, provided that the Company shall be dissolved prior to such date upon the occurrence of any of the following events:

- a. upon the unanimous vote of all the members;
- b. any event that makes it unlawful for the business of the Company to be carried on by the Members;
- c. the death, retirement, resignation, expulsion, bankruptcy, incapacity or dissolution of a Member or the occurrence of any other event that terminates the continued eligibility for membership of a Member in the Company; or
- d. any other event causing a dissolution of a limited liability company under the Act.

3.2 **Continuance of the Company.** Notwithstanding the foregoing, upon the occurrence of an event of dissolution as described above, the Company shall not terminate or dissolve but shall continue if the remaining Members unanimously elect to continue the business of the Company within 90 days following such event. Otherwise, the Company shall dissolve and wind up its affairs and the assets of the Company shall be distributed pursuant to Article XI of this Agreement. For the purposes of this Article, bankruptcy shall include a general assignment for the benefit of creditors. The successors in interest of any Member whose death, retirement, resignation, expulsion, bankruptcy, incapacity or dissolution might cause a dissolution of the Company shall become substituted Members of the Company only if they first consent in writing to be bound by the provisions of this Agreement, and then only if the remaining Members unanimously consent in writing to such substitution. Without such consent, the successors in interest shall be treated as unauthorized assignees.

ARTICLE IV
PURPOSE OF COMPANY

4.1 The sole purpose of the Company is the acquisition, development, ownership, management, sale and/or leasing of the real property legally described on Exhibit A (the "Property"), and other related business within the State of Utah. In connection therewith, and as Company expenses, (1) Watts shall receive a development fee equal to 10% of the total Project costs for managing the development of the Project, (2) the Company shall hire The Watts Corporation, an affiliate of Watts, or its designee to act as the general contractor for the construction of all improvements erected in connection with the development of the Property (the "Project"), for which such general contractor shall be paid its normal and customary fees charged on an arms-length basis to third parties for similar services, and (3) the Company shall hire Kevin

Watts as the architect and designer for the Project, for which he shall be paid his normal and customary fees charged on an arms-length basis to third parties for similar services. The nature and scope of the Project are described on Exhibit B, which also contains the preliminary budget for the Project. Neither the scope and nature of the Project nor such budget shall be subject to change unless such change is agreed to in writing by the holders of a majority of the Interests (as defined below) and both Watts and Stevensen.

ARTICLE V
NAMES AND RESIDENCES OF MEMBERS

The name and place of residence of each Member of the Company are as follows:

R. K. W. 96, L. L.C., 5200 So Highland Dr , SLC, UT 84117

STEVENSEN 3RD EAST L.C., 895 G Donner Circle, SLC, UT 84108

ARTICLE VI
CAPITAL CONTRIBUTIONS

6.1 Contributions to Capital. The initial capital contributions of the respective Members and the respective initial interests of the Members in the capital of the Company (the "Interests") are set forth on Exhibit C. Stevensen shall promptly contribute the Property to the Company. The Members agree that such contribution shall be valued at \$670,000.00 (a gross value of \$770,000.00, less \$100,000.00 in existing encumbrances). Watts agrees to contribute an estimated \$631,100.00 to the Company, to consist of the following, after which all contributions of operating funds shall be made on a pro-rata basis in accordance with the respective Interests: the 10% development fee described above, currently estimated to be \$451,000.00; \$100,000.00 to pay off existing encumbrances against the Property as described in Article XIII; and \$80,000.00. The Members shall endeavor to obtain one or more loans to cover all operating costs to the greatest extent possible, and both Watts and Stevensen shall sign whatever documents may be reasonably necessary to obtain such financing, including any required personal guarantees. If and to the extent any Member fails to contribute its share of necessary operating costs, the other Member may advance the same, and such advance shall be treated as a loan to the Borrowing Member bearing interest at a rate 2% in excess of the nationally prevailing prime rate (or equivalent) in effect from time to time while such loan is outstanding, which loan (including the interest thereon) shall be repaid out of the Borrowing Member's first shares of profits accrued until repaid in full. It is also agreed that Stevensen shall receive a ~~loan~~ from the Company against his share of profits in the form of an interest-free draw in the amount of \$5,000.00 per month, which shall be repaid from Stevensen's share of profits as they accrue.

2/10/99

ATS CORP.
771,693.

EVSENIAN
200,000.

W. 96
326,000

W 94
140,000

W 00
0

DEAN (RW) [initials]

6.2 Interest on Contributions. No interest shall be paid on the initial contributions to the capital of the Company or on any subsequent capital contributions made by the Members.

6.3 Withdrawal of Capital. No withdrawals of the Company capital will be permitted except on the affirmative vote of those Members holding a majority of the Interests.

ARTICLE VII
CAPITAL ACCOUNTS; DRAWING ACCOUNTS

7.1 **Capital Accounts.** An individual capital account shall be maintained for each Member. Each Member's capital account shall consist of his initial capital contribution to the Company, increased by (1) his additional contributions to capital (other than the contributions Watts is obligated to make as described in Section 6.1), and (2) his share of Company profits transferred to capital, and decreased by (a) distributions to him in reduction of his Company capital, and (b) his share of Company losses, if transferred from his drawing account. Notwithstanding the foregoing or the fact that the balances in said capital accounts may change from time to time, the respective Interests of the members shall not be subject to change unless agreed to in writing by the Members.

7.2 **Drawing Accounts.** An individual drawing account shall be maintained for each Member. All withdrawals made by a Member shall be charged to his drawing account. Each Member's share of profits and losses shall be credited or charged to his drawing account.

7.3 **Distribution of Profits.** If the Manger determines that any portion of the credit balances in the Members' drawing accounts should be retained for the reasonable needs of the business, such portion shall be retained in the Company. The Members shall endeavor to establish and maintain a \$25,000.00 reserve fund during the first two years of Company operations. Any portion of the Members' drawing accounts which is not so retained for the reasonable needs of the business, shall be distributed to the Members in accordance with their respective Interests no less often than annually.

7.4 **Transfers from Drawing Accounts to Capital Accounts.** The Members may transfer all or part of any credit balances or debit balances in the Members' drawing accounts to the Members' capital accounts at any time, provided the transfers are made proportionately to each Member's Interest.

ARTICLE VIII
PROFITS AND LOSSES

8.1 **Allocation of Profits and Losses.** The net profits and net losses of the Company shall be credited or charged to the Members at the end of each fiscal year of the Company in accordance with the respective Interests.

8.2 **Liability of Members.** No Member shall be personally liable for any of the losses of the Company beyond its Interest.

8.3 **Interim Rents.** 75% of Interim rents from the Property (i.e., until project construction begins) shall be distributed to Stevensen as an advance against its share of profits. The remainder shall be maintained in a tax reserve account.

ARTICLE IX
ACCOUNTING FOR THE COMPANY

9.1 **Accounting Methods; Fiscal Year.** The Company shall keep its accounting records and shall report for income tax purposes on an accrual basis. The fiscal year of the Company, both for accounting and tax reporting purposes, shall be the calendar year.

ARTICLE X
MANAGEMENT OF THE LIMITED COMPANY

10.1 **Management of the Company.** The Company shall be managed by a manager (the "Manager"), who shall be Russell K. Watts. If Ted Stevensen ever ceases to actively manage Stevensen for any reason, the appointment of Russell K. Watts, which is coupled with an interest, shall be irrevocable and Russell K. Watts shall then have sole management authority in all respects over the Company. If Russell K. Watts shall ever cease to manage the Company while Stevensen is the owner of at least 25% thereof, Ted Stevensen and Kevin Watts shall jointly succeed as Manager.

10.2 **Tax Matters Member.** The Tax Matters Member shall be the Manager. The Tax Matters Member shall have the following rights and duties: (1) to provide the Internal Revenue Service any or all information which is within the knowledge of the Tax Matters Member as to the organization operations and/or liquidation of the Company; (2) to adjust, arbitrate, negotiate, compromise, sue or defend, abandon or otherwise deal with and settle any and all federal tax matters or claims in favor of or against the Members and the Company as the Tax Matters Member shall deem proper; and (3) do all other things which may be permitted or required of tax matters partners pursuant to Internal Revenue Code Sections 6221 through 6232 as amended.

10.3 **Bank Accounts.** The Manager shall maintain checking or other accounts in such bank or banks as he shall determine and all funds received by the Company shall be deposited therein. Withdrawals shall be made on such funds as may be designated by the Manager from time to time, provided that all checks shall require the signatures of both Stevensen and Watts.

10.4 **Brokerage.** Stevensen shall have the right to participate in the marketing of the project, and shall receive a customary commission for any units Stevensen sells. Stevensen agrees, however, that the Manager will be primarily responsible for marketing decisions and strategy, and agrees to operate within such marketing plans and guidelines as the Manager may implement from time to time.

ARTICLE XI
LIQUIDATION

11.1 **Events Causing Liquidation.** The Company shall be dissolved and terminated when any one or more of the following occurs:

- a. The term of the Company expires;
- b. The Members unanimously vote to dissolve the Company; or
- c. Subject to the provisions of Article III, there is a death, retirement, resignation, expulsion, dissolution, incapacity or bankruptcy of a Member

11.2 **Method of Liquidation.** Upon any such dissolution and termination of this Company, the Company shall immediately commence to wind up its affairs. The remaining Members shall act as liquidators. The liquidators shall have full power and authority to sell, assign and encumber any or all of the Company's assets and to wind up and liquidate the Company's business, assets and affairs in an orderly and prudent manner.

11.3 **Settlement Upon Dissolution.** The Members shall continue to share profits and losses during the period of liquidation in the same proportions as before dissolution. Any gain or loss in disposition of the Company properties in the process of liquidation shall be credited or charged to the Members in the ratio of their Interests. The proceeds from the liquidation shall be applied in the following order:

- a. To creditors of the Company, including Members who are creditors of the Company;
- b. To Members in respect to their share of any undrawn profits; and
- c. To Members in respect to their contributions to the capital of the Company

11.4 **Distribution in Kind.** If the liquidators shall determine that a portion of the Company's assets should be distributed in kind to the Members, the liquidators shall distribute such assets to the Members in undivided interests as tenants-in-common in proportion to the Members' Sharing Ratios.

11.5 **Completion of Dissolution.** Upon the completion of the distribution of the Company assets, the Company shall be terminated and the Members shall cause the Company to execute Articles of Dissolution and take such other actions as may be necessary or appropriate to terminate the Company.

ARTICLE XII
MISCELLANEOUS

12.1 **Notices.** Any notices to or between the Members shall be in writing and shall be sent registered mail, return receipt requested, to the address of each Member as the same appears in the books and records of the Company. Notice shall be deemed to be received on the earlier of the day actually received or the fifth day after being deposited in the United States mail as above described.

12.2 **Amendment of Agreement.** This Agreement may be amended, altered, supplemented, or modified by the majority vote of the Members, provided that no provision of this Agreement requiring a decision to be made or action to be taken upon the unanimous vote or agreement of the Members may be amended to allow a decision to be made or action to be taken upon the vote or agreement of less than all of the Members.

12.3 **Invalidity.** If any part of this Agreement is or shall be invalid or unenforceable for any reason, the same shall be deemed severable from the remainder hereof, and shall in no way affect or impair the validity of this Agreement, or any other portion thereof.

12.4 **Gender.** The masculine includes the feminine and the neuter, the singular includes the plural, and vice versa, as the context may require.

12.5 **Execution of Further Instruments.** The Members shall cooperate with each other in good faith to accomplish the objectives and purposes hereof and to that end, from time to time, they shall make, execute, and deliver such other and further instruments as may be necessary or convenient in the fulfillment of this Agreement.

12.6 **Headings.** The headings of this Agreement are included solely for convenience of reference and shall not be construed as limiting or in any other way modifying the text of the Agreement.

12.7 **Agreement to be Binding.** This Agreement is the entire agreement between the Members regarding the Property and/or the Project, and completely supersedes all other agreements related thereto, including the Agreement/Statement of Understanding dated 11/23/95 between Ted Stevensen and Russell K. Watts. This Agreement shall be governed by the laws of the State of Utah and shall inure to the benefit of and shall be binding upon each of the Members and their respective personal representatives, executors, heirs, successors, and assigns (including successors and assigns by operation of law and involuntary event, as well as by voluntary act).

ARTICLE XIII
CONDITION PRECEDENT

This Agreement is subject to Watts receiving acceptable evidence, in its sole discretion, that upon payment of back taxes of approximately \$50,000 and payment to First Interstate Bank of

indebtedness of approximately \$50,000, both of which are secured against the Property, Ted Stevensen will be discharged from bankruptcy and the Property will be free and clear of all liens and claims. Upon such determination by Watts, Watts shall deposit \$100,000.00 into escrow with Bryan B. Todd, Esq., to be applied to the satisfaction of the above listed debts upon full discharge thereof and of all other current claims that could reasonably affect the Property, and the payment thereof shall constitute a capital contribution on the part of Watts under Section 6.1 hereof. In addition, if any liens not consented to in writing by Watts, other than those securing the two \$50,000 obligations specified above, are determined by Watts to affect the Property at any time (or if the liens specified above are determined to secure debts in excess of \$100,000), Watts shall have the right to pay off and release the same, and all funds expended in so doing shall be treated as a loan to Stevensen (in addition to any other loans under this Agreement) bearing interest at a rate 2% in excess of the nationally prevailing prime rate (or equivalent) in effect from time to time while such loan is outstanding, which loan (including the interest thereon) shall be repaid out of Stevensen's first shares of profits accrued until repaid in full.

ARTICLE XIV BUY-SELL PROVISIONS

14.1 **Restriction Against Transfer.** No Member shall transfer all or any part of its Interest at any time except in accordance with the provisions of this Article. Any purported transfer in violation thereof shall be void and shall not transfer all or any part of any Interest. Any Member may, however, transfer any or all of its Interest to a trust or entity that is and remains controlled by such Member without any prior consent or approval as long as the transferring Member is the only representative of the transferee for purposes of participating in the management of the Company, but such transferred Interest shall remain subject to all the terms and provisions of this Agreement and shall be treated as if it continued to be owned by the Member personally.

14.2 **Right of First Refusal.** In the event any Member shall at any time desire to transfer all or any of its Interest (a "Subject Interest"), other than by a transfer permitted under Section 14.1, such Member (the "Transferor") shall give written notice thereof (the "Offer Notice") to the other Member (the "Optionee"), and the Optionee shall have the first right and option to purchase the Subject Interest. The Offer Notice shall set forth a description of the proposed transfer, including the name of the proposed transferee, the nature and amount of the Subject Interest, and the purchase price and any other terms and conditions of the proposed transfer. If the Optionee exercises such option to purchase the Subject Interest, the purchase price and terms of sale for the Subject Interest shall be the same as those set forth in the Offer Notice. If and to the extent any consideration to be received by the Transferor for the Subject Interest pursuant to the Offer Notice is property other than cash, the price of the Subject Interest set forth in the Offer Notice shall be measured to such extent by the value of such non-cash consideration and shall be the sum of (1) the fair market value of any non-cash consideration offered for the Subject Interest, plus (2) the value of any special benefits to the Transferor of receiving such non-cash consideration to the extent that such value can be reasonably identified and evaluated, plus (3) the amount of any expense or cost (including additional taxes) saved by the Transferor in accepting non-cash consideration, in each case based upon a realistic appraisal of such non-cash consideration, special benefits, expense or cost, as agreed upon by the Transferor and the

Optionee, as the case may be, or, if no agreement can be reached, as determined by the averaged appraisals of two independent qualified appraisers, one being selected by the Transferor and the other by the Optionee. If the Optionee does not exercise its right to purchase the Subject Interest within 30 days after receiving an Option Notice, the Transferor, within a period of 90 days from the expiration of the Exercise Period, may transfer the Subject Interest as proposed in the Offer Notice; provided that unless the remaining Members consent in writing to allow the transferee to participate in the management of the affected Company, the transferee shall have no right to participate in the management of said Company and shall be entitled only to participate in the profits and losses thereof, and returns of contributions therefrom; and provided further that any person acquiring the Subject Interest must, as a condition of such acquisition, agree to be bound by the provisions of this Agreement.

14.3. **Buy Out.**

a. **Offer.** Any Member (the "Offeror") may at any time make a firm offer (the "Offer") to the other Member (the "Offeree") to purchase all of the Offeree's Interest. The Offer shall be in writing and shall set forth the purchase price per Interest and the terms for payment thereof.

b. **Acceptance/Rejection.** The Offeree shall have a period of 30 days from receipt of the Offer within which to elect in writing to purchase the Offeror's Interest at the same price per Interest and upon the same terms as are contained in the Offer. If the Offeree does not elect to purchase the Interest of the Offeror, all of the Offerees shall be deemed to have elected to sell their Interests to the Offeror in accordance with the Offer.

c. **Closing.** The closing of any sale and purchase pursuant to this Section shall take place within 30 days after the end of the Offeree's 30 day election period described above.

14.4 **Necessary Documents.** If, pursuant to this Article, the Interest of any Member is purchased, the Member selling such Interest (or the legal representatives of any deceased or disabled Member) shall execute and deliver all necessary documents that may reasonably be required to accomplish the transfer of such Interest.

14.5 **New Members.** Any Interest transferred in contravention of this Article, by operation of law or otherwise, shall remain subject to the provisions of this Article, which shall be binding on any transferee.

14.6 **Specific Performance.** The Members agree that it is impossible to measure in money the damages which will accrue to a party hereto or to its personal representative by reason of the failure by any party or personal representative of such party to perform any of its obligations under this Article. Therefore, any party aggrieved by the breach or threatened breach of any of the provisions hereof shall be entitled to seek from any court of competent jurisdiction an order for specific performance of all the terms and conditions hereof, and the defendant or defendants in any such action or proceeding hereby waive the claim or defense that the plaintiff is not entitled to

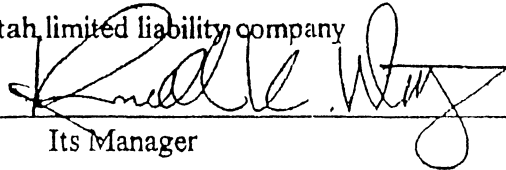
the remedy of specific performance, and such defendant or defendants shall not raise such claim or defense in any such action or proceeding

IN WITNESS WHEREOF, the Members have executed this Agreement as of the date first appearing above.

MEMBERS:

R.K.W. 96, L.L.C.,

a Utah limited liability company

By:  _____
Its Manager

STEVENSEN 3RD EAST L.C.,

a Utah limited liability company

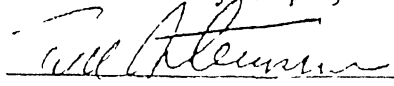
By:  _____
Its Manager

EXHIBIT C

MEMBER:	CONTRIBUTION:	INTEREST:
R.K.W. 96, L.L.C.	\$50 00	50%
STEVENSEN 3RD EAST L.C.	\$50 00	50%

ADDENDUM NO. D-2

WATTS CORPORATION
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR

where the basis of payment is the
COST OF THE WORK PLUS A FEE

1997 EDITION

AGREEMENT

Made as of the Fifteenth day of June in the year of Nineteen Hundred and Ninety Seven.

BETWEEN the Owner: The Club L.C.
5200 South Highland Drive, Suite 101
Salt Lake City, UT 84117

and the Contractor: Watts Corporation
5200 South Highland Drive, Suite 101
Salt Lake City, UT 84117

the Project is: The Club Condominiums

the Architect is: Kevin Watts Architects
5200 South Highland Drive, Suite 100
Salt Lake City, UT 84117

The Owner and the Contractor agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

- 1.1 The Contract Documents consist of this Agreement, Conditions of the Contract, Drawings, Specifications, Owners Finish Schedule, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 16.

ARTICLE 2

THE WORK OF THIS CONTRACT

- 2.1 The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

a) This contract excludes any unforeseen ground conditions, including subsurface water, rock, or unstable material. A soil engineer will inspect the site and make recommendation that the Contractor will consult with the Owner about. Adjustments of cost on subsurface conditions will be approved by the Owner.

ARTICLE 3

RELATIONSHIP OF THE PARTIES

- 3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to utilize the Contractor's best skill, efforts, and judgment in furthering the interest of the Owner, to furnish efficient business administration and supervision, to make best efforts to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with requirements of the Contract Documents.
- 3.2 The Owner is to provide property Builders All-Risk Insurance and Owner usual liability insurance. The Owner may opt to have the contractor provide the All-Risk Insurance.
-

- 3.3 The Contractor will provide the following insurance:
- A) Liability insurance for contractors' employees.
 - B) Workman's Compensation Insurance for contractors' employees.
 - C) Personal injury liability insurance for contractors' employees.
 - D) Vehicle insurance for contractors' vehicles.
- 3.4 Certificates of Insurance acceptable to the Owner shall be filed with the owner prior to commencement of the work.

ARTICLE 4

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 4.1 The date of commencement is the date from which the Contract Time of Subparagraph 4.2 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

The construction work will begin 10 days after the building permit is issued.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

- 4.2 The Contractor shall achieve Substantial Completion of the entire Work not later than 15 months after commencement date, subject to adjustment of this Contract Time as provided in the Contract Documents. The Contract Time will be extended in an amount equal to time lost due to Owner changes and delays beyond the control of the Contractor. Such delays shall include, but not be restricted to acts of neglect by any separate contractor employed by Owner, fires, flood, labor, disputes, abnormal weather conditions or Acts of God. Extension of time will also be allowed for any scheduling delays caused by any contractor or supplier in the employment of the Owner.

ARTICLE 5

CONTRACT SUM

- 5.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Contractor's Fee determined as follows:

8% of Cost of Work as defined in Article 7.

ARTICLE 6
CHANGES IN THE WORK

- 6.1 Increased costs for the items set forth in Article 7 which result from changes in the Work shall become part of the Cost of the Work, and the Contractor's Fee shall be adjusted as provided in Paragraph 5.1. The Owner shall be notified by the use of a budget tracker concerning all changes to the Contract Sum.

ARTICLE 7
COSTS TO BE REIMBURSED

- 7.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.
- 7.1.1 LABOR COSTS
- 7.1.1.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- 7.1.1.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site are as follows:
- | | | |
|------------|----------|----------|
| Supervisor | \$ 28.50 | Per Hour |
| Laborer | \$ 15.50 | Per Hour |
- 7.1.1.3 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law, or collective bargaining agreements.
- 7.1.2 SUBCONTRACT COSTS
- 7.1.2.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.
- 7.1.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION
- 7.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- 7.1.3.2 Costs of materials described in the preceding Clause 7.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work

- 7.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- 7.1.3.2 Costs of materials described in the preceding Clause 7.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.
- 7.1.4 **COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**
 - 7.1.4.1 Costs of temporary facilities, machinery, equipment, and hand tools not customarily owned by the contractor, which are provided by the Contractor at the site and fully consumed in the performance of the Work.
 - 7.1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the contractor, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
 - 7.1.4.3 Costs of removal of debris from the site.
 - 7.1.4.4 Costs of telephone service at the site and reasonable petty cash expenses of the site office.
 - 7.1.4.5 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.
- 7.1.5 **MISCELLANEOUS COSTS**
 - 7.1.5.1 That portion directly attributable to this Contract of premiums for Builders Risk and Liability insurance and bonds, if so desired by the Owner.
 - 7.1.5.2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Contractor is liable.
 - 7.1.5.3 Municipal Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required to pay.
 - 7.1.5.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or non-conforming Work.
- 7.1.6 **CHANGE ORDERS**

- 7.1.6.1 Change Orders incurred in the performance of the Work if and to the extent approved by the Owner.

ARTICLE 8

COSTS NOT TO BE REIMBURSED

- 8.1 The Cost of the Work shall not include:
- 8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Clauses 7.1.1.2 and 7.1.1.3 or as may be provided in Article 14.
- 8.1.2 Expenses of the Contractor's principal office.
- 8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.
- 8.1.4 Costs due to the fault or negligence of the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 8.1.5 Any cost not specifically and expressly described in Article 7.

ARTICLE 9

DISCOUNTS, REBATES, AND REFUNDS

- 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.
- 9.2 Amounts which accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10

SUBCONTRACTS AND OTHER AGREEMENTS

- 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain bids from subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner and Contractor will then determine which bids will be accepted. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

ARTICLE 11

ACCOUNTING RECORDS

- 11.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment.

ARTICLE 12

PROGRESS PAYMENTS

- 12.1 Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.
- 12.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- 12.3 Provided an Application for Payment is received by the Owner not later than the Fifteenth day of a month, the Owner shall make payment to the Contractor no later than the Twentieth day of the month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than seven days after the Owner receives the Application for Payment.

- 12.4 With each Application for Payment the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee, plus (3) payrolls for the period covered by the present Application for Payment, plus (4) retainage provided in Subparagraph 12.7.1, if any, applicable to prior progress payments

ARTICLE 13

FINAL PAYMENT

- 13.1 The Owner shall make the final payment to the Contractor before taking occupancy of the residence with a retention amount to be determined and agreed upon based on the project completion list.
- 13.2 The amount of the final payment shall be calculated as follows:
- 13.2.1 Take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee
- 13.2.2 Subtract the aggregate of previous payments made by the Owner.
- 13.3 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or non-conforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment

ARTICLE 14

MISCELLANEOUS PROVISIONS

- 14.1 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate of 12%
- 14.2 Lien Releases will be provided to the Owner at each draw period from the previous draw to verify all subcontractor and suppliers of material payments

ARTICLE 15

TERMINATION OR SUSPENSION

- 15.1 The Contract may be terminated by the Contractor on the following basis
 - 15.1.1 If the work is stopped for 30 days by no fault of the Contractor or Subcontractor.
 - 15.1.2 If the Owner fails to make a payment 30 days after it is due.
 - 15.1.3 If repeated suspensions, delays, interruptions or non-communication by the Owner prevents the orderly execution of the work by the Contractor.
 - 15.1.4 If one of the above reasons exists, the Contractor will provide written notice of termination and recover from the Owner payment for work executed, including overhead and profit.
- 15.2 The Owner may terminate the contract if the Contractor
 - 15.2.1 Fails to supply properly skilled workers or proper material.
 - 15.2.2 Fails to make payment to subcontractors and suppliers.
 - 15.2.3 Disregards laws, ordinances, regulations of the public authorities.
 - 15.2.4 Fails to comply with any provision of the contract documents.
- 15.3 Arbitration - Controversies and Claims Subject to Arbitration.

any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction.

ARTICLE 16

ENUMERATION OF CONTRACT DOCUMENTS

- 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:
 - 16.1.1 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
----------	-------	-------

16.1.3 The Drawings are as follows, and are dated _____ unless a different date is shown below
or they list the Drawings here or refer to an exhibit attached to this agreement

Number	Title	Date
--------	-------	------

16.1.4 The Addenda, if any, are as follows

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16

16.1.7 Other Documents, if any, forming part of the Contract Documents are as follows

- 1 Homeowner Selection List dated June 25, 1997.
- 2 Construction Budget dated June 25, 1997

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies of which one is to be delivered to the Contractor, and the other to the Owner

OWNER

CONTRACTOR

[Signature]
(SIGNATURE)

WATTS CORPORATION [Signature]
(SIGNATURE)

The Club LLC
(PRINTED NAME AND TITLE)

RUSSELL K. WATTS
(PRINTED NAME AND TITLE)



AIA Document B141

Standard Form of Agreement Between Owner and Architect

1987 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.*

AGREEMENT

made as of the Thirtieth day of April in the year of
Nineteen Hundred and Ninety-seven.

BETWEEN the Owner:

(Name and address)

The Club L.C.
5200 South Highland Drive
Salt Lake City, UT 84117

and the Architect:

(Name and address)

Kevin Watts Architects/Planners
5200 South Highland Drive
Salt Lake City, UT 84117

For the following Project:

(Include detailed description of Project, location, address and scope.)

(49) units with one, two, and three bedroom units, lobby,
storage, covered parking, and courtyard.

The Owner and Architect agree as set forth below.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program,

schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent shall not be unreasonably withheld

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on site inspections to check the quality or quantity of the Work. On the basis of on site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. *(More extensive site representation may be agreed to as an Additional Service, as described in Paragraph 3.2.)*

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and the quality of Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on site inspections to check the quality or

quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.17 The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.19 The Architect's decisions on claims, disputes or other matters, including those in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Contract Documents in effect as of the date of this Agreement, unless

3.2.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in Drawings, Specifications or other documents when such revisions are

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or other studies of project areas.

- 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.4.5 Providing services relative to future facilities, systems and equipment.
- 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.
- 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.
- 3.4.10 Providing detailed estimates of Construction Cost.
- 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.4.12 Providing analyses of owning and operating costs.
- 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.4.14 Providing services for planning tenant or rental spaces.
- 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.
- 3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.
- 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

4.7 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of price in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

1. give written approval of an increase in such fixed limit.
2. authorize rebuilding or negotiating of the Project within a reasonable time.

3. if the Project is abandoned, terminate in accordance with Paragraph 8.3, or

4. cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Architect's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

ARTICLE 7 MEDIATION

7.5.1 The parties shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Demand for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

- .2 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase, or
- .3 Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damage, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos product, polychlorinated biphenyl (PCB) or other toxic substances.

9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

8.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7.

8.7 Termination Expenses are in addition to compensation for Basic and Additional Services and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

- 1 Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the pre-design, site analysis or Schematic Design Phases, or

the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

ARTICLE 10

PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

10.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

10.2.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

10.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

10.2.1.4 Expense of renderings, models and mock-ups requested by the Owner.

10.2.1.5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.

10.2.1.6 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the base mutually established in Subparagraph 11.3.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of _____ Dollars shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

Architects to be paid on an hourly basis. (See Section 11.3.1)

11.2.2 Monthly progress payments based on the amount of the work completed to date shall be made. This percentage shall not exceed 85% of the total fee until after the Construction Documents are complete; thereafter upon completion of Bidding and Negotiation, an additional 5% will be billed. Equal monthly progress payments during the construction phase will total the final 10% of the fee.

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

Principal	\$95/hr.
Senior Architect	\$75/hr.
Architect	\$55/hr.
Draftsman	\$45/hr.

11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Additional Services, but excluding services of consultants, compensation shall be computed as follows:

See Article 11.3.1

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one point fifteen (1.15) times the amounts billed to the Architects for such services.

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point fifteen (1.15) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

11.5 ADDITIONAL PROVISIONS

11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within twelve (12) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

11.5.2 Payments are due and payable ten (10) days from the date of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of interest agreed upon.)

12%

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations of the Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

11.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect

ARTICLE 12
OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the Basic Compensation included in this Agreement.)

12.2.1

Owner and Architect agree that in the event of any claim against Architect, or the Architect's consultants, agents or employees (herein collectively referred to as "Service Providers"), including but not limited to claims for breach of this Agreement, acts or omissions constituting negligence, or other claims by Owner against the Service Providers, excluding, however, claims for wilful and/or malicious conduct, damages arising from such claims would be difficult, impossible, and/or costly to determine. Consequently the parties have elected to agree that in the event that Owner successfully establishes a claim against the Service Providers or any of them, they shall not be jointly, severally or individually liable to Owner for damages in excess of a liquidated damage amount equal to the lesser of (i) the compensation to be paid to Architect under the terms of this Agreement, or (ii) the sum of \$50,000.00 which liquidated damage amount constitutes a reasonable forecast of any damages which an Owner would suffer if such claims are successfully established.

12.3 HARD COPIES

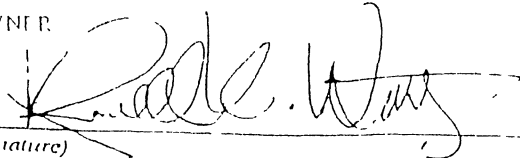
12.3.1 The Architect will furnish to the Owner fifteen (15) sets of blueline prints and eight (8) Project Manual books in the contract fee. Additional sets and books requested will be billed as a reimbursable expense.

12.4 LITIGATION

12.4.1 In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's fees and other related expenses.

This Agreement entered into as of the day and year first written above

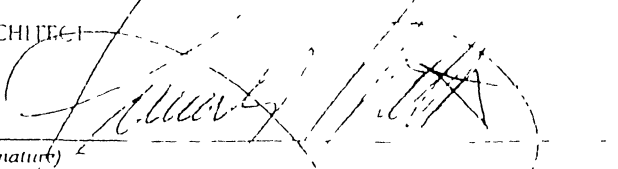
OWNER



(Signature)

The Club L.C., Russ Watts, Mgr.
(Printed name and title)

ARCHITECT



(Signature)

Kevin Watts, Principal
(Printed name and title)

ADDENDUM NO. D-4

A COMPLETE SELF-CONTAINED
APPRAISAL ON THE

THE CLUB CONDOMINIUMS
Proposed 47-Unit Condominium Project

LOCATED AT APPROXIMATELY
150 South 300 East
Salt Lake City, Utah

DATE OF APPRAISAL
February 18, 1997 ("As Is" Valuation)
February 18, 1998 (Projected Date of Completion)

REPORT # 181-97-C

PREPARED FOR

Mr. Richard A. Koldewyn
Vice President
US Bancorp Appraisal Division
921 S. Las Vegas Blvd.
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PREPARED BY

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March 13, 1997

Mr. Richard A. Koldewyn
Vice President
US Bancorp Appraisal Division
921 S. Las Vegas Blvd.
Las Vegas, NV 89101

RE: A complete appraisal in a self-contained appraisal report on a proposed 47 unit condominium development located at 150 South 300 East in Salt Lake City, Utah, to be known as The Club Condominiums.

Dear Mr. Koldewyn:

At your request, we have personally inspected the 0.786 total acres located in Salt Lake City, Utah, from which a 47-unit condominium project will be developed.

The gross sellout and bulk sale value of the project have been determined, as well as the "as is" value of the entire 0.786 acre site. A detailed description of the land and surrounding area, as well as the basis of valuation, are found in the following appraisal report.

We have conducted the investigation and analysis necessary to form an opinion of the market value on the above referenced property. The purpose of this report is to appraise the real estate property only and not the personal property items. The values estimated and concluded in this report do not include personal property items, business value, or goodwill associated with the business. The intended use and function of this appraisal is for financing purposes.

As per your request, the appraisal report has been prepared in a manner to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards of the Appraisal Foundation. The appraisal report has also been prepared in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the revisions of June 7, 1994 (FIRREA); the regulations adopted by the Office of the Comptroller of the Currency pursuant to Title XI, including, without limitations, the appendix thereto consisting of excerpts from the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Foundation, and the Appraisal Guidelines of US Bancorp.

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It is noted that the subject parcel has asbestos contamination. The cost of cleanup is estimated by the developer at \$90,000. However, an environmental study has not been made available to us at this time.

In the Valuation Process, the Cost Approach and Income Approach were expanded to determine the market value estimate. The Sales Comparison Approach was not included due to the lack of data regarding bulk sales of condominium projects. A detailed Highest and Best Use analysis has been performed to determine the appropriate method of valuation for this property considering zoning, size, location, and other pertinent factors regarding the property.

After careful consideration of the information contained within this report, we are of the opinion that the "as is" value of the 0.786 acre subject parcel, herein described in fee simple title, as of February 18, 1997, which was the date of inspection, is:

\$685,000

"SIX HUNDRED EIGHTY-FIVE THOUSAND DOLLARS"

After careful consideration of the information contained within this report, we are of the opinion that the Aggregate Retail Value of the proposed 47 condominium units, herein described in fee simple title, as of February 18, 1998, which is the projected date of completion, is:

\$8,160,000 (Not Market Value as Defined)

"EIGHT MILLION ONE HUNDRED SIXTY THOUSAND DOLLARS"

After careful consideration of the information contained within this report, we are of the opinion that the wholesale market value of the proposed 47 condominium units, together with the proposed improvements as if completed, herein described in fee simple title, as of February 18, 1998, which is the projected date of completion is:

\$6,495,000 (Bulk Sale Value)

"SIX MILLION FOUR HUNDRED NINETY-FIVE THOUSAND DOLLARS"

This letter of transmittal is not to be misconstrued as a complete and self-contained appraisal report, but merely indicates the final value estimate developed in the following narrative report. The following appraisal report provides supporting data, assumptions, and justifications for our final value conclusions.

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The appraisal is completed subject to the general assumptions and limiting conditions which are found at the conclusion of this report. The values concluded in this report are subject to the successful completion of the improvements according to the plans and specifications provided to the appraiser. If you have any further questions regarding this assignment, please feel free to call.

Respectfully submitted,

Gary R. Free, MAI, SRA

Roland D. Robison, Appraiser

RDR/rtj

SUMMARY OF IMPORTANT CONCLUSIONS

SUBJECT:	The Club Condominiums, a 47-unit proposed condominium development
LOCATION:	Approximately 150 South 300 East, Salt Lake City, Utah
HIGHEST AND BEST USE:	Condominium Development
ZONING:	R-MU (Residential Mixed Use)
OWNER OF RECORD:	Club Condominiums LC
PARCEL NUMBER:	16-06-177-007, 003, 004, and 008
APPRAISED INTEREST:	Fee Simple Title
DATE OF VALUATION:	February 18, 1997
DATE OF REPORT:	March 13, 1997
PROJECTED DATE OF COMPLETION:	February 18, 1998
VALUATION CONCLUSIONS:	
"As Is" Value of Subject Land:	\$ 685,000
Cost Approach:	\$ 6,755,000
Aggregate Retail Value:	\$ 8,160,000 (Not market value as defined)
Income Approach (Bulk Sale):	\$ 6,495,000 (Discounted value considering absorption time and holding costs)
MARKETING/EXPOSURE PERIOD:	
Bulk Sale:	Six months

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IDENTIFICATION OF THE PROPERTY

The locational address of the subject is approximately 150 South 300 East, Salt Lake City, Utah. According to the Salt Lake County Recorder's Office, the subject property is comprised of parcels #16-06-177-007, 003, 004, and 008, and consists of approximately 0.786 acres. It should be noted that a legal description for the property was not provided to the appraisers. This appraisal report is contingent on the 0.786 acres remaining the same if a future survey is performed.

PURPOSE AND USE OF THE APPRAISAL

The purpose of the appraisal is to estimate the wholesale, or "bulk sale" value of the proposed development as well as the "as is" market value. The projected date of completion of the proposed improvements is February 18, 1998. The intended use of the appraisal is for financing or investment purposes.

SCOPE OF THE APPRAISAL ASSIGNMENT

After receiving the appraisal assignment, a preliminary search of all available resources was made to determine market trends, influences, and other significant factors pertaining to the subject property. A physical inspection of the parcel was made on February 18, 1997, by Roland Robison. Gary Free inspected the property on a later date. Although due diligence was exercised while at the subject, the appraisers are not experts in such matters as pest control, hazardous waste, etc., and no warranty is given as to these elements. As needed, inspections by professionals within these fields might be recommended, with the final estimate of value being contingent on their findings. It is noted that the subject property suffers from asbestos contamination in the existing structure. The developer has allocated \$90,000 for cleanup and has indicated that this should be more than adequate. However, to our knowledge, an environmental analysis has not been conducted to assess the cost. We recommend that this be done prior to closing.

We have researched the *CERCLIS* publication, published by the Utah Division of Environmental Health, and found that no hazardous waste sites are located within one mile of the subject.

We have performed an extensive investigation of real estate transactions in the Salt Lake County marketplace for valuation of the subject property. Our search included, but was not limited to, talking with local property owners, city and county officials, brokers, appraisers, and developers. Each of the sales were verified by a responsible party. We have expanded the Cost Approach and Income Approach for the valuation. The Sales Comparison Approach was not expanded, due to a lack of reliable information.

The information and analysis has been prepared in a narrative format and is intended to comply with the current Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Foundation as of July 1, 1994, except that the Departure Provision of the USPAP does not apply. In addition, the report is prepared in conformance with the appraisal reporting guidelines and standards of Title XI of FIRREA (Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the revisions of June 7, 1994), and Appraisal Guidelines of US Bancorp. Understanding that Utah is a non-disclosure state, information used in this report is as reliable as practical.

DEFINITION OF MARKET VALUE

"MARKET VALUE" as used in this report is defined as follows:

"The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and each acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."¹

DEFINITION OF "AS IS" PREMISE

The definition of "AS IS" as used in this report is based on the following:

"Market Value "as is" on appraisal date means an estimated of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications, as of the date the appraisal is prepared."²

¹ *Federal Register*, Volume 55, Number 163, (August 22, 1990), 34228 and 34229; also quoted in the Definitions section of the *Uniform Standards of Professional Appraisal Practice*, 1996 ed., and *The Appraisal of Real Estate*, 11th ed. (Chicago: Appraisal Institute, 1996), 23.

² Appraisal Policies and Practices of Insured Institutions and Service Corporations, Federal Home Loan Bank Board, *Final Rule*, 12 CFR Parts 563 and 571, December 21, 1987.

PROSPECTIVE FUTURE VALUE UPON COMPLETION OF CONSTRUCTION PREMISE

This definition is as follows:

"Prospective future value upon completion of construction means the prospective future value of a property on the date that construction is completed, based upon market conditions forecast to exist as of that completion date."³

The "prospective future value upon completion" premise assumes that all assumptions are in place as of a future date.

BULK OR WHOLESALE PREMISE

This definition is as follows:

"Bulk or wholesale market value is the value of the property typically consisting of multiple parcels, as if sold to a single buyer. It is not the sum of the retail value."

DATE OF APPRAISAL

The date of the appraisal is February 18, 1997, which was the date of inspection. The date of the report or completion date of the appraisal is March 7, 1997.

Based on input from local developers, such as Lear Thorpe of Fort Union Management and Kelly Shepard of Village Communities, we have estimated construction time for the condominium project at 12 months. As such, the prospective future value upon completion is projected as of February 18, 1998. Based on current market activity, values are projected to be relatively stable in the foreseeable future. Hence, values are projected to be at least as high as the date of inspection, but not necessarily higher.

STATEMENT OF OWNERSHIP

According to the Salt Lake County Assessor's Office, the ownership of the subject parcels is vested in the name of Club Condominiums LC.

³ Ibid.

PROPERTY RIGHTS APPRAISED

The appraisal is based on the property rights being in fee simple estate.

Fee Simple Estate

A fee simple estate is defined as:

"Absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."⁴

⁴ Appraisal Institute, *The Appraisal of Real Estate*, 11th ed., (Chicago: Appraisal Institute, 1996), 137.

AREA ANALYSIS WITH REGIONAL AND CITY DATA

The subject property is located in northern Utah within the official boundaries of Salt Lake County. The metropolitan area of Salt Lake County is the largest population, transportation, and business center in the state of Utah. Salt Lake County physically encompasses an area which extends 33 miles along Interstate 15 from Bountiful City on the north to Draper City on the south. The elevation varies from 4,200 to 5,200 feet above sea level with Salt Lake City having an official elevation of 4,330.35 feet.

Servicing the Salt Lake region are three major railroads, an international airport, a public bus system, and numerous interstate trucking and transport service companies. The metropolitan Salt Lake region is significantly affected by the environmental considerations (location), and also by the fact that the state has a high birth rate. In analyzing the general area of the subject property, four primary forces which influence real estate value and use will be discussed in detail. The four forces are: 1) Social, 2) Economic, 3) Governmental, and 4) Environmental Considerations.

Social Considerations

Population

Salt Lake County encompasses the Salt Lake metropolitan area and had a 1995 U.S. Census Bureau population estimate of 806,000, which was about 41 percent of the state of Utah population estimate of 1,959,000. The chart on the following page shows the 1994 Census of major population centers of the state of Utah. According to the Utah Office of Planning and Budget, 1995 population estimates are not yet available on a city basis due to disagreements between local agencies and the U.S. Census regarding methodologies. Hence, as of 1994, three of the five largest cities in the state (Salt Lake, West Valley, and Sandy) are located in Salt Lake County.

MAJOR POPULATION CENTERS IN UTAH	
City	1994 Census Estimate
Salt Lake City	171,849
West Valley City	94,663
Provo	88,519
Sandy City	85,406
Orem	74,402
Ogden	67,763
West Jordan	49,979
Layton	49,200
Bountiful	37,076
Source: 1994 Bureau of the Census Population Estimates, <i>Utah Data Guide</i> , October 1995, Volume 14, Number 4.	

Salt Lake County and the state of Utah have always shown an increase in population above prior years that is also higher than the national average. According to the Utah State Director of Demographic and Economic Analysis, Utah has the second highest birth rate in the nation with 20.9 births per 1,000, which is considerably higher than the 15.6 national average. Due to this, Utah has one of the youngest populations with a median age estimated at 24.2 years. The Salt Lake metropolitan area also has a reported average life span of 75.76 years, which is the fourth longest life span for a metropolitan area in the United States. Although Utah experienced an out-migration of people from 1986 to 1989, due to a sluggish economy, the high birth rate more than offset the out-migration. The high birth rate and longer life span have contributed to a strong and stable population growth rate.

Growth Rates

Salt Lake County has increased in population every year since 1970 increasing from 619,066 in 1980 to 806,000 in 1995.⁵ The 1995 county population estimate represents a rate of

⁵ 1994 Bureau of the Census Population Estimates, *Utah Date Guide*, (Oct. 1995), Vol. 14, No. 1.

2.03 percent per year. This compares very favorably with a national growth rate that has averaged less than 1.0 percent recently. The 1996 *Economic Report to the Governor* projected that Salt Lake County's population will grow by 69,246 people by the year 2000, for an average of 13,849 per year. With an average household of about 3.1, this translates to 4,467 new household per year.

The city of Salt Lake actually declined in population from 163,034 in 1980 to 159,936 in 1990, but has since risen steadily to its present population of 171,849, showing a resurgence back into the metropolitan area. The following chart demonstrates the strong growth rate of some of the major cities located within Salt Lake County boundaries:

SALT LAKE COUNTY POPULATION DATA					
City or County	1970 Census	1980 Census	1990 Census	1994 Census	90-94 % Change
SALT LAKE COUNTY	458,607	619,066	729,048	795,340	+9.1
Salt Lake City	175,885	163,034	160,405	171,849	+7.1
West Valley City	N/A	72,509	87,386	94,663	+8.3
Sandy	6,438	52,210	75,714	85,406	+12.8
West Jordan	4,221	27,327	43,220	49,979	+15.6
Murray	21,206	25,750	31,426	33,361	+6.2
Midvale	7,840	10,146	11,905	12,083	+1.5
South Jordan	2,942	7,492	12,314	16,911	+37.3
Riverton	2,820	7,032	11,324	14,404	+27.2
Draper	N/A	5,521	7,128	8,611	+20.8
Bluffdale	N/A	1,300	2,172	2,989	+37.6
Alta	93	381	395	396	+0.3
Unincorporated	229,352	235,951	275,482	293,493	+6.5

Source: 1994 Bureau of the Census Population Estimates, *Utah Data Guide*, (Oct. 1995), Vol. 14, No. 1.

Based on historical statistics and future projections, Salt Lake County is expected to have an average annual growth rate of over 2.0 percent for the rest of the decade, which is more than double the projected national growth rate estimate of 0.6 percent for the same time period.⁶

Education

Utah is a national leader among states in the education attainment of its population. According to the *Utah Facts Book*, Utah ranks among the highest in the nation in median years of schooling completed for adults, second in the nation in percent of heads of household that have completed high school, and highest in the nation in regards to the total population (94 percent) 18 years of age or more that are literate.⁷ This has created a local work force that is better educated than the national average and is a positive benefit to companies relocating to the area. There are currently six four-year universities and six two-year level colleges in the state. The University of Utah, located in Salt Lake City, has an estimated annual enrollment of 25,425 and is known for its medical school and research in the medical profession. Brigham Young University is the largest private institution of higher education in the United States, with an estimated annual enrollment of 31,900 students and is located only 45 miles south of Salt Lake City.

Overall, the local area has a well educated work force which is a factor that has contributed to the growth and economic base of the area. This is considered a positive influence on real estate values and is also a contributing factor for future economic growth in the region.

⁶ Utah Office of Planning and Budget, Demographic and Economic Analysis, *Utah Data Guide*, (December 1989), Volume 8, Number 4, 7.

⁷ Utah Department of Community and Economic Development, *Utah Facts Book*, (1992 - 1993), 7.

Crime

Based on the 1990 crime statistics compiled by the U.S. Department of Justice and published in the document, *Crime In The United States*, the Salt Lake area is near the national average for overall crime per 100,000 residents. According to the publication, Utah had a total crime rate for 1990 of 5,659.9 per 100,000 residents, versus 5,820.3 per 100,000 as a national average. The Salt Lake City region and state of Utah, however, are much lower than the United States average for violent crime. The document, *Crime In The United States*, indicates that the general Salt Lake City/Ogden area had considerably less violent crime during 1990 compared to the nation as a whole. There were 374.5 violent crimes committed per 100,000 residents in the Salt Lake City/Ogden area, versus 731.8 per 100,000 for the United States as a whole. When comparing neighboring states, Utah also ranks among the lowest for this category. A comparison is as follows:

State	Violent Crime Rate Per 100,000 Residents (1990)
Idaho	275.7
Montana	159.3
Colorado	526.0
California	1,045.2
Nevada	600.9
Utah	283.9
U.S.	731.8
Source: Crime In The United States	

Overall, the Salt Lake metropolitan area has major crime problems similar to other cities, but has considerably less violent crime. The statistics indicate that the subject's general area

location is not negatively impacted by crime, when comparison is made with other sections of the United States.

Housing

Single family building permits in Salt Lake County since 1990 have been as follows:

SINGLE FAMILY BUILDING PERMITS		
Year	Building Permits	Increase/Decrease
1990	2,178	+15.5%
1991	3,047	+39.9%
1992	3,831	+25.7%
1993	4,510	+17.7%
1994	4,447	- 1.4%
1995	4,909	+10.4%

Source: University of Utah BEBR

Large inventories of subdivision building lots, as well as vacant homes and apartments, characterized Salt Lake County's residential markets as of the beginning of this decade. However, due to strong economic growth in recent years and the resulting in-migration, this market condition has reversed dramatically.

Gary Free and Associates conducts an extensive physical inventory of building lots and new home inventories on a quarterly basis. This information is compiled in a report entitled *Decision Systems*, which is published each quarter. According to the second quarter 1996 report, vacant lot inventories in Salt Lake County totaled 6,628 as of June 30, 1996, compared to 5,413 as of the same date in 1995, for an increase of 22.5 percent.

In spite of the fact that this represents a significant increase, inventories are considered to be relatively lean, based on the fact that approximately half of these inventories were reported

as being sold and new homes in Salt Lake County are absorbed at the rate of nearly 5,000 per year. Speculative building is relatively scarce with only 211 unoccupied new homes observed.

Apartment Market

The multifamily market has been very strong over the past few years and continues to report very low vacancy rates in spite of recent increases in production levels.

The production of multifamily building permits are reported as follows:

MULTIFAMILY BUILDING PERMITS		
Year	Building Permits	Increase/Decrease
1990	246	+89.0%
1991	153	- 37.8%
1992	163	+6.5%
1993	1,626	+897.55%
1994	1,268	- 22.0%
1996	2,392	+88.6%

Source: University of Utah BEBR

Economic Considerations

The Salt Lake County metropolitan area has both favorable and unfavorable economic considerations. Of particular note is the fact that in past years, Utah (including Salt Lake County) has had one of the lowest per capita personal income levels in the nation. However, in recent years this trend has begun to change significantly, with Utah ranking within the top five personal income growth states in the nation.

Income Levels

According to the Utah Department of Employment Security, Salt Lake County's 1995 per capita personal income at \$20,700, was higher than the statewide average of \$18,223. Utah County's personal per capita income was lower at \$15,800. This can partially be explained by the fact that Utah's household size is larger than the national average, with a concomitantly younger population, and costs of living are generally lower. As a result, even though the per capita income is lower than the national average, the standard of living is not significantly different. In fact, many workers value the quality of life in Utah enough to forego higher monetary rewards elsewhere.

Personal income for the four Wasatch Front counties is summarized on the following table:

PERSONAL PER CAPITA INCOME BY COUNTY				
Year	Salt Lake	Utah	Weber	Davis
1986	\$12,216	\$8,636	\$12,209	\$11,044
1987	\$12,722	\$8,981	\$12,778	\$11,352
1988	\$13,374	\$10,340	\$13,600	\$11,367
1989	\$14,467	\$10,487	\$14,275	\$12,533
1990	\$15,520	\$11,592	\$15,085	\$14,217
1991	\$16,121	\$12,467	\$15,709	\$14,792
1992	\$17,200	\$12,921	\$16,467	\$15,069
1993	\$18,070	\$13,401	\$16,984	\$15,651
1994	\$19,300	\$14,200	\$17,800	\$16,100
1995	\$18,223	\$15,800	\$18,400	\$17,100

Source: Utah Department of Employment Security, 1995, Labor Market Information

According to the January 1996 *Economic Report to the Governor* prepared by the Utah Office of Planning and Budget, the near term outlook for Utah is for continued high performance in personal income growth.

According to the *Utah Data Guide*, Personal Income Growth for Utah and the United States are as follows:

Description	1992 - 93	1993 - 94	1994 - 95	Projected 1995 - 96
United States	4.4%	5.3%	5.3%	5.5%
Utah	7.6%	7.7%	9.5%	8.0%
Source: Utah Office of Planning and Budget				

Utah's higher growth rates in this statistic will have a positive influence on Salt Lake County's housing market due to the increased purchasing power of its residents. According to Mr. Ken Jenson of the Utah Department of Employment Security, the Median Household Income in Salt Lake County, as of the 1990 Census, was \$30,150 per year. Applying the above income growth percentages, current Median Household Income would be in the area of \$44,000 per year.

Employment

The state's employment base is fairly well diversified with the majority of jobs found in the service, trade, government, and manufacturing sectors. The following chart, obtained from the Utah Office of Planning and Budget, shows the percentage of employment for the various Utah industry sectors since 1980 and includes projections to the year 2010.

**STATE OF UTAH
TOTAL EMPLOYMENT BY INDUSTRY**

Year	Agriculture	Mining	Constr	Manu- facturing	TCPU (1)	Trade	FIRE (2)	Services	Govt	Non-Farm Proprietors	Total Employment	Total Wage And Salary
1980 Number Of Jobs % Of Total	21,966 3.6%	18,500 3.0%	31,549 5.1%	87,700 14.2%	34,120 5.5%	128,678 20.8%	25,768 4.2%	102,232 16.6%	122,240 19.8%	44,626 7.2%	617,379 100.0%	550,787
1987 Number Of Jobs % Of Total	21,972 2.8%	7,997 1.0%	26,676 3.4%	92,456 11.8%	37,890 4.8%	152,550 19.5%	33,751 4.3%	154,806 19.9%	137,503 17.6%	116,478 14.9%	782,079 100.0%	643,629
1990 Number Of Jobs % Of Total	22,100 2.6%	8,000 1.0%	26,700 3.2%	104,000 12.4%	41,800 5.0%	165,700 19.7%	35,700 4.3%	174,100 20.6%	142,400 17.0%	119,000 14.2%	839,500 100.0%	698,200
1995 Number Of Jobs % Of Total	22,500 2.4%	9,000 1.0%	30,200 3.3%	117,800 12.8%	47,200 5.1%	185,800 20.1%	40,000 4.3%	201,400 21.8%	146,600 15.9%	123,200 13.3%	923,700 100.0%	778,000
2000 Number Of Jobs % Of Total	22,900 2.3%	9,700 1.0%	33,800 3.4%	130,400 13.0%	51,800 5.2%	204,600 20.3%	44,000 4.4%	224,800 22.3%	149,500 14.8%	133,700 13.3%	1,005,200 100.0%	848,500
2005 Number Of Jobs % Of Total	23,200 2.1%	10,500 0.9%	37,900 3.4%	144,400 13.0%	56,700 5.1%	227,700 20.6%	48,900 4.4%	250,100 22.6%	158,800 14.4%	147,500 13.3%	1,105,700 100.0%	935,100
2010 Number Of Jobs % Of Total	23,600 1.9%	11,500 0.9%	42,500 3.5%	160,100 13.1%	62,200 5.1%	255,100 20.8%	54,900 4.5%	277,800 22.7%	173,100 14.1%	164,200 13.4%	1,225,000 100.0%	1,037,100
Average Annual Growth	0.0%	-13.0%	-2.8%	0.9%	1.8%	2.9%	4.6%	7.2%	2.0%	17.3%	4.0%	
1980 - 1987	0.3%	1.5%	2.0%	2.3%	2.1%	2.2%	2.0%	2.5%	1.0%	1.4%	1.9%	
1986 - 2010												

(1) Transportation, Communication, Public Utilities

(2) Finance, Insurance, Real Estate

Source: 1980 - 1987, Utah Department of Employment Security and U.S. Bureau of Economic Analysis
1990 - 2010, Utah Office of Planning and Budget, UPED Model

Agriculture and mining represent only a small portion of the total Utah industry employment and are expected to decrease in total job numbers for the next 19 years. The service sector employed the most people in 1995 and is projected to continue to be a major growth sector in the future. The trade sector is also projected to be a major growth industry in the future, while government services are projected to decline from a 1990 industry share of 17 percent to only 14.1 percent in the year 2010. The employment projections are considered a positive influence for Salt Lake County's real estate markets.

The largest employers in the general Salt Lake region are as follows:

LARGEST EMPLOYERS IN THE SALT LAKE CITY METROPOLITAN AREA	
Employers	Number of Employees
University of Utah (Inc. Hospital)	15,000
Granite School District	7,500
Jordan School District	7,000
Utah Social Services	5,500
Smith's Food and Drug	5,500
US Post Office	5,000
Matrixx Marketing	4,500
Salt Lake County	4,500
Delta Air Lines	4,500
Albertsons	4,500
ZCMI	4,000
Wal-Mart	4,000
Salt Lake School District	3,500
K-Mart	3,000
Pacific Corporation (Utah Power & Light)	3,000

Employers	Number of Employees
US West Communications	3,000
LDS Hospital	3,000
Salt Lake City Corporation	2,500
Shopko Stores	2,500
Sears and Roebuck	2,500
FHP of Utah	2,500
Healthtrust, Inc.	2,500
JC Penney Company	2,500
First Security Bank of Utah	2,500
Hercules (Alliant Techsystems)	2,500
Kennecott Mining	2,500
Unisys Defense Systems	2,000
Unibase Data Entry	2,000
Zions First National Bank	2,000
United Parcel Service	2,000
Utah State Corrections	2,000
Primary Children's Medical Center	2,000
Salt Lake Community College	2,000
Fred Meyer, Inc.	2,000
American Express	2,000
Source: Utah Department of Employment Security, 1995.	

As can be seen by the chart, the Salt Lake metropolitan area has a broad-based economy that does not depend on any primary employers or industries whose stability and profitability could cause a negative shift in jobs or unemployment. The largest employment site in the county is the central business district of Salt Lake City.

According to the most recent report of the Utah Department of Employment Security (December 1996), the Salt Lake County unemployment rate is 2.6 percent, the Utah State rate is 3.1 percent, and the national estimate is 5.1 percent. The Salt Lake County unemployment rate is typically lower than the national average, indicating stability in employment and job growth. According to *State Rankings 1995*, from the US Department of Labor, Utah was ranked second in the nation for annual job growth in 1995 at 5.87 percent. This contributes to stability in the local population and in the value of local residential and commercial real estate properties.

Real Estate - Retail Market

Overall, Salt Lake County has a healthy retail market. According to discussions with various real estate agents that specialize in retail real estate sales and leasing, there is currently a vacancy factor that ranges in the area of 5 percent in the general Salt Lake area. According to Consolidated Realty Group, the total retail base in June 1996 was 18,735,065± square feet. The net vacancy rate for 1996 was 5.98 percent or 1,120,551 square feet which is 3 percent less than the net vacancy rate for 1993 of 7.14 percent. Many "Big Box" retailers constructed new buildings in 1993 and 1994 which were absorbed. Consolidated Realty Group estimates that there was more than 3,000,000 square feet of new retail space planned for 1994 and 1995. The overall outlook for retail or commercial space is for continued demand and decreasing vacancy.

Real Estate - Office Market

According to CB Commercial, a commercial real estate sales and management company in the Salt Lake area, vacancy rates for office buildings in the Salt Lake Valley, as of July 1996, were as follows:

Downtown Vacancy	= 6.58%
Suburban Vacancy	= 4.90%
Total Vacancy	= 5.81%

The office market has improved dramatically within the past few years and occupancy rates are increasing at a rapid rate for good quality buildings. Overall Downtown space leased for \$13.20 per square foot while Suburban space leased for \$13.18 per square foot as of the same date. Overall, the office market is in good condition.

Real Estate - Apartment Market

Salt Lake County's apartment market has recovered from the overbuilt market that occurred in 1984-85. According to a recent survey by the Apartment Association of Utah, the current vacancy rate is 2.32 percent for units surveyed in the Salt Lake Valley. This compares to a vacancy factor of over 20 percent in 1985. Another factor contributing to the current low vacancy rate is the dramatic decline in construction of new apartment units. More than 11,000 apartment units (in complexes of 50 units or more) were built in 1984-1985, whereas only 909 multifamily units were built in 1988 through May of 1993. In 1993, 1,552 building permits were issued for apartment units in the Salt Lake Area. This indicates that in 1994 these units were completed and ready for occupation. According to Jim Wood of the BEBR, the construction of additional units is warranted due to recent growth. Rents are continuing to increase due to the low vacancy rate and high demand. The typical sales price range of apartment complexes, in Salt Lake County, currently ranges from about \$25,000 to \$35,000 per unit and the typical range in rent for a two bedroom, one bath unit is from \$375 to \$520 with an average of \$468 per month.

The following chart shows the historical vacancy levels for major apartment complexes in the area.

VACANCY LEVELS IN MAJOR APARTMENT COMPLEXES	
Year	Wasatch Front Vacancy
1978	3.5%
1979	3.3%
1980	4.6%
1981	N/A
1982	2.7%
1983	3.2%
1984	6% to 8%
1985	10% to 15%
1986	15% to 20%
1987	13% to 15%
1988	9.7%
1989	7.6%
1990	5.8%
1991	3.8%
1992	3.0%
1993	2.6%
1994	3.3%
1995	3.1%
1996	2.6%

Source: Utah Apartment Association

Real Estate - Industrial Market

The Salt Lake area has 11 industrial parks with about 4,500 acres of both developed and undeveloped, improved and unimproved land. With a large base of industrial space available, the Salt Lake metropolitan area should continue to attract new and expanding businesses.

The industrial sector enjoyed a strong year in 1995 and is continuing strong in 1996. According to Commerce Properties, a local real estate brokerage and management firm, the overall vacancy rate for industrial buildings in the Salt Lake County area, as of year end 1995, was 4.5 percent. The following table shows the combined industrial building vacancy factor in Salt Lake County for the past four years and is based on statistics compiled by Commerce Properties, Inc.

SALT LAKE COUNTY INDUSTRIAL BUILDING VACANCY 1991-1996						
Year	1991	1992	1993	1994	1995	1996
Vacancy	7.4%	6.3%	3.9%	3.1%	4.5%	5.0%

As can be seen by the table, the overall vacancy rate for industrial buildings in Salt Lake County declined from 1991 to 1994. It appears there will likely be some stabilization at about 5 percent. The projected stabilized vacancy for the future is 5 percent.

The typical 1995 average sales price for improved industrial sites in well located industrial parks is from \$75,000 to \$105,000 per acre. According to Commerce Properties, Inc., the average 1995 lease rate for industrial buildings in various industrial parks range from \$0.28 to \$0.41 per square foot monthly, with triple net lease terms.

There is currently some conventional financing available for industrial properties from local banks. The following information is based on a discussion with Mr. Richard L. Gray, Vice President of Bank One of Utah (801-481-5070), located at 6255 South State Street in Salt Lake City, and with Mr. Robert Edminster, Commercial Loan Officer with Deseret Certified Development Company (801-566-1163), located at 7050 South Union Park Center in Midvale,

Utah. According to both of these individuals, fixed rate financing can be obtained on new industrial buildings in the range of 9.00 to 9.50 percent. The interest rate would depend, in part, on the financial strength of the borrower with one to two points plus the cost of the appraisal. The amortization period would be a maximum of 25 years and the loan would have a balloon in seven years. The loan-to-value ratio would be 75 percent for a new building.

Overall, the industrial market outlook is for low vacancy and high demand. Rents and values should remain stable or possibly increase in the future due to the high demand.

Governmental Considerations

Local Government/Organization

Salt Lake County is governed by a County Commission comprised of three people. All of the cities in the Salt Lake County area and Salt Lake County have comprehensive zoning ordinances which have created areas with conformity of development and use.

Public Transportation

Salt Lake County has an extensive public bus system which provides public transportation to all areas of Salt Lake County and to nearby ski resorts. Bus stops can be found on all major streets within the county.

Public Education

According to Lois Heltman (801-538-7500) of the Utah State Education Office, Salt Lake County currently has 145 elementary schools, 35 junior high schools, 19 high schools, 4 alternative schools, and 22 handicapped schools. Although the performance of Utah students taking the A.C.T. exams in 1992 was actually 5 percent higher than the national average, information obtained from the Utah State Education Office indicates that Utah has a student per teacher ratio of 23, which is the highest in the nation and is attributed to the high birth rate and young age of the Utah population. The national average is 15.9 students per teacher. The

statistics indicate that more money is needed for public education in the state. The high student per teacher ratio is likely to continue in the future and is a negative factor that somewhat reduces the appeal of the general area for the relocation of companies and individuals.

Property Taxes

Property taxes in Salt Lake County are considered to be mid-range, compared to many other large metro areas in the nation. Recent economic growth has driven them upward, but they are not to a level where they are considered to be detrimental to additional economic expansion. Mill levies in Salt Lake County range from about 0.0125 to 0.0185, with an average of about 0.0160.

Environmental Considerations

Salt Lake County is the largest population area between Denver, Colorado and the west coast. This geographical location has helped Salt Lake County become an important transportation hub for air, rail, and truck/transport shipments to and from the west coast.

Transportation

There are three rail companies that serve the Salt Lake metropolitan area: Union Pacific, Denver and Rio Grande Western, and Southern Pacific.

According to the *Utah Facts Book*, the Salt Lake International Airport was the 28th busiest airport in passenger traffic in the U.S.⁸ The airport is the main hub operation for Delta Airlines and is served by several other major airlines.

There are about 40 large interstate trucking companies that are Utah based or that maintain national headquarters or terminals in the Salt Lake region. The major roadway artery through the state of Utah and the Salt Lake metropolitan area is Interstate 15 (I-15), which runs

⁸ Utah Department of Community and Economic Development, *Utah Facts Book*, (1992 - 1993), 21.

north/south through the center of the state connecting the Salt Lake area with cities to the south and southwest such as Las Vegas, San Diego, Phoenix, and Los Angeles; as well as to the northern and northwestern cities of Boise, Spokane, Portland, and Seattle. Interstate 80 (I-80) is a major east/west freeway that enters Salt Lake City from Evanston, Wyoming, and extends westward to Reno, Sacramento, and San Francisco. Also found within the Salt Lake metropolitan area is Interstate 215 (I-215), a belt-route freeway which has been constructed to service the Salt Lake Valley. Although Salt Lake City is the major population center of the state, it is much smaller in size than major cities like Phoenix and Portland, and does not have major traffic congestion.

Regional Resources, Recreation, and Entertainment

The metropolitan Salt Lake area has better regional resources than is typical on a nationwide basis when taking into account the smaller overall population size. The area has excellent medical care with 18 hospitals in Salt Lake County, of which the largest is the 520 bed L.D.S. Hospital. The new Primary Children's Hospital, located in Salt Lake City, is a recognized leader in the west for the treatment of injury and disease of infants and children. Salt Lake City has a major university (University of Utah) and is within 45 miles of the largest private university in the nation, Brigham Young University. Sports attractions include the Utah Jazz of the National Basketball Association, minor league baseball (the Salt Lake Buzz), and university level athletics. According to a study completed by the Bureau of Economic and Business Research of the Graduate School of Business, University of Utah, entitled "Profile of the Salt Lake Labor Market Area," Salt Lake City is ranked second in the nation of its recreational facilities.

There are seven major ski areas within a 30 minute drive from Salt Lake City. On June 16, 1995, the International Olympic Committee selected Salt Lake City as the site of the 2002 Winter Olympic Games. This will generate significant international exposure to the area and is expected to be a significant positive influence on economic growth.

The area has a variety of performing arts including an opera company, symphony orchestra, the Mormon Tabernacle Choir, and several ballet companies. In conclusion, the availability of major sports and performing arts entertainment facilities are attractive amenities which will contribute to population growth and economic stability.

Conformity of Existing Development

All of Salt Lake County is zoned for land use and is regulated by individual cities or the county. This has created conformity of land use in the local Salt Lake area. The general area is divided into separate residential, commercial, and industrial districts. Some of the more rural parts of the county are in transition from older single family residential to commercial or industrial uses. All areas of the county have been master planned for conformity of use, and the zoning is strictly enforced. The conformity of use has contributed to generally stable property values in the region and is a positive influence for the subject property.

Earthquake Hazard

A major earthquake fault, known as the "Wasatch Fault," runs through the east boundary of the Salt Lake metropolitan area. According to a map compiled by Craig Nelson of the Salt Lake County Public Works Department, the majority of the Salt Lake area is rated moderate for damage with a 10 to 50 percent liquefaction rating. According to Mr. Nelson, there is a fairly high probability of a major earthquake of 7.0 to 7.5 occurring within the next 50 to 100 years in the Salt Lake region. This is based on the fact that the average earthquake in this area has recurred every 395 years with a 60 year, plus or minus, chance of error. Studies show that the last major earthquake in the Salt Lake area was between 300 to 500 years ago, indicating the likelihood of a major earthquake occurring in the future. Although a negative influence, many major cities in the west are located on or near earthquake faults. This is not considered to have a major impact on the region or real estate values in general.

Summary and Conclusions

In summary, the Salt Lake metropolitan area is the largest population center in the state of Utah and has generally positive social, economic, governmental, and environmental influences with regards to real estate values and use. The primary positive social influence is the region's high birth rate which has produced an annual population growth rate that is higher than the national average. This trend is expected to continue into the future and supports the likelihood of continual demand and future growth in the local real estate markets.

The economic base is fairly diversified and unemployment levels are low with no single employer predominant in the local work force. This is beneficial, since a major employer cannot adversely affect the local economy and local real estate values by laying off a large number of workers. The per capita income level of the state, however, is much lower than the national average, but is experiencing significant increases which are bringing it more in line with the rest of the country. The area real estate markets, with respect to single family residential, multifamily residential, commercial, and industrial properties, are healthy. Financing is available for commercial and industrial properties. The economic factors indicate mostly positive influences, stable or increasing residential and commercial real estate values, and stable occupancy levels for the future.

The governmental influences are both favorable and unfavorable. The Salt Lake metropolitan area has good conformity of real estate use, but has generally high real estate taxes, which would partially offset some of the positive high growth factors previously discussed. The local public schools are also crowded due to the high birth rate and large family size. Although the local population is well educated and the students perform consistently with the national average on A.C.T.'s, this could eventually cause a deterioration in the education quality and is a negative factor for nonresidents considering relocation to the area.

The environmental considerations are favorable to the region and real estate market. Transportation facilities are adequate and the metropolitan Salt Lake area has good conformity of property use which contributes to stable real estate values. There is sufficient recreation and cultural activities in the area to support continued growth and expansion in the future.

NEIGHBORHOOD DATA

Neighborhood Boundaries

The geographical area of the subject neighborhood can be described as that area south of 100 South, east of 200 East, north of 200 South, and west of 300 East.

Composition of Neighborhood and Property Uses

Historic Temple Square is located five blocks northwest, and most major attractions and employment centers in downtown Salt Lake City are within one mile. The Salt Lake International Airport is about five miles northwest and most suburban communities in the Salt Lake Metropolitan area are within a 20-minute commute.

The majority of uses in the neighborhood are commercial and multifamily uses. Retail services and commercial properties surround the neighborhood, with major shopping centers located in close proximity. Crossroads Plaza and ZCMI Center, two of Salt Lake County's largest shopping malls, are located approximately four blocks northwest of the subject at 50 South Main Street. These malls are anchored by ZCMI, Mervyns, JC Penney, and Nordstrom.

Utah's school districts are currently experiencing a situation of overcrowding as classroom sizes expand. The population continues to grow faster than taxes will allow new schools to be constructed. The state of Utah is currently working to correct the problem in this area as well as other areas in Salt Lake County. Due to the fact that this is a state-wide problem, it is not expected to have a negative affect on the success of the proposed development.

Economic Forces of the Neighborhood

The recent history of the subject's general area has included strong growth. However, the subject property is located in an area that is largely developed, leaving very little developable ground for additional growth.

Neighborhood Life Stage

According to *The Appraisal of Real Estate*, neighborhoods evolve through four stages. These stages are as follows:

1. Growth - a period during which the neighborhood gains public favor and acceptance.
2. Stability - a period of equilibrium without marked gains or losses.
3. Decline - a period of diminishing demand.
4. Revitalization - a period of renewal, modernization, and increasing demand.⁹

Based on the fact that very little developable land is available in the area, it is considered to be in the "Stability" stage of its life cycle. However, with projections for continued economic growth, it is expected that property values will continue to increase in future years.

Access, Transportation, and Traffic Arteries

Access to the subject neighborhood is via 300 East Street, which is a major traffic artery. Interstate I-15 is accessed by traveling about five blocks southwest on 500 South to the interchange. As such, linkages to the surrounding area are considered to be good. Public transportation in the area is by the Utah Transit Authority.

Community Facilities and Service

General community facilities such as schools, parks, places of worship, and recreation centers are dispersed throughout the described neighborhood area. Local services are considered to be adequate. Services provided to the area include street maintenance, garbage pick-up, police, and fire protection.

⁹ Appraisal Institute, *The Appraisal of Real Estate*, 11th ed., (Chicago: Appraisal Institute, 1996), 192.

Summary and Conclusion

In summary, the subject neighborhood is considered to be good in location for residential purposes. Vehicular access is good. The general neighborhood is in the stability stage of its life cycle (with very little developable land remaining), but continues to experience strong housing demand due to its close linkages to transportation systems and shopping, as well as strong upscale influences in the area. Municipal services, schools, and commercial and retail services are in close to the subject neighborhood.

LAND DESCRIPTION

Dimensions, Shape, and Area

As previously noted, the total combined land area encompassing the proposed project consists of approximately 0.786 acres, as indicated by developer Russ Watts. According to the Salt Lake County Recorder's Office, the subject parcels contain a total of 0.78 acres. However, based on conversations with Mr. Watts, the total acreage for the purpose of this report is 0.786 acres. The subject is irregular in shape and adequate for development of the proposed 47 units.

Topography and Drainage

The land is level and slopes slightly downward from east to west. This does not appear to pose any unique development problems. According to the Federal Emergency Management Agency (FEMA) flood map #490105 0031A, dated August 1, 1983, the subject property is not located in a flood hazard area.

Soil and Subsoil

A soil survey has not been conducted in the downtown area. As such, information regarding soil type is not available. However, the site appears to have soil conditions that would support development and construction, as witnessed by the fact that surrounding properties have been fully developed.

Utilities

According to conversations with Paul Jara with Salt Lake City Public Utilities Sewer Department, plans for The Club Condominiums have not been submitted to them. As such, they could not determine if enough sewer capacity is available. In addition, we spoke with Scott Chartwell with Salt Lake City Public Utilities - Water Department, who indicated that enough water capacity is available to service the 47 condominium units with water. The sewer and water lines are located in 300 East Street. It is assumed there is adequate sewer capacity.

Easements, Hazards, and Nuisances

We have reviewed a title report on the subject property, which can be found in the addendum of this report, and found no unusual easements. However, it is noted that the existing structure is contaminated with asbestos. According to developer Russ Watts, the projected cost of cleanup is \$90,000.

Surrounding Influences

An apartment complex is located to the north. Commercial properties are located to the east, south and west.

IMPROVEMENT ANALYSIS

Existing Improvements

Existing improvements on the subject property include an old athletic club and a parking area. According to conversations with Russ Watts, these improvements will be demolished. The cost of removing these improvements has been taken into account in the site cost breakdown section of this appraisal report. Consistent with the highest and best use of the property, these improvements will be removed in order to develop the parcel into the proposed condominium project.

Proposed Improvements

Please find and refer to the site and building plans on the following pages. A floorplan sketch for the interior units, including design and layout, also follows.

The subject project consists of one four-level building. In addition, there will be a common courtyard and recreation room.

The construction will be wood frame with brick exterior. All of the units will have a similar layout and will occupy a main and upper level. All of the units will be finished with painted gypsum board walls and ceilings, carpeted living areas and vinyl flooring in kitchen and bath areas. Each unit is also equipped with washer/dryer hook-ups and typical appliances. Each unit is also provided with one covered parking space under the building. Additional "open" parking will be located at the south end of the subject.

The following is a summary of the unit sizes and room count. The actual square footage is based on measurements of the architectural drawings provided to the appraiser. The square footage includes the gross livable area.

UNIT SUMMARY - THE CLUB				
# of Bedrooms	Main Level	Upper Level	Third Level	Room Count
1	Parking	2	6	6
2	Parking	10	10	10
3	Parking	3	1	1
Total	N/A	15	17	17

Parking

Parking will include a covered carport under the main building. Ten additional parking spaces will be located at the south end of the property.

Description and Materials

The following is a breakdown of the basic components of construction materials:

Footings/Foundations:	Reinforced concrete footings and foundations with reinforced concrete block brick veneered first level walls. Concrete T system with a 4" slab on the first floor.
Flooring:	The first level floor is a concrete reinforced T system with a 4" reinforced slab. Remaining floor systems are 12" TJI joist at 16" o.c. with 3/4" flooring and 1 1/2" concrete flooring on each floor.
Exterior Walls:	Framing to be 2 x 6 exterior at 16" o.c. Lower exterior walls will be covered with synthetic stucco or masonry brick and the exterior insulation will be R-19 or greater.
Roof:	Wood frame construction with R-38 fiberglass insulation with a vapor barrier on bottom side. The exterior flat area will be either a one ply system for the heating and cooling equipment and the slope areas will be a prefinished steel standing seam deck.
Interior Walls:	Typical interior wall construction will be 2 x 4 studs at 16" o.c. with 1/2" gypsum board. All nonbearing walls will be 2 x 4 metal studs with 1/2" gypsum board. The typical party walls to be double wall construction of 2 x 4 studs at 16" o.c. with (2) layers of 5/8" gypsum board on either side and sound insulation with air space in between.
Ceiling System:	Two layers of 1/2" gypsum board on an R.C. sound channel with sound insulation above the two layers.
H.V.A.C.:	Forced air gas heating and central air conditioning with separate metering for each unit.
Windows:	The window system will be wood and vinyl combination, double pane insulated glass.
Doors:	Exterior doors will be insulated metal. All interior doors will be solid core masonite.

Plumbing/Electrical:	Plumbing and electrical will be as per code.
Decks and Balconies:	Iron railings with a one-ply deck system.
Cabinets:	Will be a maple stain square raised panel system.
Appliances:	GE appliances throughout.
Personal Property (furniture and furnishings):	None

Physical Condition/Deferred Maintenance

The proposed units are generally functional and will be in good physical condition when completed. There is no functional obsolescence noted, as the units have typical market designs and layouts. The effective age of the units is new and the economic life of the proposed improvements is estimated to be 55 years.

ZONING

The property is located in Salt Lake County's jurisdiction. According to the Salt Lake City Planning and Zoning Department, the current zoning is R-MU (Residential Mixed Use). A copy of this ordinance can be found in the addendum. A minimum lot area is not required.

According to developer Russ Watts, monthly Homeowner's Association dues have not been determined yet. Amenities include an exercise area and garden area.

According to conversations with Margaret Paul of the Salt Lake City Planning and Zoning Department, the proposed development has not received approval from the city. It is important to note that the value estimates in this report are contingent on the final approval being granted.

HISTORY OF THE PROPERTY

The subject property has been owned by Ted Stevenson for about 30 years, and has functioned as the Salt Lake Athletic Club. In 1988, the footings of the existing building were damaged by the construction of the "257 Towers" adjacent to the subject. The owners of the "257 Towers" agreed to buy the subject and a contract was initiated. Subsequently, the "257 Towers Corp." filed bankruptcy and the property was regained by Mr. Stevenson through foreclosure proceedings.

According to developer Russ Watts, the subject property was contributed to The Club Condominiums LC at a value of \$770,000 on October 31, 1996, as a joint venture agreement. Due to the fact that no money was exchanged as part of this transaction, it is not considered to be representative of the property's market value. In addition, Mr. Watts indicated that to his knowledge no other offers have been made on this property during the past three years, nor has this property been listed for sale during this time.

ASSESSMENT AND TAXES

Taxes on the subject parcels over the past three years are reported as outlined below:

Parcel #16-06-177-002

0.31 Acres

(According to Salt Lake County Recorder's Office)

Year	Land Value	Improvement Value	Total Value	Taxes
1996	\$219,100	\$2,500	\$221,600	\$3,423.28
1995	\$219,100	\$2,870	\$221,970	\$3,637.42
1994	\$219,100	\$0	\$219,100	\$4,230.38

Parcel #16-06-177-003

0.16 Acres

(According to Salt Lake County Recorder's Office)

Year	Land Value	Improvement Value	Total Value	Taxes
1996	\$108,200	\$8,100	\$116,300	\$1,796.60
1995	\$108,200	\$6,000	\$114,200	\$1,871.40
1994	\$108,200	\$8,600	\$116,800	\$2,255.17

Parcel #16-06-177-004

0.16 Acres

(According to Salt Lake County Recorder's Office)

Year	Land Value	Improvement Value	Total Value	Taxes
1996	\$108,200	\$5,400	\$113,600	\$1,754.89
1995	\$108,200	\$4,000	\$112,200	\$1,838.62
1994	\$108,200	\$6,800	\$115,000	\$2,220.42

Parcel #16-06-177-008

0.16 Acres

(According to Salt Lake County Recorder's Office)

Year	Land Value	Improvement Value	Total Value	Taxes
1996	\$78,100	\$0	\$78,100	\$1,206.49
1995	\$78,100	\$0	\$78,100	\$1,279.82
1994	\$78,100	\$0	\$78,100	\$1,507.95

No delinquent taxes were reported on the subject property. The total land assessed value is \$513,600 which is less than the \$685,000 concluded in this report. This is not unusual for Salt Lake County.

MARKET ANALYSIS

The purpose of this section is to evaluate the demand for attached housing created by economic activity in the subject's market area, then relate it to current and future new home inventories. The first step in this analysis is to evaluate the demand for new housing based on market activity and population growth. These statistics are extracted from private and government sources that have proven to have a reasonable degree of reliability in the past.

Short term economic forecasts by government sources usually carry a reasonable degree of accuracy in tracking overall trends, but long term forecasts are less reliable. Consequently, while our analysis may identify long term trends, actual projections are conducted for only one to two years into the future.

Once these projections are established, they are compared to current inventories, subdivisions that are in the planning stages ("pipeline" projects), and the rate at which new homes and building lots are being absorbed by the market. Conclusions are then drawn regarding the overall "market equilibrium." After market equilibrium is established, the market is segmented to analyze the condition of specific market niches and projections are made regarding the need for individual types and price ranges of housing.

Salt Lake County Job Growth

According to the Labor Market Information Services of the Utah Department of Employment Security, Utah led the nation in job growth for 1994 and was in the top three states in the nation in 1995. This is considered to be an important statistic, since job growth fuels the demand for housing.

SALT LAKE COUNTY JOB GROWTH

1993	1994	1995	1996	1997
5.0%	6.2%	5.7%	5.5%	4.5% (Proj.)

Building Permit Analysis

An analysis of building permits for new dwelling units in Salt Lake County is helpful in analyzing growth and projecting absorption through 1996 and 1997. Salt Lake County's single family production for 1994 decreased to 4,447 from 4,510 in 1993. According to the University of Utah BEBR's 1997 projections for the Governor's Annual Report, very little upward pressure on interest rates is anticipated for the next year and single family building permits are expected to stabilize or increase slightly.

RESIDENTIAL BUILDING PERMITS SALT LAKE COUNTY		
YEAR	S L COUNTY SF BLDG PERMITS	PERCENT CHANGE
1986	4,201	N/A
1987	2,632	-37.35%
1988	2,025	-23.06%
1989	1,885	-6.91%
1990	2,178	+15.54%
1991	3,047	+39.90%
1992	3,831	+25.73%
1993	4,510	+17.72%
1994	4,447	-1.40%
1995	4,909	+10.39%
1996	5,000 (projected)	1.85%
1997	5,000 (projected)	+0.00%
Source: University of Utah BEBR, Gary Free & Associates		

The chart on the previous page illustrates the fact that Salt Lake County building permits increased steadily from 1990 through 1995. Projections for 1996 and 1997 are for relatively stable growth, at about 5,000 single family building permits per year.

It is important to re-emphasize that the purpose of these projections is simply to forecast trends that can be helpful in making development and financing decisions. While these projections are believed to be reasonable, they are based on economic developments that are totally outside the control of this appraiser, and therefore are not ensured in any way.

Market Equilibrium

The Market Equilibrium Analysis is conducted by analyzing the absorption rate of building lots versus the number of units that are currently on the market, and calculating the number of months of inventory that currently exists on the market. The purpose of this analysis is to ensure that the proposed development will not be developed in an overbuilt market condition.

This analysis is conducted by using data from the Income Approach of this report. The following statistics were gathered as of the valuation date of this report. They include all projects (attached) located in the Salt Lake City submarket with over five units in inventory.

MARKET ANALYSIS SALT LAKE CITY SUBMARKET				
Name/Location	Units	Starts	Completed Unsold Units	Total
838 Condos 850 East South Temple	0	43	0	43
The Place Townhomes 2726 East Wasatch Drive	24	0	0	24
Wingate Village 500 North 1700 West	13	22	0	35

Name/Location	Units	Starts	Completed Unsold Units	Total
Winslow Park Condos 3300 South 300 West	16	0	0	16
TOTAL ABSORPTION	53	65	0	118

Due to the fact that very few new condominium projects are being approved, the above list represents everything that is currently being offered on the market. Based on information from the Third Quarter 1996 Decision Systems report, condominium absorption in the Salt Lake City submarket is occurring at the rate of about 65 units per year. This compares to current inventories of 53 units, 65 starts, and zero unsold units, for a total of 118. Research for the report indicates that about 40 percent of the physical inventories are sold. Hence, about 71 unsold units are believed to be on the market. With an absorption of about 65 units per year, this is slightly over one year's absorption and is considered to be a good market condition.

In addition, the reconstruction of I-15, which is scheduled to begin within the next three months, is expected to increase the demand for downtown condominiums. Agent Garth Briggs indicated that the demand for downtown condominiums in Salt Lake City is rising sharply.

Pipeline

According to Salt Lake City, 83 additional condominium units are currently in the approval stage, ranging from preliminary approval to final recording.

Summary and Conclusion

Due to continued economic growth and the pending I-15 construction, the demand for new condominium units in the Salt Lake City submarket is expected to continue at a strong pace over the next two to three years. Because of this, market conditions are projected to continue to be "good" for the foreseeable future.

HIGHEST AND BEST USE

Real estate is typically valued in terms of its highest and best use. Highest and Best Use is defined in *The Appraisal of Real Estate* as:

"The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value."¹⁰

In estimating highest and best use, the appraiser must consider these four basic stages of analysis for proposed uses:

1. Legally Permissible Uses. Are there zoning or deed restrictions that would prohibit proposed uses?
2. Physically Possible Uses. From the permissible uses, what uses are physically possible when considering all aspects of the site's size, shape, and topography or any other physical aspects?
3. Financially Feasible Uses. Which of the above legally permissible and possible uses will produce a net return to the owner of the site?
4. Maximally Productive or Highest and Best Use. After analyzing the above considerations, which of the proposed uses will produce or generate the highest rate of net return over a projected period of time?

In determining the highest and best use of the subject property, the land is considered under two classifications. The first classification is the highest and best use as vacant, and the second is the highest and best use as improved. Each classification requires a separate discussion and analysis.

¹⁰ Ibid., 297.

Highest and Best Use as Vacant

This analysis assumes that the subject parcel of land is vacant or that it can be made vacant through demolition of the improvements. The focus is on what development, if any, would be maximally productive with regard to value and income.

Legally Permissible

The subject property is currently zoned R-MU (Residential Mixed Use). According to conversations with Margaret Paul of the Salt Lake City Planning and Zoning Department, the subject property has not received final approval from the city. The legally permissible uses are limited to single family and multifamily residential applications. No commercial or industrial uses are permitted under this zoning.

In conclusion, when considering legally permissible applications, the possible uses of the land are reduced to single family and multifamily residential.

Physically Possible

The subject parcel is capable of accommodating residential or multifamily uses. It is roughly rectangular in shape and is adequate for full utilization. The topography and drainage are also considered adequate and would not restrict development.

All utilities are available at the land parcel including culinary water, sewer, electricity, and natural gas.

Financially Feasible

The financially feasible uses are influenced to a large degree by the general and specific location of the land. It was noted in the Neighborhood Analysis that the subject has adequate proximity to retail services, freeway systems, and employment centers. Municipal services and schools are within reasonable proximity, as are cultural attractions and medical facilities there are numerous condominiums and apartment units located in the subject neighborhood. Hence,

market data indicates that condominium units could be successfully and profitably developed on the subject.

All of the above mentioned factors suggest that there is sufficient demand and purchasing power in the residential market for the successful and profitable development of condominium units on the subject land. This use also conforms with existing uses in the surrounding area and, therefore, holds the potential for being financially feasible.

Maximally Productive

It was concluded under the financially feasible uses that the only appropriate use for the subject is residential development. Taking into account the size and location of the property, as well as market data included in the discounting section of this report, condominiums with a density of 59.8 units per acre would be maximally productive. The absorption analysis found later in this report reveals that this type of unit is selling very well in the area and should bring maximum profits.

In conclusion, the maximally productive use of the subject is for development of condominium units with a density of about 59.8 units per acre.

Highest and Best Use as Improved

The highest and best use of the land as improved considers the existing improvements and whether or not they provide a maximally productive use of the property. This particular analysis focuses on whether or not the proposed development is consistent with the highest and best use as vacant.

Legally Permissible

The proposed development consists of 47 condominium units with a density of 59.8 units per acre. This is a legal and conforming use under the R-MU zoning, which makes the proposed development permissible and a legally conforming use.

Physically Possible

As previously noted, the subject currently has several improvements on it, including an old athletic club structure and a parking area. Conversations with the developer indicate that these improvements will be demolished. As such, the highest and best use is considered to be achieved through the demolition of the existing improvements.

Based on the topography, shape, and access to the subject, the proposed development is physically possible.

Financially Feasible

Based on the Cost Approach, the cost of site improvements and construction costs for the proposed 47 units, excluding profit, but including financing, was projected to be \$5,560,060. Based on the Income Approach, the bulk sale value of the proposed units is \$6,495,000. Deducting the above costs from this value results in a wholesale profit of \$934,940 or 16.8 percent. Based on input from local builders Mike Holmes of Holmes and Associates and Dave Myers of Pulte Homes, retail construction profits along the Wasatch Front are ranging from 10 to 20 percent. As such, a 16.8 percent wholesale profit is considered to be more than adequate for the proposed development.

Maximally Productive

As previously noted, the proposed development includes residential lots, with about 59.8 units per acre. Since the maximally productive use was similarly defined, the proposed development is considered to be maximally productive.

VALUATION PROCESS

The appraisal process for valuation of real estate involves a systematic analysis of facts based on supply and demand and other various economic principles. To organize these pertinent factors, appraisal theory has developed three basic approaches to the appraisal process. They are applied on the basis of the highest and best use of the property.

The three basic approaches are known as: 1) the Cost Approach; 2) the Sales Comparison Approach, and 3) the Income Capitalization Approach.

The Cost Approach to value is based on the justification that an informed investor or purchaser would pay no more for the subject property than it would cost him to produce a substitute that would offer the same utility. The Cost Approach involves determining the depreciated value of the improvements plus land value and profit.

The Sales Comparison Approach is a process of comparing similar properties that sold on a "bulk sale" basis with the subject to estimate the market value. The comparable properties are chosen from those that would generally compete for the same purchasers in the market. Comparison to the subject may be made of the whole comparable property, the price per lot, or some other unit of comparison.

In making comparisons, major points of difference must be identified and considered. These may include the conditions of the sale such as special terms or other considerations, time of sale, location, size, and other physical characteristics, or any other factors or conditions that would influence the sale. The amount of discount from retail value is calculated and conclusions are drawn regarding the appropriate discount for the subject.

The Sales Comparison Approach involves the principle of substitution or exchange. The primary justification is that the value of a property that is replaceable in the market tends to be set by the cost of acquiring an equally desirable substitute property. This approach is applicable to most all property types where there is a sufficient number of similar, recent, and reliable transactions. Due to the fact that housing projects tend to be developed and marketed on a retail basis by the same entity, this approach has not been developed.

The Income Approach is the process of measuring and converting future income streams into a present value estimation. These future benefits are generally measured by the net income

which a property will produce over a given period of time plus the proceeds of resale of the property. As such, the income potential of the proposed subject is analyzed then discounted back to a present value. This is done after estimating an average value per condominium for the proposed subject by the Cost Approach. This process is explained in detail in a later section entitled Absorption, Discounting, and Final Value Estimate.

In this appraisal assignment there are two specific conclusions to be reached; (1) "as is" value of the vacant land, (2) market value to one buyer or investor - as if complete.

LAND VALUATION

The market value of the land is best determined by a thorough investigation of recent market sales, listings, and analysis of market activity as it relates to the subject property. This is accomplished by the use of Sales Comparison Approach techniques.

As previously noted, improvements currently exist on the subject. However, the land is appraised as though vacant and available to be developed to its highest and best use. As determined earlier, the highest and best use of the land as vacant is for multifamily development. We have been asked to determine the market value of the approximately 0.786 acres of land where the proposed condominium development will be located.

After investigating a variety of comparable land sales, three were found that are considered to be similar to the subject. Similar to the subject property, these properties were acquired with the intent of developing multifamily projects, and therefore have the same highest and best use. Consequently, market motivations and economics are considered to be similar to the subject and appropriate for establishing a reliable value opinion of the subject. They are presented on the following pages.

Due to the fact that the proposed units are designed to target a recently emerging, but strong market in Salt Lake for downtown condominiums, only three comparables could be found. As a result, to give additional support to the value conclusion, we have also developed a residual approach to value, which can be found at the end of this section.

Comments are made on each comparable as support and justification for appropriate adjustments.

COMPARABLE NUMBER ONE

Land Sale

LOCATION:	264 North Almond Street Salt Lake City
AP NUMBER:	08-36-432-001
SALES DATE:	3/8/96
SALES PRICE:	\$667,000
SIZE:	1.02 acres or 44,431 square feet
PRICE PER ACRE:	\$653,922
PROPERTY RIGHTS:	Fee Simple
HIGHEST AND BEST USE:	Multifamily Development
ZONING:	RM-45
UTILITIES:	All available to site
OFF-SITE IMPROVEMENTS:	Paved asphalt road
TERMS:	Cash
PROPERTY RIGHTS:	Fee Simple
CONDITIONS:	Arm's Length
CASH EQUIVALENT PRICE/ACRE:	\$653,922
PRICE PER SQUARE FOOT:	\$15.01
PRICE PER UNIT:	\$15,159
GRANTOR:	Marmalade Hills
GRANTEE:	Watts Corporation
VERIFIED:	Russ Watts, Developer by Roland Robison

COMMENTS: This parcel was purchased for the development of downtown condominiums, similar to the subject. It is located on a hillside and will require additional costs associated with hillside development. A total of 44 units will be constructed on the site, for a density of 43 units per acre.

COMPARABLE NUMBER TWO

Land Sale

LOCATION:	550 East 300 South Salt Lake City
AP NUMBERS:	16-06-427-016 16-06-283-008 16-06-427-013
SALES DATE:	4/96
SALES PRICE:	\$360,000
SIZE:	1.00 acres or 43,560 square feet
PRICE PER ACRE:	\$360,000
PROPERTY RIGHTS:	Fee Simple
HIGHEST AND BEST USE:	Multifamily Development
ZONING:	RO (Office)
UTILITIES:	All available to site
OFF-SITE IMPROVEMENTS:	Paved asphalt road
TERMS:	Cash
PROPERTY RIGHTS:	Fee Simple
CONDITIONS:	Arm's Length
CASH EQUIVALENT PRICE/ACRE:	\$360,000
PRICE PER SQUARE FOOT:	\$8.26
PRICE PER UNIT:	\$7,200
GRANTOR:	Saw Development
GRANTEE:	American Housing Development
VERIFIED:	Craig Nielsen, Developer by Leyla Sim

COMMENTS: This property is located four blocks southeast of the subject. According to Mr. Nielsen, he was still uncertain as to the final number of units, but felt they would probably end up with about 50 units. This property is considered to be inferior to the subject in linkages.

COMPARABLE NUMBER THREE**Land Sale**

LOCATION:	500 East 100 South Salt Lake City
AP NUMBER:	16-06-204-025
SALES DATE:	Pending
SALES PRICE:	\$1,800,000
SIZE:	1.71 acres or 74,488 square feet
PRICE PER ACRE:	\$1,052,632
PROPERTY RIGHTS:	Fee Simple
HIGHEST AND BEST USE:	Multifamily Development
ZONING:	RO (Office)
UTILITIES:	All available to site
OFF-SITE IMPROVEMENTS:	Paved asphalt road
TERMS:	Cash
PROPERTY RIGHTS:	Fee Simple
CONDITIONS:	Arm's Length
CASH EQUIVALENT PRICE/ACRE:	\$1,052,632
PRICE PER SQUARE FOOT:	\$24.17
PRICE PER UNIT:	N/A
GRANTOR:	Tramell Crow
GRANTEE:	Hermes Corporation
VERIFIED:	Garth Briggs, Marketer (277-4646/560-4635)

COMMENTS: This property is located about two blocks east of the subject. Due to the fact that it is located further from the downtown area, linkages are considered to be slightly inferior. Final plans had not been made regarding uses and densities. The sale has not yet closed, but Mr. Briggs indicated that it will close within the next 30 days.

SUMMARY OF SALE COMPARABLES							
Comp	Location	Sales Date	Size	Cash Price	Overall Price/Acre	Price Per SF	Zoning
1	264 North Almond Street Salt Lake City, Utah	3/8/96	1.02 Acres	\$667,000	\$653,922	\$15.01	RM-45
2	550 East 300 South Salt Lake City, Utah	4/96	1.00 Acres	\$360,000	\$360,000	\$8.26	RO
3	500 East 100 South Salt Lake City, Utah	Pending	1.71 Acres	\$1,800,000	\$1,052,632	\$24.17	RO
Subject	150 South 300 East Salt Lake City, Utah	10/31/96	0.786 Acres	N/A	N/A	N/A	R-MU

ADJUSTMENT GRID VACANT LAND SALES			
COMPARABLE	1	2	3
Price/SF	\$15.01	\$8.26	\$24.17
Property Rights	0%	0%	0%
Adjusted Price/Acre	\$15.01	\$8.26	\$24.17
Conditions/Terms	0%	30%	0%
Adjusted Price/Acre	\$15.01	\$10.74	\$24.17
Market (Time) Adj.	30%	30%	0%
Market Price/Acre	\$19.51	\$13.96	\$24.17
Location	0%	20%	10%
Size	0%	0%	5%
Zoning	10%	0%	0%
Shape/Topography	25%	20%	0%
Utilities	0%	0%	0%
Access	0%	0%	0%
Demolition & Cleanup	-30%	0%	-30%
ADJUSTED VALUE PER SF	\$20.49	\$19.54	\$20.54
NET ADJ. / SF	5%	40%	-15%
Mean	\$20.19		

Explanation of Adjustments

Property Rights

Property rights conveyed with the subject are fee simple, as are all of the comparables. As a result, no adjustments are indicated.

Terms/Conditions of Sale

The first adjustment to be made is for the terms and conditions of sale. All of the sales closed on cash terms or with cash equivalent financing. It should be noted that comparable three is a pending sale. However, according to conversations with developer Garth Briggs, this transaction is expected to close in about 30 days. Hence, no adjustments are indicated for terms. No adjustments are indicated regarding conditions of sale for comparables one or three. According to Craig Nelson, the buyer of comparable two, he purchased this parcel from a seller that was unaware of the potential of the emerging downtown condominium market. Comparative sale analysis indicated that it represents a purchase that was roughly 30 percent below market value. As such, a 30 percent upward adjustment is indicated.

Market (Time)

This is an adjustment made to account for differences in market prices due to changes that develop in the market over a period of time. Market timing can have a tremendous affect on property values. Over the past three years, Salt Lake County's economy has been improving steadily due to the recent "net in-migration" and lower interest rates. The unemployment rate has dropped substantially, and housing inventories have been significantly depleted.

In the case of the subject property, these factors appear to have created a substantial market for downtown condominiums. With the impending widening of I-15, this trend has been accelerated. Conversations with downtown condominium developers Craig Nelson, Jeff Jonas, and Russ Watts indicate that infill parcels in the downtown area which are capable of being developed as condominiums have increased in value by at least 30 percent over the past year.

Comparables one and two sold nearly one year ago, indicating upward adjustments of 30 percent. Comparable three represents a recent sale, with no adjustment indicated.

Location

Issues relative to location include surrounding influences and linkages to employment centers, retail services and transportation systems. Linkages are particularly important in multifamily properties, due to the fact that most condominium buyers choose multifamily housing to be close to employment and cultural linkages.

The subject property is located at approximately 150 South 300 East, which is an area that enjoys good linkages. It is located in close proximity to Historic Temple Square, Crossroads Plaza, and ZCMI Center. To analyze these two influences, we have developed the following table:

COMPARABLE	SURROUNDING INFLUENCES	LINKAGES	NET ADJUSTMENT
1	0%	0%	0%
2	10%	10%	20%
3	0%	10%	-10%

Comparable one is considered to be similar to the subject in linkages and surrounding influences, with no adjustment indicated. Comparable two is considered to be slightly inferior to the subject in surrounding influences, being located in a slightly older part of town and linkages, being located about four blocks further from downtown. Comparative sale analysis indicates 10 percent upward adjustments for each category, for a total upward adjustment of 20 percent.

Comparable three is considered to be slightly inferior to the subject in linkages, being located three blocks further from downtown, but similar in surrounding influences. Comparative sale analysis indicates an upward adjustment of 10 percent for linkages.

Size

The subject property is comprised of approximately 0.786 acre or 34,238 square feet. It is typically the case that larger parcels of land sell for less per acre than smaller ones because of the increased risk and exposure associated with holding and marketing larger properties.

Comparables one and two are considered to be similar to the subject in size, with no adjustments indicated. Comparable three is about twice the size of the subject, but still considered to be a relatively small parcel. Comparative sale analysis indicates a 5 percent upward adjustment.

Zoning/Density

As previously noted, the subject is currently zoned R-MU zoning (Residential Mixed Use) and will have a density of about 59.8 units per acre.

Comparable one will have a density of 43 units per acre, indicating a somewhat subjective but logical upward adjustment of 10 percent. No adjustments are indicated for comparables two and three.

Shape/Topography

Comparable three is similar to the subject due to the fact that it is at grade with the street and is fully developable, being either flat or gently sloping. Hence, no adjustment is indicated. Comparable one is located on extremely steep terrain, much of which appears to exceed 30 percent. The increased cost of developing this site will be substantial. Comparative sale analysis indicates an upward adjustment of 25 percent. Comparable two is an interior parcel with limited access and no visibility. Comparative sale analysis indicates a 20 percent upward adjustment.

Utilities

All of the comparables have the necessary utilities adjacent to their borders with no unusual circumstances. Hence, no adjustments are indicated.

Access

As previously noted, the subject has adequate access from 300 East. All of the comparables also enjoy adequate access with no adjustments indicated.

Demolition and Cleanup

According to developer Russ Watts, the subject will require \$130,000 for demolition and fill. In addition, the existing structure contains asbestos, which will require an additional \$90,000 for cleanup. Since the total cost of \$220,000 (\$130,000 + \$90,000) represents roughly 30 percent of the property's value, 30 percent downward adjustments are indicated for comparables one and three, which are clean sites.

An older home is located on comparable two. The developer was unsure as to demolition and cleanup costs associated with this structure. Comparative sale analysis indicates no adjustment.

Land Value Conclusion

The adjusted values of the comparables range from \$19.54 to \$20.54 per square foot, with an average of \$20.19 per square foot. Due to the scarcity of similar comparables, the most weight is given to the central tendency of the three sales.

After careful consideration of the above presented information, it is our opinion that an appropriate rounded value for the subject parcel in fee simple title as of February 18, 1997, which was the date of inspection, is \$20.00 per square foot. Based on the size of the subject being 34,238 square feet or 0.786 acres, the value estimate is determined to be:

$$34,238 \text{ square feet (0.786 acres)} \times \$20.00 \text{ per square foot} = \$684,760$$

\$685,000 (Rounded)

"SIX HUNDRED EIGHTY-FIVE THOUSAND DOLLARS"

Correlation with Purchase Price

As reported in the History of the Property section of this report, the subject property was contributed to *The Club Condominiums LC* at \$770,000. Since no money was exchanged in this transaction, it seems logical that this value may be above market value.

Exposure/Marketing Period

Based on the strong demand for developable multifamily property throughout Utah County, as well as conversations with active developers and builders, including John Riding of Hallmark Properties and Dave Tolman of Performance Dynamics, a reasonable marketing period for the subject at the above value estimate is considered to be three months.

Residential Approach

In as much as reliable land comparables were scarce for this assignment, we have also developed a residual approach to value. The residual approach to land value utilizes Cost Approach techniques to identify the cost of developing and constructing the proposed units. These costs, together with an acceptable developers profit, are deducted from the wholesale value of the proposed units to arrive at an estimate of the land value.

Based on conversations with the developer and after reviewing costing information from Marshall and Swift, as well as other multifamily builders in the Wasatch Front market including Ord and Rodgers and Trophy Homes, the following Cost Breakdown is believed to be a reasonable representation of probable costs for the proposed development. According to *Marshall Valuation Service*, Section 11, Page 14, area and time adjusted Class "C" Good quality apartment and stacked flat condominium construction is estimated at \$63.89 per square foot, while Class "C" Excellent is estimated at \$81.35 per square foot. In as much as the proposed construction is considered to be "Good," an estimate of \$65.00 per square foot is considered reasonable. The developer has projected a cost of \$22.00 per square foot for the parking structure, which is typical of the area. In as much as the bulk sale value is used to arrive at the residential value, marketing expenses are not deducted, since they have already been deducted in the DCF analysis.

PROJECTED COSTS AND PROFITS
(Excluding Land)

Permits and Fees	Lump Sum			\$60,000
Architecture and Engineering	Lump Sum			200,000
Excavation, Demolition, and Fill	Lump Sum			130,000
Asbestos Removal	Lump Sum			90,000
Parking	15,000 sf	@	\$ 22.00	330,000
Landscaping	Lump Sum			310,000
Condominiums	54,000 sf	@	\$ 63.89 ¹¹	3,450,060
Financing (60% loan @ 9.0%)				<u>305,000</u>
Subtotal				\$4,875,060
Profit (15%, see Cost Approach)				<u>788,259</u>
Total				\$5,663,319

Based on the wholesale value of the proposed condominium units, as outlined in the Income Approach section of this report, the final value of the proposed units is estimated at \$6,495,000. Deducting the above costs from this value, results in the following value indication for the subject property:

Wholesale value of Proposed Units	\$6,495,000
Cost and Profit of Building Units	<u>(5,663,319)</u>
Indicated Residual Value of Land	\$831,691

The above analysis tends to support the concluded land value estimate of at least \$685,000.

¹¹ *Marshall Valuation Service*, Section 11, Page 14. Class "C" Good \$63.89/sf.

COST OF DEVELOPMENT APPROACH

The Cost of Development Approach is developed by using the reproduction cost new of improvements method and deducting depreciation from all causes. The value of the land is then added to make a composite total.

This approach is developed on the premise that the value of a property can be derived by adding the estimated value of the land to the cost of constructing a reproduction or replacement of the improvements, including required developer's profit, and then subtracting the amount of depreciation (i.e., deterioration and obsolescence) in the improvements from all causes.

The improvement costs are estimated from a combination of the *Marshall Valuation Service*, published by Marshall and Swift Publishing Company, and known costs experienced by builders and developers in the area.

Added to the project costs are financing fees, interest, and developer's profit to determine the wholesale value of the subject at the time that the improvements are completed. The financing fees are based on a 2 percent origination fee on a 60 percent loan. Interest is based on a 60 percent loan at 9 percent interest and a 50 percent outstanding loan balance over a one year development period (the loan balance varies based on draws and pay-backs).

It is important to note that in the Cost of Development Approach only that profit associated with bringing the development to a completed stage is addressed, since this would represent all of the profit that has been earned as of that time. Any remaining profit is a function of the ability of the owner of the units (which may or may not be the developer) to sell the units over time. In other words, the total profit anticipated from the development and sale of the condominiums should be allocated separately between the development effort and the marketing effort.

To establish a reliable estimate as to the appropriate share of profits associated with the development phase of the project, we spoke with developers Paul Washburn of Gardner Associates, Dave Tolman of Performance Dynamics, and Kelly Shepard of Village Communities. According to input from these developers and consultants, due to the current high demand for affordable housing in Salt Lake County, condominium profits are currently ranging from about 20 percent to 30 percent, depending on location. Since the subject is

considered to be in a location with very strong linkages, we have selected the upper range of 30 percent as an appropriate total profit for the proposed 47-unit development. Since these costs are incurred during the development phase, we have also selected 50 percent as the profit split for the development phase of the project. Multiplying the projected profit of 30 percent by the 50 percent attributed to the development phase yields a net projected profit of 15 percent for the development. By adding this profit margin and financing fees to the subtotal of improvement costs and land value, a wholesale value for the proposed development is calculated.

Based on conversations with developer Russ Watts, as well as input from realtors Garth Briggs and developer Craig Nielsen of American Housing Corporation, the typical cost of marketing units such as the proposed subject ranges from about 3 to 5 percent, including commissions and advertising. We have selected 5 percent as a reasonable projection.

Using the above information, the Cost Approach is developed as outlined on the following pages.

C O S T A P P R O A C H
47-Unit The Club Condominiums

Cost New of Improvements

Development and Construction

Permits & Fees	Lump Sum			\$ 60,000
Parking	15,000 sf	@	\$ 22.00	\$ 330,000
Landscaping	Lump Sum			\$ 310,000
47 Units	54,000 sf	@	\$ 63.89 ¹²	\$ 3,450,060
Engineering	Lump Sum			\$ 200,000
Excavation & Demolition	Lump Sum			\$ 130,000
Asbestos Removal	Lump Sum			\$ 90,000
Total Cost New of Improvements				\$ 4,570,060
Value of Land				<u>685,000</u>
Subtotal				\$ 5,255,060
Profit (15%)				<u>788,259</u>
Subtotal				\$ 6,043,319
Financing				305,000
Marketing (5% of Gross Sellout)				<u>408,250</u>
TOTAL				\$ 6,756,569

Based on the above analysis, the value of the proposed condominiums in fee simple title, as of February 18, 1998, which is the projected date of completion, is:

\$6,755,000 (Rounded)

"SIX MILLION SEVEN HUNDRED FIFTY-FIVE THOUSAND DOLLARS"

¹² Ibid.

INCOME APPROACH

The Income Approach recognizes the principle of anticipation which states that value is equal to the present worth of the future benefits accruing to the rights of ownership. In this analysis, the "future benefits" are defined as the income to be derived from the sales of condominiums. A discounted cash flow analysis is then utilized to convert the sale proceeds into an indication of present value for the development, "as if complete."

The required information and steps in this analysis are as follows:

1. Estimation of condominium values.
2. Estimation of absorption period.
3. Estimation of holding costs and marketing expenses.
4. Discounting of probable net revenues over the absorption period based on assumptions regarding appreciation/depreciation, holding costs and marketing costs.

On the following pages is our analysis of the market value of the individual condominiums within the subject development (as if developed). Analysis of absorption time and discounted cash flow of the revenues will follow. Our research included the identification of similar condominium developments throughout the market area. In the following analysis, adjustments are made to each development for those characteristics or features which are dissimilar to the subject.

Based on the values identified on Freddie Mac Form 465, which can be found in the addendum of the appraisal, the value estimate of the proposed units is \$150,000 for the 1-bedroom units, \$167,000 for the 2-bedroom units and \$250,000 for the 3-bedroom units.

Since the proposed project is not yet developed, it is likely that an additional 12 months will be required for its completion. As previously noted, residential values in Salt Lake County have been increasing at the rate of about 10 percent per year in recent months. However, projecting rapid value increases in real property is considered to be a highly speculative practice, since future values are a function of many influences that are outside the control of the appraiser, developer, and lender. In addition, it is our opinion that significant increases in condominium prices could exceed the market's purchasing power and have a negative impact

on absorption. We, therefore, estimate that the market value of the proposed condominiums, at the time of their completion, will be equal to, but not necessarily greater than their current value.

As such, the value of the proposed condominiums in fee simple interest, as of February 18, 1998, which is the estimated date of completion of the project, is estimated to be:

1- bedroom condominium units \$150,000 x 6	=	\$	900,000
2- bedroom condominium units \$167,000 x 36	=		6,012,000
3- bedroom condominium units <u>\$250,000 x 5</u>	=		<u>1,250,000</u>
Total		\$	8,162,000

\$8,160,000

"EIGHT MILLION ONE HUNDRED SIXTY THOUSAND DOLLARS"

Absorption, Discounting, and Final Value Estimate

In order to determine the discounted retail value or wholesale value to one buyer, an appropriate absorption rate must be concluded. We have reviewed sales histories of other condominium developments in the market area and have spoken to various real estate agents.

A search of the real estate market has been undertaken in order to estimate the most probable absorption rate for the subject property. This search included interviews with marketing agents, developers, and banks involved with condominium projects in Salt Lake County. Developments similar to the proposed subject have been thoroughly evaluated in order to ascertain the feasibility of building and marketing the project as planned. These projects are as follows:

ABSORPTION COMPARABLES SUMMARY

Name/Location	Unit Size	Unit Price	Units Sold	Sales Period	Monthly Absorp.
The Cottages Condos 4580 South 900 East Salt Lake City, Utah	1,375 to 1,800 sf	\$209,900 to \$244,900	9	8/01/96 to Present	1.50
Cottonwood Cove 5055 South Highland Drive Salt Lake City, Utah	1,700 to 2,300 sf	\$185,000 to \$215,000	24	4/96 to Present	2.40
838 Condos 850 East South Temple Salt Lake City, Utah	1,300 to 1,990 sf	\$155,000 to \$250,000	17	8/96 to Present	2.83

AVERAGES AND RANGES

Unit Price Range - \$155,000 to \$250,000

Absorption Range - 1.50 to 2.83

Mean Absorption Rate - 2.24

As previously noted, there are many positive circumstances influencing the proposed subject, including good economic growth, in-migration, and strong market activity within the subject neighborhood over the past year. Housing inventories are increasing, but continued high levels of demand are expected to keep the market in good condition over the next two years, in spite of the fact that several new projects will be coming on the market in the near future. These events combine to create a market condition where demand continues to be strong but where home buyers may have more choices available to them in the future. Due to continued demand in the foreseeable future, absorption rates in the Salt Lake County market are expected to continue at a brisk pace.

As noted above, absorption rates for the comparables range from 1.50 to 2.83 per month. In establishing an appropriate absorption projection for the proposed subject, most weight is given to comparable three, due to its similarity pricing relative to the proposed development. This comparable has had an absorption of 2.83 sales per month. Based on the information presented herein, and taking into account the location and aesthetics of the subject property, as well as the estimated price range of the proposed units and current interest rate activity, it is our opinion that a conservative absorption projection of at least 2.33 sales or "take-downs" will occur per month or (7 per quarter) until the project is sold out.

Absorption could be higher during the spring and the summer time period, and slightly lower during the winter months. In order to arrive at an appropriate discounted value, presales must be projected. Based on current market activity, we have projected two pre-sales for the proposed development.

After establishing the above projected absorption and presales for the subject, it is now appropriate to discuss the discounting process.

Discounting

In the appraisal of condominiums, it is recognized that values are typically higher when condominiums are sold individually than when they are sold in multiples. This is commonly referred to as the "value to one buyer" or wholesale value. This is a result of holding costs,

retail profit potential, and risks during the absorption period. Another way to look at it is to identify the value of the fully developed property to another entrepreneur.

When determining the discounted value of the subject as a whole to one buyer, marketing costs and developer's retail profit should also be subtracted. These are elements that an entrepreneur would expect to add into the price he pays for the property as a whole to sell the units. The average gross sellout value per unit, as of February 18, 1998, which is the projected date of completion, was concluded to be \$173,617 per unit (\$8,160,000/47 units). As identified in the Land Valuation section of this report, land values have been increasing in Salt Lake County. Hence it is logical to assume that unit values are also increasing. Conversations with developers and consultants Dave Tolman, Kelly Shepard, and Trevor Sudweeks indicate that condominium values have been increasing at the rate of at least 10 percent per year. However, projecting that values will continue to increase at this rate is considered to be highly speculative. In the interest of making a prudent and conservative value projection, we have selected 4 percent as an annual growth rate in the value of the proposed condominiums.

The marketing of the condominium units is considered to be an expense. The typical cost to sell condominiums such as those proposed for the subject, ranges from 3.0 to 5.0 percent of the retail price, including commissions and advertising. This is based on interviews with several local developers and marketers, including Kelly Shepard of Village Communities and Dave Tolman of Performance Dynamics, who have developed and sold large numbers of condominium units in Salt Lake County. Due to current activity in the marketplace, the marketing expense would likely be in the area of 5.0 percent. We, therefore, conclude 5.0 percent as a marketing expense for the condominiums.

Closing costs are also an expense to the seller. They are estimated to be \$500 per unit based on title policy costs of \$415, closing costs of \$75, and a recording fee of \$10, for a rounded total of \$500. The annual real estate taxes per unit are estimated to be \$2,816 ($\$173,617 \times 0.015448 = \$2,682 + 5\%$ increase). These are typical rates for the immediate subject neighborhood and the Salt Lake County market, as indicated and supported in the tax information for the subject.

Based on projections supplied by developer Russ Watts, Homeowner's Association dues are estimated at \$100 per month.

The next assumption to be considered is entrepreneurial profit. When considering the value of a project to one buyer, profit should be subtracted. This is based on the supposition that the reason a developer or entrepreneur would purchase or build a project, such as the subject, is to make a profit on the sale of the individual units. The entrepreneur would not purchase the project with no profit incentive. Profit is a return on the capital at risk. This profit should not be confused with developer's profit, which considers the developer's profit and risk of competition.

The subject profit to be deducted is not associated with the construction or development of the condominiums, because we are appraising the subject as if complete. Therefore, a lower amount is used in this analysis. The entrepreneurial profit considered in this analysis is not related to the developer's profit, but is the profit required to sell the condominiums.

Based on discussions with Lear Thorpe of Fort Union Management, Roy Hansen of Silver Summit, Inc., and Wayne Larsen of Clyde H. Larsen & Sons Construction, we have determined a 7 percent retail profit margin to be appropriate, given the number of condominiums in the subject.

The net income is then discounted to a present value based on an appropriate discount rate. The discount rate chosen is based on the market's expectations of risk and investor's required return on their money. To arrive at an appropriate discount rate, yields for real estate investments should be analyzed, as opposed to yields provided by more liquid or less risky ventures.

One method of arriving at an appropriate discount rate is to combine three discount rate elements. According to an article published in the January 1989, *Appraisal Journal*, there are three major elements to consider in this methodology. Author, Robert C. Mason, MAI, identified these three elements as the safe rate, the risk rate, and the inflation rate.

The safe rate is defined as that compensation paid to a lender or investor for the use of money. The risk rate is the compensation paid to the lender or investor to offset possible losses

that occur when an investment fails to pay back borrowed funds. The inflation rate is defined as that compensation paid to the lender or investor to offset losses that may occur to the purchasing power of the payments received due to inflation.

Mr. Mason explains that typically vacant or subdivision land has a discount rate before inflation of between three and five times the safe rate. A good measure of the safe rate is the interest paid on federal funds, as they are allowed to float with the market to whatever interest rate level investors are willing to accept. According to the monthly publication, *Appraiser News*, the six month Treasury Bill rate is currently in the area of 5.5 percent. However, this rate would also include an inflation factor. According to the *Wall Street Journal*, inflation is currently running about 2.5 percent, leaving a real rate of 3.0 percent. Hence, if 3.0 percent were used as the safe rate, and an appropriate risk rate were selected at 2.0 percent, due to the current strong demand for housing in Utah, the discount rate would be calculated as follows:

$$(\text{Safe Rate}) 3.0\% + (\text{Risk Rate}) 2.0\% = 5.0\%$$

$$5.0\% \times \text{Inflation Rate} = \text{Discount Rate}$$

To select an appropriate Inflation Rate, we spoke with Mr. Jeffrey Thredgold, economist with Key Bank of Utah. Key Bank reports the C.P.I. over the past 16 years as follows:

CONSUMER PRICE INDEX STATISTICS		
Year	Index	Percent Change from Previous Year
1980	82.4	N/A
1981	90.9	10.3%
1982	96.5	6.2%
1983	99.6	3.2%
1984	103.9	4.3%
1985	107.6	3.6%
1986	109.6	1.9%
1987	113.6	3.6%
1988	118.3	4.1%
1989	124.0	4.8%
1990	130.7	5.4%
1991	136.2	4.2%
1992	140.3	3.0%
1993	144.5	3.0%
1994	149.5	3.0%
1995	153.2	2.5%
Last 15 Year Average		4.2%

Mr. Thredgold indicated that the projection for inflation through 1997 is about 2.5 percent. He also indicated that most economists predict long term inflation of 3.8 to 4.0 percent annually. However, inflation is currently very low, according to the *Wall Street Journal*, it is expected to remain low in the short term. As such, we have concluded that 2.5 percent is a "reasonable" expectation of inflation. Multiplying this Inflation Rate of 2.5 percent by the 5.0 percent Safe Rate and Risk Rate, yields an appropriate Discount Rate of 12.5 percent.

This annual rate is used to discount the net income cash flow to a present value. This is done by computer as shown on the DCF model. With these market extracted assumptions, the net income can now be determined. The DCF model shows the calculations and a summary of the assumptions.

Based on this analysis, the wholesale value of the proposed condominiums, in fee simple title as of February 18, 1998, which is the projected date of completion, is:

\$6,495,000

"SIX MILLION FOUR HUNDRED NINETY-FIVE THOUSAND DOLLARS"

RECONCILIATION AND GROSS VALUE ESTIMATE

Reconciliation is the process of evaluating, coordinating, and selecting from among several conclusions to reach a final answer or estimate. This process requires a review or re-examination of the work performed by the appraiser throughout the appraisal report.

The major valuation conclusions reached in the report are under two approaches to value, the Income Approach and the Cost Approach. The estimates of value reached by each of these sections were supported by market information extracted from the marketplace. The conclusions reached are as follows:

Aggregate Retail Value	\$ 8,160,000	Not Market as Defined)
Per Unit (rounded)	\$ 173,617	
Income Approach (Bulk Sale)	\$ 6,495,000	
Per Unit (rounded)	\$ 138,191	
Cost Approach	\$ 6,755,000	
Per Unit (rounded)	\$ 143,723	

These conclusions were reached by applying the techniques and principles of appraisal theory. They were well supported by a good description of the improvements along with the market or environment.

The Cost Approach generally gives a good indication of value for new developments such as the subject property. The cost estimate, provided by the *Marshall Valuation Service*, has proven to be very close to actual builder costs in the local area. Cost estimates in the *Marshall Valuation Service* and local engineer and developer estimates were used in estimating the reproduction cost.

In the Income Approach, recent comparables were found. Comments were made and adjustments used to make comparison to the subject. A Discounted Cash Flow value was then calculated to arrive at a wholesale value.

The Income Approach and Cost Approach are important to consider in determining a final value. The Income Approach is usually considered to be the best determinant of value, and

this particular assignment is based on very reliable market information. As previously noted, the Sales Comparison Approach was not used, due to the lack of reliable information in the market. Hence, most weight is given to the Income Approach in arriving at a final value conclusion.

Based upon the analysis made and the data reported, we are of the opinion the bulk sale value of the proposed development in fee simple title, as of February 18, 1998, which is the projected date of completion, is:

\$6,495,000

"SIX MILLION FOUR HUNDRED NINETY-FIVE THOUSAND DOLLARS"

CERTIFICATION OF VALUE - Proposed 47-Unit, The Club Condominiums

We, ROLAND D. ROBISON and GARY R. FREE, certify that, to the best of our knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analysis, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, unbiased professional analysis, opinions, and conclusions.

We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest or bias with respect to the parties involved.

Our compensation is not contingent on an action or event resulting from the analysis, opinions, or conclusions in, or the use of, this report.

The appraisal was not based on a request for a minimum valuation, a specific valuation, or approval of the loan.

Our analysis, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Practice of the Appraisal Foundation and the Supplemental Standards of the Appraisal Institute. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

Roland D. Robison has made a personal inspection of the property that is the subject of this report. Gary Free is familiar with the area but did not make a physical inspection of the property.

The Appraisal Institute and other appraisal organizations, of which this appraiser is a member, conducts a voluntary program of continuing education for its designated members. MAI's and SRA's who meet minimum standards of this program are awarded periodic educational certification. As of the date of this report, I, GARY R. FREE, have completed the requirements of the continuing education program of the Appraisal Institute.

The undersigned hereby acknowledges that they have the appropriate education and experience to complete the assignment in a competent manner. The reader is referred to the appraisers' Statements of Qualifications. Brent Clark, Leyla Sim, and Kristie Long provided significant professional assistance to the persons signing this report.

DATE

DATE

GARY R. FREE, MAI, SRA

Utah State - Certified General Appraiser
License # CG00037508 (Exp. 6/10/97)

ROLAND D. ROBISON

Utah State - Registered Appraiser
License #RA00041279 (Exp. 10/31/98)

GENERAL ASSUMPTIONS

This appraisal report has been made with the following general assumptions:

1. The legal description used in this report is assumed to be correct.
2. No survey of the property has been made by the appraiser and no responsibility is assumed in connection with such matters. Sketches in this report are included only to assist the reader in visualizing the property.
3. No responsibility is assumed for matters of a legal nature affecting title to the property nor is an opinion of title rendered. The title is assumed to be good and marketable, unless otherwise stated.
4. Information furnished by others is assumed to be true, correct, and reliable. A reasonable effort has been made to verify such information; however, no responsibility for its accuracy is assumed by the appraiser.
5. All mortgages, liens, encumbrances, leases, and servitudes have been disregarded unless so specified within the report. The property is appraised as though under responsible ownership and competent management.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover such factors.
7. Full compliance with all applicable federal, state, and local environmental regulations and laws is assumed unless noncompliance is stated, defined, and considered in the appraisal report.
8. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined, and considered in the appraisal report.
9. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.

GENERAL LIMITING CONDITIONS

The appraisal report has been made with the following general limiting conditions:

1. The appraiser will not be required to give testimony or appear in court because of having made this appraisal, with reference to the property in question, unless arrangements have been previously made.
2. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with proper written qualification and only in its entirety.
3. The distribution of the total valuation in this report between land and improvements applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.
4. Disclosure of the contents of this appraisal report is governed by the By-Laws and Regulations of the Appraisal Institute.
5. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or any reference to the Appraisal Institute or to the MAI designation) shall be disseminated to the public through advertising media, public relations media, sales media or any other public means of communication without the prior written consent and approval of the appraiser.
6. Acceptance of and/or use of this appraisal report constitutes acceptance of the stated general assumptions and limiting conditions.

SPECIAL LIMITING CONDITIONS

1. The appraisal is made subject to completion of the proposed improvements as described in this report, and as represented by the developer, Ross Watts, as well as the architecture and engineering firms performing the survey, legal description, and architecture for the proposed 47-unit The Club Condominiums.
2. The appraisal is made subject to the final approval and recordation of the subject and a final engineers survey.
3. The liability of Gary Free and Associates is limited to the client only and to the fee actually received by appraiser. Further, there is no accountability, obligation, or liability to any third party. If this report is placed in the hands of anyone other than client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraiser is in no way to be responsible for any costs incurred to discover or correct any deficiencies of any type present in the property; physically, financially, and/or legally. In the case of limited partnerships or syndication offerings or stock offerings in real estate, client agrees that in case of lawsuit (brought by lender, partner or part owner in any form of ownership, tenant, or any other party), any and all awards, settlements of any type in such suit, regardless of outcome, client will hold appraiser completely harmless in any such action.
4. The existence of potentially hazardous material on the subject site is reported, with the existence of asbestos in the current structure.

ADDENDUM NO. D-5

EXHIBIT 22

THE CLUB
47 UNIT / CONDOMINIUM PROJECT
ESTIMATED BREAKDOWN
10/21/97

A. Construction Costs	
1. 54,564 s.f. Interior Finished Units, Parking Structure	6,700,000
B. Demolition and Fill	100,000
C. Asbestos Removal	81,000
D. Land Cost	770,000
E. Consultant Cost, Engineering	150,000
F. Interest & Finance Costs	295,000
G. Appraisal, Bonding	9,500
H. Municipal Hook-Up Fees, Permits	60,000
I. Legal/Closing Cost/Insurance	10,000
J. Utility Company Fees	18,000
K. Development Fee	493,000
L. Marketing	25,000
M. Contingency	<u>50,000</u>
 TOTAL COST	 \$8,761,500

INCOME ANALYSIS

30 - A Unit 2 Bdrm., 2 Bath; 1,150 s.f.; 212,500 per unit	6,382,500
3 - B Unit 3 Bdrm., 2 Bath; 1,650 s.f.; 297,000 per unit	891,000
2 - C Unit 3 Bdrm., 2 Bath; 1,743 s.f.; 313,000 per unit	627,480
6 - D Unit 2 Bdrm., 2 Bath; 1,060 s.f.; 196,000 per unit	1,176,600
<u>6 - E Unit 1 Bdrm., 1 Bath; 872 s.f.; 162,000 per unit</u>	<u>972,000</u>
47 Units	10,049,580

TOTAL INCOME 10,049,580

Closing and Commission, Less 5% <502,479>

Net Sales Income 9,547,101

Total Project Costs 8,761,500

TOTAL ESTIMATED PROJECT PROCEEDS 785,601

This analysis and compilation is based on our best estimate of costs & market conditions. This projection will change.

~~RAW~~

TS
11/20

10/21/0

EXHIBIT 23

THE CLUB
47 UNIT / CONDOMINIUM PROJECT
ESTIMATED BREAKDOWN
10/30/98

A. Construction Costs	
1 54,564 s.f. Interior Finished Units, Parking Structure	6,900,000
B. Demolition and Fill	100,000
C. Asbestos Removal	81,000
D. Land Cost	770,000
E. Consultant Cost, Engineering	150,000
F. Interest & Finance Costs	395,000
G. Appraisal, Bonding	9,500
H. Municipal Hook-Up Fees, Permits	60,000
I. Legal/Closing Cost/Insurance	10,000
J. Utility Company Fees	18,000
K. Development Fee	493,000
L. Marketing	42,000
M. Contingency	<u>50,000</u>
 TOTAL COST	 \$9,078,500

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INCOME ANALYSIS

Gross Sales - (See Sales List Dated 10/15/98) - \$10,420,000

TOTAL INCOME	10,420,000
Closing and Commission, Less 5%	<521,000>
Net Sales Income	9,899,000
Total Project Costs	<9,078,500>
TOTAL ESTIMATED PROJECT PROCEEDS	820,500

This analysis and compilation is based on our best estimate of costs & market conditions. This projection will change.

EXHIBIT 24

THE CLUB
47 UNIT / CONDOMINIUM PROJECT
UPDATED CONSTRUCTION BREAKDOWN
9/5/99

A. Construction Costs	7,246,000
B. Demolition and Fill	90,000
C. Asbestos Removal	81,000
D. Land Cost	770,000
E. Consultant Cost, Engineering	159,900
F. Interest & Finance Costs	528,000
G. Appraisal, Bonding	5,900
H. Municipal Hook-Up Fees, Permits	2,500
I. Legal/Closing Cost/Insurance	17,100
J. Utility Company Fees	1,450
K. Development Fee	493,000
L. Marketing	149,500
M. Contingency	<u>80,000</u>
 TOTAL COST	 \$9,624,350

Flake Project

INCOME ANALYSIS

Gross Sales - (see list dated 8/21/99)	10,187,352
TOTAL INCOME	
Closing and Commission, Less 5%	<509,367>
Net Sales Income	9,677,985
Total Project Costs	<9,624,350>
TOTAL ESTIMATED PROJECT PROCEEDS	53,635

currently (-50,000)

This analysis and compilation is based on our best estimate of costs & market conditions. This projection will change.

MEMORANDUM


To: The Club L C Members
From: Russ Watts, Managing Member
Date: February 11, 1999
Re: Financial Review, The Club

Capital status and loans on The Club:

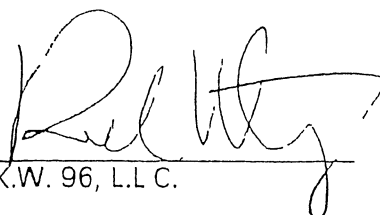
Bank of Arizona loan debt -	\$5,054,000.00
Watts Corporation outstanding loan to construction cost -	\$771,693.75
Rees Jensen loan plus interest -	\$200,000.00
R.K.W. 96, L.C. - Capital Deposit	\$326,000.00
R.K.W. 94, L.C. - Loan	\$142,000.00
Todd - Capital -	<u>\$ 35,600.00</u>
	\$6,460,293.75

- Interest is ongoing
- Cost on loan extensions, see bank memo
- Closing schedule critical

Review of Ted's capital account - balance left -	\$491,815.80
Review of capital obligation required by agreement	\$631,000.00
Balance contributed as of 2/10/99 -	1,239,693.75
Development fee -	<u>451,000.00</u>
	1,690,693.75
Partnership to pay interest at 10% on balance of	\$1,059,693.75
Review bank meeting/status of 2/5/99	
Acceptance of financial status	



Stevensen 3rd L.C.



R.K.W. 96, L.L.C.

Shauri

TED STEVENSEN DRAWS

DATE	CHECK #	AMOUNT	
10/21/96	103	\$ 118,958.60	AMERICAN WEST TITLE
10/21/96	104	\$ 5,000.00	
11/5/96	105	\$ 5,000.00	
12/2/96	101	\$ 10,000.00	
1/9/97	103	\$ 5,000.00	
2/4/97	106	\$ 5,000.00	
3/4/97	106	\$ 5,000.00	
4/7/97	115	\$ 5,000.00	
4/14/97	117	\$ 7,000.00	
5/5/97	122	\$ 5,000.00	
6/5/97	124	\$ 5,000.00	
7/7/97	137	\$ 5,000.00	
8/4/97	142	\$ 5,000.00	
9/5/97	149	\$ 5,000.00	
10/3/97	153	\$ 5,000.00	
11/1/97	LOAN	\$ 2,230.60	AT 10% INTEREST
11/7/97	161	\$ 5,000.00	
12/2/97	163	\$ 5,000.00	
1/5/98	168	\$ 5,000.00	
2/3/98	170	\$ 5,000.00	
3/2/98	173	\$ 5,000.00	
4/7/98	180	\$ 5,000.00	
5/4/98	181	\$ 5,000.00	
6/2/98	189	\$ 5,000.00	
7/1/98	190	\$ 5,000.00	
8/5/98	193	\$ 5,000.00	
9/4/98	199	\$ 5,000.00	
10/5/98	201	\$ 5,000.00	
11/9/98	207	\$ 5,000.00	
12/3/98	208	\$ 5,000.00	
1/13/99	214	\$ 5,000.00	
2/9/99	215	\$ 5,000.00	
TOTALS		\$ 279,164.20	

TOTAL CAPITAL ACCOUNT	\$ 770,000.00
LESS DISTRIBUTIONS	\$ (279,164.20)
REMAINING CAPITAL ACCOUNT	\$ 490,835.80

The Club LC Financial Summary 1

Sales	\$ 10,406,281	<1>
Net Closing costs	69,251	A
Commissions	517,517	B
Total	<u>9,819,513</u>	
Land	631,000	<2>
Costs to build	7,178,500	C
Administrative and Other Costs	813,000	D
Net profit	1,197,013	
Adjustments to net profit	451,000	<4>
Adjusted net profit	<u>\$ 1,648,013</u>	
50% net profit sharing to Stevensen	\$ 598,507	
Less: Distribution of profits made	162,000	<3>
Net profit available for distribution	436,507	
Add: Payment for land	631,000	<2>
Add: Payment for 1% fee	53,202	B
Total due Stevensen	<u>\$ 1,120,709</u>	

<1> Source: L. Dean Smith, December 15, 2005, Report Of Findings, Exhibit 8

<2> Source: Per stipulation and court order dated March 16, 2005

<3> Source: Washington Federal bank statements

<4> Source: Defendant's Exhibit 793

The Club LC Financial Summary 2

Sales	\$ 10,406,281	<1>
Net Closing costs	69,251	A
Commissions	517,517	B
Total	<u>9,819,513</u>	
Land	631,000	<2>
Costs to build	8,164,366	C
Administrative and Other Costs	1,544,333	D
Net profit (loss)	<u>\$ (520,186)</u>	
50% of net loss to Stevensen	\$ (260,093)	
Add: Distribution of profits already made	<u>(162,000)</u>	<3>
Net loss allocated to Stevensen	(422,093)	
Add: Payment for land	631,000	<2>
Add: Payment for 1% fee	53,202	B
Total due Stevensen	<u>\$ 262,109</u>	

<1> L. Dean Smith, December 15, 2005, Report Of Findings, Exhibit 8

<2> Per stipulation and court order dated March 16, 2005

<3> Source: Washington Federal bank statements

**The Club LC
Net Closing Costs**

Title insurance & closing fees	\$	44,856	<1>
Property taxes		19,311	<1>
HOA fees		7,645	<1>
Buyer's credits		33,022	<1>
		<hr/>	
Sub total		104,834	
Less: Tax and other reimbursements		35,583	<1>
		<hr/>	
Net closing costs	\$	69,251	
		<hr/> <hr/>	

<1> Source: L. Dean Smith, December 15, 2005, Report Of Findings, Exhibit 8

**The Club LC
Commissions**

Watts commissions	\$	311,202	<1>
Stevensen 1% commissions - paid		46,216	<1>
Stevensen 1% commissions - not paid		53,242	<2>
Outside commissions		106,857	<1>
		<hr/>	
Total commissions	\$	517,517	
		<hr/> <hr/>	

<1> Source: L. Dean Smith, December 15, 2005, Report Of Findings, Exhibit 8

<2> Source: L. Dean Smith, December 15, 2005, Report Of Findings, Exhibit 1

**The Club LC
Costs to build**

	<u>Approved</u>		<u>Actual</u>	
Construction costs	\$ 6,700,000	<1>	\$ 7,750,765	<2>
Demolition and fill & asbestos removal	181,000	<1>	188,642	<3>
Consultant costs - engineering	150,000	<1>	152,934	<2>
Appraisal & bonding	9,500	<1>	5,880	<2>
Municipal hook-up fees & permits	60,000	<1>	17,179	<2>
Legal & insurance	10,000	<1>	27,549	<2>
Utilities	18,000	<1>	-	
Contingency	50,000	<1>	21,417	<2>
Total costs to build	<u>\$ 7,178,500</u>		<u>\$ 8,164,366</u>	

<1> Source: Last approved Watts budget, Estimated Breakdown October 21, 1997; Bates # TS 0.0.0.0.6.

<2> Source: Washington Federal Savings checking account & Watts Enterprise Detail Job Costs;
Bates #101662 - 74, Watts Corporation check register; Bates #102541 - 841

<3> Source: Washington Federal Savings checking account & Watts Enterprise check register;
Bates #102857 - 89

**The Club LC
Administrative and Other Costs**

	<u>Approved</u>		<u>Actual</u>	
Watts development fees	\$ 493,000	<1>	\$ -	
Interest & finance costs	295,000	<1>	1,046,978	<2>
Marketing & Advertising	25,000	<1>	374,740	<3>
Other unsupported costs			122,615	<3>
Total costs to build	<u>\$ 813,000</u>		<u>\$ 1,544,333</u>	

<1> Source: Last approved Watts budget, Estimated Breakdown October 21, 1997, Bates # TS 0.0.0.0.6.

<2> Source: Washington Federal bank statement, The Club check register January 1, 2000 - June 11, 2003 and L. Dean Smith, December 15, 2005, Report Of Findings, Exhibit 6

<3> Source: Washington Federal bank statement, The Club check register January 1, 2000 - June 11, 2003

PROMISSORY NOTE

June 1, 1999
Salt Lake City, UT

FOR VALUE RECEIVED, the undersigned promises to pay Whitmore's Inc., Blaine N. Harmon, *pres.*, or order, at 1453 Major Street, Salt Lake City, UT 84115, or such other address as the holder hereof (the "Holder") may designate, the sum of Two Hundred Thousand Dollars (\$200,000) ("Principal Amount") together with interest as provided hereinbelow and such other amounts which may become due in accordance with the following provisions.

1. INTEREST RATE: APPLICATIONS OF PAYMENTS. Interest shall accrue on the unpaid Principal Amount from the date hereof at the rate of TEN percent (10%) per annum and shall be payable in accordance with the provisions of Paragraph 2 hereinbelow.
2. INTEREST ONLY PAYMENTS ON A QUARTERLY BASIS.
3. MATURITY DATE. Principal and remaining interest amount shall be due and payable on or before MARCH 31, 2000.
4. PREPAYMENT. The undersigned shall have the right to prepay any amount of interest or principal without penalty.
5. SEVERABILITY, REFUSAL OF PAYMENTS. If any provision hereof shall be found to be invalid or unenforceable, the remaining provisions hereof shall nonetheless be given the fullest effect under law. Holder may, at its option, refuse to accept any payment which when applied to amounts owing under this Note will nonetheless leave other payments delinquent, or if this Note is, at that time, otherwise in default.
6. DEFAULT. a) If the payment of any money which shall become due under this Note shall not have been received by Holder on the due date for such payment, and if Holder shall then give maker written notice thereof, and Holder shall not have received such payments on the tenth day after sending such notice, this Note shall be in default.

b) *If the performance of any covenant, condition, or obligation, other than the payment of money as set forth in subparagraph (a) above, shall not be made as required by this Note or if any representation, promise, term, or provision of this Note shall be breached, and if Holder shall have given the undersigned written notice of such failure of performance or breach at the undersigned's address as set forth below, then if within (30) days after sending of the written notice, the undersigned shall not have both cured the failure of performance or breach and given Holder evidence of cure upon which Holder may, in its reasonable discretion and judgment, rely with certainty, this notice shall be in default, unless in the reasonable discretion and judgment of Holder, Maker is diligently pursuing action acceptable to Holder which may take longer than thirty (30) days and there is no monetary default under this note.*

- c) Upon the occurrence of a default Holder may, at any time, with or without notice, declare the unpaid balance of the Principal amount, and all other sums evidenced by this Note at once due and immediately payable.
7. REMEDIES ARE CUMULATIVE. The rights of the Holder as provided in this Note shall be cumulative and concurrent, and may be pursued singly, successively, or together against the undersigned, any Guarantor hereof and any other funds, property or security held by the Holder for the payment hereof at the sole discretion of the Holder. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of said rights or remedies or of the rights to exercise them at any later time.
8. WAIVER. All makers, endorsers, guarantors, sureties, accommodation parties hereof and all other persons liable or to become liable for all or any part of this indebtedness, jointly and severally waive diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity and also recourse to suretyship defenses generally; and they also jointly and severally hereby consent to any and all renewals, extensions or modification of the terms hereof or the release or substitution of any security for the indebtedness evidenced hereby or any other indulgences shall not affect the liability of said parties for the indebtedness evidenced by this Note.
9. ATTORNEY'S FEES, ETC. The maker, endorsers, guarantors, sureties accommodation parties hereof and all other persons liable or to become liable on this Note, agree jointly and severally, to pay all costs of collection, including reasonable attorney's fees and all costs of suit appeal, in case the unpaid principal sum of this Note, or any payment of interest or principal and interest thereon, is not paid when due, or in the case it becomes necessary to protect the security for the indebtedness evidenced hereby, or in the event the Holder is made a party to any litigation merely because of the existence of the indebtedness evidenced by this Note, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.
10. LIABILITY FOR FEES. The undersigned shall pay and indemnify Holder against liability for, any fees or costs imposed on or incidental to this Note claimed by the State of Utah or any municipality, including with limitation, mortgage, or recording taxes, if any but not including income, franchise, or other taxes applicable to Holder or its operations generally and not specifically incident to the transaction evidenced hereby.
11. NOTICES. Notices which are given pursuant to this Note shall be given by prepaid certified or registered mail, returned receipt requested, as follows:

TO HOLDER:

Whitmore's Inc. ~~Profit Sharing and Retirement Plan~~
1453 Major Street
SLC, UT 84115

TO UNDERSIGNED:

Watts Corporation
5200 South Highland Drive, Suite 101
SLC, UT 84117

Failure of Holder to give any notice contemplated hereby other than notice of default, shall not excuse the undersigned from its payment or performance hereunder; provided, however, if by the terms of this Note, the undersigned must rely upon the Holder for the calculation and notice to the undersigned of the amount of any installment or other payment under this Note, and if Holder shall not have given such notice in a timely manner, then the undersigned shall not be required to make such installment or other payment until five (5) days after receipt of written notice of such amount.

12. AMENDMENTS IN WRITING. This Note may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

13. SUCCESSORS AND ASSIGNS. Whenever used herein, the words the "undersigned" and "Holder" shall be deemed to include their respective heirs, personal representatives, successors, and assigns.

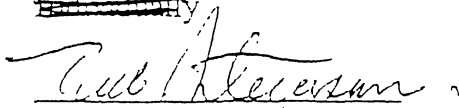
14. UTAH LAW. This Note shall be construed according to and governed by the laws of the State of Utah.

Watts Corporation, A Utah Corporation

BY: 
Russell K. Watts

6/1/99
Date

ITS: Agents

~~_____~~

Ted Stevens / L.C.

6/1/99
Date

PROMISSORY NOTE

June 1, 1999
Salt Lake City, UT

FOR VALUE RECEIVED, the undersigned promises to pay Whitmore's Inc. Profit and Sharing Retirement Plan, Blaine N. Harmon, Trustee, or order, at 1453 Major Street, Salt Lake City, UT 84115, or such other address as the holder hereof (the "Holder") may designate, the sum of One Hundred Thousand Dollars (\$100,000) ("Principal Amount") together with interest as provided hereinbelow and such other amounts which may become due in accordance with the following provisions.

1. INTEREST RATE: APPLICATIONS OF PAYMENTS. Interest shall accrue on the unpaid Principal Amount from the date hereof at the rate of TEN percent (10%) per annum and shall be payable in accordance with the provisions of Paragraph 2 hereinbelow.
2. INTEREST ONLY PAYMENTS ON A QUARTERLY BASIS.
3. MATURITY DATE. Principal and remaining interest amount shall be due and payable on or before MARCH 31, 2000.
4. PREPAYMENT. The undersigned shall have the right to prepay any amount of interest or principal without penalty.
5. SEVERABILITY. REFUSAL OF PAYMENTS. If any provision hereof shall be found to be invalid or unenforceable, the remaining provisions hereof shall nonetheless be given the fullest effect under law. Holder may, at its option, refuse to accept any payment which when applied to amounts owing under this Note will nonetheless leave other payments delinquent, or if this Note is, at that time, otherwise in default.
6. DEFAULT. a) If the payment of any money which shall become due under this Note shall not have been received by Holder on the due date for such payment, and if Holder shall then give maker written notice thereof, and Holder shall not have received such payments on the tenth day after sending such notice, this Note shall be in default.

b) If the performance of any covenant, condition, or obligation, other than the payment of money as set forth in subparagraph (a) above, shall not be made as required by this Note or if any representation, promise, term, or provision of this Note shall be breached, and if Holder shall have given the undersigned written notice of such failure of performance or breach at the undersigned's address as set forth below, then if within (30) days after sending of the written notice, the undersigned shall not have both cured the failure of performance or breach and given Holder evidence of cure upon which Holder may, in its reasonable discretion and judgment, rely with certainty, this notice shall be in default, unless in the reasonable discretion and judgment of Holder, Maker is diligently pursuing action acceptable to Holder which may take longer than thirty (30) days and there is no monetary default under this note.

- c) Upon the occurrence of a default Holder may, at any time, with or without notice, declare the unpaid balance of the Principal amount, and all other sums evidenced by this Note at once due and immediately payable.
7. REMEDIES ARE CUMULATIVE. The rights of the Holder as provided in this Note shall be cumulative and concurrent, and may be pursued singly, successively, or together against the undersigned, any Guarantor hereof and any other funds, property or security held by the Holder for the payment hereof at the sole discretion of the Holder. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of said rights or remedies or of the rights to exercise them at any later time.
8. WAIVER. All makers, endorsers, guarantors, sureties, accommodation parties hereof and all other persons liable or to become liable for all or any part of this indebtedness, jointly and severally waive diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity and also recourse to suretyship defenses generally; and they also jointly and severally hereby consent to any and all renewals, extensions or modification if the terms hereof or the release or substitution of any security for the indebtedness evidenced hereby or any other indulgences shall not affect the liability of said parties for the indebtedness evidenced by this Note.
9. ATTORNEY'S FEES, ETC. The maker, endorsers, guarantors, sureties accommodation parties hereof and all other persons liable or to become liable on this Note, agree jointly and severally, to pay all costs of collection, including reasonable attorney's fees and all costs of suit appeal, in case the unpaid principal sum of this Note, or any payment of interest or principal and interest thereon, is not paid when due, or in the case it becomes necessary to protect the security for the indebtedness evidenced hereby, or in the event the Holder is made a party to any litigation merely because of the existence of the indebtedness evidenced by this Note, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.
10. LIABILITY FOR FEES. The undersigned shall pay and indemnify Holder against liability for any fees or costs imposed on or incidental to this Note claimed by the State of Utah or any municipality, including with limitation, mortgage, or recording taxes, if any but not including income, franchise, or other taxes applicable to Holder or its operations generally and not specifically incident to the transaction evidenced hereby.
11. NOTICES. Notices which are given pursuant to this Note shall be given by prepaid certified or registered mail, returned receipt requested, as follows:

TO HOLDER: Whitmore's Inc. Profit Sharing and
Retirement Plan
1453 Major Street
SLC, UT 84115

TO UNDERSIGNED: Watts Corporation
5200 South Highland Drive, Suite 101
SLC, UT 84117

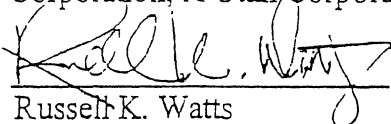
Failure of Holder to give any notice contemplated hereby other than notice of default, shall not excuse the undersigned from its payment or performance hereunder; provided, however, if by the terms of this Note, the undersigned must rely upon the Holder for the calculation and notice to the undersigned of the amount of any installment or other payment under this Note, and if Holder shall not have given such notice in a timely manner, then the undersigned shall not be required to make such installment or other payment until five (5) days after receipt of written notice of such amount.

12. AMENDMENTS IN WRITING. This Note may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

13. SUCCESSORS AND ASSIGNS. Whenever used herein, the words the "undersigned" and "Holder" shall be deemed to include their respective heirs, personal representatives, successors, and assigns.

14. UTAH LAW. This Note shall be construed according to and governed by the laws of the State of Utah.

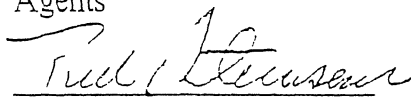
Watts Corporation, A Utah Corporation

BY: 
Russell K. Watts

5/1/99.
Date

~~Individually~~

ITS: Agents


Ted Stevensen / t.e.

6/1/99
Date

EXHIBIT 566

PROMISSORY NOTE

June 1, 1999
Salt Lake City, UT

FOR VALUE RECEIVED, the undersigned promises to pay ~~Christopoulos~~ ~~Enterprises, L.L.C., P.~~ O. Box ~~352~~, Salt Lake City, UT 84110, or such other address as the holder hereof (the "Holder") may designate, the sum of One Hundred Five Thousand Dollars (~~\$105,000~~) ("Principal Amount") together with interest as provided hereinbelow and ~~such other amounts which may~~ become due in accordance with the following provisions. *105,000*

1. INTEREST RATE: APPLICATIONS OF PAYMENTS. Interest shall accrue on the unpaid Principal Amount from the date hereof at the rate of TEN percent (10%) per annum and shall be payable in accordance with the provisions of Paragraph ~~2~~ hereinbelow.
2. INTEREST ONLY PAYMENTS ON A QUARTERLY BASIS.
3. MATURITY DATE. Principal and remaining interest amount shall be due and payable on or before APRIL 30, 2000.
4. PREPAYMENT. The undersigned shall have the right to ~~prepay any~~ amount of interest or principal without penalty.
5. SEVERABILITY, REFUSAL OF PAYMENTS. If any provision hereof shall be found to be invalid or unenforceable, the remaining provisions hereof shall nonetheless be given the fullest effect under law. Holder may, at its option, refuse to accept any payment which when applied to amounts owing under this Note will nonetheless leave other payments delinquent, or if this Note is, at that time, otherwise in default.
6. DEFAULT. a) If the payment of any money which shall become due under this Note shall not have been received by Holder on the due date for such payment, and if Holder shall then give maker written notice thereof, and Holder shall not have received such payments on the tenth day after sending such notice, this Note shall be in default.

b) If the performance of any covenant, condition, or obligation, other than the payment of money as set forth in subparagraph (a) above, shall not be made as required by this Note or if any representation, promise, term, or provision of this Note shall be breached, and if Holder shall have given the undersigned written notice of such failure of performance or breach at the undersigned's address as set forth below then if within (30) days after sending of the written notice, the undersigned shall not have both cured the failure of performance or breach and given Holder evidence of cure upon which Holder may, in its reasonable discretion and judgment, rely with certainty, this notice shall be in default, unless in the reasonable discretion and judgment of Holder Maker is diligently pursuing action acceptable to Holder which may take longer than thirty (30) days and there is no monetary default under this note.

- c) Upon the occurrence of a default Holder may, at any time, with or without notice, declare the unpaid balance of the Principal amount, and all other sums evidenced by this Note at once due and immediately payable.
7. REMEDIES ARE CUMULATIVE. The rights of the Holder as provided in this Note shall be cumulative and concurrent, and may be pursued singly, successively, or together against the undersigned, any Guarantor hereof and any other funds, property or security held by the Holder for the payment hereof at the sole discretion of the Holder. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of said rights or remedies or of the rights to exercise them at any later time.
8. WAIVER. All makers, endorsers, guarantors, sureties, accommodation parties hereof and all other persons liable or to become liable for all or any part of this indebtedness, jointly and severally waive diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity and also recourse to suretyship defenses generally; and they also jointly and severally hereby consent to any and all renewals, extensions or modification if the terms hereof or the release or substitution of any security for the indebtedness evidenced hereby or any other indulgences shall not affect the liability of said parties for the indebtedness evidenced by this Note.
9. ATTORNEY'S FEES, ETC. The maker, endorsers, guarantors, sureties accommodation parties hereof and all other persons liable or to become liable on this Note, agree jointly and severally, to pay all costs of collection, including reasonable attorney's fees and all costs of suit appeal, in case the unpaid principal sum of this Note, or any payment of interest or principal and interest thereon, is not paid when due, or in the case it becomes necessary to protect the security for the indebtedness evidenced hereby, or in the event the Holder is made a party to any litigation merely because of the existence of the indebtedness evidenced by this Note, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.
10. LIABILITY FOR FEES. The undersigned shall pay and indemnify Holder against liability for, any fees or costs imposed on or incidental to this Note claimed by the State of Utah or any municipality, including with limitation, mortgage, or recording taxes, if any but not including income, franchise, or other taxes applicable to Holder or its operations generally and not specifically incident to the transaction evidenced hereby.
11. NOTICES. Notices which are given pursuant to this Note shall be given by prepaid certified or registered mail, returned receipt requested, as follows:

TO HOLDER:	Christopoulos Enterprises L.L.C. P. O. Box 352 SLC, UT 84110
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TO UNDERSIGNED:	Watts Corporation 5200 South Highland Drive, Suite 101 SLC, UT 84117
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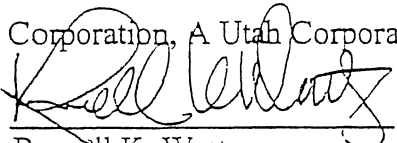
Failure of Holder to give any notice contemplated hereby other than notice of default, shall not excuse the undersigned from its payment or performance hereunder; provided, however, if by the terms of this Note, the undersigned must rely upon the Holder for the calculation and notice to the undersigned of the amount of any installment or other payment under this Note, and if Holder shall not have given such notice in a timely manner, then the undersigned shall not be required to make such installment or other payment until five (5) days after receipt of written notice of such amount.

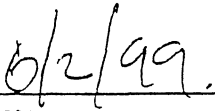
12. AMENDMENTS IN WRITING. This Note may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

13. SUCCESSORS AND ASSIGNS. Whenever used herein, the words the "undersigned" and "Holder" shall be deemed to include their respective heirs, personal representatives, successors, and assigns.

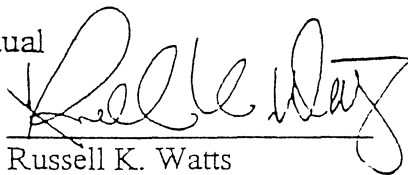
14. UTAH LAW. This Note shall be construed according to and governed by the laws of the State of Utah.

Watts Corporation, A Utah Corporation

BY: 
Russell K. Watts


Date

ITS: Agents

Individual 
Russell K. Watts

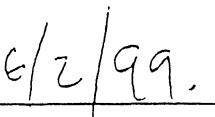

Date

EXHIBIT 567

PROMISSORY NOTE

June 1, 1999
Salt Lake City, UT

FOR VALUE RECEIVED, the undersigned promises to pay Spence Whitney, 3915 Pluto Way, Salt Lake City, UT 84124, or such other address as the holder hereof (the "Holder") may designate, the sum of One Hundred Thousand Dollars (\$100,000) ("Principal Amount") together with interest as provided hereinbelow and such other amounts which may become due in accordance with the following provisions.

1. INTEREST RATE: APPLICATIONS OF PAYMENTS. Interest shall accrue on the unpaid Principal Amount from the date hereof at the rate of TEN percent (10%) per annum and shall be payable in accordance with the provisions of Paragraph 2 hereinbelow.
2. INTEREST ONLY PAYMENTS ON A QUARTERLY BASIS.
3. MATURITY DATE. Principal and remaining interest amount shall be due and payable on or before April 30, 2000.
4. PREPAYMENT. The undersigned shall have the right to prepay any amount of interest or principal without penalty.
5. SEVERABILITY, REFUSAL OF PAYMENTS. If any provision hereof shall be found to be invalid or unenforceable, the remaining provisions hereof shall nonetheless be given the fullest effect under law. Holder may, at its option, refuse to accept any payment which when applied to amounts owing under this Note will nonetheless leave other payments delinquent, or if this Note is, at that time, otherwise in default.
6. DEFAULT. a) If the payment of any money which shall become due under this Note shall not have been received by Holder on the due date for such payment, and if Holder shall then give maker written notice thereof, and Holder shall not have received such payments on the tenth day after sending such notice, this Note shall be in default.

b) If the performance of any covenant, condition, or obligation, other than the payment of money as set forth in subparagraph (a) above, shall not be made as required by this Note or if any representation, promise, term, or provision of this Note shall be breached, and if Holder shall have given the undersigned written notice of such failure of performance or breach at the undersigned's address as set forth below, then if within (30) days after sending of the written notice, the undersigned shall not have both cured the failure of performance or breach and given Holder evidence of cure upon which Holder may, in its reasonable discretion and judgment, rely with certainty, this notice shall be in default, unless in the reasonable discretion and judgment of Holder, Maker is diligently pursuing action acceptable to Holder which may take longer than thirty (30) days and there is no monetary default under this note.

Failure of Holder to give any notice of assignment or other notice...
...understanded from or payment...
...the terms of this Note, the undersigned...
...Holder shall not have given such notice in writing...
...to make such installment or other payment...

ASSIGNMENTS IN WRITING. This Note may not be assigned, transferred, or changed, nor
...
...and signed by the party against whom enforcement of this note is sought.

...or retained in the whole or in part, and
...of this Note shall be void and of no effect...

...shall be non...
...of this Note.

BY _____

EXHIBIT 568

PROMISSORY NOTE

June 1, 1999
Salt Lake City, UT

FOR VALUE RECEIVED, the undersigned promises to pay Connie Whitney, 3915 Pluto Way, Salt Lake City, UT 84124, or such other address as the holder hereof (the "Holder") may designate, the sum of Eighty Thousand Dollars (\$80,000) ("Principal Amount") together with interest as provided hereinbelow and such other amounts which may become due in accordance with the following provisions.

1. INTEREST RATE: APPLICATIONS OF PAYMENTS. Interest shall accrue on the unpaid Principal Amount from the date hereof at the rate of TEN percent (10%) per annum and shall be payable in accordance with the provisions of Paragraph 2 hereinbelow.
2. INTEREST ONLY PAYMENTS ON A QUARTERLY BASIS.
3. MATURITY DATE. Principal and remaining interest amount shall be due and payable on or before APRIL 30, 2000.
4. PREPAYMENT. The undersigned shall have the right to prepay any amount of interest or principal without penalty.
5. SEVERABILITY, REFUSAL OF PAYMENTS. If any provision hereof shall be found to be invalid or unenforceable, the remaining provisions hereof shall nonetheless be given the fullest effect under law. Holder may, at its option, refuse to accept any payment which when applied to amounts owing under this Note will nonetheless leave other payments delinquent, or if this Note is, at that time, otherwise in default.
6. DEFAULT. a) If the payment of any money which shall become due under this Note shall not have been received by Holder on the due date for such payment, and if Holder shall then give maker written notice thereof, and Holder shall not have received such payments on the tenth day after sending such notice, this Note shall be in default.

b) If the performance of any covenant, condition, or obligation, other than the payment of money as set forth in subparagraph (a) above, shall not be made as required by this Note or if any representation, promise, term, or provision of this Note shall be breached, and if Holder shall have given the undersigned written notice of such failure of performance or breach at the undersigned's address as set forth below, then if within (30) days after sending of the written notice, the undersigned shall not have both cured the failure of performance or breach and given Holder evidence of cure upon which Holder may, in its reasonable discretion and judgment, rely with certainty, this notice shall be in default, unless in the reasonable discretion and judgment of Holder, Maker is diligently pursuing action acceptable to Holder which may take longer than thirty (30) days and there is no monetary default under this note

- c) Upon the occurrence of a default Holder may, at any time, with or without notice, declare the unpaid balance of the Principal amount, and all other sums evidenced by this Note at once due and immediately payable.
7. REMEDIES ARE CUMULATIVE. The rights of the Holder as provided in this Note shall be cumulative and concurrent, and may be pursued singly, successively, or together against the undersigned, any Guarantor hereof and any other funds, property or security held by the Holder for the payment hereof at the sole discretion of the Holder. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release of said rights or remedies or of the rights to exercise them at any later time.
8. WAIVER. All makers, endorsers, guarantors, sureties, accommodation parties hereof and all other persons liable or to become liable for all or any part of this indebtedness, jointly and severally waive diligence, presentment, protest and demand, and also notice of protest, of demand, of nonpayment, of dishonor and of maturity and also recourse to suretyship defenses generally; and they also jointly and severally hereby consent to any and all renewals, extensions or modification if the terms hereof or the release or substitution of any security for the indebtedness evidenced hereby or any other indulgences shall not affect the liability of said parties for the indebtedness evidenced by this Note.
9. ATTORNEY'S FEES, ETC. The maker, endorsers, guarantors, sureties accommodation parties hereof and all other persons liable or to become liable on this Note, agree jointly and severally, to pay all costs of collection, including reasonable attorney's fees and all costs of suit appeal. in case the unpaid principal sum of this Note, or any payment of interest or principal and interest thereon, is not paid when due, or in the case it becomes necessary to protect the security for the indebtedness evidenced hereby, or in the event the Holder is made a party to any litigation merely because of the existence of the indebtedness evidenced by this Note, whether suit be brought or not, and whether through courts of original jurisdiction, as well as in courts of appellate jurisdiction, or through a bankruptcy court or other legal proceedings.
10. LIABILITY FOR FEES. The undersigned shall pay and indemnify Holder against liability for, any fees or costs imposed on or incidental to this Note claimed by the State of Utah or any municipality, including with limitation, mortgage, or recording taxes, if any but not including income, franchise, or other taxes applicable to Holder or its operations generally and not specifically incident to the transaction evidenced hereby.
11. NOTICES. Notices which are given pursuant to this Note shall be given by prepaid certified or registered mail, returned receipt requested, as follows:

TO HOLDER. Connie Whitney
3915 Pluto Way
SLC, UT 84124

TO UNDERSIGNED: Watts Corporation
5200 South Highland Drive, Suite 101
SLC, UT 84117

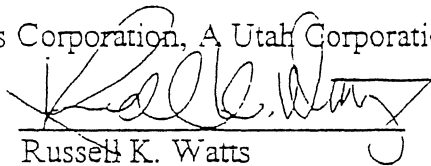
Failure of Holder to give any notice contemplated hereby other than notice of default, shall not excuse the undersigned from its payment or performance hereunder; provided, however, if by the terms of this Note, the undersigned must rely upon the Holder for the calculation and notice to the undersigned of the amount of any installment or other payment under this Note, and if Holder shall not have given such notice in a timely manner, then the undersigned shall not be required to make such installment or other payment until five (5) days after receipt of written notice of such amount.

12. AMENDMENTS IN WRITING. This Note may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

13. SUCCESSORS AND ASSIGNS. Whenever used herein, the words the "undersigned" and "Holder" shall be deemed to include their respective heirs, personal representatives, successors, and assigns.

14. UTAH LAW. This Note shall be construed according to and governed by the laws of the State of Utah.

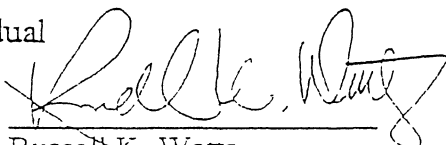
Watts Corporation, A Utah Corporation

BY: 
Russell K. Watts

6/2/99.
Date

ITS: Agents

Individual


Russell K. Watts

6/2/99.
Date

DENNIS K. POOLE & ASSOCIATES, P.C.
ATTORNEYS AT LAW

DENNIS K. POOLE, P.C.
STACEY HAYDEN SULLIVAN*

*Also Admitted in California

4543 SOUTH 700 EAST, SUITE 200
SALT LAKE CITY, UTAH 84107
TELEPHONE (801) 263-3344
TELECOPIER (801) 263-1010

October 22, 1999

Mr. Ted Stevensen
~~895-G Donner Circle~~
Salt Lake City, Utah 84108

Re: The Club Condominium, L.C.

Dear Mr. Stevensen:

This firm represents R.K.W. 96, L.L.C. and The Club Condominium, L.C. with respect to a dispute which currently exists between you and our clients. Rather than try to resolve that dispute directly between the parties, you now have directed communications to America West Title and have instructed them not to close pending sales transactions, which instructions are without authority on behalf of the limited liability company and are inconsistent with the terms of the Operating Agreement.

I have reviewed both the Articles of Organization and the Operating Agreement for The Club Condominium, L.C., as amended. There is no doubt that under the terms of these documents, Russell K. Watts is designated as the sole company Manager. In accordance with the Utah Limited Liability Company Act, Section 48-2(b)-125, a Manager designated by the limited liability company is vested and has the authority "to bind the limited liability company, unless provided in the Articles of Organization or Operating Agreement." No such limitations of authority exist in this case.

Furthermore, it is apparent to me that the intentions of Russell K. Watts, as Manager, are to maximize the sales proceeds of the condominium units and to satisfy all debts and obligations as soon as possible. Those intentions are consistent with his duties as a Manager and should be consistent with your intentions as a Manager of a company member.

Your announcement to Mr. Watts that it is your intention to file bankruptcy and put the project lenders and creditors on hold and to destroy Watts' efforts and reputation is contrary to this intention and constitutes a breach of your good faith obligations to perform in accordance with the terms and conditions of the Operating Agreement. Furthermore, your conduct may result in an intentional interference with the contractual relationships, both by and between The Club Condominium and America West, and the prospective purchasers and American West. Consequently, it is requested that your communications to these third parties immediately cease. If they do not, the company may be required to seek relief from the courts.

Mr. Ted Stevensen

October 22, 1999

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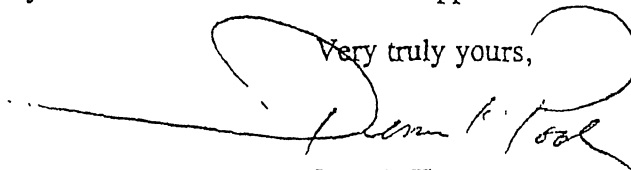
With respect to your letter dated October 14, 1999, addressed to Russ Watts, it is apparent that you are concerned about rather insignificant amounts in relationship to commissions paid upon add-ons. Rather than argue about several hundred dollars, Mr. Watts has agreed that the Watts Group will repay any commissions that relate to these add-on items.

With respect to the payment to you of \$5,000 monthly, whether referred to in the Operating Agreement or referred to in a March 25, 1999 memorandum, there are three reasons that those payments will not be made at this time. First of all, the Operating Agreement, Section 6.1, provides that those payments are to be a distribution against the profit share of Stevensen 3rd East, L.C. Since the likelihood of profits is not certain, it is impossible to make a distribution against profits. Furthermore, under the terms of the March 25, 1999 agreement, the 1% payments under paragraphs 1, 2 and 3 were clearly a credit toward the same \$5,000 a month draw against profits. (See paragraph 8.) Those \$5,000 a month payments were to cease at such time as Stevensen started to received a reimbursement for the land value contributed by that entity. Since those payments have begun, no \$5,000 a month payment is due. Third, the limited liability company is obligated, in accordance with the Utah Limited Liability Company Act and the Operating Agreement, to satisfy the claims of all creditors prior to the return of capital contributions and/or profits to the members. Until these claims are satisfied, the payment of funds is precluded when there is no assurance that excess funds are available.

With respect to your request for copies of records, all of the records of The Club Condominium, L.C. are available to you for your inspection. All that you need do is telephone Russell K. Watts to arrange a time in which to inspect those records. If you wish copies of the same, copies will be made for you at cost.

Finally, it is hoped that by this communication you will cease to make further communications or conduct yourself in a manner which is harmful to the objectives of The Club Condominium project. It is in the best interest of R.K.W. 96, L.L.C. and Stevensen 3rd East, L.C. to see that the condominium units are sold for the highest price during the shortest period of time possible. Diverting efforts and resources to battle internal disputes and to repair damages created by you distracts from this objective and only increases the cost of operations. Mr. Watts will use every effort available to him to move the project along, to see that the claims of creditors are satisfied, and thereafter will make distributions to the members based upon their capital and profits interest, if any. I trust that you will see the wisdom of this approach.

Very truly yours,



Dennis K. Poole

DKP/ekh

cc: Russell K. Watts

The Club LC

Capital Account Summary

1996 through 2002

	RKW96	Stevensen 3rd East	Totals
1996 Contributions	\$592,000	\$631,000 ¹	\$1,223,000
Subsequent Additions	325,380	2,450	327,830
Project Loss	(577,425)	(577,425)	(1,154,850)
Balance before Draws	\$339,955	\$56,025	\$395,980
Draws	(284,218)	(162,000)	(446,218)
Equity Balance – 2002	\$55,737	(\$105,975)	(\$50,237)
Adjustments:			
Watts Commissions	(2,794)	2,794	Report pg 4
Construction Costs	(15,951)	15,951	Exhibit 4
Contractor Fees	(2,763)	2,763	Report pg 7
Warranty Costs	(3,101)	3,101	Exhibit 5
Reimbursements	(1,883)	1,883	Report pg 7
Adjusted Equity Balance	\$29,245	(\$79,483)	(\$50,237)
<i>Stevenson Commissions¹</i>		<i>53,242</i>	
Ending Cash to RKW96	(3,004)		
Amount Due (Owing)	<u>\$26,241</u>	<u>(\$26,241)</u>	

Source: Financial records provided and a detailed review of fees and costs

¹ Per stipulation and court order dated March 16, 2005

The Club LC

Capital Account Summary 1996 through 2002

	RKW96	Stevensen 3rd East	Totals
1996 Contributions	\$592,000	\$631,000 ¹	\$1,223,000
Added Project Fees @ 10%	309,110	-	309,110
Subsequent Additions	325,380	2,450	327,830
Project Loss	(731,980)	(731,980)	(1,463,960)
Balance before Draws	\$494,510	(\$98,530)	\$395,980
Draws	(284,218)	(162,000)	(446,218)
Equity Balance – 2002	\$210,292	(\$260,530)	(\$50,237)
Adjustments:			
Watts Commissions	(2,794)	2,794	Report pg 4
Construction Costs	(15,951)	15,951	Exhibit 4
Contractor Fees	(2,763)	2,763	Report pg 7
Warranty Costs	(3,101)	3,101	Exhibit 5
Reimbursements	(1,883)	1,883	Report pg 7
Adjusted Equity Balance	\$183,800	(\$234,038)	(\$50,237)
Stevenson Commissions ¹		53,242	
Ending Cash to RKW96	(3,004)		
Amount Due (Owing)	<u>\$180,796</u>	<u>(\$180,796)</u>	

Source: Financial records provided and a detailed review of fees and costs

¹ Per stipulation and court order dated March 16, 2005

The Club LC
Financial Statements
December 31, 1996 through 2002

	1996	1997	1998	1999	2000	2001	2002
Revenue							
Sales	0	0	0	4,970,318	3,568,836	1,708,980	487,531
Rents & Other	0	0	0	0	21,410	0	0
Cost of Sales	0	0	0	(4,681,158)	(3,479,786)	(1,822,252)	(914,214)
Land Value Adjustment ¹	-	-	-	-	-	-	21,849
Gross Profit	0	0	0	289,160	110,460	(113,272)	(404,835)
Operating Expenses							
Advertising & Marketing	0	9,269	213	117,007	53,771	10,908	2,245
Bank Charges	162	30	0	18	18	36	16
Closing Costs	0	0	0	30,323	13,428	19,185	5,387
Commissions	0	0	0	204,255	149,532	50,262	21,030
Commissions - S3E ¹	0	0	0	46,975	35,565	14,588	2,330
Interest	0	0	0	34,222	98,187	3,263	1,864
Dues & Subscriptions	0	10	30	15	11,030	5,319	8,278
Legal & Accounting	0	3,257	1,105	1,842	14,888	4,508	7,355
Management Fees	0	0	22	0	742	0	0
Office Expense	0	0	873	0	500	1,040	210
Outside Services	0	0	300	0	110	2,581	270
Rent	0	1,611	0	2,000	0	0	0
Utilities	0	842	0	0	0	0	0
Taxes & Licenses	0	0	600	9,081	0	20	0
Taxes - Property	0	0	7,411	8,833	21,301	7,885	2,057
Travel	0	250	0	0	0	0	0
Total Operating Expense	162	15,269	10,553	454,571	399,075	119,595	51,042
Operating Income	(162)	(15,269)	(10,553)	(165,411)	(288,615)	(232,867)	(455,876)
Other Income (Expense)							
Interest income	31	812	1,090	862	10,453	560	96
Net Income/(Loss)	<u>(\$131)</u>	<u>(\$14,457)</u>	<u>(\$9,464)</u>	<u>(\$164,549)</u>	<u>(\$278,162)</u>	<u>(\$232,307)</u>	<u>(\$455,780)</u>

¹ Per stipulation and court order dated March 16, 2005

The Club LC

Financial Statements

December 31, 1996 through 2002

	1996	1997	1998	1999	2000	2001	2002
Assets:							
Cash in Bank	(2,183)	32,764	5,083	76,848	18,711	(862)	3,004
Accounts Receivable	0	0	0	0	225,000	224,875	0
Work in Process	6,402,000	6,402,000	6,402,000	4,104,706	1,371,210	179,779	0
Work in Process - Land	770,000	770,000	770,000	393,191	131,064	16,383	0
Work in Process - Develop Fee	451,000	451,000	451,000	451,000	451,000	451,000	0
Construction Period Interest	0	0	285,515	346,944	166,864	22,535	0
Total Current Assets	7,620,817	7,655,764	7,913,598	5,372,690	2,363,849	893,709	3,004
Total Assets	<u>\$7,620,817</u>	<u>\$7,655,764</u>	<u>\$7,913,598</u>	<u>\$5,372,690</u>	<u>\$2,363,849</u>	<u>\$893,709</u>	<u>\$3,004</u>
Liabilities & Capital							
Commissions Payable - S3E	0	0	0	759	36,324	50,912	53,242
Earnest Money Deposits	0	0	500	14,700	21,500	0	0
Long Term Liabilities							
Const. Notes Payable							
Bank of Arizona	0	882,429	4,669,950	1,557,759	0	0	0
Hermes Assoc.	0	200,000	200,000	200,000	0	0	0
Whitmores Inc.	0	0	0	300,000	0	0	0
Spence Whitney	0	0	0	100,000	0	0	0
Connie Whitney	0	0	0	80,000	0	0	0
Christopolos Enterprises	0	0	0	105,000	0	0	0
RKW94, LLC - 1031 Funds	0	0	132,036	132,036	0	0	0
Watts Corporation	0	0	0	0	3,000	0	0
Construction Costs Payable	6,396,099	5,158,244	1,529,485	1,660,357	1,409,459	268,538	0
Total Long Term Liabilities	6,396,099	6,240,673	6,531,471	4,135,152	1,412,459	271,538	0
Total Liabilities	6,396,099	6,240,673	6,531,971	4,150,611	1,470,282	322,449	53,242
Members Capital							
Capital - RKW96 LLC	556,461	825,841	861,841	881,841	917,380	917,380	917,380
Capital - Stevensen	652,849	655,299	655,299	655,299	655,299	655,299	633,450
Capital - Todd	35,539	35,539	35,539	35,539	0	0	0
Draws - RKW96	0	0	0	0	(50,350)	(140,350)	(284,218)
Draws - Stevensen	(20,000)	(87,000)	(147,000)	(162,000)	(162,000)	(162,000)	(162,000)
Net Income/(Loss)	(131)	(14,588)	(24,051)	(188,600)	(466,762)	(699,069)	(1,154,850)
Total Members Capital	1,224,718	1,415,091	1,381,627	1,222,079	893,567	571,259	(50,237)
	\$7,620,817	\$7,655,764	\$7,913,598	\$5,372,690	\$2,363,849	\$893,709	\$3,004

The Club LC

Capital and Loan Account Detail – Stevenson 3rd East 1996 through 1999

Date	Contributions	Loans	Draws →	Profit Advances
21–Oct–96				
21–Oct–96	631,000.00	→ Land Value per Stipulation		(5,000.00)
05–Nov–96				(5,000.00)
02–Dec–96				(10,000.00)
06–Jan–97				(5,000.00)
13–Jan–97	1,470.00			
04–Feb–97				(5,000.00)
19–Feb–97	490.00			
04–Mar–97				(5,000.00)
24–Mar–97	490.00			
07–Apr–97				(5,000.00)
14–Apr–97				(7,000.00)
05–May–97				(5,000.00)
03–Jun–97				(5,000.00)
07–Jul–97				(5,000.00)
04–Aug–97				(5,000.00)
05–Sep–97				(5,000.00)
03–Oct–97				(5,000.00)
07–Nov–97				(5,000.00)
02–Dec–97				(5,000.00)
05–Jan–98				(5,000.00)
03–Feb–98				(5,000.00)
02–Mar–98				(5,000.00)
07–Apr–98				(5,000.00)
04–May–98				(5,000.00)
02–Jun–98				(5,000.00)
01–Jul–98				(5,000.00)
05–Aug–98				(5,000.00)
04–Sep–98				(5,000.00)
05–Oct–98				(5,000.00)
09–Nov–98				(5,000.00)
03–Dec–98				(5,000.00)
13–Jan–99				(5,000.00)
09–Feb–99				(5,000.00)
05–Mar–99				(5,000.00)
	633,450.00	0.00		(162,000.00)

Source: Doc #101050

The Club LC

Capital and Loan Account Detail – Watts Entities 1996 through 2002

Date	Contributions	Loans	Const. Cost Advances	Draws →	Profit Advances
30-Aug-96	5,000.00				→ Originally classified as a loan
21-Oct-96	451,000.00				→ Est. Development Fee
21-Oct-96	130,000.00				
04-Dec-96	4,000.00				
06-Dec-96	2,000.00				
16-Jan-97	10,000.00				
04-Feb-97	10,000.00				
24-Mar-97	50,000.00				
18-Apr-97	91,000.00				
30-May-97	380.00				
04-Jun-97	25,000.00				
17-Jun-97		70,000.00			
14-Jul-97		(70,000.00)			
07-Aug-97	75,000.00				→ Midway L.C. "loan"
31-Oct-97	3,000.00				
07-Nov-97	5,000.00				
18-May-98	15,000.00				
06-Jul-98	10,000.00				
31-Aug-98		132,036.21			→ Am West Trust Acct funds (1031 exchange)
04-Sep-98	11,000.00				
25-Oct-98			85,851.85		→ Draw 15
25-Nov-98			157,783.12		→ Draw 16
23-Dec-98			178,670.16		→ Draw 17
13-Jan-99	10,000.00				
25-Jan-99			349,388.62		→ Draw 18
25-Feb-99			332,895.28		→ Draw 19
26-Feb-99	10,000.00				
22-Mar-99			(78,000.00)		
23-Mar-99			(7,500.00)		
25-Mar-99			188,181.18		→ Draw 20
05-Apr-99			(55,000.00)		
12-Apr-99			(21,000.00)		
19-Apr-99			(30,000.00)		
25-Apr-99			291,537.05		→ Draw 21
26-Apr-99			(33,000.00)		
29-Apr-99			(40,000.00)		
05-May-99			(98,000.00)		
19-May-99			(40,000.00)		
29-May-99			357,633.67		→ Draw 22
01-Jul-99			(45,000.00)		
02-Jun-99			(300,000.00)		
03-Jun-99			(285,000.00)		
25-Jun-99			200,548.94		→ Draw 23
29-Jul-99			(45,000.00)		
06-Aug-99			110,423.31		→ Draw 24
25-Aug-99			73,055.54		→ Draw 25
03-Sep-99			(45,000.00)		
07-Sep-99			(45,000.00)		
28-Sep-99		3,000.00			→ Club HOA Fees paid by Watts Corp
25-Oct-99			110,961.49		→ Draw 26
25-Nov-99			52,656.60		→ Invoice #51
06-Dec-99			(30,000.00)		
25-Dec-99			100,072.16		→ Invoice #52

The Club LC

Capital and Loan Account Detail – Watts Entities 1996 through 2002

Date	Contributions	Loans	Const. Cost Advances	Draws →	Profit Advances
01-Feb-2000			(50,000.00)		
25-Feb-2000			134,628.45 → Invoice #53,54		
02-Mar-2000		1,000.00 → HOA Legal Fees paid by Watts Corp			
17-Mar-2000		170,000.00			
25-Mar-2000			7,889.30 → Invoice #55		
19-Apr-2000		80,000.00			
25-Apr-2000			9,244.49 → Invoice #56		
08-May-2000		(80,000.00)			
31-May-2000			(5,431.87) → Invoice #57 less \$25k pmt		
06-Jun-2000		(132,036.21) → Funds from sale of unit 402 (1031 exchange)			
25-Jun-2000			37,139.22 → Invoice #58		
25-Jul-2000			23,840.63 → Invoice #59		
26-Jul-2000			(20,000.00)		
25-Aug-2000	for HOA Fees →	3,000.00	2,524.50 → Invoice #60		
25-Sep-2000			8,791.31 → Invoice #61		
26-Sep-2000		(90,000.00)			
25-Oct-2000			6,173.58 → Invoice #62		
25-Nov-2000			9,023.54 → Invoice #63		
04-Dec-2000		(80,000.00)	(260,000.00) to Bryan Todd →		50,349.77
12-Dec-2000			(145,000.00)		
25-Dec-2000			9,139.02 → Invoice #64		
25-Jan-2001			9,403.78 → Invoice #65		
01-Feb-2001			(300,000.00)		90,000.00
25-Feb-2001			12,247.96 → Invoice #66		
25-Mar-2001			7,778.60 → Invoice #67		
25-Apr-2001			6,526.85 → Invoice #68		
25-May-2001			787.32 → Invoice #24 (no doc)		
25-Jun-2001	Does not match Amortization →		2,121.79 → Invoice #1		
05-Jul-2001			(219,438.60)		
09-Jul-2001			(185,723.94)		
25-Jul-2001			788.76 → Invoice #25 (no doc)		
29-Jul-2001			(205,951.76)		
08-Aug-2001			(145,640.25)		
25-Aug-2001			6,788.33 → Invoice #26		
25-Sep-2001			1,039.92 → Invoice #27		
25-Oct-2001			1,412.97 → Invoice #28		
11-Nov-2001			330,441.58 → Inv. #30: Interest @ 9%		
20-Nov-2001	Does not match Amortization →		(230,000.00)		
25-Nov-2001			613.89 → Invoice #29		
25-Dec-2001			17,477.86 → Invoice #31		
14-Jan-2002	Does not match Amortization →		(21,903.43) → Chk # 421		
15-Jan-2002	Does not match Amortization →		(200,000.00) → Chk # 422		
25-Jan-2002			4,425.57 → Invoice #32		
27-Feb-2002			4,401.64 → Invoice #33		
30-Apr-2002		2,276.00			
19-Jun-2002		1,500.00			
20-Aug-2002		(7,000.00) → HOA loans repaid			
27-Sep-2002		1,000.00			
05-Nov-2002		200.00			
13-Nov-2002	\$3k Dbl Pmt →	(7,976.00)	(58,156.01) → Chk # 451		143,867.99
31-Dec-2002					
	\$917,380.00	(\$3,000.00)	(\$436.03)		\$284,217.76

Exhibit 4

The Club, LC
Construction Cost Overcharge – Detail
1996 – 2002

Invoice	Draw	Chk #	Payee	Date Paid	Amount	Job cost Overcharge	Comments
50	26		Alder's			3,360.00	Duplicate Charge
51		5016	Alder's	11/02/99	3,360.00		
64			All Purpose Inc			699.00	Duplicate Charge
68		9818	All Purpose Inc	03/30/2001	699.00		
49	25		Annie's Houseclean			206.00	Duplicate Charge
51		5017	Annie's Houseclean	11/02/99	206.00		
49	25		Architectural Building			22.58	Duplicate Charge
50	26	4623	Architectural Building	09/29/99	22.58		
28	8	24350	Charles S. Jony	03/30/98	875.00		
29	9		Charles S. Jony			875.00	Duplicate Charge
42	18		Clearwater Sprinkler			47.00	Duplicate Charge
47	23	3206	Clearwater Sprinkler	05/25/99	47.00		
46	22		Granite Mill			531.75	Duplicate Charge
46	22	3374	Granite Mill	06/03/99	531.75		
43	19		Intermountain Mantels			626.00	Duplicate Charge
44	20	2283	Intermountain Mantels	03/09/99	626.00		
35	13		Life & Safety Service			55.78	Duplicate Charge
37	14	26289	Life & Safety Service	09/09/98	55.78		
56			Nielco Inc			5,778.50	Duplicate Charge
57		7065	Nielco Inc	05/30/2000	5,778.50		
41	17		Pella			1,186.07	Duplicate Charge
42	18	1568	Pella	01/11/99	1,186.07		
40	16		Platt Leavitt Insurance			6,086.50	Duplicate Charge
41	17	26927	Platt Leavitt Insurance	11/02/98	6,086.50		
44	20		Ray Willette Construction			741.23	Duplicate Charge
45	21	2699	Ray Willette Construction	04/15/99	741.23		
51			Sudbury Drywall			1,203.00	Duplicate Charge
53		5779	Sudbury Drywall	01/19/2000	1,203.00		
24	6	24563	Third Little Pig Const	04/24/98	8,818.23	1,181.77	Duplicate Charge
31	10	25058	Third Little Pig Const	06/01/98	1,181.77		
43	19	27277	Third Little Pig Const	03/09/99	4,194.45	125.55	Invoice Changed
43	19		Turnkey Architectural			174.76	Duplicate Charge
44	20	2576	Turnkey Architectural	04/08/99	174.76		
47	23		Turnkey Architectural			852.84	Duplicate Charge
48	24	3905	Turnkey Architectural	07/21/99	852.84		
61			Turnkey Architectural			284.76	Duplicate Charge
62		8623	Turnkey Architectural	10/11/2000	284.76		
35	13		Ray Willette Construction			283.60	Duplicate Charge
37	14	26516	Ray Willette Construction	09/28/98	283.60		
29	9		US West Communications			97.72	Duplicate Charge
29	9	24256	US West Communication	03/23/98	97.72		
22	4		Utah Barricade			1,752.39	Duplicate Charge
25	7	23998	Utah Barricade	03/02/98	1,752.39		
49	25	4342	Western Wholesale Inc	08/30/99	4,640.80		
50	26		Western Wholesale Inc			4,640.80	Duplicate Charge
43	19		McNeil Engineering			405.00	Added Twice
51			Classic Cabinets			685.29	Duplicate Charge
53		5764	Classic Cabinets	01/19/2000	685.29		
Total Overcharges						<u>\$31,902.89</u>	

The Club LC
Warranty Costs Invoiced – Detail
 1996 through 2002

Watts Invoice	Date	Payee	Amount
53	12/21/99	Electric Drain & Sewer	67.50
53	12/22/99	Firetrol Protection Systems	342.00
59	07/07/2000	Wasatch Fire Operation	100.00
?	08/30/2000	Excel Property Management	166.85
?	08/30/2000	Joe's Triple A Drain	51.00
?	09/19/2000	TS Electric Inc	77.50
64	11/30/2000	Pella Products	60.00
64	11/30/2000	Western Wholesale Inc	60.00
65	12/13/2000	Bonneville Heating & Cooling	1,072.25
66	01/26/2001	Western Wholesale Inc	85.00
67	02/22/2001	Hall Plumbing & Mech	404.07
67	02/28/2001	Aspen Drywall	125.00
?	02/28/2001	Joe's Triple A Drain	76.00
68	03/01/2001	Burton Lumber	11.27
67	03/01/2001	Glass Illusions by Sego	30.00
68	03/22/2001	Burton Lumber	21.77
68	04/05/2001	Firetrol Protection Systems	229.00
?	04/24/2001	Redrock Heating & Cooling	866.04
?	05/22/2001	Perschon's	39.57
?	05/23/2001	Redrock Heating & Cooling	335.94
E-01	06/04/2001	Ready Made Builders Supply	127.92
?	06/13/2001	Standard Builders Supply	9.52
?	07/20/2001	Plumbers Supply Inc	80.39
?	07/27/2001	Ace Plumbing	279.38
?	07/27/2001	Bernco Distb	164.29
E-26	08/06/2001	Burton Lumber	29.99
E-27	08/20/2001	Redrock Heating & Cooling	262.50
E-28	09/19/2001	Redrock Heating & Cooling	530.83
E-28	09/24/2001	Aspen Automated	65.00
E-28	09/25/2001	Pella Products	60.00
E-29	10/11/2001	Architectural Building	54.75
E-29	10/24/2001	Ready Made Builders Supply	85.17
E-31	12/05/2001	Burton Lumber	30.57
E-32	01/02/2002	Wesley Green Roofing	75.00
E-32	01/03/2002	Burton Lumber	22.77
E-32	01/07/2002	Standard Builders	10.87
E-33	01/29/2002	Perschon's	22.71
E-33	02/04/2002	Burton Lumber	9.91
E-33	02/04/2002	Pella Products	60.00
Total Warranty Costs Charged			<u>\$6,202.33</u>

Watts Corporation
"The Club" Condominium Project
 Bank of Arizona – Loan Ledger

Exhibit f
 Page 1 of 2

Date	Description	Draws	Repayments	Balance	Available
17-Jul-97	Origination Fee	75,900.00		75,900.00	5,444,100.00
17-Jul-97	Watts Payment – Fees		13,800.00	62,100.00	5,457,900.00
17-Jul-97	Other Fees Financed	302.50		62,402.50	5,457,597.50
05-Aug-97	Interest Accrual	281.54		62,684.04	5,457,315.96
06-Aug-97	Title Insurance	6,726.00		69,410.04	5,450,589.96
03-Sep-97	Interest Accrual	631.25		70,041.29	5,449,958.71
25-Sep-97	Draw Request #2	103,136.34		173,177.63	5,346,822.37
01-Oct-97	Interest Accrual	482.78		173,660.41	5,346,339.59
03-Nov-97	Draw Request #3	196,001.38		369,661.79	5,150,338.21
05-Nov-97	Interest Accrual	1,625.61		371,287.40	5,148,712.60
02-Dec-97	Draw Request #4	311,907.14		683,194.54	4,836,805.46
03-Dec-97	Interest Accrual	2,908.77		686,103.31	4,833,896.69
26-Dec-97	Draw Request #5	272,738.28		958,841.59	4,561,158.41
06-Jan-98	Interest Accrual	5,674.34		964,515.93	4,555,484.07
23-Jan-98	Draw Request #6	83,521.04		1,048,036.97	4,471,963.03
02-Feb-98	Interest Accrual	8,533.42		1,056,570.39	4,463,429.61
02-Mar-98	Draw Request #7	255,317.63		1,311,888.02	4,208,111.98
03-Mar-98	Interest Accrual	8,213.60		1,320,101.62	4,199,898.38
30-Mar-98	Draw Request #8	392,412.23		1,712,513.85	3,807,486.15
01-Apr-98	Interest Accrual	11,009.74		1,723,523.59	3,796,476.41
07-Apr-98		1,500.00		1,725,023.59	3,794,976.41
01-May-98	Draw Request #9	428,319.76		2,153,343.35	3,366,656.65
04-May-98	Interest Accrual	14,225.93		2,167,569.28	3,352,430.72
01-Jun-98	Draw Request #10	375,545.26		2,543,114.54	2,976,885.46
02-Jun-98	Interest Accrual	18,186.99		2,561,301.53	2,958,698.47
30-Jun-98	Draw Request #11	299,918.53		2,861,220.06	2,658,779.94
01-Jul-98	Interest Accrual	20,805.64		2,882,025.70	2,637,974.30
21-Jul-98	Draw Request #12	347,778.69		3,229,804.39	2,290,195.61
04-Aug-98	Interest Accrual	24,278.23		3,254,082.62	2,265,917.38
27-Aug-98	Draw Request #13	327,345.85		3,581,428.47	1,938,571.53
01-Sep-98	Interest Accrual	28,337.10		3,609,765.57	1,910,234.43
25-Sep-98	Draw Request #14	381,408.29		3,991,173.86	1,528,826.14
01-Oct-98	Interest Accrual	29,772.62		4,020,946.48	1,499,053.52
28-Oct-98	Draw Request #15	289,070.24		4,310,016.72	1,209,983.28
30-Oct-98	Interest Accrual	33,150.34		4,343,167.06	1,176,832.94
23-Nov-98	<i>per loan history</i>			4,343,167.06	1,176,832.94
01-Dec-98	Interest Accrual	33,854.11		4,377,021.17	1,142,978.83
04-Dec-98	Draw Request #16	326,783.00		4,703,804.17	816,195.83
01-Jan-99	Interest Accrual	35,554.93		4,739,359.10	780,640.90
08-Jan-99	Draw Request #17	276,451.24		5,015,810.34	504,189.66
01-Feb-99	Interest Accrual	38,651.11		5,054,461.45	465,538.55
01-Mar-99	Interest Accrual	14,972.29		5,069,433.74	450,566.26
25-Mar-99	Interest Accrual	20,408.94		5,089,842.68	430,157.32
26-Mar-99	Sale: Unit 405		147,108.00	4,942,734.68	<i>Loan Due</i>
02-Apr-99	Sale: Unit 304		160,000.00	4,782,734.68	
19-Apr-99	Sale: Unit 205		160,000.00	4,622,734.68	

Watts Corporation
"The Club" Condominium Project
 Bank of Arizona - Loan Ledger

Exhibit 6
Page 2 of 2

Date	Description	Draws	Repayments	Balance	Available
23-Apr-99	Sale: Unit 215		160,000.00	4,462,734.68	
27-Apr-99	Sale: Unit 303		160,000.00	4,302,734.68	
03-May-99	Sale: Unit 203		160,000.00	4,142,734.68	
04-May-99	Sale: Unit 305		160,000.00	3,982,734.68	
20-May-99	Sale: Unit 315		160,000.00	3,822,734.68	
28-May-99	Sale: Unit 202		135,000.00	3,687,734.68	
02-Jun-99	Sale: Unit 316		160,000.00	3,527,734.68	<i>1st Extension</i>
11-Jul-99	Interest Accrual	113,364.21		3,641,098.89	<i>2nd Extension</i>
06-Jul-99	Sale: Unit 415		170,000.00	3,471,098.89	
16-Jul-99	Sale: Unit 302		135,000.00	3,336,098.89	
29-Jul-99	Sale: Unit 214		170,000.00	3,166,098.89	
05-Aug-99	Sale: Unit 208		160,000.00	3,006,098.89	
05-Aug-99	Sale: Unit 204		160,000.00	2,846,098.89	
23-Aug-99	Interest Accrual	27,024.83		2,873,123.72	
01-Sep-99	Interest Accrual	41,076.73		2,914,200.45	
02-Sep-99	Sale: Unit 212		160,000.00	2,754,200.45	
03-Sep-99	Sale: Unit 404		170,000.00	2,584,200.45	
07-Sep-99	Sale: Unit 209		235,000.00	2,349,200.45	
28-Sep-99	Sale: Unit 306		160,000.00	2,189,200.45	<i>3rd Extension</i>
01-Oct-99	Sale: Unit 211		160,000.00	2,029,200.45	
01-Oct-99	Interest Accrual	19,304.03		2,048,504.48	
01-Nov-99	Interest Accrual	18,067.88		2,066,572.36	
17-Nov-99	Sale: Unit 207		235,000.00	1,831,572.36	
01-Dec-99	Interest Accrual	16,561.28		1,848,133.64	
30-Dec-99	Sale: Unit 201		135,000.00	1,713,133.64	
31-Dec-99	Sale: Unit 206		170,000.00	1,543,133.64	
01-Jan-2000	Interest Accrual	14,625.58		1,557,759.22	
18-Jan-2000	Interest Payment	1,436.67	1,436.67	1,557,759.22	
26-Jan-2000	Extension Payment (206)		65,000.00	1,492,759.22	<i>4th Extension</i>
01-Feb-2000	Sale: Unit 414		170,000.00	1,322,759.22	
01-Feb-2000	Sale: Unit 409 ??		170,000.00	1,152,759.22	
01-Feb-2000	Interest Accrual	11,652.51		1,164,411.73	
01-Mar-2000	Interest Accrual	9,379.98		1,173,791.71	
07-Mar-2000	Sale: Unit 216		160,000.00	1,013,791.71	
01-Apr-2000	Interest Accrual	8,996.54		1,022,788.25	
04-Apr-2000	Sale: Unit 210		165,000.00	857,788.25	
18-Apr-2000	Sale: Unit 314		160,000.00	697,788.25	
19-Apr-2000	Sale: Unit 307		155,000.00	542,788.25	
24-Apr-2000	Sale: Unit 412		170,000.00	372,788.25	
01-May-2000	Interest Accrual	7,538.28		380,326.53	
01-Jun-2000	Interest Accrual	1,975.52		382,302.05	
05-Jun-2000	Sale: Unit 406		170,000.00	212,302.05	
05-Jun-2000	Sale: Unit 312		160,000.00	52,302.05	
05-Jun-2000	Interest Accrual	1,444.92		53,746.97	
05-Jun-2000	Sale: Unit 311		53,746.97	0.00	<i>Payoff</i>

The Club LC

Washington Federal Savings – Checking Acct
[Plus AZ Bank Loan and Unit Sales Transactions]
1996 through 2004

Date	Chk #	Description	Fee	Categor	Deposit	Transfer	Amount	Balance
01/30/96	Deposit	Watts Lu		Capital - RKW96	0000.00			000.00
01/30/96	1	Fullerton		Capital - Draw #0			00.00	1000.00
01/30/96		Todd Brian		Legal Fees - Draw #0			164.00	1816.00
09/23/96	Credit	Washington Federal Savings		Interest Income	4.56			1,820.56
10/21/96	Deposit	RKW 96 Inc		Capital - Todd	35,539.00			37,359.56
10/21/96	Deposit	RKW 96 Inc		Capital - RKW96	94,461.00			131,820.56
10/21/96	3	America West Title		Capital - Stevensen	(118,936.00)			12,866.96
10/21/96	4	Stevensen Fed		Advance		(5,000.00)		7,866.96
10/22/96	Credit	Washington Federal Savings		Interest Income	1.85			7,871.81
11/05/96	5	Stevensen Fed		Advance		(1,000.00)		2,871.81
11/06/96	Deposit	America West Title		Overpmt Taxes	1,802.23			1,674.04
11/08/96	Debit	Harland		Check Printing			146.70	4,527.34
11/22/96	Credit	Washington Federal Savings		Interest Income	1.54			4,545.18
12/02/96	101	Stevensen Fed		Advance		(10,000.00)		(5,456.82)
12/04/96		Stevensen Fed		Proj Inc - Nov Dec		950.00		(4,476.82)
12/04/96	Deposit	RKW 96 Inc		Capital - RKW96	1,000.00			(176.82)
12/04/96	Debit	Washington Federal Savings		NSF Fee			1.00	(191.82)
12/06/96	Deposit	RKW 96 Inc		Capital - RKW96	2,000.00			1,508.18
12/11/96	Debit	Stevensen Fed		Returned Check		(490.00)		1,018.18
12/11/96	Debit	Stevensen Fed		Returned Check		490.00		528.18
12/18/96	102	Todd Brian		Legal Fees - Draw #0			2,717.00	(2,188.82)
12/20/96	Credit	Washington Federal Savings		Interest Income	5.74			(2,183.08)
01/06/97	103	Stevensen Fed		Advance		(5,000.00)		(7,183.08)
01/10/97	Debit	Washington Federal Savings		NSF Fee			15.00	(7,198.08)
01/14/97	Deposit	Stevensen Fed		Capital - Stevensen	1,470.00			(5,728.08)
01/16/97	Deposit	RKW 96 Inc		Capital - RKW96	10,000.00			4,271.92
01/16/97	Debit	Washington Federal Savings		NSF Fee			1.00	4,266.92
01/23/97	Credit	Washington Federal Savings		Interest Income	6.29			4,263.21
01/23/97	104	Amex - Russ & Ted		Contingency [inter] - Draw #0			249.60	4,013.61
01/29/97	105	Scott Roberts		Mktng [blde rendering] - Draw #0			1,500.00	2,513.61
02/04/97	Deposit	RKW 96 Inc		Capital - RKW96	10,000.00			12,513.61
02/04/97	106	Stevensen Fed		Advance		(5,000.00)		7,513.61
02/11/97	107	McNeil Engineering		Civil Engineer - Draw #0			2,500.00	5,013.61
02/19/97	Deposit	Stevensen Fed		Capital - Stevensen	490.00			5,503.61
02/24/97	Credit	Washington Federal Savings		Interest Income	20.57			5,524.48
03/04/97	108	Stevensen Fed		Advance		(5,000.00)		524.48
03/21/97	Credit	Washington Federal Savings		Interest Income	3.52			528.00
03/21/97	109	Scott Roberts		Mktng [blde rendering] - Draw #0			1,500.00	(972.00)
03/24/97	Deposit	Stevensen Fed		Capital - Stevensen	490.00			(482.00)
03/24/97	Deposit	RKW 96 Inc		Capital - RKW96	50,000.00			49,518.00
03/27/97	110	Cohne Rappaport Scott		Legal Fees - Draw #0			20.25	19,497.75
03/27/97	111	Green Concept Inc		Contingency [ad mkt] - Draw #0			10.60	19,091.10
03/28/97	112	Watts Kevin		Architect - Draw #0			10,035.40	39,060.70
03/28/97	113	Watts Kevin		Architect - Draw #0			7,577.50	31,483.20
03/27/97	114	Salt Lake City		Permit [water] - Draw #0			656.75	30,826.45
04/07/97	115	Stevensen Fed		Advance		(5,000.00)		25,826.45
04/08/97	116	US Bank		Appraisal - Draw #0			550.00	19,946.45
04/14/97	117	Stevensen Fed		Advance		(7,000.00)		12,946.45
04/18/97	Deposit	RKW 96 Inc		Capital - RKW96	9,000.00			103,946.45
04/18/97	118	Watts Corp		Contingency [inter] - Draw #0			2,100.60	101,749.85

The Club LC

Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
04/18/97	118	Watts Corp		Permits – Draw #0			3,004.96	98,744.89
04/18/97	118	Watts Corp		Contingency [other] – Draw #0			111.54	98,633.35
04/18/97	118	Watts Corp		Const. Fee [8%] – Draw #0			425.05	98,208.30
04/18/97	119	Watts Corp		Const. Fee [8%] – Draw #0			6,311.03	91,897.27
04/18/97	119	Watts Corp		Asbestos – Draw #0			77,580.00	14,317.27
04/18/97	119	Watts Corp		Permits – Draw #0			826.06	13,491.21
04/18/97	119	Watts Corp		Contingency [site] – Draw #0			481.73	13,009.48
04/21/97	Credit	Washington Federal Savings		Interest Income	83.23			13,092.71
04/28/97	120	Liddle Waite & Assoc		Accounting			475.00	12,617.71
04/28/97	121	Watts, Kevin		Architect – Draw #0			3,009.00	4,608.71
05/05/97	122	Stevensen, Ted		Advance		(5,000.00)		(391.29)
05/06/97	123	Salt Lake City		Permits – Draw #0			790.00	(1,181.29)
05/21/97	Credit	Washington Federal Savings		Interest Income	15.33			(1,165.96)
05/30/97	Deposit	RKW 96 Inc		Capital – RKW96	380.00			(785.96)
06/03/97	124	Stevensen, Ted		Advance		(5,000.00)		(5,785.96)
06/04/97	Deposit	RKW 96 Inc		Capital – RKW96	25,000.00			19,214.04
06/04/97	125	Watts Corp		Demolition – Draw #0			10,800.00	8,414.04
06/04/97	125	Watts Corp		Const. Fee [8%] – Draw #0			1,124.80	7,289.24
06/04/97	125	Watts Corp		Asbestos – Draw #0			3,260.00	4,029.24
06/04/97	126	Watts Corp		Contingency [other] – Draw #0			202.36	3,826.88
06/04/97	126	Watts Corp		Contingency [Labor] – Draw #0			826.15	3,000.73
06/04/97	126	Watts Corp		Const. Fee [8%] – Draw #0			82.28	2,918.45
06/16/97	127	Watts, Kevin		Architect – Draw #0			25,038.75	(22,120.30)
06/16/97	128	Salt Lake City		Contingency [utilities] – Draw #0			185.73	(22,306.03)
06/16/97	129	American Fence		Temporary Fencing			465.00	(22,771.03)
06/16/97	130	Agra Earth		Soil Engineer – Draw #0			513.00	(23,284.03)
06/16/97	132	Liddle Waite & Assoc		Accounting			50.00	(23,334.03)
06/16/97	133	Knight & Company		Mkting [logos] – Draw #0			8,865.00	(32,199.03)
06/16/97	134	State of Utah		Licenses—Annual report			10.00	(32,209.03)
06/17/97	Deposit	Watts Corp		Loan—Overhead		70,000.00		37,790.97
06/20/97	Credit	Washington Federal Savings		Interest Income	27.20			37,818.17
06/25/97	135	Watts Corp		Demolition – Draw #0			26,400.00	11,418.17
06/25/97	135	Watts Corp		Const. Fee [8%] – Draw #0			2,112.00	9,306.17
06/25/97	136	Watts Corp		Contingency [Util] – Draw #0			464.14	8,842.03
06/25/97	136	Watts Corp		Const. Fee [8%] – Draw #0			241.92	8,600.11
06/25/97	136	Watts Corp		Contingency [Labor] – Draw #0			399.75	8,200.36
06/25/97	136	Watts Corp		Str. Engineer – Draw #0			2,160.00	6,040.36
07/07/97	137	Stevensen, Ted		Advance		(5,000.00)		1,040.36
07/14/97	Deposit	Hermes Assoc		Equity Investment		200,000.00		201,040.36
07/14/97	138	Watts Corp		Repayment		(70,000.00)		131,040.36
07/14/97	139	Watts, Greg		Financing Fee – Draw #0			3,000.00	128,040.36
07/17/97		Bank of Arizona		Origination Fee – \$13,800		62,100.00	62,100.00	128,040.36
07/17/97		Bank of Arizona		Loan Fee		302.50	302.50	128,040.36
07/22/97	Credit	Washington Federal Savings		Interest Income	123.43			128,163.79
07/28/97	140	Watts Corp		Const. Fee [8%] – Draw #0			2,832.56	125,331.23
07/28/97	140	Watts Corp		Demolition – Draw #0			35,407.00	89,924.23
07/28/97	141	Watts Corp		Contingency [Cinema] – Draw #0			304.00	89,620.23
07/28/97	141	Watts Corp		Const. Fee [8%] – Draw #0			736.26	88,883.97
07/28/97	141	Watts Corp		Permits – Draw #0			8,899.21	79,984.76
07/28/97	142	Watts Corp		Const. Fee [8%] – Draw #0			1,987.46	77,997.30

The Club LC

Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
07/28/97	142	Watts Corp		Contingency [Labor] – Draw #0			4,178.93	73,818.37
07/28/97	142	Watts Corp		Loan Cost – Draw #0			13,800.00	60,018.37
07/28/97	142	Watts Corp		Soil Engineer – Draw #0			2,135.70	57,882.67
07/28/97	142	Watts Corp		Contingency [Computer] – Draw #0			488.61	57,394.06
07/28/97	142	Watts Corp		Civil Engineer – Draw #0			4,240.00	53,154.06
08/04/97	143	Stevensen, Ted		Advance		(5,000.00)		48,154.06
08/05/97		Bank of Arizona		Interest Accrual/Pmt		281.54	281.54	48,154.06
08/06/97		Bank of Arizona		Title Insurance		6,726.00	6,726.00	48,154.06
08/08/97	144	Watts, Kevin		Architect			28,832.50	19,321.56
08/08/97	145	American Fence		Fence			300.00	19,021.56
08/08/97	146	Milbank Ins		Insurance			9,845.00	9,176.56
08/08/97	147	Sitex Enviro		Enviro Services			1,300.00	7,876.56
08/08/97	148	Todd, Bryan		Legal Fees			2,712.00	5,164.56
08/21/97	Credit	Washington Federal Savings		Interest Income	150.21			5,314.77
09/03/97		Bank of Arizona		Interest Accrual/Pmt		631.25	631.25	5,314.77
09/05/97	149	Stevensen, Ted		Advance		(5,000.00)		314.77
09/10/97	Deposit	Midway L.C. (loan)		Capital – RKW96	75,000.00			75,314.77
09/10/97	150	Watts Corp		Const. Costs – Draw #1			38,661.01	36,653.76
09/17/97	151	Watts, Kevin		Architect			19,887.88	16,765.88
09/22/97	Credit	Washington Federal Savings		Interest Income	49.43			16,815.31
09/25/97	Wire	Bank of Arizona		Funding : Draw #2		103,136.34		119,951.65
09/29/97	152	Watts Corp		Const. Costs – Draw #2		→	111,136.34	8,815.31
10/01/97		Bank of Arizona		Interest Accrual/Pmt		482.78	482.78	8,815.31
10/03/97	153	Stevensen, Ted		Advance		(5,000.00)		3,815.31
10/03/97	154	Aldave Consult		Engineering ?			850.00	2,965.31
10/03/97	155	Telen Associates		Engineering			2,600.00	365.31
10/20/97	Deposit	Salt Lake City/Per bond		Performance Bond Re	2,962.50			3,327.81
10/22/97	Credit	Washington Federal Savings		Interest Income	56.50			3,384.31
10/28/97	156	Watts, Kevin		Architect			3,011.25	373.06
10/28/97	157	Aldave Consult		Engineering			930.00	(556.94)
10/28/97	158	Telen Associates		Engineering			535.00	(1,091.94)
10/28/97	159	Pauline Downs		Rent			1,611.00	(2,702.94)
10/31/97	Deposit	RKW 96 Inc		Capital – RKW96	3,000.00			297.06
11/03/97	Wire	Bank of Arizona		Funding : Draw #3		196,001.38		196,298.44
11/04/97	160	Watts Corp		Const. Costs – Draw #3		→	196,001.38	297.06
11/05/97		Bank of Arizona		Interest Accrual/Pmt		1,625.61	1,625.61	297.06
11/07/97	Deposit	RKW 96 Inc		Capital – RKW96	5,000.00			5,297.06
11/07/97	161	Stevensen, Ted		Advance		(5,000.00)		297.06
11/24/97	Credit	Washington Federal Savings		Interest Income	37.08			334.14
12/02/97	Wire	Bank of Arizona		Funding : Draw #4		310,553.42	→ (-\$49,980)	310,887.56
12/02/97	163	Stevensen, Ted		Advance		(5,000.00)		305,887.56
12/02/97	164	Watts Corp		Const. Costs – Draw #4		→	252,852.24	53,035.32
12/02/97		Bank of Arizona		Draw Request Fee		1,353.72	1,353.72	53,035.32
12/03/97		Bank of Arizona		Interest Accrual/Pmt		2,908.77	2,908.77	53,035.32
12/07/97	162	Salt Lake County Treasurer		Prop Taxes – Draw #4		→	7,721.18	45,314.14
12/17/97	165	Watts, Kevin		Architect			12,428.75	32,885.39
12/17/97	166	Aldave Consult		Engineering			360.00	32,525.39
12/19/97	Credit	Washington Federal Savings		Interest Income	85.92			32,611.31
12/26/97	Wire	Bank of Arizona		Funding : Draw #5		272,738.28		305,349.59
12/30/97	167	Watts Corp		Const. Costs – Draw #5		→	272,738.28	32,611.31

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Washington Federal Savings – Checking Acct [Plus AZ Bank Loan and Unit Sales Transactions] 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
12/31/97	Credit	Washington Federal Savings		Interest Income	152.94			32,764.25
01/05/98	165	Stevensen, Ted		Advance		5,000.00		27,764.25
01/06/98		Bank of Arizona		Interest Accrual/Pmt		5,674.34	5,674.34	27,764.25
01/23/98	Credit	Washington Federal Savings		Interest Income	139.12			27,903.37
01/23/98	Wire	Bank of Arizona		Funding : Draw #6		82,167.32		110,070.69
01/23/98	169	Watts Corp		Const. Costs – Draw #6		→	82,167.32	27,903.37
01/23/98		Bank of Arizona		Draw Request Fee		1,353.72	1,353.72	27,903.37
02/02/98		Bank of Arizona		Interest Accrual/Pmt		8,533.42	8,533.42	27,903.37
02/03/98	170	Stevensen, Ted		Advance		(5,000.00)		22,903.37
02/09/98	171	Watts, Kevin		Architect			1,077.21	21,826.16
02/09/98	172	Appraisal Group Inc		Appraisal			300.00	21,526.16
02/23/98	Credit	Washington Federal Savings		Interest Income	69.15			21,595.31
03/02/98	Wire	Bank of Arizona		Funding : Draw #7		254,866.39		276,461.70
03/02/98	173	Stevensen, Ted		Advance		(5,000.00)		271,461.70
03/02/98	174	Watts Corp		Const. Costs – Draw #7		→	254,866.39	16,595.31
03/02/98		Bank of Arizona		Draw Request Fee		451.24	451.24	16,595.31
03/03/98		Bank of Arizona		Interest Accrual/Pmt		8,213.60	8,213.60	16,595.31
03/11/98	175	State of Utah		Licenses			20.00	16,575.31
03/12/98	176	Alphagraphics		Copies			482.83	16,092.48
03/12/98	177	McNeil Engineering		Engineering			1,656.25	14,436.23
03/12/98	178	Todd, Bryan		Legal Fees			435.00	14,001.23
03/20/98	Credit	Washington Federal Savings		Interest Income	55.27			14,056.50
03/30/98	Wire	Bank of Arizona		Funding : Draw #8		391,960.99		406,017.49
03/30/98	179	Watts Corp		Const. Costs – Draw #8		→	391,960.99	14,056.50
03/30/98		Bank of Arizona		Draw Request Fee		451.24	451.24	14,056.50
04/01/98		Bank of Arizona		Interest Accrual/Pmt		11,009.74	11,009.74	14,056.50
04/07/98	180	Stevensen, Ted		Advance		(5,000.00)		9,056.50
04/07/98		Bank of Arizona		Fee?		1,500.00	1,500.00	9,056.50
04/21/98	Credit	Washington Federal Savings		Interest Income	85.12			9,141.62
05/01/98	Wire	Bank of Arizona		Funding : Draw #9		427,868.52		437,010.14
05/01/98		Bank of Arizona		Draw Request Fee		451.24	451.24	437,010.14
05/04/98	181	Stevensen, Ted		Advance		(5,000.00)		432,010.14
05/04/98	182	Watts Corp		Const. Costs – Draw #9		→	427,858.52	4,151.62
05/04/98		Bank of Arizona		Interest Accrual/Pmt		14,225.93	14,225.93	4,151.62
05/18/98	Deposit	George Venizelos		Maple Flooring	300.00			4,451.62
05/18/98	Deposit	RKW 96 Inc		Capital – RKW96	15,000.00			19,451.62
05/21/98	Credit	Washington Federal Savings		Interest Income	140.16			19,591.78
06/01/98	Wire	Bank of Arizona		Funding : Draw #10		375,094.02		394,685.80
06/01/98	183	Watts Corp		Const. Costs – Draw #10		→	375,094.02	19,591.78
06/01/98	184	Andover Interior		Design fee			2,500.00	17,091.78
06/01/98	185	Watts, Kevin		Architect			8,962.25	8,129.53
06/01/98	186	Liddle Waite & Assoc		Accounting			625.00	7,504.53
06/01/98	187	Excel Prop Mgmt		Revise budget			22.00	7,482.53
06/01/98	188	Todd, Bryan		Legal Fees			45.00	7,437.53
06/01/98		Bank of Arizona		Draw Request Fee		451.24	451.24	7,437.53
06/02/98	189	Stevensen, Ted		Advance		(5,000.00)		2,437.53
06/02/98		Bank of Arizona		Interest Accrual/Pmt		18,186.99	18,186.99	2,437.53
06/19/98	Credit	Washington Federal Savings		Interest Income	70.45			2,507.98
06/30/98		Bank of Arizona		Draw Request Fee		451.24	451.24	2,507.98
07/01/98	Wire	Bank of Arizona		Funding : Draw #11		299,467.29		301,975.27

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Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Fee	Category	Deposit	Transfer	Amount	Balance
07/01/96	190	Stevensen Ted		Advance		(5,000.00)		296,972.7
07/01/96	191	Watts Corp		Const Costs - Draw #11			5,467.9	302,440.6
07/01/96		Bank of Arizona		Interest Accrued/Pmt		20,800.64	20,800.64	(2,492.02)
07/06/98	Deposit	RKW 96 Inc		Capital - RW 96	10,000.00			7,507.98
07/21/98	Credit	Washington Federal Savings		Interest Income	79.87			7,587.85
07/21/98	Wire	Bank of Arizona		Funding Draw #12		347,327.45		354,915.30
07/21/98		Bank of Arizona		Draw Request Fee		451.24	451.24	354,915.30
07/22/98	192	Watts Corp		Const Costs - Draw #12		→	347,327.45	7,587.85
08/04/98		Bank of Arizona		Interest Accrued/Pmt		24,278.23	24,278.23	7,587.85
08/05/98	193	Stevensen Ted		Advance		(5,000.00)		2,587.85
08/11/98	194	State of Utah		Licenses - Annual Report			10.00	2,577.85
08/11/98	195	Watts Kevin		Architect			106,300.00	(8,071.15)
08/11/98	196	Andover Interior Design		Marbletops			1,917.21	(23,992.36)
08/21/98	Credit	Washington Federal Savings		Interest Income	37.17			(23,955.19)
08/26/98	197	Watts Corp		Const Costs - Draw #13			108,000.00	(131,955.19)
08/26/98	198	Watts Corp		Const Costs - Draw #13		→	326,894.61	(458,849.80)
08/27/98	Wire	Bank of Arizona		Funding Draw #13		3,689.61		(131,955.19)
08/27/98		Bank of Arizona		Draw Request Fee		451.24	451.24	(131,955.19)
08/31/98	Deposit	Am West Trust Acct		Capital - RW 96		132,036.21		81.02
09/01/98		Bank of Arizona		Interest Accrued/Pmt		28,337.10	28,337.10	81.02
09/04/98	Deposit	Venezelos Deposit		Maple Flooring	500.00			581.02
09/04/98	Deposit	RKW 96 Inc		Capital - RW 96	11,000.00			11,581.02
09/04/98	199	Stevensen Ted		Advance		(5,000.00)		6,581.02
09/22/98	Credit	Washington Federal Savings		Interest Income	53.64			6,634.66
09/25/98	Wire	Bank of Arizona		Funding Draw #14		380,957.05		387,591.71
09/25/98		Bank of Arizona		Draw Request Fee		451.24	451.24	387,591.71
09/28/98	200	Watts Corp		Const Costs - Draw #14		→	354,117.05	33,474.66
10/01/98		Bank of Arizona		Interest Accrued/Pmt		29,772.62	29,772.62	33,474.66
10/05/98	201	Stevensen Ted		Advance		(5,000.00)		28,474.66
10/22/98	Credit	Washington Federal Savings		Interest Income	163.26			28,637.92
10/23/98	202	Hart Signs		Advertising			212.70	28,425.22
10/23/98	203	Alphagraphics		CCRs			390.19	28,035.03
10/23/98	204	Watts Kevin		Architect			4,426.25	23,608.78
10/26/98	Wire	Bank of Arizona		Funding Draw #15		119,034.00		142,662.78
10/28/98	Wire	Bank of Arizona		Funding Draw #15		169,565.00		312,227.78
10/28/98	206	Watts Corp		Const Costs - Draw #15		→	288,619.00	23,608.78
10/28/98		Bank of Arizona		Draw Request Fee		451.24	451.24	23,608.78
11/01/98		Bank of Arizona		Interest Accrued/Pmt		33,150.34	33,150.34	23,608.78
11/09/98	207	Stevensen Ted		Advance		(5,000.00)		18,608.78
11/23/98	Credit	Washington Federal Savings		Interest Income	85.61			18,697.39
12/01/98		Bank of Arizona		Interest Accrued/Pmt		33,854.11	33,854.11	18,697.39
12/03/98	208	Stevensen Ted		Advance		(5,000.00)		13,697.39
12/04/98	Wire	Bank of Arizona		Funding Draw #16		326,783.00		540,480.39
12/04/98	209	Watts Corp		Const Costs - Draw #16		→	326,783.00	13,697.39
12/21/98	Credit	Washington Federal Savings		Interest Income	102.86			13,800.25
12/21/98	210	Salt Lake County Treasurer		Property Taxes			7,410.74	6,389.51
12/21/98	211	Salt Lake City		Permits - right of way			600.00	5,789.51
12/21/98	212	Watts Kevin		Architect			711.50	078.01
12/31/98	Credit	Washington Federal Savings		Interest Income	12			5,083.13
01/01/99		Bank of Arizona		Interest Accrued/Pmt		3,493.21	3,493.21	083.13

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Washington Federal Savings – Checking Acct [Plus AZ Bank Loan and Unit Sales Transactions] 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
01/08/99	Wire	Bank of Arizona		Funding - Draw #17		276,000.00		281,083.13
01/08/99	213	Watts Corp		Const Cost - Draw #17		—	276,000.00	5,083.13
01/08/99		Bank of Arizona		Draw Request Fee		451.24	451.24	5,083.13
01/13/99	Deposit	RKW 96 Inc		Capital - RKW96	10,000.00			15,083.13
01/13/99	214	Stevensen, Ted		Advance		(5,000.00)		10,083.13
01/25/99	Credit	Washington Federal Savings		Interest Income	74.41			10,157.54
02/01/99		Bank of Arizona		Interest Accrual/Pmt		38,651.11	38,651.11	10,157.54
02/09/99	215	Stevensen, Ted		Advance		(5,000.00)		5,157.54
02/22/99	Credit	Washington Federal Savings		Interest Income	17.37			5,174.91
02/26/99	Deposit	RKW 96 Inc		Capital - RKW96	10,000.00			15,174.91
03/01/99		Bank of Arizona		Interest Accrual/Pmt		14,972.29	14,972.29	15,174.91
03/05/99	216	Stevensen, Ted		Advance		(5,000.00)		10,174.91
03/05/99	217	Watts, Kevin		Architect			1,474.00	8,700.91
03/05/99	218	Knight & Company		Advertising			605.00	8,095.91
03/05/99	219	Newspaper Agency		Advertising			4,692.46	3,403.45
03/05/99	220	Utah Dept		Fees—Annual Report			5.00	3,398.45
03/16/99	Deposit	Hansen, Que		Sales - 304	3,887.00			7,285.45
03/16/99	Deposit	Watts Group		Down Pmt - 304	5,000.00			12,285.45
03/19/99	Credit	Washington Federal Savings		Interest Income	19.65			12,305.10
03/22/99	Deposit	Ashton, Laura		Down Pmt - 205	7,500.00			19,805.10
03/22/99	Deposit	Ryan, Bill		Sales - 405	75,708.81			95,513.91
03/22/99	221	Watts Corp		Construction Costs			78,000.00	17,513.91
03/23/99	Deposit	Watts Group—Ryan EM		Down Pmt - 405	7,500.00			25,013.91
03/23/99	Deposit	AmWest—Ryan		405—Title Ins Reimb	33.00			25,046.91
03/23/99	222	Watts Corp		Construction Costs			7,500.00	17,546.91
03/25/99		Bank of Arizona		Interest Accrual/Pmt		20,408.94	20,408.94	17,546.91
03/26/99		Bank of Arizona		Sales Proceed/Loan Pmt	147,108.00	(147,108.00)		17,546.91
04/02/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		17,546.91
04/05/99	Deposit	Jones		Unit 415	2,500.00			20,046.91
04/05/99	Deposit	Hansen, Que		Sales - 304	44,357.17			64,404.08
04/05/99	Deposit	Watts Group—Garn		Down Pmt - 305	2,500.00			66,904.08
04/05/99	Deposit	Scott		Unit 303	5,000.00			71,904.08
04/05/99	Deposit	Garn		Unit 305	5,000.00			76,904.08
04/05/99	Deposit	Watts Group—Scott		Down Pmt - 303	2,500.00			79,404.08
04/05/99	223	Watts Corp		Construction Costs			55,000.00	24,404.08
04/12/99	Deposit	Watts Group—Wilson		Down Pmt - 203	2,500.00			26,904.08
04/12/99	Deposit	Wilson		Unit 203	9,434.00			36,338.08
04/12/99	Deposit	McCollum		Unit 315	5,000.00			41,338.08
04/12/99	Deposit	Jones		Unit 415	5,000.00			46,338.08
04/12/99	225	Watts Corp		Construction Costs			21,000.00	25,338.08
04/16/99	Deposit	Jones, Janae		Extras - 415	3,202.00			28,540.08
04/19/99	Deposit	Ashton, Laura		HOA Fees	141.80			28,681.88
04/19/99	Deposit	Ashton, Laura		Sales - 205	38,321.50	75.00 - ??		67,078.38
04/19/99	226	Watts Corp		Construction Costs			30,000.00	37,078.38
04/19/99	227	Newspaper Agency		Advertising			4,952.90	32,125.48
04/19/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		32,125.48
04/21/99	Credit	Washington Federal Savings		Interest Income	66.29			32,191.77
04/22/99	229	Leisure Living		Furniture			265.02	31,926.75
04/23/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		31,926.75
04/26/99	Deposit	Ridd, Jodi		Sales - 215	33,554.01	→(+ \$10)		65,480.76

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Washington Federal Savings – Checking Acct
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Date	Chk #	Description	Payee	Category	Deposit	Transfer	Amount	Balance
04/26/99	230	Watts Corp		Construction Costs			33,000.00	32,480.76
04/27/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		32,480.76
04/28/99	231	Knight & Company		Advertising			5,650.00	26,830.76
04/29/99	Deposit	Scott, Robert		Sales – 303	42,429.48			69,260.24
04/29/99	Deposit	Thomas, Carol		Down Pmt – 316	5,000.00			74,260.24
04/29/99	232	Watts Corp		Construction Costs			40,000.00	34,260.24
05/03/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		34,260.24
05/04/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		34,260.24
05/05/99	Deposit	Wilson		Sales – Unit 203	24,224.92			58,485.16
05/05/99	Deposit	Garn		Sales – Unit 305	50,924.29	(75.00) -- "		109,334.45
05/05/99	Deposit	Watts Group – Ridd		Down Pmt – 215	2,500.00			111,834.45
05/05/99	Deposit	Norwest Mgtc – NMI PC		Marketing	2,000.00			113,834.45
05/05/99	233	Watts Corp		Construction Costs			98,000.00	15,834.45
05/10/99	234	Liddle Waite & Assoc		Accounting			70.00	15,764.45
05/10/99	236	Newspaper Agency		Advertising			2,948.67	12,815.78
05/10/99	237	Watts, Kevin		Architect			343.75	12,472.03
05/13/99	Deposit	King, Herbert		Down Pmt – 202	5,000.00			17,472.03
05/13/99	238	US Postmaster		Advertising			1,650.00	15,822.03
05/19/99	Deposit	McCollum, Chantel		Sales – 315	39,688.56			55,510.59
05/19/99	Deposit	McCollum, Chantel		Extras – Unit 315	1,363.00			56,873.59
05/19/99	239	Watts Corp		Construction Costs			40,000.00	16,873.59
05/20/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		16,873.59
05/21/99	Credit	Washington Federal Savings		Interest Income	65.75			16,939.34
05/26/99	240	America West Title		Sales – 202	(1,999.00)			14,940.34
05/28/99		Bank of Arizona		Sales Proceed/Loan Pmt	135,000.00	(135,000.00)		14,940.34
06/01/99	241	Watts Corp		Construction Costs			45,000.00	(30,059.66)
06/02/99	Deposit	Whitmores Inc		Loan		300,000.00		269,940.34
06/02/99	Deposit	AmWest		Escrow cabinets – 203	1,022.00			270,962.34
06/02/99	Deposit	Thomas, Wilson		Sales – 316	46,293.03			317,255.37
06/02/99	242	Watts Corp		Construction Costs			300,000.00	17,255.37
06/02/99		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		17,255.37
06/03/99	Deposit	Whitney, Connie		Loan		80,000.00		97,255.37
06/03/99	Deposit	Christopoulos Ent		Loan		105,000.00		202,255.37
06/03/99	Deposit	Whitney, Spence		Loan		100,000.00		302,255.37
06/03/99	245	Watts Corp		Construction Costs			285,000.00	17,255.37
06/10/99	246	Norwest Bank		'97 Loan – Extension fee			13,800.00	3,455.37
06/15/99	Deposit	America West Title		Refund Lien 205	5,791.50			9,246.87
06/21/99	Credit	Washington Federal Savings		Interest Income	84.50			9,331.37
06/24/99	Deposit	Ridd, Jodi		Down Pmt – 215	5,000.00			14,331.37
06/29/99	243	Newspaper Agency		Advertising			20,044.55	(5,713.18)
06/29/99	244	The Park Record		Advertising			672.00	(6,385.18)
06/29/99	247	Utah Dept		Fees – Annual Report			10.00	(6,395.18)
06/29/99	248	Liddle Waite & Assoc		Accounting			686.80	(7,081.98)
06/29/99	249	Todd, Bryan		Legal Fees			320.00	(7,401.98)
06/29/99	250	The Enterprise		Advertising			1,362.92	(8,764.90)
06/29/99	251	Knight & Company		Advertising			3,035.00	(11,799.90)
07/02/99	Deposit	Jones, Janae		Sales – 415	39,768.55			27,968.65
07/02/99	Debit	Washington Federal Savings		NSF Fee			18.00	27,950.65
07/06/99		Bank of Arizona		Sales Proceed/Loan Pmt	170,000.00	(170,000.00)		27,950.65
07/11/99		Bank of Arizona		Interest Accrual Pmt		113,364.21	113,364.21	27,950.65

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Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
07/16/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	135,000.00	(135,000.00)		27,950.65
07/19/99	Deposit	Jones, Janae		Extra - 412	1,575.00			29,525.65
07/19/99	Deposit	Price, William		Sales - 302	8,918.99			38,444.64
07/21/99	252	Norwest Bank		Loan Extension Fee			9,395.00	29,349.64
07/22/99	Credit	Washington Federal Savings		Interest Income	54.19			29,403.83
07/29/99	Deposit	Eckard, Cecil		Sales - 214	45,554.51			74,958.34
07/29/99	253	Watts Corp		Construction Costs			45,000.00	29,958.34
07/29/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	170,000.00	(170,000.00)		29,958.34
08/03/99	254	Knight & Company		Advertising			6,921.00	23,037.34
08/03/99	255	Norwest Bank		Loan Extension			500.00	22,537.34
08/03/99	256	The Enterprise		Advertising			1,362.92	21,174.42
08/03/99	257	The Park Record		Advertising			672.00	20,502.42
08/03/99	258	Newspaper Agency		Advertising			13,510.22	6,992.20
08/03/99	259	America West Title		Sales - 208	(1,924.56)			5,067.64
08/05/99	Deposit	DMF Ltd.		Sales - 204	38,434.78			43,502.42
08/05/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	320,000.00	(320,000.00)		43,502.42
08/20/99	Credit	Washington Federal Savings		Interest Income	104.64			43,607.06
08/23/99		<i>Bank of Arizona</i>		<i>Interest Accrual/Pmt</i>		27,024.83	27,024.83	43,607.06
09/01/99		<i>Bank of Arizona</i>		<i>Interest Accrual/Pmt</i>		41,076.73	41,076.73	43,607.06
09/02/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	160,000.00	(160,000.00)		43,607.06
09/03/99	Deposit	Meyer, Frank		Sales - 404	48,180.33			91,787.39
09/03/99	Deposit	Carroll, Bradford		Sales - 212	23,928.79			115,716.18
09/03/99	260	Watts Corp		Construction Costs			45,000.00	70,716.18
09/03/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	170,000.00	(170,000.00)		70,716.18
09/07/99	Deposit	Smith, Alfred		Sales - 209	47,886.97			118,603.15
09/07/99	261	Haaga Mattress		Model			429.02	118,174.13
09/07/99	262	Ethan Allen		The Club - (Furniture?)		(17,561.00)	2,439.00	98,174.13
09/07/99	262	Ethan Allen		Entered twice - adjusted		(20,000.00)		78,174.13
09/07/99	263	Newspaper Agency		Advertising			16,174.44	61,999.69
09/07/99	264	Watts Corp		Construction Costs			45,000.00	16,999.69
09/07/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	235,000.00	(235,000.00)		16,999.69
09/10/99	Credit	Ethan Allen		Adjustment		20,000.00		36,999.69
09/20/99	265	Linda B. Strate		The Club Model			68.00	36,931.69
09/20/99	266	Evergreen Framing		The Club Model			1,019.36	35,912.33
09/20/99	267	Call, Gailen		The Club Model			350.00	35,562.33
09/20/99	268	Cockrell, Shauneen		The Club Model			3,020.17	32,542.16
09/22/99	Credit	Washington Federal Savings		Interest Income	158.72			32,700.88
09/22/99	269	Knight & Company		Advertising			11,975.00	20,725.88
09/28/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	160,000.00	(160,000.00)		20,725.88
09/28/99	HOA	Watts Corp		Loan: HOA Fees Paid		3,000.00	3,000.00	20,725.88
09/29/99	Deposit	Siegel, Michael		Sales - 306	16,783.09			37,508.97
09/30/99	270	Whitmores Inc		Interest Expense			3,342.80	34,166.17
09/30/99	271	Whitmores Inc		Interest Expense			6,684.38	27,481.79
09/30/99	272	Whitney, Spence		Interest Expense			3,315.40	24,166.39
09/30/99	273	Whitney, Connie		Interest Expense			2,652.32	21,514.07
09/30/99	274	Christopoulos Ent		Interest Expense			3,481.17	18,032.90
09/30/99	275	Norwest Bank		3rd Loan Extension			6,498.00	11,534.90
10/01/99	Deposit	Mangelson, R Herman		Sales - 211	26,590.35			38,125.25
10/01/99		<i>Bank of Arizona</i>		<i>Sales Proceed/Loan Pmt</i>	160,000.00	(160,000.00)		38,125.25
10/01/99		<i>Bank of Arizona</i>		<i>Interest Accrual/Pmt</i>		19,304.03	19,304.03	38,125.25

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Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
10/04/99	276	Newspaper Agency		Advertising			623.04	37,502.21
10/03/99	277	Mangelson, R Herman		Rent Unit 211			1,000.00	36,502.21
10/19/99	Deposit	Pella			500.00			37,002.21
10/19/99	Deposit	Meck, Phil		Sales – 207		8,000.00		45,002.21
10/22/99	Credit	Washington Federal Savings		Interest Income	96.86			45,099.07
11/01/99	278	Cockrell, Shauneen		Model			156.10	44,942.97
11/01/99	279	Ethan Allen		Model			4,876.86	40,066.11
11/01/99		Bank of Arizona		Interest Accrual/Pmt		18,067.88	18,067.88	40,066.11
11/02/99	280	Mangelson, R Herman		Rent			1,000.00	39,066.11
11/04/99	Deposit	Mangelson, R Herman		Refund taxes – 211	109.15			39,175.26
11/04/99	Deposit	Siegel, Michael		Refund Taxes – 306	91.37			39,266.63
11/05/99	281	Newspaper Agency		Advertising			12,787.28	26,479.35
11/05/99	282	Todd, Bryan		Legal Fees			160.00	26,319.35
11/05/99	283	The Park Record		Advertising			990.00	25,329.35
11/17/99		Bank of Arizona		Sales Proceed/Loan Pmt	235,000.00	(235,000.00)		25,329.35
11/22/99	Credit	Washington Federal Savings		Interest Income	78.39			25,407.74
11/23/99	Deposit	Meck, Phil		Withheld		(8,000.00)		17,407.74
11/23/99	Deposit	Meck, Phil		Sales – 207	16,007.79			33,415.53
11/23/99	Deposit	Ryan, Bill		Sales – 405	737.00			34,152.53
11/29/99	284	Salt Lake County Treasurer		Property Taxes			9,081.37	25,071.16
12/01/99		Bank of Arizona		Interest Accrual/Pmt		16,561.28	16,561.28	25,071.16
12/02/99	Deposit	Otero, Lori		Down Pmt – 307	10,000.00			35,071.16
12/06/99	285	Watts Corp		Construction Costs			30,000.00	5,071.16
12/21/99	Credit	Washington Federal Savings		Interest Income	41.38			5,112.54
12/28/99	Deposit	Eckard		Taxes	451.03			5,563.57
12/28/99	Deposit	Craft		Rental Income	2,700.00			8,263.57
12/28/99	Deposit	Smith		Unit 209 Taxes	260.49			8,524.06
12/28/99	Deposit	Meck		Appl upgrade – 207	3,088.00			11,612.06
12/28/99	Deposit	Thomas			294.59			11,906.65
12/28/99	Deposit	Wilson		Unit 203 taxes	238.54			12,145.19
12/28/99	Deposit	Taylor		Rental Income	2,000.00			14,145.19
12/28/99	Deposit	Price		Taxes	222.32			14,367.51
12/30/99	Deposit	King		Unit 202 Tax	167.46			14,534.97
12/30/99	Deposit	Harrison		Sales – 206	78,324.73			92,859.70
12/30/99	Deposit	Jones		Prop Tax	281.42			93,141.12
12/30/99	Deposit	DMF Ptr		Tax	424.98			93,566.10
12/30/99	Deposit	Parnell		Sales – Unit 201	5,010.01			98,576.11
12/30/99	291	Newspaper Agency		Advertising			5,299.07	93,277.04
12/30/99	292	The Enterprise		Advertising			1,078.08	92,198.96
12/30/99	293	Poole, Dennis K.		Legal Fees			605.10	91,593.86
12/30/99		Bank of Arizona		Sales Proceed/Loan Pmt	135,000.00	(135,000.00)		91,593.86
12/31/99	Credit	Washington Federal Savings		Interest Income	17.92			91,611.78
12/31/99	286	Whitney, Connie		Interest Expense			2,016.64	89,595.14
12/31/99	287	Whitney, Spence		Interest Expense			2,520.80	87,074.34
12/31/99	288	Whitmores Inc		Interest Expense			2,520.80	84,553.54
12/31/99	289	Christopoulos Ent		Interest Expense			2,646.84	81,906.70
12/31/99	290	Whitmores Inc		Interest Expense			5,040.68	76,866.02
12/31/99		Bank of Arizona		Sales Proceed/Loan Pmt	170,000.00	(170,000.00)		76,866.02
01/01/2000		Bank of Arizona		Interest Accrual/Pmt			14,625.58	76,866.02
01/21/2000	294	Norwest Bank [ot AZ]		Loan Pmt – 206		(65,000.00)		11,866.02

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Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfer	Amount	Balance
01/21/2000	294	Norwest Bank for AZ		Loan Extension Fee			10,214.00	1,652.02
01/24/2000	Credit	Washington Federal Savings		Interest Income	133.31			1,790.33
02/01/2000	Deposit	Security Trust		Sales – 414	57,169.79			58,960.62
02/01/2000	Deposit	Security Trust		Exch Sale – 409	54,236.79			113,197.41
02/01/2000	296	Unity Enterprises		Princ pmt note		(50,000.00)		63,197.41
02/01/2000	297	Watts Corp		Construction Costs			50,000.00	13,197.41
02/01/2000		Bank of Arizona		Sales Proceed/Loan Pmt	340,000.00	(340,000.00)		13,197.41
02/01/2000		Bank of Arizona		Interest Accrual/Pmt		11,652.51	11,652.51	13,197.41
02/10/2000	Credit	???			112.84			13,310.25
02/10/2000	Deposit	Ashton			215.67			13,525.92
02/10/2000	Deposit			Unit 404	558.25			14,084.17
02/10/2000	Deposit	Taylor		Rental Income	1,000.00			15,084.17
02/10/2000	Deposit	Craft		Rental Income	1,350.00			16,434.17
02/22/2000	Credit	Washington Federal Savings		Interest Income	138.27			16,572.44
03/01/2000	299	Newspaper Agency		Advertising			4,446.10	12,126.34
03/01/2000		Bank of Arizona		Interest Accrual/Pmt		9,379.98	9,379.98	12,126.34
03/02/2000	HOA	Watts Corp		Loan Legal Fees – HOA		1,000.00	1,000.00	12,126.34
03/02/2000	Deposit	Taylor		Rental Income	1,000.00			13,126.34
03/02/2000	Deposit	Carroll, Bradford		Tile upgrade #212	988.00			14,114.34
03/06/2000	300	The Club Homeowners		Homeowners Fees			6,000.00	8,114.34
03/07/2000		Bank of Arizona		Sales Proceed Loan Pmt	160,000.00	(160,000.00)		8,114.34
03/09/2000	Deposit	Craft, Frederick G.		Rental income	1,350.00			9,464.34
03/09/2000	Deposit	Craig, Stuart H.		Sales – 216	35,024.85			44,489.19
03/13/2000	301	Cockrell, Shauneen		Design Fee			105.00	44,384.19
03/14/2000	Deposit	Garn		Unit 305 Tax	267.29			44,651.48
03/14/2000	Deposit	Craft		Rental Income	1,350.00			46,001.48
03/14/2000	Deposit			Tax – Unit 315	280.93			46,282.41
03/14/2000	Deposit			Eckard	295.00			46,577.41
03/14/2000	Deposit	Watts Group		Down Pmt – 307	7,500.00			54,077.41
03/14/2000	302	Unity Enterprises		Note due + interest		(150,000.00)	46,913.38	(142,835.97)
03/17/2000	Deposit	RKW 96 Inc		Loan		170,000.00		27,164.03
03/21/2000	Credit	Washington Federal Savings		Interest Income	138.74			27,302.77
03/21/2000	303	James R. Blakesley		Legal Fees			988.75	26,314.02
03/21/2000	304	Heavens Best		Cleaning			110.00	26,204.02
03/21/2000	305	Knight & Company		Advertising			278.00	25,926.02
03/21/2000	306	Newspaper Agency		Advertising			3,970.96	21,955.06
03/21/2000	307	Liddle Waite & Assoc		Accounting			2,219.50	19,735.56
03/21/2000	308	Poole & Sullivan		Legal Fees			3,974.22	15,761.34
03/21/2000	309	Whitney, Connie		Interest Expense			1,994.72	13,766.62
03/21/2000	310	Whitney, Spence		Interest Expense			2,493.40	11,273.22
03/21/2000	311	Whitmores Inc		Interest Expense			4,985.89	6,287.33
03/21/2000	312	Whitmores Inc		Interest Expense			2,493.40	3,793.93
03/21/2000	313	Christopoulos Ent		Interest Expense			2,618.07	1,175.86
04/01/2000		Bank of Arizona		Interest Accrual/Pmt		8,996.54	8,996.54	1,175.86
04/03/2000	Deposit	Taylor		Rental Income	1,000.00			2,175.86
04/04/2000	Deposit	Lee		Sales – 210	18,949.53			21,125.39
04/04/2000	314	Newspaper Agency		Advertising			353.89	20,771.50
04/04/2000		Bank of Arizona		Sales Proceed/Loan Pmt	165,000.00	(165,000.00)		20,771.50
04/13/2000	Deposit	Craft, Frederick G.		Rental income	1,350.00			22,121.50
04/15/2000	315	Whitmores Inc		Repayment		(100,000.00)		(77,878.50)

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Washington Federal Savings - Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk. #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
04/18/2000		Bank of Arizona		Sales Proceed/Loan Pmt	160,000.00	(160,000.00)		(77,878.50)
04/19/2000	Deposit	Otero, Lori		Sales - 307	203.40			(77,675.10)
04/19/2000	Deposit	Stock, Reed		Sales - 314	36,901.37			(40,773.73)
04/19/2000	Wire	Watts Corp		Loan		80,000.00		39,226.27
04/19/2000		Bank of Arizona		Sales Proceed/Loan Pmt	155,000.00	(155,000.00)		39,226.27
04/24/2000		Bank of Arizona		Sales Proceed/Loan Pmt	170,000.00	(170,000.00)		39,226.27
04/25/2000	Credit	Washington Federal Savings		Interest Income	67.78			39,294.05
04/26/2000	Deposit	Taylor		Rental Income	1,000.00			40,294.05
04/26/2000	Deposit	Otero		Window Cov-Unit 30	1,051.00			41,345.05
04/26/2000	Deposit	Watts Group		Down Pmt - 401 ?	21,500.00			62,845.05
04/26/2000	Deposit	Burggraf, Greg		Sales - 412	52,754.71			115,599.76
05/01/2000		Bank of Arizona		Interest Accrual/Pmt		7,538.28	7,538.28	115,599.76
05/08/2000	316	Watts Corp		Repayment		(80,000.00)		35,599.76
05/18/2000	Deposit	Nearon		Unit 414	4,123.00			39,722.76
05/18/2000	Deposit	Craft, Frederick G.		Rental income	1,350.00			41,072.76
05/23/2000	Credit	Washington Federal Savings		Interest Income	147.02			41,219.78
05/31/2000	317	Watts Corp		Construction Costs			25,000.00	16,219.78
06/01/2000	318	Newspaper Agency		Advertising			4,672.36	11,547.42
06/01/2000	319	Newspaper Agency		Advertising			1,376.26	10,171.16
06/01/2000		Bank of Arizona		Interest Accrual/Pmt		1,975.52	1,975.52	10,171.16
06/05/2000	320	KJZZ TV		Advertising			9,983.88	187.28
06/05/2000	321	Cockrell, Shauneen		Design		(90.00)		97.28
06/05/2000		Bank of Arizona		Interest Accrual/Pmt		1,444.92	1,444.92	97.28
06/05/2000		Bank of Arizona		Sales Proceed/Loan Pmt	383,746.97	(383,746.97)		97.28
06/08/2000	Credit	Cockrell, Shauneen ?		Adjustment		90.00		187.28
06/09/2000	Deposit	McCusker, K.		Sales - 402	164,901.02	(132,036.21)	—RKW \$ 8.98	33,052.09
06/12/2000	322	KJZZ TV		Advertising			572.50	32,479.59
06/13/2000	Deposit	Falk		Sales Unit 312	47,445.13			79,924.72
06/13/2000	Deposit	Rice		Sales Unit 406	43,878.23			123,802.95
06/13/2000	Deposit	Ipson		Sales-311	153,701.06			277,504.01
06/13/2000		Midway Village L.C.		Exchange - 409			225,000.00	52,504.01
06/28/2000	323	Newspaper Agency		Advertising			5,554.44	46,949.57
06/28/2000	324	RKW 96 Inc		1st, 2nd qtr interest			4,984.06	41,965.51
06/30/2000	Deposit	Taylor		Rental Income	2,000.00			43,965.51
06/30/2000	Deposit	Craft, Frederick G.		Rental income	1,350.00			45,315.51
06/30/2000	Credit	Washington Federal Savings		Interest Income	115.72			45,431.23
06/30/2000	325	Whitney, Spence		Interest Expense			2,493.40	42,937.83
06/30/2000	326	Whitney, Connie		Interest Expense			1,994.72	40,943.11
06/30/2000	327	Whitmores Inc		Interest Expense			4,985.89	35,957.22
06/30/2000	329	Christopoulos Ent		Interest Expense			2,618.07	33,339.15
06/30/2000	330	Whitmores Inc		Interest Expense			411.00	32,928.15
07/20/2000	Deposit	Craft, Frederick G.		Rental income	1,350.00			34,278.15
07/21/2000	321	Cockrell, Shauneen		Professional Fees			90.00	34,188.15
07/26/2000	331	Watts Corp		Construction Costs			20,000.00	14,188.15
07/26/2000	334	Poole & Sullivan		Legal Fees			2,739.74	11,448.41
07/26/2000	335	Liddle Waite & Assoc		Accounting			1,300.00	10,148.41
07/26/2000	336	Knight & Company		Advertising			1,306.00	8,842.41
07/26/2000	337	Printers Inc		Advertising			1,380.42	7,461.99
07/26/2000	338	Newspaper Agency		Advertising			1,792.56	5,669.43
07/26/2000	339	Newspaper Agency		Advertising			1,109.29	4,560.14

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Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
07/26/2000	340	Todd, Bryan		Legal Fees			60.58	4,499.56
07/26/2000	341	Todd, Bryan		Legal Fees			109.42	4,390.14
07/31/2000	Credit	Washington Federal Savings		Interest Income	77.69			4,467.83
08/03/2000	342	US Postmaster		Advertising			1,485.00	2,982.83
08/10/2000	Deposit	Taylor		Rental Income	1,000.00			3,982.83
08/22/2000	343	Newspaper Agency		Advertising			3,465.00	517.83
08/22/2000	344	Newspaper Agency		Advertising			1,777.66	(1,259.83)
08/25/2000	Deposit	Watts Corp		Loan—HOA Fees		3,000.00		1,740.17
08/25/2000	Deposit	Chamberlain, Clark		Sales – 416	218,750.44			220,490.61
08/25/2000	Debit	Washington Federal Savings		NSF Fee			18.00	220,472.61
08/29/2000	345	Christopoulos Ent		Repayment		(105,000.00)		115,472.61
08/29/2000	346	Christopoulos Ent		Interest Expense			1,726.20	113,746.41
08/29/2000	349	Forest Creek Mgmt		Rent			742.00	113,004.41
08/29/2000	350	Liddle Waite & Assoc		Accounting			200.00	112,804.41
08/29/2000	351	Poole & Sullivan		Legal Fees			2,831.44	109,972.97
08/29/2000	352	Printers Inc		Advertising			840.16	109,132.81
08/29/2000	353	Whitney, Connie		Repayment		(80,000.00)		29,132.81
08/29/2000	354	Whitney, Connie		Interest Expense			1,315.20	27,817.61
08/31/2000	Credit	Washington Federal Savings		Interest Income	107.45			27,925.06
09/01/2000	355	The Club Homeowners		Referral—Unit 209			1,500.00	26,425.06
09/01/2000	356	The Club Homeowners		HOA Shortage			2,320.00	24,105.06
09/01/2000	Deposit	Taylor		Rental Income	1,000.00			25,105.06
09/19/2000	357	Liddle Waite & Assoc		Accounting			120.00	24,985.06
09/19/2000	358	Knight & Company		Advertising			1,271.00	23,714.06
09/19/2000	359	Newspaper Agency		Advertising			1,775.76	21,938.30
09/19/2000	360	Newspaper Agency		Advertising			1,741.82	20,196.48
09/19/2000	361	US Postmaster		Advertising			1,485.00	18,711.48
09/26/2000	Deposit	Colessides, Sophia		Sales – 410	295,443.14			314,154.62
09/26/2000	362	RKW 96 Inc		Repayment		(90,000.00)		224,154.62
09/26/2000	363	RKW 96 Inc		Interest Expense			4,166.72	219,987.90
09/26/2000	364	Whitney, Spence		Interest Expense			2,520.80	217,467.10
09/26/2000	365	Whitmores Inc		Repayment		(200,000.00)		17,467.10
09/26/2000	366	Whitmores Inc		Interest Expense			4,821.52	12,645.58
09/26/2000	367	Poole & Sullivan		Legal Fees			134.70	12,510.88
09/29/2000	Credit	Washington Federal Savings		Interest Income	108.57			12,619.45
10/04/2000	Deposit	Stoddard, Simeon		Sales – 411	228,998.48	(214,000.00) → Seller note		27,617.93
10/24/2000	Deposit	Craft, Frederick G.		Rental income	4,050.00			31,667.93
10/25/2000	Wire			Rental income	1,605.00			33,272.93
10/31/2000	Credit	Washington Federal Savings		Interest Income	91.06			33,363.99
11/21/2000	368	Newspaper Agency		Advertising			3,136.00	30,227.99
11/21/2000	369	Liddle Waite & Assoc		Accounting			120.00	30,107.99
11/21/2000	370	The Club Homeowners		Dues #412			1,200.00	28,907.99
11/21/2000	371	State of Utah		Licenses			10.00	28,897.99
11/27/2000	Deposit	Heb, FLP		Stoddard Note #411		214,000.00 → Note sold		242,897.99
11/27/2000	372	Salt Lake County Treasurer		Property Taxes			16,593.90	226,304.09
11/28/2000	Deposit			Rental Income	1,605.00			227,909.09
11/30/2000	Credit	Washington Federal Savings		Interest Income	128.99			228,038.08
12/04/2000	Deposit	Lewis, Tom		Lien – 310		4,119.00		232,157.08
12/04/2000	Deposit	Taylor		Rental Income	1,000.00			233,157.08
12/04/2000	Deposit	Nearon		Furniture		2,561.00		235,718.08

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The Club LC

Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
12/04/2000	Deposit	Lewis, Tom		Sales – 310	279,860.30	(4,119.00) ← Loan		511,459.38
12/04/2000	373	Brian Todd [Zach Land Trust]		RKW 96 Capital Draw	(30,349.77)			461,109.61
12/04/2000	374	Whitney, Spence		Interest Expense		(100,000.00)	1,781.00	359,328.61
12/04/2000	375	RKW 96 Inc		Loan payoff/interest		(80,000.00)	1,424.80	277,903.81
12/04/2000	376	Watts Corp		Construction Costs			260,000.00	17,903.81
12/12/2000	Deposit	Olsen, Rex & Margaret		Sales – 301	146,131.71			164,035.52
12/12/2000	377	Watts Corp		Construction Costs			145,000.00	19,035.52
12/21/2000	378	Vance Brand		Christmas lights			500.00	18,535.52
12/29/2000	Credit	Washington Federal Savings		Interest Income	175.21			18,710.73
01/02/2001	Deposit	Craig		Unit 401 tax	857.96			19,568.69
01/02/2001	Deposit	Craft		Unit 308 Rent	2,700.00			22,268.69
01/02/2001	Deposit	Steele		Unit 308	2,085.00			24,353.69
01/08/2001	379	Newspaper Agency		Advertising			3,564.00	20,789.69
01/08/2001	380	Cockrell, Shauneen		Outside Svcs – Design			217.69	20,572.00
01/08/2001	381	Simeon Stoddard		Prop Taxes			290.98	20,281.02
01/17/2001	Deposit	Ryan		Tax credit w/h	431.35			20,712.37
01/17/2001	Deposit	Rowley-Smith		Lighting cabinets	507.54			21,219.91
01/17/2001	Deposit	Stock		Unit 314 TS Elec	452.66			21,672.57
01/29/2001	Deposit	Steele		Unit 308	1,350.00			23,022.57
01/29/2001	Deposit	Eckhard, Cecil		Extras – 214	157.34			23,179.91
01/31/2001	Credit	Washington Federal Savings		Interest Income	51.57			23,231.48
01/31/2001	Debit	Washington Federal Savings		Wire Fee			15.00	23,216.48
01/31/2001	Wire	America West Title		Closing Costs – #308 Craft			9,021.00	14,195.48
02/01/2001	Deposit	Syd Colessides		Unit 409 proceeds	204,137.74	(151,500.00) ← Seller note		66,833.22
02/01/2001	Deposit	Colessides Note – Whitney		Sold Note – 409		151,500.00 ← Note sold		218,333.22
02/01/2001	Deposit	Craft, Frederick G.		Sales – 308	175,220.63			393,553.85
02/01/2001	Deposit	Thomas, Carol L.		Sales – 417	9,766.62	← Less \$225,000 credit		403,320.47
02/01/2001	382	Burggarf, Greg		Office expense – reimb			37.96	403,282.51
02/01/2001	383	Newspaper Agency		Advertising			575.95	402,706.56
02/01/2001	384	Newspaper Agency		Advertising			594.00	402,112.56
02/01/2001	385	RKW 96 Inc		Capital – Draw	(90,000.00)			312,112.56
02/01/2001	386	Watts Corp		Construction Costs			300,000.00	12,112.56
02/14/2001	387	US Postmaster		Postage			1,020.00	11,092.56
02/22/2001	388	Scott Dastrup		Desk			1,111.96	9,980.60
02/22/2001	389	Redrock Heating		Unit 417			425.10	9,555.50
02/22/2001	390	Excel Prop Mgmt		Mgmt Fees			259.00	9,296.50
02/23/2001	Deposit	Poole & Adams		Refund Legal Fees			(720.84)	10,017.34
02/23/2001	Deposit	Jones		Taxes	405.11			10,422.45
02/23/2001	Deposit	TS Elec		Unit 402 Overpmt	410.44			10,832.89
02/28/2001	Credit	Washington Federal Savings		Interest Income	159.33			10,992.22
03/21/2001	391	Newspaper Agency		Advertising			775.04	10,217.18
03/30/2001	Credit	Washington Federal Savings		Interest Income	26.01			10,243.19
04/11/2001	Deposit	Scott		Tax	227.01			10,470.20
04/11/2001	Deposit	Hansen/Silver		Tax	186.15			10,656.35
04/24/2001	Deposit	Craig, Stuart H.		Other income	3,262.50			13,918.85
04/26/2001	Debit	Harland		Check Printing			20.70	13,898.15
04/30/2001	Credit	Washington Federal Savings		Interest Income	27.49			13,925.64
05/01/2001	392	Newspaper Agency		Advertising			1,060.43	12,865.21
05/01/2001	394	Santa Fe Developers		Cleaning			340.00	12,525.21
05/01/2001	395	Custom Cleaning		Janitor			136.86	12,388.35

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The Club LC

Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
05/23/2001	396	Newspaper Agency		Advertising			993.99	11,394.36
05/31/2001	Credit	Washington Federal Savings		Interest Income	23.11			11,422.47
06/07/2001	397	Newspaper Agency		Advertising			1,864.37	9,558.10
06/11/2001	Deposit	Carroll, Bradford		Tax Unit 212	95.85			9,653.95
06/29/2001	Credit	Washington Federal Savings		Interest Income	21.36			9,675.31
07/05/2001	Deposit	Davies		Sales – 403	219,438.60			229,113.91
07/05/2001	398	Watts Enterprises		Construction Costs			219,438.60	9,675.31
07/09/2001	Deposit	Lake, Chris		Sales – 309	185,723.94			195,399.25
07/09/2001	399	Watts Enterprises		Construction Costs			185,723.94	9,675.31
07/18/2001	Deposit	Schwartz, Refael		Sales – 317	205,951.76			215,627.07
07/29/2001	400	Watts Enterprises		Construction Costs			205,951.76	9,675.31
07/31/2001	Credit	Washington Federal Savings		Interest Income	138.96			9,814.27
07/31/2001	401	Whitney, Bob		Office Expense – Glen's			17.23	9,797.04
07/31/2001	402	Sign Concepts Inc		Advertising			53.30	9,743.74
08/06/2001	403	The Club Homeowners		Dues – Break even dep			4,109.00	5,634.74
08/06/2001	404	Whitney, Bob		Office Expense – Glen's			61.00	5,573.74
08/08/2001	Deposit	Craig, Stuart H.		Sales – 401	145,640.25			151,213.99
08/08/2001	405	Watts Enterprises		Construction Costs			145,640.25	5,573.74
08/10/2001	406	Newspaper Agency		Advertising			409.94	5,163.80
08/21/2001	Deposit	Schwartz, Refael		Unit 317	8,759.00			13,922.80
08/21/2001	Deposit	Lewis		Unit 310	843.15			14,765.95
08/23/2001	407	James R. Blakesley		Legal Fees			693.75	14,072.20
08/23/2001	408	Poole & Sullivan		Legal Fees			1,291.69	12,780.51
08/23/2001	409	State of Utah		Licenses – Annual Report			20.00	12,760.51
08/27/2001	410	Cockrell, Shauneen		Advertising			135.00	12,625.51
08/31/2001	Credit	Washington Federal Savings		Interest Income	31.14			12,656.65
08/31/2001	411	The Club Homeowners		Dues			1,140.00	11,516.65
09/27/2001	412	Liddle Waite & Assoc		Accounting			30.00	11,486.65
09/27/2001	413	Newspaper Agency		Advertising			547.61	10,939.04
09/27/2001	414	Poole & Sullivan		Legal Fees			43.00	10,896.04
09/30/2001	Credit	Washington Federal Savings		Interest Income	23.65			10,919.69
10/01/2001	415	The Club Homeowners		Dues #317			70.00	10,849.69
10/02/2001	416	Card, Sherrie		Security			90.00	10,759.69
10/24/2001	417	Newspaper Agency		Advertising			334.71	10,424.98
10/31/2001	Credit	Washington Federal Savings		Interest Income	20.72			10,445.70
11/20/2001	Deposit	Halas, Jodi M.		Sales – 407	224,422.80			234,868.50
11/20/2001	418	Watts Enterprises		Construction Costs			230,000.00	4,868.50
11/28/2001	419	Salt Lake County Treasurer		Property Taxes			3,312.32	1,556.18
11/30/2001	Credit	Washington Federal Savings		Interest Income	27.81			1,583.99
12/21/2001	420	Liddle Waite & Assoc		Accounting			2,450.00	(866.01)
12/31/2001	Credit	Washington Federal Savings		Interest Income	3.56			(862.45)
01/14/2002	Deposit	Threlkeld, Kay		Sales – 316	227,136.69			226,274.24
01/14/2002	Deposit	Stock, Reed		Furn from Model		1,000.00		227,274.24
01/14/2002	421	Watts Enterprises		Construction Costs			21,903.43	205,370.81
01/15/2002	422	Watts Enterprises		Construction Costs			200,000.00	5,370.81
01/17/2002	426	Express Deliveries		Postage/Delivery			210.00	5,160.81
01/17/2002	428	Corporate Cleaning		Janitor			180.00	4,980.81
01/18/2002	427	Newspaper Agency		Advertising			259.62	4,721.19
01/22/2002	423	Poole & Sullivan		Legal Fees			1,025.59	3,695.60
01/22/2002	425	Sign Concepts Inc		Advertising			21.32	3,674.28

The Club LC

Washington Federal Savings – Checking Acct
 [Plus AZ Bank Loan and Unit Sales Transactions]
 1996 through 2004

Date	Chk #	Description / Payee	Category	Deposit	Transfers	Amount	Balance
01/28/2002	424	James R. Blakesley	Legal Fees			218.75	3,455.53
01/31/2002	Credit	Washington Federal Savings	Interest Income	26.48			3,476.61
02/28/2002	Credit	Washington Federal Savings	Interest Income	5.52			3,481.53
03/04/2002	429	Poole & Sullivan	Legal Fees			2,072.80	1,408.73
03/26/2002	430	Newspaper Agency	Advertising			350.60	1,058.13
03/31/2002	Credit	Washington Federal Savings	Interest Income	2.54			1,060.67
04/30/2002	Deposit	RKW 96 Russ Watts	Loan		2,276.00		3,336.67
04/30/2002	Credit	Washington Federal Savings	Interest Income	2.04			3,338.71
05/02/2002	431	Newspaper Agency	Advertising			208.03	3,130.68
05/15/2002	433	Show Me the Homes	Advertising			79.99	3,050.69
05/15/2002	434	Newspaper Agency	Advertising			263.90	2,786.79
05/31/2002	Credit	Washington Federal Savings	Interest Income	4.95			2,791.74
06/18/2002	435	Watts, Russ	Annual Report			12.50	2,779.24
06/18/2002	436	The Club Homeowners	HOA Dues – Units held			810.00	1,969.24
06/18/2002	437	Watts Group	Owner Referral			330.00	1,639.24
06/18/2002	438	The Club Homeowners	HOA Dues – Units held			125.00	1,514.24
06/18/2002	439	Liddle Waite & Assoc	Accounting			1,600.00	(85.76)
06/18/2002	440	Poole & Sullivan	Legal Fees			921.68	(1,007.44)
06/19/2002	Deposit	Woodruff	Int on furniture	93.33			(914.11)
06/19/2002	Deposit	Watts Corp	Loan		1,500.00		585.89
06/19/2002	441	Corporate Cleaning	Janitor			90.00	495.89
06/30/2002	Credit	Washington Federal Savings	Interest Income	4.65			500.54
07/17/2002	Deposit	Jodi Woodruff	June Interest	93.33			593.87
07/17/2002	Deposit	Jodi Woodruff	Furniture		14,000.00		14,593.87
07/31/2002	Credit	Washington Federal Savings	Interest Income	13.09			14,606.96
08/20/2002	442	Liddle Waite & Assoc	Accounting			75.00	14,531.96
08/20/2002	443	Watts Enterprises	Construction Costs			6,313.30	8,218.66
08/20/2002	444	Poole & Sullivan	Legal Fees			766.81	7,451.85
08/20/2002	445	Watts Enterprises	HOA Fees; Loan Payback		(7,000.00)		451.85
08/20/2002	446	Newspaper Agency	Advertising			264.26	187.59
08/31/2002	Credit	Washington Federal Savings	Interest Income	17.36			204.95
09/26/2002	447	Newspaper Agency	Advertising			247.89	(42.94)
09/26/2002	448	Poole & Sullivan	Legal Fees			327.44	(370.38)
09/27/2002	Deposit	RKW 96 Russ Watts	Loan		1,000.00		629.62
09/30/2002	Credit	Washington Federal Savings	Interest Income	0.50			630.12
09/30/2002	Debit	Washington Federal Savings	Service Charge			8.00	622.12
10/31/2002	Debit	Washington Federal Savings	Service Charge			8.00	614.12
11/04/2002	449	Newspaper Agency	Advertising			285.43	328.69
11/04/2002	450	Poole & Sullivan	Legal Fees			346.90	(18.21)
11/05/2002	Deposit	RKW 96 Russ Watts	Loan		200.00		181.79
11/13/2002	Deposit	Lewis, Tom	Lien release – 310	4,119.00	\$3k Dbl Pmt		4,300.79
11/13/2002	Deposit	Beaty, Thomas	Sales – 408	208,717.73	1		213,018.52
11/13/2002	451	RKW 96 Inc	Draw. Loans. Costs	(143,867.99)	(7,976.00)	58,156.01	3,018.52
11/18/2002	452	Newspaper Agency	Advertising			264.05	2,754.47
11/25/2002	Deposit	Beaty, Thomas	Unit 408 overpmt		837.37		3,591.84
11/25/2002	Deposit	Beaty, Thomas	Appliance Pkg – 408	225.00	520.00		4,336.84
11/30/2002	Credit	Washington Federal Savings	Interest Income	19.54			4,356.38
12/10/2002	453	Beaty, Thomas	Reimb Appliances		(1,357.37)		2,999.01
12/31/2002	Credit	Washington Federal Savings	Interest Income	5.40			3,004.41

The Club LC

Washington Federal Savings – Checking Acct [Plus AZ Bank Loan and Unit Sales Transactions] 1996 through 2004

Date	Chk #	Description	Payee	Category	Deposit	Transfers	Amount	Balance
1/21/2003	454	Poole & Sullivan		Legal Fees			769.40	2,235.01
1/21/2003	455	Liddle Waite & Assoc		Accounting			71.00	2,160.01
1/31/2003	Credit	Washington Federal Savings		Interest Income	3.67			2,163.68
2/24/2003	456	Liddle Waite & Assoc		Accounting			165.00	1,998.68
2/24/2003	457	Poole & Sullivan		Legal Fees			597.94	1,400.74
2/28/2003	Credit	Washington Federal Savings		Interest Income	2.51			1,403.25
3/31/2003	Credit	Washington Federal Savings		Interest Income	1.95			1,405.20
4/29/2003	458	Poole & Sullivan		Legal Fees			819.85	585.35
4/30/2003	Deposit	Lewis, Tom		Extras – 310?	1,124.00			1,709.35
4/30/2003	Credit	Washington Federal Savings		Interest Income	1.28			1,710.63
5/31/2003	Credit	Washington Federal Savings		Interest Income	1.54			1,712.17
5/26/2003	459	Liddle Waite & Assoc		Accounting			1,850.00	(137.83)
5/26/2003	460	Poole & Sullivan		Legal Fees			4,453.18	(4,591.01)
5/30/2003	Credit	Washington Federal Savings		Interest Income	1.11			(4,589.90)
7/31/2003	Credit	Washington Federal Savings		Interest Income	0.66			(4,589.24)
8/28/2003	Deposit	RKW 96 Russ Watts		Loan		5,000.00		410.76
8/31/2003	Credit	Washington Federal Savings		Interest Income	0.76			411.52
9/25/2003	461	Liddle Waite & Assoc		Accounting			809.69	(398.17)
9/29/2003	Deposit	RKW 96 Russ Watts		Loan		500.00		101.83
9/29/2003	462	Burggart, Greg		Misc			92.83	9.90
9/30/2003	Credit	Washington Federal Savings		Interest Income	1.17			10.17
10/24/2003	463	Poole & Sullivan		Legal Fees			13,983.43	(13,973.26)
10/31/2003	Debit	Washington Federal Savings		Service Charge			8.00	(13,981.26)
11/30/2003	Debit	Washington Federal Savings		Service Charge			8.00	(13,989.26)
12/02/2003	Deposit	RKW 96 Russ Watts		Loan		14,000.00		10.74
12/31/2003	Credit	Washington Federal Savings		Interest Income	1.73			12.47
1/22/2004	464	James R. Blakesley		Legal Fees			214.50	(202.03)
1/22/2004	465	Poole & Sullivan		Legal Fees			8,538.81	(8,740.84)
1/27/2004	Deposit	RKW 96 Russ Watts		Loan		9,000.00		259.16
1/30/2004	Credit	Washington Federal Savings		Interest Income	0.48			259.64
2/27/2004	Credit	Washington Federal Savings		Interest Income	0.61			260.25
3/31/2004	Credit	Washington Federal Savings		Service Charge			8.00	252.25
					10,028.277	(136,500.00)	9,891,525	
					1996-1999	162,000.00	Ted Stevensen Advances	
					Nov-2002	3,000.00	Double Pmt - HOA Fees	
					2003-2004	(28,500.00)	RKW Loans Payable	
						0.00		

The Club Condominium LLC
Sales Contracts

Table with columns: Closing Date, Unit No., Name, Sales Price, Seller's Credits, Bank Pwoff, Outside Comm, Stcrensen Comm, Wats Comm, Title Ins & Closing Fees, Property Taxes, HOA Fee, Payment Credits, Buyer's Credits, Closing Cash-Seller, Down Payment, Tax & Other Reimburse, Total Cash to Seller. Includes rows for various units and names like Bill Ryan, Que Hansen, Laura Ashton, etc.

The Club LC
Financial & Construction Budgets
 1996 through 1999

	Sep-96	Jan-97	Feb-97	Oct-97	Revised Jun-98	Oct-98	Revise #2 Nov-98	Sep-99	Change 1997-1999
Sales - 47 Units	7,773,000	8,445,000	8,445,000	10,049,580	8,445,000	10,420,000	8,445,000	10,420,000	1,975,000
Project Costs	(6,626,100)	(7,172,000)	(7,064,500)	(8,736,500)	(7,064,500)	(9,036,500)	(7,064,500)	(9,474,850)	(2,302,850)
Marketing	0	0	(25,000)	(25,000)	(25,000)	(42,000)	(25,000)	(149,500)	(149,500)
Closing & Commissions @ 5%	(310,920)	(422,100)	(422,100)	(502,479)	(422,100)	(521,000)	(422,100)	(521,000)	(98,900)
Anticipated Profit	<u>\$835,980</u>	<u>\$850,900</u>	<u>\$933,400</u>	<u>\$785,601</u>	<u>\$933,400</u>	<u>\$820,500</u>	<u>\$933,400</u>	<u>\$274,650</u>	<u>(\$576,250)</u>
Project Costs:									
Construction of Units	4,222,300	4,452,900	4,609,789	6,180,100	4,647,044	6,365,300	4,661,722	6,689,900	2,237,000
Contractors Fee @ 8%	363,700	399,100	374,211	519,900	374,211	534,700	374,211	556,100	157,000
Demolition & Fill	66,000	130,000	97,500	100,000	104,226	100,000	104,226	90,000	(40,000)
Asbestos Removal	0	90,000	90,000	81,000	80,840	81,000	80,840	81,000	(9,000)
Land	770,000	770,000	770,000	770,000	770,000	770,000	770,000	770,000	0
Engineering & Consultants	190,400	210,000	210,000	150,000	158,607	150,000	158,607	159,900	(50,100)
Interest & Finance	275,500	345,000	295,000	295,000	295,000	395,000	295,000	528,000	183,000
Appraisal & Bonding	7,500	9,500	9,500	9,500	9,500	9,500	9,500	5,900	(3,600)
Fees & Permits	32,500	38,500	43,170	60,000	59,742	60,000	59,742	2,500	(36,000)
Legal/ Insurance	15,000	15,000	15,000	10,000	15,000	10,000	13,622	17,100	2,100
Utilities	18,000	18,000	18,000	18,000	18,000	18,000	4,700	1,150	(16,550)
Development Fee	465,200	444,000	444,000	493,000	444,000	493,000	444,000	493,000	49,000
Contingency	200,000	250,000	88,330	50,000	88,330	50,000	88,330	80,000	(170,000)
Total Project Costs	\$6,626,100	<u>\$7,172,000</u>	<u>\$7,064,500</u>	\$8,736,500	<u>\$7,064,500</u>	\$9,036,500	<u>\$7,064,500</u>	\$9,474,850	\$2,302,850
	<i>Preliminary</i>	<i>per Book WIP</i>	<i>to Bank</i>		<i>Revised Bank</i>		<i>Revised #2</i>		

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The Club LC
Financial & Construction Budgets
1996 through 1999

	Sep-96	Jan-97	Feb-97	Oct-97	Revised Jun-98	Oct-98	Revise #2 Nov-98	Sep-99	Change 1997-1999
Assets:									
Cash	0	0	0	0	0	0	0	0	0
Units Held for Sale	5,956,100	6,502,000	6,394,500	8,066,500	6,394,500	8,366,500	6,394,500	8,804,850	2,302,850
Land	670,000	670,000	670,000	670,000	670,000	670,000	670,000	670,000	0
Total Assets	\$6,626,100	\$7,172,000	\$7,064,500	\$8,736,500	\$7,064,500	\$9,036,500	\$7,064,500	\$9,474,850	\$2,302,850
Liabilities & Capital									
Const. Notes Payable	5,052,450	5,052,450	5,052,450	5,052,450	5,052,450	5,052,450	5,052,450	5,052,450	0
Const. Costs Payable	0	545,900	438,400	2,110,400	438,400	2,410,400	438,400	2,848,750	2,302,850
Total Liabilities	5,052,450	5,598,350	5,490,850	7,162,850	5,490,850	7,462,850	5,490,850	7,901,200	2,302,850
Members Capital									
Capital—RKW 96 LLC	786,825	786,825	786,825	786,825	786,825	786,825	786,825	786,825	0
Capital—Stevensen	786,825	786,825	786,825	786,825	786,825	786,825	786,825	786,825	0
Draws—Stevensen	0	0	0	0	0	0	0	0	0
Net Income/(Loss)									
Total Members Capital	1,573,650	1,573,650	1,573,650	1,573,650	1,573,650	1,573,650	1,573,650	1,573,650	0
Total Liabilities & Capital	\$6,626,100	\$7,172,000	\$7,064,500	\$8,736,500	\$7,064,500	\$9,036,500	\$7,064,500	\$9,474,850	\$2,302,850

The Club Condominium LLC

Stevenson Sales Commissions Payable

<u>Closing Date</u>	<u>Unit No.</u>	<u>Sales Price</u>	<u>Amount Due - 1%</u>	<u>Amount Paid</u>	<u>Amount Owning</u>
			NA	0.00	0.00
03/18/99	405	\$239,000			0.00
03/26/99	304	223,387	2,233.87	2,233.87	0.00
04/16/99	205	219,000	2,190.00	2,190.00	0.00
04/20/99	215	210,977	2,109.77	2,109.77	0.00
04/21/99	303	220,000	2,200.00	2,200.00	0.00
04/30/99	203	213,434	2,134.34	2,134.34	0.00
04/30/99	305	229,000	2,290.00	2,290.00	0.00
05/14/99	315	221,497	2,214.97	2,214.97	0.00
05/26/99	202	149,500	1,495.00	1,495.00	0.00
05/28/99	316	217,000	2,170.00	2,170.00	0.00
06/30/99	415	235,000	2,350.00	2,350.00	0.00
07/14/99	302	149,000	1,490.00	1,490.00	0.00
07/20/99	214	229,000	2,290.00	2,290.00	0.00
07/28/99	208	169,000	1,690.00	1,690.00	0.00
08/03/99	204	215,000	2,150.00	2,150.00	0.00
08/25/99	404	239,800	2,398.00	2,398.00	0.00
08/31/99	212	199,000	1,990.00	7,960.00	(5,970.00)
09/02/99	209	295,000	2,950.00	2,950.00	0.00
09/24/99	306	191,000	1,910.00	1,910.00	0.00
09/29/99	211	199,000	1,990.00	1,990.00	0.00
11/12/99	207	258,000	2,580.00	0.00	2,580.00
12/16/99	206	263,000	2,630.00	0.00	2,630.00
12/22/99	201	151,900	1,519.00	0.00	1,519.00
01/24/2000	409	225,000	2,250.00	0.00	2,250.00
01/24/2000	414	235,000	2,350.00	0.00	2,350.00
03/02/2000	216	201,950	2,019.50	0.00	2,019.50
03/23/2000	210	197,000	1,970.00	0.00	1,970.00
04/14/2000	314	204,000	2,040.00	0.00	2,040.00
04/17/2000	307	179,000	1,790.00	0.00	1,790.00
04/20/2000	412	237,600	2,376.00	0.00	2,376.00
06/07/2000	402	170,000	1,700.00	0.00	1,700.00
06/08/2000	311	215,000	2,150.00	0.00	2,150.00
06/08/2000	406	228,730	2,287.30	0.00	2,287.30
06/09/2000	312	215,000	2,150.00	0.00	2,150.00
08/24/2000	416	234,000	2,340.00	0.00	2,340.00
09/20/2000	410	317,000	3,170.00	0.00	3,170.00
09/27/2000	411	239,000	2,390.00	0.00	2,390.00
12/01/2000	310	302,170	3,021.70	0.00	3,021.70
12/05/2000	301	156,000	1,560.00	0.00	1,560.00
01/29/2001	417	230,000	2,300.00	0.00	2,300.00
01/30/2001	308	183,651	1,836.51	0.00	1,836.51
06/28/2001	403	235,062	2,350.62	0.00	2,350.62
07/05/2001	309	196,000	1,960.00	0.00	1,960.00
07/13/2001	317	214,000	2,140.00	0.00	2,140.00
08/06/2001	401	166,500	1,665.00	0.00	1,665.00
11/14/2001	407	233,623	2,336.23	0.00	2,336.23
11/06/2002	408	233,000	2,330.00	0.00	2,330.00
			99,457.81	46,215.95	53,241.86

L. Deane Smith, CPA

788 East Mutton Hollow Road

Kaysville, Utah 84037

Home: (801) 544-2305

Office: (801) 355-0252

PERSONAL: 57 years old
Married, 7 children

EDUCATION: October, 1978 - August, 1980--University of Utah, MBA
July, 1974 - August, 1974--University of Utah, Real Estate
September, 1967 - June, 1974--Weber State University, B.S.
Economics

ASSOCIATION: Chairman, Board of Trustees, Davis Behavioral Health
Omicron Delta Epsilon Honor Society in Economics
American Institute of CPA's (AICPA)
Utah Association of CPA's (UACPA)
American Academy of Economic and Financial Experts
National Association of Forensic Economics

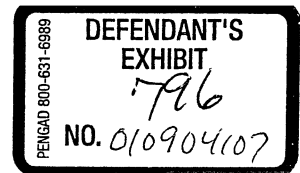
EMPLOYMENT: 1998 - Present--SmithPeterson, LC
1991 -1998--Smith & Deakin, LC
1989 - 1991--Ernst & Young
1981 - 1989--Arthur Young & Company
1977 - 1981--F.K. Stuart Associates
1976 - 1977--Herm Hughes Construction Company
1974 - 1976--Interac - Japan
1973 - 1974--Herm Hughes Construction Company
1971 - 1972--Litton ABS
1968 - 1971--Missionary, LDS Church (volunteer)
1968 - 1968--Murray Construction Company
1967 - 1968--U.S. Internal Revenue Service

**LITIGATION SUPPORT ENGAGEMENTS
LIST OF TESTIMONY PROVIDED
2001- 2005**

Case Name	Case Number	Client	Attorney and Law Firm	Type of Case	Date	Testimony Given
Pav America, Inc. et al v HR Logic	JAMS Dispute Arbitration Case Reference No 136003187	Plaintiffs- Truman Child, William Child, Don Almeida, Dennis Nell	Cass Butler Callister Nebeker & McCullough	Breach of Contract	1-02-2001 2-07-2001	Consultation re: economic losses <i>Deposition Testimony Arbitration Testimony</i>
Hagan Johnson v Eric Johnson	Third Judicial District Court, Salt Lake County, State of Utah Case No 990905536	Plaintiff- Hagan Johnson, a minor, by and through Kristen H. Johnson, et al	Greg Sanders- Kipp and Christian, PC	Personal injury as a result of near drowning	1-31-2001 6-05-2001	Economic loss estimate from loss of capacity to work for remainder of life <i>Deposition & Trial Testimony</i>
Glade Tueller v Jeanetta Williams & NAACP	Third Judicial District Court for Salt Lake County, State of Utah Civil No 990906479-MI	Defendants- Jeanetta Williams Salt Lake Chapter NAACP	II Scott Jacobson Strong & Harri	Defamation & subsequent loss of income	7-27-2001	Consultation re: alleged economic impacts suffered by plaintiff; examination of claims submitted by plaintiff's experts <i>Deposition Testimony</i>
Drew M. Petersen, Jr. v Stephen & Mary Crowlev	Third Judicial District Court, Salt Lake County, State of Utah Civil No 990909716	Plaintiff- Drew M. Petersen, Jr.	David Tufts Durham Jones & Pinegar	Partnership dispute	8-29-2001	Economic and accounting related consultation, assist in preparation of economic loss estimates re: Meersman Trust <i>Deposition Testimony</i>
M. Louise Cannon and Allan Robert Cannon v United States of America	US District Court, District of Utah, Central Division Civil No 2-98 CV 0882 J	Plaintiffs- M Louise Cannon Allan Robert Cannon	Anthony L Rampton Ryan M. Harris Jones Waldo Holbrook & McDonough	Damages incurred from munitions testing on private mining properties by US Government in 1945	11-06-2001	Calculate damages from supplied cost estimate; other tasks on request of counsel <i>Deposition Testimony</i>
Marcus M. Mitchell v Union Pacific Railroad	Third Judicial District Court, Salt Lake County, State of Utah Civil No 980913295	Plaintiff- Marcus M. Mitchell	John J. Rossi, Esq. Rossi Cox Kiker & Indersisch, PC Richard I. Ashton, Esq	Heart Attack from excessive stress on job	05-08-2002	Economic loss estimate from loss of capacity to work at former job <i>Trial Testimony</i>
Robert L. Case v Sheila M. Case	Third Judicial District Court, Salt Lake County, State of Utah Civil No 004902839 DA	Petitioner- Robert L. Case	Paige Bigelow Kruse, Landa & Maycock, LLC	Divorce	05-30-2002	Analysis and calculation of personal and business income for purposes of Alimony assessment <i>Trial Testimony</i>
Braeken, et al v Kiteco, Inc., et al	US District Court, Central Division District of Utah Case No 2 98CV-07871 Judge Bruce S. Jenkins	Defendant- Kiteco, Inc	David W. Tufts Durham Jones & Pinegar	Wrongful Termination	07-26-2002	Review of pertinent documents; examination of claims submitted by plaintiffs or their experts <i>Deposition Testimony</i>
Leslie Perkins v Jason Williams	Second Judicial District Court of Davis County, Farmington Dept, State of Utah	Defendant- Jason Williams	Robert W. Thompson Snow Christensen & Martineau	Personal Injury from an auto accident	8-12-2002 10-10-2002	Assessment of plaintiff's earning capability, examination of claims submitted by plaintiff or her expert <i>Deposition Testimony Trial Testimony</i>
In re Martin J. Brooks and Jeanette L. Brooks	United States Bankruptcy Court, District of Nevada		Janet L. Chubb, Esq Jones Vargas	2004 Exam	9-26-2002	Testimony re: correspondence with Marty Jeanette Brooks
Ruth L. MacAngus dba Growing Empire v J & J Produce, Inc	Third District Court for Salt Lake County, State of Utah Civil No 010908851	Respondent- J&J Produce dba Great Basin Turf Products	David W. Lund Peterson & Hansen	Property damage	11-25-2002	Consultation re: alleged economic impacts suffered by plaintiff; examination of claims submitted by plaintiff's experts <i>Arbitration Testimony</i>
Jessica F. Peterson v Cock-A-Dooodle Design Inc.	American Arbitration Association No 81 181 00126 01 TMS	Claimant- Jessica F. Peterson	Douglas B. Cannon Fabian & Clendenin PC	Breach of contract and copyright infringement	01-15-2003	Consultation re: economic loss suffered by plaintiff <i>Arbitration Testimony</i>
Stacy Dubois Zaelit v Annette Brazell	Third Judicial District Court, Salt Lake County, State of Utah Civil No 990904949P1 Judge J. Dennis Frederick	Plaintiff-Stacy Dubois Zaelit	Wesley F. Sine, Atty	Personal Injury and related economic losses due to automobile accident	07-23-2003 03-17-2004	Consultation re: economic losses suffered by plaintiff due to injuries suffered in automobile accident <i>Deposition Testimony Trial Testimony</i>
M & M Storage, LLC, et al v Pleasant View City	Second Judicial District Court of Weber County, State of Utah, Ogden Department Case No 030902464 Judge Ernest W. Jones	Respondent- Pleasant View City	Richard W. Jones Helgesen, Waterfall & Jones	Economic effects of discontinuity of several parcels of land from Pleasant View City	02-11-2004 02-13-2004	Consultation re: economic effects of proposed discontinuity from city boundaries <i>Deposition Testimony Trial Testimony</i>

Case Name	Case Number	Client	Attorney and Law Firm	Type of Case	Date	Testimony Given
J. Joseph Perry v. Mountain West Cardiovascular Assoc.	Third Judicial District Court, Salt Lake County, State of Utah Civil No. 010902223 Judge Stephen L. Henriod	Plaintiff- J. Joseph Perry	James D. Gilson Callister Nebeker & McCullough	Breach of employment contract	03-15-2004	Consultation re: economic loss suffered as a result of breach of contract
Mark Lund v. G. Sam Wilson MD	Civil no 010801277 Second Judicial District Court Davis County, State of Utah	Plaintiff- Mark Lund	John D. Ray Fabian & Clendenin	Medical Malpractice and alleged treatment mismanagement	04-23-2004	<i>Deposition testimony</i> Consultation re: economic loss suffered by plaintiff
Leyla Briggs v. Randall K. Jones, MD, et al	Third Judicial District Court, Salt Lake County, State of Utah Case No Judge	Plaintiff- Leyla Briggs	Philip S. Lott G. Eric Nielson & Associates	Medical Malpractice and wrongful death	09-22-2004	<i>Deposition testimony</i> Consultation re: economic losses suffered by plaintiffs
Amentrade International Inc v. HSN Improvements, LLC	US District Court, District of Utah, Central Division Civil No 2 03CV00459 TS	Defendant- HSN Improvements, LLC	Thomas J. Rossa Jeffrey M. Lillywhite Holme, Roberts & Owen, LLP	Alleged Trademark infringement, & unfair competition	01-26-2005	<i>Deposition testimony</i> Consultation re: alleged economic loss suffered by plaintiff
Tate v. Tate	Third Judicial District Court, Salt Lake County, State of Utah Civil No 034906633	Petitioner- Cynthia Ann Tate	James C. Lewis	Divorce	04-22-2005	<i>Deposition testimony</i> Consultation re: value of Midwest Office Supply
Harry Stout v. Sharon Stout	Third Judicial District Court, Summit County, State of Utah Civil No 044500085 DA	Respondent- Sharon Stout	Clark W. Sessions T. Mickell Jimenez Rowe Clyde Snow Sessions & Swenson	Divorce	07-15-2005	<i>Deposition testimony</i> Consultation re: average family monthly expenses for alimony computation purposes, value of assets
Martha Odegaard v. Snowbird Corporation	Third Judicial District Court, Salt Lake County, State of Utah Civil No 020907314 Judge Timothy R. Hanson	Plaintiff- Martha Odegaard	R. Brent Stephens Jill L. Dwyon Snow Christensen & Martineau	Slip and Fall with injury	10-19-2005	<i>Trial Testimony</i> Consultation re: economic losses suffered by plaintiff
Antomo & Josephine Del Giudice v. Farmers Insurance Group, et al	Second Judicial District Court, Weber County, State of Utah Civil No 030907234	Defendant- Farmers Insurance Group	Alma Nelson Nelson Chipman Quigley & Payne	Alleged economic losses due to actions of defendant	02-09-2006	<i>Viva Testimony</i> Evaluation of claims and evidence submitted by plaintiff re: reliability and validity
Michael A. Henric v. Northrop Grumman Corp. et al	Third Judicial District Court, Salt Lake County, State of Utah Case No 030913392	Plaintiff- Michael A. Henric	Douglas B. Cannon Fabian & Clendenin	Personal injury - Workplace incident	02-22-2006	<i>Deposition Testimony</i> Consultation re: economic losses suffered by plaintiff
Gables Homeowners v. Azad, Inc	Third Judicial District Court, Salt Lake County, State of Utah Civil No 000900967 Judge Sandra N. Peuler	Plaintiff- Gables Homeowners	J. Steven Newton Business Law Associates	Contract Dispute Homeowners Assoc.	05-24-2006	<i>Deposition Testimony</i> Consultation re: common area cost allocations

ADDENDUM NO. D-12



The Club LC

Project Income and Stevenson Capital Summaries 1996 through 2002

Project Income

Revenue	\$10,770,979	C
Net Closing Costs	(142,456)	A
Commissions	(511,928)	B
Net Revenue	\$10,116,595	
Land – Stevenson	\$631,000	1
Added Land Costs – Watts	118,954	2
Development Fee – Watts	451,000	3
Interest and Finance Costs	1,231,813	D
Costs of Construction	8,442,795	4
Less: Adjustments	(47,397)	5
Operating Expenses	390,294	4
Total Costs	\$11,218,458	
Project Loss	<u><u>(\$1,101,863)</u></u>	

Stevenson Capital

Land Contribution	\$631,000	1
+ Cash Additions	2,450	6
1% Commissions Owing	53,242	B
<i>Sub–Total: Capital Additions</i>	<i>\$686,692</i>	
Less: Distributions already made	(162,000)	6
Less: 50% of Project Loss	(550,932)	
Capital Account Balance	<u><u>(\$26,240)</u></u>	

¹ Per stipulation and court order dated March 16, 2005

² Washington Federal Checking Detail – December 15, 2005 Report, Exhibit 7

³ Acknowledged Financial Status Memorandum, February 11, 1999

⁴ Summary of Liddle & Waite Financials – December 15, 2005 Report, Exhibit 2

⁵ December 15, 2005 Report. Pages 5–6 with detail from Exhibits 4 and 5

⁶ Stevenson Capital Account Detail – December 15, 2005 Report, Exhibit 3

The Club LC
Net Closing Costs

Title Insurance and closing fees	\$44,856	7
Croft Fees paid directly	9,021	8
Property Taxes paid at closing	19,311	7
Property Taxes paid directly	44,410	8
HOA Fees paid at closing	7,645	7
HOA Fees paid directly	19,774	8
Buyer's Credits	33,022	7
Sub—Total	\$178,039	
Less: Tax and other reimbursements	(35,583)	7
Net Closing Costs	<u>\$142,456</u>	

⁷ Source: Sales Contract Summary – December 15, 2005 Report, Exhibit 8

⁸ Source: Washington Federal Checking Detail – December 15, 2005 Report, Exhibit 7

The Club LC
Commissions

Watts Commissions	\$311,202	7
Less: Overpayment Adjustment	(5,589)	7
Stevenson 1% commissions – paid	46,216	7
Stevenson 1% commissions – not paid	53,242	9
Outside Commissions	<u>106,857</u>	7
Total Commissions	<u><u>\$511,928</u></u>	

⁷ Source: Sales Contract Summary – December 15, 2005 Report, Exhibit 8

⁹ Source: Stevenson Commission Summary – December 15, 2005 Report, Exhibit 10

The Club LC
Revenues

Units Sales Price	\$10,406,281	7
Plus: Trade Credit – Thomas	225,000	7
Sellers Credits	93,497	7
Rents & Other	30,410	4
Reimbursements, etc	10,887	10
Interest Earnings	4,904	4
Total Revenues per Financials	<u>\$10,770,979</u>	

⁴ Source: The Club, LC Financials – December 15, 2005 Report, Exhibit 2

⁷ Source: Sales Contract Summary – December 15, 2005 Report, Exhibit 8

¹⁰ Source: Liddle & Waite, CPAs – Annual Revenue Worksheets 1999–2002

The Club LC

Interest and Finance Costs

Interest and Finance Costs

Arizona Loan	\$767,407	12
Watts Loans	333,442	8, 11
Unity Enterprises	46,913	8
Whitney Loans	25,099	8
Whitmores Inc.	35,286	8
Christopulos Ent.	13,090	8
RKW 96	10,576	8
Total	<u>\$1,231,813</u>	

⁸ Source: Washington Federal Checking Detail – December 15, 2005 Report, Exhibit 7

¹¹ Source: Watts Corp Summary of Payments and Non–Construction Expenses

¹² Source: Bank of Arizona Loan Ledger – December 15, 2005 Report, Exhibit 6

ADDENDUM NO. D-13

WATTS CORP. SUMMARY of PAYMENTS

1. Checks Paid Out \$8,157,036.00

NON-CONSTRUCTION EXPENSES

1. Construction Interest <\$330,441.58>

2. Municipal Fees – Salt Lake City

\$ <3005.86>
\$ 826.06
\$ 290.00
- \$ 10,886.67

<\$15,008.59>

3. Marketing & Advertising

- \$ <3,000.00> HOA

<\$3,000.00>

4. Demolition

\$ <11,924.80>
\$ <1,110.79>
\$ <465.00>
\$ <31,777.81>
\$ <38,779.82>
\$ <300.00>
\$ <24,843.24>

<\$109,201.46>

5. Asbestos

\$ <77,580.00>
\$ <3,260.00>
\$ <3,960.00>

<\$84,800.00>

6. Utilities – On going Maintenance

\$ <56,934.00>

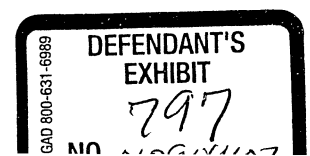
<\$56,934.00>

TOTAL

\$7,557,650.37

FOOTNOTE:

*With profit of 8% charged on the utility bills you add another \$4,554.72 to the job cost report – Making a total of \$7,562,704.70.



Memorandum

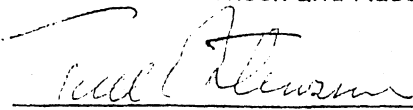
TO: Ted Stevensen
FROM: Russ Watts, The Club Condominium L.C.

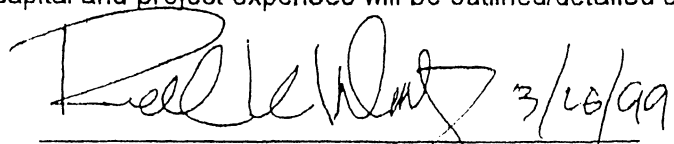
DATE: March 25, 1999
RE: The Club Marketing Fee Structure

Ted Stevensen and Russ Watts agree on the following:

- 1) During the time-frame between March 25, 1999 and a future date when all debt for the Club Condominium Project is retired (see paragraph #9): Stevensen L.C. will receive a fee of 1%(one percent) of the sales price of every condo unit sold/closed to buyers through the Watts Group.
- 2) During the time-frame referenced in paragraph #1: for any real estate condo contract written and closed by the Watts Group, The Club will pay 3%(three percent) of the sales price as a fee to the Watts Group and 1%(one percent) of the sales price as a fee to Stevensen.
- 3) During the time-frame referenced in paragraph #1: If the Watts Group coordinates the sale of a condo unit with an outside real estate broker, 3%(three percent) of the sales price will be paid to the outside broker, 3%(three percent) of the sales price will be paid as fee to the Watts Group, and 1%(one percent) of the sales price will be paid as a fee to Stevensen.
- 4) During the time-frame referenced in paragraph #1: The Stevensens will not have any responsibility for marketing/selling the units, and agree not to engage in the selling/marketing of the units with any clients. The Stevensens will not be involved in any previewing or "floor time" at The Club. All phone calls to the Stevensens by real estate agents or customers will referred to the Watts Group. Any customers who have visited The Club previous to March 25, 1999, shall become the full responsibility of the Watts Group. If any person shall enter into a condo purchase contract during the time-frame referenced in paragraph 1#, Stevensen's compensation shall be limited to the 1%(one percent) fee referenced in paragraphs #1, #2, #3.
- 5) During the time frame referenced in paragraph #1: Continuing with the original Club Condominium L.C. agreement, the pricing of any/all condo units will not be adjusted without the mutual agreement of Ted Stevensen and Russ Watts.

The fees referenced in paragraphs #1 and #2 will not be paid on any condo unit(s) purchased by either Ted Stevensen or Russ Watts.
- 7) Ted Stevensen and Russ Watts will both review each Earnest Money offer and closing, and must both initial and approve each condo closing for the transaction to be valid.
- 8) The fees (detailed in paragraphs #1, #2, #3) being distributed to Stevensen will be credited towards (or offset) the monthly \$5,000 (five-thousand dollar) draw to Stevensen that is detailed in The Club Condominium L.C. Agreement. The \$5,000 shall be a minimum monthly payment to Stevensen, and will stop when Stevensen begins to be reimbursed for the land value (\$631,000: six-hundred-and-thirty-one thousand dollars) he contributed to The Club Project. The accumulation of the 1%(one-percent) fees due Stevensen will be totaled to meet or exceed the \$5,000 monthly draw paid to Stevensen.
- 9) All disbursements from the selling of The Club L.C. condo units will first be used to pay back bank debt, construction draws, partnership contributed capital, and interest on borrowed funds from partners and the bank. When these entities have been paid, condo sale revenue will then be evenly distributed between paying for the land (due Stevensen) and the development fee (due Watts Corporation.) When the land and development fees have been paid, Ted Stevensen and Russ Watts will split any profits 50/50 (fifty-fifty). Additionally, when all debt is retired, Ted Stevensen and Russ Watts have the option of accepting condo units in lieu of profit, and marketing/selling them as they individually desire.
- 10) As described in The Club L.C. Agreement, interest is accruing on monies contributed by Russ Watts, the Watts Corporation, and R.K.W. 96 on the balance over \$631,000 (Stevensen's land value contribution) at a rate of 9%(nine percent). A full accounting of the contributed capital and project expenses will be outlined/detailed and given to Ted Stevensen and Russ Watts.


Ted Stevensen

 3/26/99
Russ Watts