

2007

Lebr Associates, LLC, a Utah limited liability company, and Centennial Pointe Property Owners Association (Registered on November 29, 2004), a Utah Nonprofit Corporation v. Myriam Onyeabor :
Brief of Appellee

Utah Court of Appeals

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UTAH COURT OF APPEALS

LEBR ASSOCIATES, LLC, a Utah
limited liability company, and
CENTENNIAL POINTE PROPERTY
OWNERS ASSOCIATION (Registered
on November 29, 2004), a Utah Nonprofit
Corporation,

Appellee/Cross-Appellant,

vs.

MYRIAM ONYEABOR,

Appellant/Cross-Appellee

ADDENDUM TO

BRIEF OF APPELLEE/CROSS-
APPELLANT

LEBR ASSOCIATES, LLC, and
CENTENNIAL POINTE PROPERTY
OWNERS ASSOCIATION (Registered
on November 29, 2004), a Utah Nonprofit
Corporation

Appellate Case No. 20070851

District Court No. 040918762

Appeal from Order of

Third District Court

Judge Robert P. Faust

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UTAH COURT OF APPEALS

LEBR ASSOCIATES, LLC, a Utah
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CENTENNIAL POINTE PROPERTY
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Tab 1

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FILED DISTRICT COURT
Third Judicial District

OCT - 1 2007

By RF SALT LAKE COUNTY
Deputy Clerk

Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

**ENTERED IN REGISTRY
OF JUDGMENTS**

DATE 10/18/07

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited
liability company, and CENTENNIAL
POINTE PROPERTY OWNERS
ASSOCIATION (Registered on November
29, 2004), a Utah Nonprofit Corporation,

Plaintiffs,

v.

MYRIAM ONYEABOR,

Defendant.

**ORDER ON PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY
JUDGMENT AND MOTIONS TO
STRIKE AND JUDGMENT**

Civil No. 040918762

Judge Robert P. Faust

On May 2, 2007, at the hour of 10:00 a.m., the Court heard oral argument on the following motions: Plaintiffs' Motion for Partial Summary Judgment; Plaintiffs' Motion to Strike the Affidavit of Myriam Onyeabor; Plaintiffs' Motion to Strike the Affidavit of James Walker; Plaintiffs' Motion to Strike the Affidavits of Robert Mills and Travis Healey; Plaintiffs' Motion to Strike the Affidavit of Chinedum Alexander Udeh; Plaintiffs' Motion to Strike

Order on Plaintiffs' Motion for Partial Summary Judgment



American Document Examiner's Expert Report and Exhibits 15 through 21 to Ms. Onyeabor's Opposition Memorandum; Plaintiffs' Motion to Strike Myriam Onyeabor's Answer to Plaintiffs' and Third-Party Defendants' Reply Memorandum of January 17, 2007 and Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment and Exhibits. Ms. Onyeabor did not oppose Plaintiffs' Motion to Strike the Answer to Plaintiffs' and Third-Party Defendants' Reply Memorandum of January 17, 2007 and Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment and Exhibits.

The aforementioned Motions were fully briefed and properly submitted to the Court for decision. Plaintiffs were represented by and through their counsel, Jeffrey L. Silvestrini and Edward T. Vasquez of Cohn Rappaport & Segal, P.C., Donald Sanborn was represented by Mark R. Anderson of Williams & Hunt, and Myriam Onyeabor appeared *pro se*.

1. The Court, having reviewed Plaintiffs' Motions to Strike, the affidavits relevant thereto, the exhibits relevant thereto, and the pleadings in this matter, hereby issues the following ruling on those Motions: For the reasons set forth in Plaintiffs' Motion to Strike the Affidavit of Myriam Onyeabor; Plaintiffs' Motion to Strike the Affidavit of James Walker; Plaintiffs' Motion to Strike the Affidavits of Robert Mills and Travis Healey; Plaintiffs' Motion to Strike the Affidavit of Chinedum Alexander Udeh; Plaintiffs' Motion to Strike American Document Examiner's Expert Report and Exhibits 15 through 21 to Ms. Onyeabor's Opposition Memorandum; Plaintiffs' Motion to Strike Myriam Onyeabor's Answer to Plaintiffs' and Third-Party Defendants' Reply Memorandum of January 17, 2007 and Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment and Exhibits, and good cause therefor,

Plaintiffs' Motions are GRANTED and the aforementioned affidavits, exhibits, and pleadings are STRICKEN in their entirety.

2. The Court, having reviewed Plaintiffs' Motion for Partial Summary Judgment, the affidavits, deposition testimony and other exhibits appended thereto, Ms. Onyeabor's Opposition to Plaintiffs' Motion, Plaintiffs' Reply Memorandum in support of their Motion, the pleadings in this matter, and good cause therefor, hereby RULES as follows:

a. The undisputed facts and evidence in this matter show, as a matter of law, that the Restated Covenants, Conditions and Restrictions of Centennial Pointe recorded in August 2002 (the "Restated Amended CC&Rs") are valid and encumber the entire Centennial Point development, including Lots 1 and 2 owned by Defendant Myriam Onyeabor. The undisputed facts and evidence in this matter show, as a matter of law, that Ms. Onyeabor had actual notice of the Restated Amended CC&Rs by virtue of the fact that Ms. Onyeabor received title work, followed by a policy of title insurance for Lot 2, that expressly disclosed that Lot 2 was encumbered by the Restated Amended CC&Rs. The undisputed facts and evidence in this matter show, as a matter of law, that Ms. Onyeabor had record notice of the Restated Amended CC&Rs and that the Special Warranty Deed from Centennial Pointe, LLC to Ms. Onyeabor for Lot 2 expressly states that Centennial Pointe, LLC's conveyance to Ms. Onyeabor was subject to any restrictions of record. Finally, the undisputed facts and evidence in this matter show, as a matter of law, that Ms. Onyeabor, through her conduct and her participation in the Centennial Pointe Owners Association (the "Association"), has ratified the Restated Amended CC&Rs.

b. The undisputed facts and evidence in this matter show, as a matter of law, that Centennial Pointe's developer, Centennial Pointe, LLC, had the authority, pursuant to Centennial Pointe's April 2000 CC&Rs, to amend Centennial Pointe's CC&Rs. The undisputed facts and evidence in this matter show, as a matter of law, that the Restated Amended CC&Rs were validly adopted according to the procedures set forth in the April 2000 CC&Rs, and that the Restated Amended CC&Rs are consistent with the general plan and scheme of Centennial Pointe reflected in the April 2000 CC&Rs, particularly in respect to Ms. Onyeabor's objections thereto. Both the April 2000 CC&Rs and the Restated Amended CC&Rs define Centennial Pointe's common area to include the same property, i.e., parking areas, sidewalk areas, landscaped areas, and loading dock areas. Both sets of CC&Rs provided for an owners association empowered to levy assessments for maintenance of Centennial Pointe's common areas and to lien property for unpaid assessments. Both sets of CC&Rs provided for a reciprocal easement for use of Centennial Pointe's common areas by all owners, tenants and invitees. The undisputed facts and evidence in this matter show, as a matter of law, that the purpose of Centennial Pointe, LLC's adoption of the Restated Amended CC&Rs was to clarify and refine certain definitions contained in the April 2000 CC&R's which were unclear, but that the adoption of the Restated Amended CC&Rs did not change the configuration of the Centennial Pointe development respecting the location of buildings on the property, or the nature or extent of common areas.

c. The undisputed facts in this matter show that Ms. Onyeabor has failed and refused to pay her *pro rata* share of Centennial Pointe's common expenses. The undisputed facts

in this matter show that Ms. Onyeabor ceased paying her Centennial Pointe assessments in October 2002.

d. The undisputed facts and evidence in this matter show, as a matter of law, that the Association is entitled to its attorney fees incurred in prosecuting this action and defending against Ms. Onyeabor's counterclaims and third-party claims.

e. Based upon the affidavits of Plaintiffs, the Association is entitled to judgment in the amount of \$18,749.87 for past due and owing assessments and \$5,081.14 accrued as interest, calculated at the rate of 18% per annum.

f. Further, as set forth in the Supplemental Affidavit of Edward T. Vasquez filed with the Court on June 20, 2007, the Association has incurred attorney fees in enforcing Centennial Pointe's CC&Rs and defending against Ms. Onyeabor counterclaims and third-party claims, which necessarily involved defending Centennial Pointe's Restated Amended CC&Rs, in the amount of \$136,589.00. The costs in this matter total \$6,914.09; combined these figures total \$143,503.09. The Association is awarded its reasonable attorney fees in the amount of \$ _____, and its costs in the amount of \$ _____, for a combined total of attorney fees and costs in the amount of \$ _____.

g. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor's claim for intentional infliction of emotional distress fails as a matter of law. The conduct that Ms. Onyeabor has asserted is not sufficiently revulsive or outrageous to sustain her claim.

h. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor has failed to satisfy the nine elements required to show fraud, *see Armed Forces Insur. Exch. v. Harrison*, 2003 UT 14, ¶ 16, 70 P.3d 35, including, but not limited to, any false representation by either LEBR or the Association. Ms. Onyeabor's fraud claims against the Association and LEBR fail as a matter of law.

i. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor's claim against Bruce Raile for trespass fails as a matter of law because, *inter alia*, the alleged conduct occurred on Centennial Pointe's common areas, to which all Centennial Pointe owners and invitees have a reciprocal access easement.

j. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor's claim against Bruce Raile for assault fails as a matter of law because, *inter alia*, Mr. Raile has never touched Myriam Onyeabor, threatened her, or called her names and that his statements to her were a privileged attempt to enforce the rights of the Association and its members to use common areas of Centennial Pointe to which they held a reciprocal easement.

k. The undisputed facts and evidence in this matter, and the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment, show that Myriam Onyeabor's claims against LEBR for trespass and assault fail as a matter of law because, *inter alia*, Jennifer Clark is not and has never been an employee of LEBR.

l. Plaintiffs' Motion for Partial Summary Judgment did not reach Ms. Onyeabor's claims for nuisance and breach of the CC&Rs against the Association and LEBR, or Ms. Onyeabor's assault claim against Jennifer Clark.

m. The Court concludes as a matter of law that the Association's affirmative claims against Myriam Onyeabor to enforce the April 2000 CC&Rs and the Restated Amended CC&Rs and Myriam Onyeabor's counterclaims' against the Association, excepting Ms. Onyeabor's claims for nuisance and breach of the CC&Rs, and her third-party claims against Bruce Raile, an officer of the Association, share a common factual basis, are closely related and inextricably intertwined.

n. The Court finds and concludes as a matter of law that Plaintiffs' efforts in developing facts and evidence to establish the validity of the Restated Amended CC&Rs and Ms. Onyeabor's contractual obligation to pay her past due assessments also led to, and were inextricably intertwined with, facts and evidence to defeat Ms. Onyeabor's counterclaims against LEBR for fraud, trespass, and assault.

o. The Court concludes as a matter of law that the Association is entitled to its attorney fees in pursuing its affirmative claims against Myriam Onyeabor to enforce the April 2000 CC&Rs and the Restated Amended CC&Rs and for defending against Myriam Onyeabor's counterclaims against the Association and LEBR, and third-party claims against Bruce Raile, the Association's president. *See Brown v. David K. Richards & Co.*, 1999 UT App 109, ¶¶ 19-24, 978 P.2d 470.

p. The Court concludes as a matter of law that the disposition of Plaintiffs' Motion for Partial Summary Judgment in favor of Plaintiffs completely resolves Plaintiffs' claims against Ms. Onyeabor, and that no further judicial action remains to be taken respecting Plaintiffs' claims.

q. The Court concludes as a matter of law that the disposition of Plaintiffs' Motion for Partial Summary Judgment in favor of Plaintiffs wholly disposes of Ms. Onyeabor's counterclaim and third-party claim for intentional infliction of emotional distress, Ms. Onyeabor's counterclaims for fraud against the Association and LEBR, Ms. Onyeabor's counterclaims for trespass and assault against LEBR, and Ms. Onyeabor's third-party claims for trespass and assault against Bruce Raile. No further judicial action remains to be taken respecting these claims.

r. The Court concludes as a matter of law that there is no just reason for delay of entry of a final judgment in this matter on the Association's claims for damages and attorney fees. The claims asserted by Myriam Onyeabor for nuisance, breach of the CC&Rs, and assault are compensable in damages, however, the claims are so dissimilar from the claims for payment of common area expenses for utilities and maintenance which Myriam Onyeabor and the occupants of her properties have enjoyed, without paying for them, that the Court believes that entry of a final judgment in favor of the Association for the common area expenses, interest and attorney fees incurred in prosecuting this action and defending against the claims of Ms. Onyeabor dismissed to date, are sufficiently separate and distinct as to warrant the entry of a final

judgment and certification of that judgment pursuant to Rule 54(b) of the Utah Rules of Civil Procedure.

s. The Court concludes as a matter of law that the disposition of Plaintiffs' Motion for Partial Summary Judgment in favor of Plaintiffs wholly disposes of Ms. Onyeabor's claims for quiet title and for declaratory judgment. Because the Restated Amended CC&Rs are valid and encumber Ms. Onyeabor's Lots 1 and 2, those claims are DISMISSED with prejudice.

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' Motion for Partial Summary Judgment is GRANTED;
2. Judgment is hereby entered in favor of the Association and against Myriam Onyeabor for past due assessments in the amount of \$18,749.87, plus interest at the rate of 18% to date in the amount of \$5,081.14;
3. Plaintiffs' request for fines and late fees, as provided for in the April 2000 CC&Rs and the Restated Amended CC&Rs, is DENIED;
4. The Association is awarded its attorney fees and costs, as provided for in the April 2000 CC&Rs and in the Restated Amended CC&Rs, for (a) enforcing the CC&Rs; (b) collecting common area assessments and interest owing for Lots 1 and 2, and (c) defending claims against the Association or its officers based upon their right to enforce the Restated Amended CC&Rs and their right to use the common areas of Centennial Pointe or asserting their right to do so (e.g. the trespass, assault, and emotional distress claims). The Association is awarded its reasonable attorney fees in the amount of \$ 68,294.50, and is awarded its costs in the amount of \$ 3,088.19.

5. Judgment ^(without fees & costs) is entered against Myriam Onyeabor in favor of the Association in the total amount of \$ 23,831.01, plus interest at the judgment rate of 6.99% from and after date of entry;

6. The Sheriff of Salt Lake County is hereby directed to sell Lot 1 and Lot 2 owned by Myriam Onyeabor, for the purpose of satisfying the Judgment, unless Myriam Onyeabor satisfies the same before such sale may be noticed and conducted under law;

7. Myriam Onyeabor's counterclaim and third-party claim for intentional infliction of emotional distress are DISMISSED with prejudice;

8. Myriam Onyeabor's claim for fraud against LEBR and the Association is DISMISSED with prejudice;

9. Myriam Onyeabor's claims for trespass and assault against Bruce Raile are DISMISSED with prejudice;

10. Myriam Onyeabor's claims for trespass and assault against LEBR are DISMISSED with prejudice;


11. In light of the Court's ruling GRANTING Plaintiffs' Motion for Partial Summary Judgment, Myriam Onyeabor's Counterclaims for Quiet Title and Declaratory Judgment alleging that Lots 1 and 2 are not burdened by the April 2000 CC&Rs and the Restated Amended CC&Rs are DISMISSED with prejudice; and

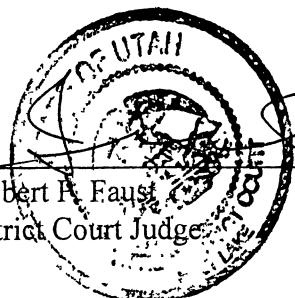
12. In light of the Court's ruling GRANTING Plaintiffs' Motion for Partial Summary Judgment and Motions to Strike, Myriam Onyeabor's Countermotion for Summary Judgment fails as a matter of law and is DENIED;

13. This Order and Judgment is hereby certified as a Final Order pursuant to the provisions of Rule 54(b) of the Utah Rules of Civil Procedure.

DATED this 1st day of October, 2007.

BY THE COURT:



The Honorable Robert P. Faust
Third Judicial District Court Judge



Approved as to Form:

Myriam Onyeabor, *pro se*

WILLIAMS & HUNT



George A. Hunt
Mark R. Anderson
Attorneys for Donald Sanborn

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2007, I caused to be mailed a true and correct copy of the foregoing, postage prepaid, to:

Myriam Onyeabor
P.O. Box 521297
Salt Lake City, UT 84152

George A. Hunt
WILLIAMS & HUNT
257 East 200 South, #500
Salt Lake City, UT 84111



Tab 2

FILED DISTRICT COURT
Third Judicial District

OCT 30 2006

SALT LAKE COUNTY

By _____ Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited	:	
liability company, and CENTENNIAL	:	
POINTE PROPERTY OWNERS	:	MEMORANDUM IN SUPPORT OF
ASSOCIATION (Registered on November 29,	:	PLAINTIFFS' AND THIRD-PARTY
2004), a Utah Nonprofit Corporation,	:	DEFENDANTS BRUCE RAILE'S
	:	AND JENNIFER CLARK'S MOTION
	:	FOR PARTIAL SUMMARY
Plaintiffs,	:	JUDGMENT
	:	
v.	:	
	:	Civil No. 040918762
MYRIAM ONYEABOR,	:	
	:	Judge Randall Skanchy
Defendant.	:	
	:	

Plaintiffs Centennial Pointe Property Owners Association (the "Association"), LEBR Associates, LLC ("LEBR") (collectively "Plaintiffs"), and Third-Party Defendants Bruce Raile ("Raile"), and Jennifer Clark ("Clark") (collectively "Third-Party Defendants"), through their counsel, COHNE, RAPPAPORT & SEGAL, P.C., file the following Memorandum in Support of Plaintiffs' and Third-Party Defendants' Motion for Partial Summary Judgment.

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INTRODUCTION

Centennial Pointe is a light industrial planned unit development, which its developer intended to be managed by an owners association and the lots therein to be burdened by restrictive covenants. Myriam Onyeabor owns two lots in Centennial Pointe. Ms. Onyeabor has challenged the validity of Centennial Pointe's restrictive covenants and the authority of the owners association to manage and maintain Centennial Pointe's common areas and to assess Ms. Onyeabor for her *pro rata* share of Centennial Pointe's common expenses. Ms. Onyeabor has refused to pay her owners association assessments since October 2002.

The facts of this matter and the legal authority relied upon show that Centennial Pointe's restrictive covenants are valid and enforceable and no justifiable basis exists for Ms. Onyeabor's refusal to pay her assessments. As such, Plaintiffs seek an Order from this Court declaring Centennial Pointe's restrictive covenants valid and enforceable, and that those covenants burden Ms. Onyeabor's property. Plaintiffs also seek an Order from this Court declaring that Ms. Onyeabor is liable to the owners association for all past due assessments, fines and late fees, as well as all costs and attorney fees in bringing the current litigation. Further, Plaintiffs request that this Court judicially foreclose the liens that the owners association has recorded against Ms. Onyeabor's property for her failure to pay her *pro rata* share of Centennial Pointe's common expenses.

Finally, Plaintiffs and Third-Party Defendant Bruce Raile request an Order from this Court denying as a matter of law Ms. Onyeabor's counterclaim and third-party claim for intentional infliction

of emotional distress, her third-party claims against Mr. Raile for assault and trespass, her counterclaim against LEBR and the Association for fraud, and her claims against LEBR for assault and trespass. These claims are spurious, completely lacking any factual or legal support, and fail as a matter of law.

UNDISPUTED STATEMENT OF FACTS

1. Centennial Pointe Industrial Park (“Centennial Pointe”) is a commercial, light industrial planned unit development located at or about 1755 South 4490 West, Salt Lake City.
2. Centennial Pointe is comprised of two integrated commercial buildings, sharing common areas which include, *inter alia*, utilities, grass areas and landscaping, walkways, interior roads, as well as parking spaces around the two various buildings.
3. On or about April 18, 2000, Centennial Pointe’s owner and developer, Centennial Pointe, LLC, executed Centennial Pointe’s Declaration of Covenants, Conditions and Restrictions (“April 2000 CC&Rs”), which were recorded by the Salt Lake County Recorder’s office on April 19, 2000 as Entry No. 7631217. *See* Declaration of Covenants, Conditions and Restrictions, appended hereto as **Exhibit “A.”**
4. The April 2000 CC&Rs expressly granted Centennial Pointe, LLC the right to unilaterally amend the April 2000 CC&Rs and the Plat, so long as Centennial Pointe, LLC had not sold all of the Lots in Centennial Pointe. Specifically,

Until the Declarant [Centennial Pointe, LLC] has sold all Lots, Declarant shall have the right unilaterally to amend and supplement this Declaration and the Plat to correct any technical errors or to clarify any provision to more fully express the intent of the Declarant for development and

management of the Project.

April 2000 CC&Rs, Section XIV(b).

5. The April 2000 CC&Rs provided for the establishment of the Centennial Pointe Property Owners Association (the “Association”) to manage and maintain Centennial Pointe’s common areas. *See id.* Sections VI, VII.

6. The Association was also vested with the authority to “fix, levy, collect and enforce payment” of all charges and assessments for, *inter alia*, the maintenance and repair of Centennial Pointe’s common areas and for capital improvements, as well as to impose fines and late fees for an owner’s failure to pay his or her assessments. *See id.* Section VII; *see also* Section XIX.

7. The April 2000 CC&Rs define the common areas to include all parking stalls, roads, walkways and landscaping. *See* Section I, 1.5, Section XII, 12.8.

8. However, the April 2000 CC&Rs contained some conflicting or overlapping definitions. For example, common areas were defined to exclude Lots, but the description of Lots in the CC&Rs and the Plat showed all of the property encompassed in Lots. Also, “Buildings” were defined to include landscaping as well as other improvements existing on a Lot. *See* Section I, 1.5, 1.4.

9. On or about April 24, 2000, Myriam Onyeabor purchased Lot 1 in the Centennial Pointe development. *See* Onyeabor Depo. p. 9, appended hereto as **Exhibit “B.”**

10. To clarify the ambiguities and conflicting definitions contained in the April 2000 CC&Rs, Centennial Pointe, LLC caused to be prepared Centennial Pointe’s Restated Declaration of

Covenants, Conditions and Restrictions (“Restated Amended CC&Rs”), which Centennial Pointe, LLC intended to supercede and amend the April 2000 CC&Rs. *See* Affidavit of Donald Sanborn (“Sanborn Affidavit”) at ¶¶ 13-14, appended hereto as **Exhibit “C.”**

11. The Restated Amended CC&Rs did not alter the fee simple ownership interest that Centennial Pointe owners possessed over their Lots. *See* Restated Amended CC&Rs, Section IV, 4.1, appended hereto as **Exhibit “D.”**

12. The Restated Amended CC&Rs defined Centennial Pointe’s Common Elements (or common areas) as “Utility Lines, lighting not attached to Buildings, fences, landscaping, Accessways, parking spaces, loading/receiving areas, and all other portions of [Centennial Pointe] other than the Buildings.” *Id.* at Section I, 1.6.

13. The Restated Amended CC&Rs continued to vest the Association with the authority to maintain and manage Centennial Pointe’s common areas. *See id.* Section VII.

14. The Restated Amended CC&Rs continued to vest the Association with the authority to “fix, levy, collect and enforce payment” of all charges and assessments for, *inter alia*, the maintenance and repair of Centennial Pointe’s common areas and for capital improvements. *See id.* Section VII, 7.6(a).

15. The Restated Amended CC&Rs continued to vest in the Association the authority to impose and collect fines and late fees for, *inter alia*, an owner’s failure to pay his or her assessments. *See id.* Section XIX.

16. The Restated Amended CC&Rs continued to grant Centennial Pointe's owners and the Association the right to use the common areas, as well as ingress and egress easements over those areas. *See id* Section IV, 4.5, 4.6, 4.7.

17. Donald Sanborn, the manager of Centennial Pointe, LLC, executed the Restated Amended CC&Rs on behalf of Centennial Pointe, LLC. *See* Sanborn Affidavit at ¶ 18; *see also* Restated Amended CC&Rs.

18. On August 3, 2000, Ms. Onyeabor was the owner of Lot 1 and she appeared before Jo Ellen Crockett, a licensed notary public in the State of Utah, at the Brickyard office of America First Credit Union in Salt Lake City and signed the Restated Amended CC&Rs. *See* Crockett Depo. pp. 11, 19-20,¹ appended hereto as **Exhibit "E"**; *see also* Restated Amended CC&Rs, appended hereto as **Exhibit "D."**

19. On August 24, 2000, the Restated Amended CC&Rs were recorded by the Salt Lake County Recorder's Office as Entry No. 7704757. *See* Restated Amended CC&Rs.

20. On or about September 28, 2000, after the Restated Amended CC&Rs had been recorded, Ms. Onyeabor purchased Lot 2 in Centennial Pointe from Centennial Pointe, LLC. *See* Onyeabor Depo. p. 10.

21. Prior to closing, Ms. Onyeabor received title work, followed by a policy of title insurance for Lot 2 that expressly disclosed that Lot 2 was encumbered by the Restated Amended CC&Rs. *See*

¹The specific details of Ms. Crockett's testimony are set forth *infra* at Section I (b)(1).

Stewart Title Policy of Title Insurance No. 0-993-1980019, Schedule B (17), for Lot 2 produced by Ms. Onyeabor, appended as Exhibit 1 to the Affidavit of Edward T. Vasquez, appended hereto as **Exhibit “F”**; *see also* Onyeabor Depo. pp. 28-29 (Ms. Onyeabor testified that she received title documents for Lot 2 from Landmark Title).

22. The Special Warranty Deed from Centennial Pointe, LLC to Ms. Onyeabor for Lot 2 expressly states that Centennial Pointe, LLC’s conveyance was subject to any restrictions of record. *See* Onyeabor Depo. p. 9 (Exhibit 2 to Onyeabor Depo. appended hereto as **Exhibit “G”**).

23. In November, 2000, LEBR Associates, LLC (“LEBR”) purchased Lots 3, 4, and 5 in the Centennial Pointe Development. *See* Affidavit of Bruce Raile (“Raile Affidavit”) at ¶ 6, appended hereto as **Exhibit “H.”**

24. LEBR is a limited liability company. *See id.* at ¶ 3.

25. LEBR’s managing partner is Bruce Raile. *See id.* at ¶ 4.

26. From April 2000 through December 2000, the Association maintained Centennial Pointe’s common areas, including, but not limited to, the landscaping and snow removal in the Centennial Pointe development. *See* Sanborn Affidavit at ¶¶ 21-25; *see also* Onyeabor Depo. pp. 101-05 (Exhibit 9 to Onyeabor Depo. Letter and Spread Sheet from Sanborn to Ms. Onyeabor dated December 16, 2000, appended hereto as **Exhibit “I”**).

27. The Association also paid the water, sewer, power and insurance for the Centennial Pointe development. *See* **Exhibit “I.”**

28. In December 2000, the Association assessed the Centennial Pointe owners, including Ms. Onyeabor, for their *pro rata* share of Centennial Pointe's common expenses for the period of April 2000 through December 2000. *See* Onyeabor Depo. pp. 100-02.

29. Specifically, the Association assessed Ms. Onyeabor \$1,028.42 for her *pro rata* share of the common expenses. *See id.* p. 101.

30. The assessment included costs for landscaping, snow removal, water, sewer and power. *See Exhibit "I."*

31. Ms. Onyeabor paid the \$1,028.42 Association assessment. *See* Onyeabor Depo. pp. 101-02.

32. Ms. Onyeabor did not contest the existence of the Association, nor its authority to assess Centennial Pointe owners for the maintenance and repair of Centennial Pointe's common areas and utilities in the Centennial Pointe development. *See id.* pp. 101-05.

33. In December 2000, Bruce Raile was elected president of the Association and Ms. Onyeabor was elected secretary of the Association. *See* Raile Affidavit at ¶ 7; *see also* Onyeabor Depo. Exhibit 9, Association Meeting Minutes dated December 11, 2000, appended hereto as **Exhibit "J."**

34. In October 2001, the Association conducted a meeting with all members of the Association, including Ms. Onyeabor, in attendance. *See* Onyeabor Depo. p. 108 (Onyeabor Depo. Exhibit 9 Association Meeting Minutes dated October 17, 2001, appended hereto as **Exhibit "K"**).

35. During that meeting, the Association members discussed the 2001 assessments for the

maintenance of Centennial Pointe's common areas, including power, water, sewer, landscaping and insurance. *See id.* p. 108; *see also* **Exhibit "K."**

36. Ms. Onyeabor agreed to obtain bids for the Association maintaining the landscaping and snow removal for Centennial Pointe's common areas. *See id.* pp. 108-09; *see also* **Exhibit "K."**

37. On or about November 26, 2001, Ms. Onyeabor paid the Association's 2001 assessment in the amount of \$2,745.00. *See id.* pp. 110-11.

38. The assessment included expenses for water and sewer, power, insurance, and landscaping and snow removal. *See* Onyeabor Depo. Exhibit 9 Assessment Breakdown, appended hereto as **Exhibit "L."**

39. Ms. Onyeabor paid the Association's assessments through October 2002. *See* Onyeabor Depo. pp. 111, 112, 113; *see also* Raile Affidavit at ¶ 14.

40. On or about May 22, 2002, Ms. Onyeabor notified the members of the Association that beginning June 1, 2002 she would no longer participate as a member of the Association or pay her *pro rata* share of Centennial Pointe's common expenses. *See* Onyeabor Depo. pp. 95-96; *see also* Onyeabor Depo. Exhibit 9, Onyeabor letter dated May 22, 2002, appended hereto as **Exhibit "M."**

41. Ms. Onyeabor also informed the members of the Association that she, and not the Association, would maintain the landscaping and common area on or around her two Lots, and that she would have vehicles towed that were parked in the Centennial Pointe parking stalls within her "legal

boundary.” Onyeabor Depo. pp. 95-96; *see also* Onyeabor Depo. Exhibit 9, Onyeabor letter dated May 22, 2002, appended hereto as **Exhibit “M.”**

42. In or about June 2002, after receipt of Ms. Onyeabor’s letter, the Association’s president Bruce Raile forwarded to Ms. Onyeabor a copy of a memorandum from Dave Castleton, the Association’s attorney, explaining that Ms. Onyeabor could not unilaterally opt out of her obligations as a Centennial Pointe owner. *See* Onyeabor Depo. Exhibit 9, Castleton Memorandum, appended hereto as **Exhibit “N”**; *see also* Raile Affidavit at ¶¶ 12-13.

43. After October 2002, Ms. Onyeabor ceased paying the Association’s assessments, forcing the other Centennial Pointe owners to pay more than their ratable share of Centennial Pointe’s expenses for joint utilities and maintenance of the common areas. *See* Onyeabor Depo. p. 113; *see also* Raile Affidavit at ¶ 14.

44. Ms. Onyeabor continued to receive assessment statements from the Association, but ignored those statements. *See* Onyeabor Depo. p. 113; *see also* Affidavit of Jennifer Clark (“Clark Affidavit”) at ¶¶ 6, 8, 9, and 12, appended hereto as **Exhibit “O.”**

45. Jennifer Clark is the secretary of the Association and either sent or caused to be sent statements and assessment information from the Association to Ms. Onyeabor. *See* Clark Affidavit at ¶¶ 5-12.

46. Ms. Clark is an employee of Sun Optics, which is located in Centennial Pointe. *See id.* at ¶ 3.

47. Ms. Clark is not and has never been an employee of LEBR. *See id.* at ¶ 4; *see also* Raile

Affidavit at ¶ 5.

48. Ms. Clark is familiar with landscaped common areas on and around Ms. Onyeabor's property and the condition of those areas. *See* Clark Affidavit at ¶¶ 28-29.

49. Ms. Onyeabor failed to maintain the landscaped common area on and around Lots 1 and 2 in a manner acceptable to other members of the Association. *See* Raile Affidavit at ¶ 16; *see also* Clark Affidavit at ¶¶ 29-30, referencing Exhibit 3 appended to the Clark Affidavit.

50. Ms. Onyeabor denied access to the landscaped common areas on and around Lots 1 and 2 by, *inter alia*, threatening criminal charges against maintenance workers hired by the Association to cut the lawn, by placing a "Danger Keep Off The Grass" sign on the landscaped area on or near Lot 1, and by placing rodent poison on the landscaped common area on or near Lots 1 and 2. (Plaintiffs have appended hereto as **Exhibit "P"** a Compact Disk recording of the October 18, 2004 evidentiary hearing for Plaintiffs' Motion for Preliminary Injunction against Ms. Onyeabor. The CD contains testimony from Ms. Onyeabor concerning the facts set forth above. Plaintiffs have cited the CD counter for review of the testimony. By way of background, the parties entered their appearances during the hearing at CD Counter 3:21:00-3:21:38; Ms. Onyeabor was administered her oath by the Court at 4:43:00; and the testimony referred to above is located at 4:57:05-4:57:40, and 4:59:05-4:59:07).

51. Ms. Onyeabor has threatened to restrict access to a common utility room located on her property, which contains telephone equipment servicing multiple Centennial Pointe owners. *See* Raile Affidavit at ¶ 15.

52. Ms. Onyeabor has interfered with Centennial Pointe's owners' and invitees' use of the common area parking lot by placing notes on vehicles threatening to have the vehicles towed. *See* Onyeabor Depo. p. 122; *see also* Onyeabor Depo. Exhibit 10, appended hereto as **Exhibit "Q."**

53. The Association initiated the present action against Ms. Onyeabor to, *inter alia*, enforce provisions of the Restated Amended CC&Rs, enjoin Ms. Onyeabor from interfering with the maintenance and use of Centennial Pointe's common areas, and to collect past due assessments from Ms. Onyeabor.

54. To date, Ms. Onyeabor owes the Association \$82,463.16 for past due assessments, late fees and fines. *See* Clark Affidavit at ¶ 15.

55. Those past due assessments are comprised of, *inter alia*, the cost for water supplied to Ms. Onyeabor's property and for the common areas, electricity for the common areas—used to light Centennial Pointe's parking lot and common areas—liability insurance, maintaining the landscaped areas, removal of snow from the parking lot and loading area. *See id.* at ¶ 7.

56. To date, the Association has been billed \$83,038.58 in attorney fees for the present litigation against Ms. Onyeabor. *See id.* at ¶ 16; *see also* Vasquez Affidavit at ¶ 13 (legal fees for Cohn Rappaport & Segal amount to \$77,738.00), appended hereto as **Exhibit "F."**

57. On June 22, 2005, the Salt Lake County Recorder's Office recorded a Notice of Lien for Nonpayment of Common and Association Expenses for both Ms. Onyeabor's Lots 1 and 2, Entry No.

9412031, prepared by the Association. *See* Vasquez Affidavit, Notice of Lien for Nonpayment of Common and Association, appended hereto as **Exhibit “F.”**

58. On October 18, 2004, Judge Henroid conducted an evidentiary hearing in this matter on Plaintiffs’ Motion for Preliminary Injunction.

59. During that hearing Ms. Onyeabor testified that she signed the Restated Amended CC&Rs. Specifically, Plaintiffs’ counsel asked Ms. Onyeabor: “You signed the CC&Rs. Is that correct?” *See* **Exhibit “P,”** CD Counter 4:53:30-4:54:00. Ms. Onyeabor, testifying under oath, responded: “Yes. That signature is mine.” **Exhibit “P,”** CD Counter 4:53:30-4:54:00.

60. Later, during the hearing, Ms. Onyeabor testified that she was familiar with the Restated Amended CC&Rs that she had signed. **Exhibit “P,”** CD Counter 4:54:23-4:54:46.

61. Ms. Onyeabor has asserted counterclaims against Plaintiffs and Third-Party Defendants.

62. On March 23, 2006, in her deposition, Ms. Onyeabor testified as follows:

a. Ms. Onyeabor met Mr. Raile for the first time after LEBR had purchased Lots 3, 4, and 5 in Centennial Pointe. *See* Onyeabor Depo. p. 150.

b. LEBR purchased Lots 3, 4, and 5 in Centennial Pointe in November, 2000, after Ms. Onyeabor had purchased Lot 2 in Centennial Pointe. *See id.*

c. Ms. Onyeabor testified that she had never met Mr. Raile or had any discussions with him prior to LEBR’s purchase of the Lots in Centennial Pointe. *See id.*

d. Ms. Onyeabor testified that nothing Mr. Raile said or did affected her decision to purchase Lots 1 and 2 in Centennial Pointe. *See id.* p. 151.

e. Ms. Onyeabor testified that her complaint against Mr. Raile stems from Mr. Raile (1) “talk[ing] down to [her],” (2) telling Ms. Onyeabor that Centennial Pointe’s parking area is a common area as defined by the CC&Rs, (3) telling Ms. Onyeabor that Mr. Raile’s employees could park in any of Centennial Pointe’s parking stalls, even those in front of Ms. Onyeabor’s business, and (4) telling Ms. Onyeabor that the landscaped areas in Centennial Pointe, even those in and around Ms. Onyeabor’s Lots, are common areas to be maintained by the Association. *See id.* pp. 81, 82, 115-19.

f. Ms. Onyeabor testified that Mr. Raile never came into her building during any of his conversations with Ms. Onyeabor. *See id.* p. 117.

g. Ms. Onyeabor testified that Mr. Raile has never called her a derogatory name. *See id.* pp. 118-19.

h. Ms. Onyeabor testified that Mr. Raile has never threatened her. *See id.* p. 119.

i. Ms. Onyeabor testified that Mr. Raile has never touched her. *See id.*

j. Ms. Onyeabor testified that her conversations with Mr. Raile occurred in the Centennial Pointe parking lot or on the sidewalk area outside of Ms. Onyeabor’s building. *See id.* p. 117.

k. In her Amended Counterclaims, Ms. Onyeabor alleged that Mr. Raile, LEBR, and the Association posted “offensive” signs and notices on the “Onyeabor Property that “violate[d]” the

[April 2000] CC&Rs and/or the [Restated] CC&Rs. Amended Counterclaims at 16.

l. Ms. Onyeabor testified that signs were placed on a utility room door that Ms. Onyeabor acknowledged was part of Centennial Pointe' common area. *See* Onyeabor Depo. pp. 82, 120.

m. Ms. Onyeabor testified that the posted signs stated "Property of Qwest Communications" and the other sign said "Centennial Pointe Association." *Id.* p. 120.

n. Ms. Onyeabor has not sought medical attention as a result of any of the conduct that she relies upon to establish her intentional infliction of emotional distress claim. *See* Onyeabor Depo. pp. 60, 145.

o. Ms. Onyeabor has not sought treatment from a psychiatrist or a psychologist as a result of the alleged conduct of Plaintiffs or Third-Party Defendants. *See id.* p. 143.

p. Ms. Onyeabor was not prescribed any medications, nor did she take any prescribed medications as a result of the alleged conduct of Plaintiffs or Third-Party Defendants. *See id.* p. 60. Ms. Onyeabor has testified that she "didn't need to." *Id.* p. 60.

q. Regarding any distress that she may have experienced, Ms. Onyeabor testified that she just "deal[t] with it." *Id.* p. 145.

ARGUMENT

I. CENTENNIAL POINTE'S RESTATED AMENDED CC&RS ARE VALID AND BURDEN MS. ONYEABOR'S PROPERTY AS A MATTER OF LAW.

A. Ms. Onyeabor Purchased Lot 1 Subject to Centennial Pointe, LLC's Right to Unilaterally Amend or Supplement the April 2000 CC&Rs and the Plat.

Centennial Pointe, LLC, had the right to unilaterally amend the April 2000 CC&Rs, and Ms. Onyeabor purchased her property in Centennial Pointe subject to that right. Specifically, Centennial Pointe, LLC reserved the right to unilaterally amend the April 2000 CC&Rs. This reservation was contained in the April 2000 CC&Rs. Utah courts and other jurisdictions, have recognized the validity of provisions reserving a developer's right to unilaterally amend, alter, or annul restrictive covenants. *See e.g. The View Condo Owner's Assoc., v. MSICO, LLC*, 2005 UT 91, ¶ 26, 127 P.3d 697 (acknowledging that CC&Rs provided developer the unilateral right to amend CC&Rs, but developer failed to follow the procedures set forth in CC&Rs to implement unilateral amendment).

For example, in *Baldwin v. Barbon Corp.*, 773 S.W.2d 681 (Tex. Ct. App. 1989), the Texas Court of Appeals held that a provision contained in restrictive covenants that reserved a developer's right to unilaterally amend those covenants was valid and enforceable. *See id.* at 686. The provision allowed the developer to amend the covenants without the consent of other lot owners until such time as the developer had sold all of the lots in the development. *See id.* at 682. The developer in *Baldwin* owned a 534 acre tract, a portion of which the developer intended to be for residential development. *See id.* The restrictive covenants imposed a residential lot restriction on the entire 534 acres. *See id.* at 684.

Portions of the acreage had been, and continued to be used to raise cattle. *See id.* at 683. The developer unilaterally amended the restrictive covenants to remove the residential lot restriction on a portion of the acreage. *See id.* at 682. A lot owner sued the developer seeking to have the amendment declared void. *See id.*

The Texas Court of Appeals held that the amendment provision was valid and enforceable. The court explained that the lot owner “purchased his property subject to the Subdivision Restrictions which clearly included an express right of alteration or amendment.” *Id.* at 686. The court utilized a three prong analysis to evaluate provisions reserving a developer’s right to unilaterally amend restrictive covenants. Specifically: (1) the “instrument creating the original restrictions must establish both the right to amend such restrictions and the method of amendment”; (2) the “right to amend such restrictions implies only those changes contemplating a correction, improvement, or reformation of the agreement rather than a complete destruction of it”; and (3) “the amendment to the restrictions may not be illegal or against public policy.” *Id.* at 685. The court concluded that all three prongs were satisfied. It explained that the amendment provision in the restrictive covenants provided the right and the method for amendment. The court also held that the developer’s amendment, which only removed the residential lot restrictions on a portion of the 534 acre tract, did not destroy the general scheme or development plan. *See id.* at 686. And, the court concluded, the amendment did not violate public policy. *See id.*

In *Rossman v. The Seasons at Tiara Rado Assocs.*, 943 P.2d 34 (Colo. Ct. App. 1997), the Colorado Court of Appeals held that a provision contained in restrictive covenants allowing the

developer of a subdivision to unilaterally amend the restrictive covenants was valid and enforceable. In *Rossman*, the developer maintained a sales office in one of the model homes in the subdivision. *See id.* at 35. The restrictive covenants allowed the developer to maintain a sales office on any “unsold Lot or Common Area.” *Id.* at 35. The developer unilaterally amended the restrictive covenants deleting the word “unsold.” *Id.* Property owners in the subdivision sued the developer seeking to have the amendment declared void. *See id.* at 37. The owners argued, *inter alia*, that the sales office increased the amount of traffic and commercial signs in the subdivision and created parking problems. *See id.* at 37.

In addition to holding that the provision allowing for unilateral amendment was valid and enforceable, the court of appeals also held that the developer reasonably exercised its right of amendment. *See id.* at 38. The court explained that the developer’s amendment deleting the word “unsold” “did not destroy the general scheme or plan of development for the neighborhood,” nor did the amendment “authorize a new or different commercial use in the neighborhood.” *Id. (relying on Flamingo Ranch Estates, Inc. v. Sunshine Ranches Homeowners, Inc., 303 So.2d 665, 666 (Fla. Dist. Ct. App. 1974 (holding a grantor reasonably exercises the right to amend restrictive covenants if the grantor does not destroy the general scheme or plan of development for the property)).* The court concluded that the amendment “merely authorized [the developer’s] continued use of the residence as a sales office and model home.” *Id.*

The holdings and analysis in the aforementioned cases are plainly applicable in the present matter. Here, similar to *Baldwin* and *Rossmann*, Centennial Pointe, LLC had expressly reserved the right to amend the April 2000 CC&Rs and provided for a method for doing so. Specifically, the April 2000 CC&Rs state:

(b) Until the Declarant [Centennial Pointe, LLC] has sold all Lots, Declarant shall have the right unilaterally to amend and supplement this Declaration and the Plat to correct any technical errors or to clarify any provision to more fully express the intent of the Declarant for development and management of the Project.

(c) Until the Declarant has sold all Lots, no amendment to the Plat or to any provisions of this Declaration shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by the Declarant.

April 2000 CC&Rs, Section XIV (b), (c). The April 2000 CC&Rs were recorded before Ms. Onyeabor purchased any property in Centennial Pointe and therefore, similar to *Baldwin*, Ms. Onyeabor purchased Lot 1 “subject to [the April 2000 CC&Rs] which clearly included an express right of alteration or amendment.” *Baldwin*, 773 S.W.2d at 686. Further, the facts of this matter show that Centennial Pointe, LLC complied with the requirements and method for amending the April 2000 CC&Rs. First, at the time the Restated Amended CC&Rs were signed and recorded, Centennial Pointe, LLC had not sold all of the Lots in Centennial Pointe, so it still possessed the right to unilaterally amend the April 2000 CC&Rs. *See* April 2000 CC&Rs, Section XIV, (b). Second, the Restated Amended CC&Rs were reduced to writing and consented to by Centennial Pointe, LLC, which satisfied the “method” for amendment. *See Baldwin*, 773 S.W.2d at 685-86; *see* April 2000 CC&Rs, Section XIV, (c).

The facts of this matter also show that Centennial Pointe, LLC exercised its right to amend the April 2000 CC&Rs in a reasonable manner. The Restated Amended CC&Rs reinforced and further clarified Centennial Pointe, LLC's intent that Centennial Pointe be developed and managed as a planned unit development. The Restated Amended CC&Rs did not "destroy the general scheme or plan of development for the property." *Rossman*, 943 P.2d at 38. Centennial Pointe was and continues to be a planned unit development industrial park. The Restated Amended CC&Rs simply clarified definitional ambiguities contained in the April 2000 CC&Rs.

Specifically, the April 2000 CC&Rs declared that Centennial Pointe was to be a "planned unit development." April 2000 CC&Rs Section II. The April 2000 CC&Rs provided that Centennial Pointe's common areas included landscaping, walkways, parking spaces and roads. *See id.* Section I, 1.5, Section XII, 12.8. The April 2000 CC&Rs provided that all Centennial Pointe property owners had the right to use the common areas and had an easement of ingress and egress over the common areas. *See id.* Section IV, 4.6. The April 2000 CC&Rs also provided that the Association was responsible for maintaining and managing the common areas. *See id.* Section VII, 7.1. However, plainly contrary to those definitions and terms, as well as Centennial Pointe, LLC's intent that Centennial Pointe be a planned unit development, the April 2000 CC&Rs defined common areas to exclude "Lots." *Id.* Section I, 1.5. The April 2000 CC&Rs defined "Buildings" to include "landscaping" "and other improvements of any kind existing on a Lot at anytime." *Id.* Section I, 1.3. These definitions created ambiguities because the definitions of Lots, Buildings and common areas overlapped in some respects.

Recognizing the ambiguity and conflict contained in the April 2000 CC&Rs, Centennial Pointe, LLC amended the April 2000 CC&Rs to more clearly define Centennial Pointe's common areas. *See* Sanborn Affidavit at ¶¶ 13, 16. The Restated Amended CC&Rs did not change or alter Centennial Pointe's owners' ownership interests in their respective Lots, the owners remained fee simple owners of their Lots. *Compare* April 2000 CC&Rs Section IV, 4.1, Restated Amended CC&Rs Section IV, 4.1. The Restated Amended CC&Rs did not change Centennial Pointe's owner's right to access and use the common areas. *Compare* April 2000 CC&Rs, Section IV, 4.6, 4.7, Restated Amended CC&Rs, Section IV, 4.5, 4.6. The Restated Amended CC&Rs did not change Centennial Pointe's general scheme or expand the common areas. The Restated Amended CC&Rs continued to vest the Association with the authority to maintain and manage Centennial Pointe's common areas, and with the authority to assess the owners for those and other common expenses. *Compare* April 2000 CC&Rs, Section IV, 4.9, Section VII, 7.1, 7.6, Section VIII; Restated Amended CC&Rs Section IV, 4.7, 4.8, Section VII 7.1, 7.6, Section VIII.

However, the Restated Amended CC&Rs clearly and unambiguously define common areas as "all Utility Lines, lighting not attached to Buildings, fences, landscaping, Accessways, parking spaces, loading/receiving areas, and all other portions of [Centennial Pointe] other than Buildings." *Id.* Section I, 1.6. The term "Building" was amended to "all buildings (including elements and components thereof, including exterior walls and roofs and above-ground attachments thereto)." Restated Amended CC&Rs, Section I, 1.4. The term "Accessways" is defined as "the walkways, entrances, exits, drive aisles,

driveways, interior roads and any other access ways to, from and/or over the Property.” *Id.* Section I, 1.1.

In sum, Centennial Pointe, LLC had the right to unilaterally amend the April 2000 CC&Rs. Ms. Onyeabor purchased property in Centennial Pointe subject to that right. Further, the facts show that Centennial Pointe, LLC exercised that right in a reasonable manner. The Restated Amended CC&Rs furthered Centennial Pointe’s general scheme and plan for development. Accordingly, the Restated Amended CC&Rs are valid and both benefit and burden Ms. Onyeabor Property as a matter of law.

B. Ms. Onyeabor has Admitted that She Signed Centennial Pointe’s Restated CC&Rs as Owner of Lot 1.

While Ms. Onyeabor’s testimony regarding whether she signed the Restated Amended CC&Rs is conflicting, Ms. Onyeabor has testified that she signed and ratified the Restated Amended CC&Rs as the owner of Lot 1. Specifically, during an evidentiary hearing in this matter before Judge Henroid, Ms. Onyeabor testified that she signed the Restated Amended CC&Rs. During that hearing, Ms. Onyeabor was presented with a copy of the Restated Amended CC&Rs bearing her signature. Plaintiffs’ counsel asked Ms. Onyeabor: “You signed the CC&Rs. Is that correct?” *See Exhibit “P,”* CD Counter 4:53:30-4:54:00. Ms. Onyeabor, testifying under oath, responded: “Yes. That signature is mine.” *See Exhibit “P,”* CD Counter 4:53:30-4:54:00. Later, Ms. Onyeabor testified that she was familiar with the Restated Amended CC&Rs that she had signed. *See Exhibit “P,”* CD Counter 4:54:23-4:54:46. Ms. Onyeabor’s own testimony shows that no disputed issue of fact exists regarding whether Ms. Onyeabor signed and ratified the Restated Amended CC&Rs before that document was recorded.

Since making those statements, Ms. Onyeabor has come perilously close to, if not actually, perjuring herself by contradicting her prior sworn testimony and now categorically denying that she signed the Restated Amended CC&Rs. Ms. Onyeabor denied that she signed the Restated Amended CC&Rs in an affidavit dated November 21, 2005, filed with this Court and again in her deposition. Ms. Onyeabor made these potentially perjurious statements before being confronted with the testimony of Jo Ellen Crockett, the notary public who witnessed her sign the Restated Amended CC&Rs and who notarized Ms. Onyeabor's signature. As set forth more fully below, Ms. Crockett's testimony is precise, supported by documentary evidence, and is unassailable. It is not known whether Ms. Onyeabor will continue to perjure herself by asserting in opposition to the present Motion that she did not sign the Restated Amended CC&Rs. Prudence would dictate that she withdraw her erroneous testimony and admit that she signed the Restated Amended CC&Rs.

1. Ms. Onyeabor Cannot Overcome the Legal Presumption that She Signed the Restated Amended CC&Rs.

The overwhelming evidence and legal presumption therefrom unequivocally show that Ms. Onyeabor signed the Restated Amended CC&Rs. Jo Ellen Crockett, the notary public who notarized Ms. Onyeabor signature on the Restated Amended CC&Rs, has testified under oath that she witnessed Ms. Onyeabor sign the Restated Amended CC&Rs. *See* Crockett Depo. pp. 19-20. Ms. Crockett testified that she has been a notary public for approximately ten years. *See id.* p. 6. During her deposition, Ms. Crockett produced a notary log book maintained by her that contained Ms. Onyeabor's name, Utah Driver's License number and signature, as well as a description of the document that Ms.

Onyeabor signed when she appeared before Ms. Crockett on August 3, 2000, specifically, the “Restated Declarations.” *Id.* pp. 12-20, (*referencing* Exhibit A to Ms. Crockett’s deposition, appended hereto as **Exhibit “E”**). Ms. Crockett recalled Ms. Onyeabor’s physical features and her accent. *See id.* pp. 11-12. Ms. Crockett also identified Ms. Onyeabor as the person who appeared before her on August 3, 2000 to sign the Restated Amended CC&Rs, based upon her review of Ms. Onyeabor driver’s license photo during Ms. Crockett’s deposition. *See id.* p. 12.

Moreover, Ms. Crockett’s testimony is corroborated by Ms. Onyeabor’s own testimony. Specifically, Ms. Onyeabor testified that she held an account at America First Credit Union (“America First”) and that she has transacted business at America First’s “Brickyard” office. Onyeabor Depo. p. 17. Indeed, funds Ms. Onyeabor used to purchase Lot 2 were delivered to Landmark Title via an America First Cashier’s Check stating “Landmark Title Re: Miriam Ne Onyeabor.” *See* **Exhibit “F.”** Ms. Crockett testified that at the time she notarized Ms. Onyeabor’s signature Ms. Crockett was an America First employee who worked at its “Brickyard” office. Crockett Depo. p. 5. Ms. Crockett also testified that she confirmed Ms. Onyeabor was an America First account holder before she notarized Ms. Onyeabor’s signature. *See id.* p. 17. Ms. Crockett is a disinterested witness with absolutely no connection to any party except Ms. Onyeabor. Quite simply, no disputed issue of fact exists as to whether Ms. Onyeabor signed the Restated Amended CC&Rs.

Ms. Onyeabor’s testimony and Ms. Crockett’s testimony are buttressed by a legal presumption that Ms. Onyeabor signed the Restated Amended CC&Rs. First, Ms. Crockett’s testimony that she

physically observed Ms. Onyeabor sign the Restated Amended CC&Rs and notarized Ms. Onyeabor's signature qualifies Ms. Crockett as a "subscribing witness" under Utah Code Ann. § 57-2-10, *et seq.* See *Cazares v. Cosby*, 2003 UT 3, ¶ 20, 65 P.3d 1184. In pertinent part, Section 57-2-10 states that the "proof of the execution of any conveyance whereby real estate is conveyed or may be affected shall be: (1) By the testimony of a subscribing witness." Utah Code Ann. § 57-2-10. Moreover, in *Cazares* the Utah Supreme Court expressly stated that the testimony of a subscribing witnesses, where present, remains the preferred method of proving due execution of a conveyance of real property. See *Cazares*, 2003 UT 3 at ¶ 18.²

Second, because the Restated Amended CC&Rs is a recorded document, there is a legal presumption that the signature on that document purporting to be that of Ms. Onyeabor, is what it appears to be: Ms. Onyeabor's signature. See Utah Code Ann. § 57-4a-4. In pertinent part, Section 57-4a-4 provides that a recorded document creates certain legal presumptions regarding title to the real property affected. Specifically, that the document is genuine, was executed voluntarily by the person purporting to execute it, and that the person executing the document was the person that he or she

²Even if Ms. Onyeabor were to survive summary judgment on the issue of whether she signed the Restated Amended CC&Rs, Ms. Onyeabor would be precluded, pursuant to Utah Code Ann. § 57-2-14, from presenting handwriting evidence to prove that she did not sign the document. See Utah Code Ann. § 57-2-14 ("no proof by evidence of the handwriting of a party, or of the subscribing witness or witnesses, shall be taken unless the officer taking the same shall be satisfied that all of the subscribing witnesses to such conveyance are dead, out of the jurisdiction, or cannot be had to prove the execution thereof").

purported to be. *See id.* These legal presumptions can only be overcome by clear and convincing evidence. *See Jacobs v. Hafen*, 875 P.2d 559, 561 (Utah Ct. App. 1994).

In ruling on the present Motion, it is well-settled that this Court “must view the evidence presented through the prism of the substantive evidentiary burden.” *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 254, 106 S. Ct. 2505 (1986). As such, this Court must view whatever evidence that Ms. Onyeabor may proffer through the prism of the heightened evidentiary standard of clear and convincing evidence. *See id.* The question for this Court being whether a reasonable factfinder could conclude that Ms. Onyeabor has shown with “convincing clarity” that she did not sign the Restated Amended CC&Rs. *Id.* A mere “scintilla” of evidence such as a conclusory or unsubstantiated denial by Ms. Onyeabor does not and will not satisfy the clear and convincing evidentiary standard nor will it preclude this Court from granting Plaintiffs’ and Third-Party Defendants’ Motion for Partial Summary Judgment. *See id.* at 254-56.

In sum, the facts show that Ms. Onyeabor signed and ratified the Restated Amended CC&Rs. Rather than risk perjuring herself, Ms. Onyeabor should simply concede that she signed the Restated Amended CC&Rs. That said, Ms. Onyeabor cannot overcome the heightened evidentiary burden that she must overcome to stave off summary judgment. A conclusory denial by Ms. Onyeabor will not preclude this Court from granting Plaintiffs’ and Third Party Defendants’ Motion for Partial Summary Judgment. Accordingly, Plaintiffs and Third-Party Defendants request that this Court issue an Order declaring the Restated Amended CC&Rs valid and enforceable, encumbering Ms. Onyeabor’s Property.

C. The Restated Amended CC&Rs are Valid and Encumber Lot 2.

Assuming *arguendo* that an issue of fact exists regarding Centennial Pointe, LLC's unilateral right to amend the April 2000 CC&Rs or whether Ms. Onyeabor signed the Restated Amended CC&Rs, at a minimum, the Restated Amended CC&Rs are valid and encumber Ms. Onyeabor's Lot 2 as a matter of law. It is well-settled that a "servitude, such as a restrictive covenant, 'is created . . . if the owner of the property to be burdened . . . conveys a lot or unit in a general-plan development or common-interest community subject to a recorded declaration of servitudes for the development or community.'" *The View*, 2005 UT 91 at ¶ 21 (*quoting* Restatement (Third) of Property: Servitudes § 2.1 (2000)). Here, Centennial Pointe, LLC was the owner of Lot 2 at the time the Restated Amended CC&Rs were recorded. As such, Centennial Pointe, LLC had the right to burden Lot 2 through the recording of the restrictive covenants contained in the Restated Amended CC&Rs. *See id.* The facts of this matter show that Ms. Onyeabor had both actual and constructive notice of the Restated Amended CC&Rs and of the document's contents. First, Ms. Onyeabor had actual notice of the Restated Amended CC&Rs because the same were disclosed to her in the title insurance policy she received when she purchased Lot 2. *See Exhibit "F."* Second, Ms. Onyeabor had constructive notice of the Restated Amended CC&Rs because it is a recorded document. *See* Utah Code Ann. § 57-3-102(1) (stating a duly recorded document imparts notice to all of its contents). The Restated Amended CC&Rs undisputedly encumbered Lot 2 at the time Centennial Pointe, LLC conveyed that Lot to Ms. Onyeabor. *See The View*, 2005 UT 91 at ¶ 21. Accordingly, the Restated Amended CC&Rs are valid and encumber Lot 2.

1. Lot 1 Remains Encumbered by the April 2000 CC&Rs.

If for any reason this Court determines that an issue remains as to whether Lot 1 is encumbered by the Restated Amended CC&Rs, Plaintiffs request that this Court enter an Order declaring that the April 2000 CC&Rs continue to burden Lot 1. Similar to the analysis set forth above, Centennial Pointe, LLC owned Lot 1 at the time the April 2000 CC&Rs were recorded, and therefore had the right to burden that Lot through the recording of restrictive covenants. *See id.* at ¶ 21. Those restrictive covenants were in full force and effect when Centennial Pointe, LLC conveyed Lot 1 to Ms. Onyeabor. *See id.* Assuming the Restated Amended CC&Rs did not supercede and amend the April 2000 CC&Rs with regard to Lot 1, the April 2000 CC&Rs remain in effect as to Lot 1, as it was Centennial Pointe, LLC's intent that all Lots in Centennial Pointe be part of a planned unit development and burdened by restrictive covenants. *See* April 2000 CC&Rs; *see also* Sanborn Affidavit at ¶¶ 6, 8. Accordingly, Plaintiffs request that this Court alternatively find, as a matter of law, that the April 2000 CC&Rs are valid and burden Lot 1, should this Court conclude that issues remain respecting the Restated Amended CC&Rs as to Lot 1.

II. AN ORDER SHOULD ISSUE DECLARING THAT MS. ONYEABOR IS LIABLE TO THE ASSOCIATION FOR ALL PAST DUE AND OWING ASSESSMENTS, LATE FEES AND FINES.

A. The Association has the Authority to Levy, Impose and Collect Assessments, Late Fees and Fines.

As a matter of law, Ms. Onyeabor is liable to the Association for all past due and owing assessments, late fees, and fines. At the date of filing this Motion, the amount owing the Association

for past due assessments, interest and late fees is \$82,463.16. *See* Clark Affidavit at ¶ 15. In addition, the Association has incurred \$83,038.50 in attorney fees attempting to enforce the Restated Amended CC&Rs and to collect the amount Ms. Onyeabor's owes. *See id.* at ¶ 16, *see also* Vasquez Affidavit at ¶ 13. No legal basis exists to justify Ms. Onyeabor's refusal to pay her *pro rata* share of Centennial Pointe's common expenses. Under either the April 2000 CC&Rs or the Restated Amended CC&Rs, the Association had, and has the authority to assess Centennial Pointe owners, and Ms. Onyeabor is legally obligated to pay those assessments. Both Centennial Pointe's April 2000 CC&Rs and the Restated Amended CC&Rs provide the Association with the authority to "fix, levy, collect and enforce payment" of all charges and assessments for, *inter alia*, the maintenance and repair of Centennial Pointe's common areas and for capital improvements. Restated Amended CC&Rs, Section VIII; April 2000 CC&Rs, Section VIII. The Association is also authorized to impose fines and late fees against an owner who fails to timely pay their assessments. *See* Restated Amended CC&Rs Section XIX. Further, both Centennial Pointe's April 2000 CC&Rs and the Restated Amended CC&Rs provide that

The Association shall . . . have the following powers: fix, levy, collect and enforce payment by any lawful means, all charges and Assessments pursuant to the terms of this Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association

. . . .

Each Owner of any Lot by the acceptance of a Deed therefore, whether or not it be so expressed in such Deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association annual assessments made by the Association for the purpose provided in this

Declaration, and special assessments for capital improvements and other matters as provided in this Declaration.

Restated Amended CC&Rs, Section VII, VIII; *see also* April 2000 CC&Rs, Section VII, VIII. Both sets of CC&Rs preclude a Centennial Pointe owner from opting out of the Association and relinquishing their obligations and rights as a Centennial Pointe lot owner, e.g., payment of common expenses. Specifically, “[n]o part of a Lot or the legal rights comprising ownership of a Lot may be separated from any other part thereof.” Restated Amended CC&Rs, Section IV, 4.3. Ms. Onyeabor simply cannot opt out of the Association and refuse to pay her *pro rata* share of Centennial Pointe’s common expenses.

Whether this Court determines that the Restated Amended CC&Rs burden both Lots 1 and 2, or, alternatively, that Lot 1 is burdened by the April 2000 CC&Rs and Lot 2 is burdened by the Restated Amended CC&Rs, the result is the same: Ms. Onyeabor is liable to the Association for all past due and owing assessments, late fees, and fines. Accordingly, Plaintiffs request an Order from this Court declaring that Ms. Onyeabor is liable to the Association for all past due and owing assessments, late fees and fines in the amount of \$82,463.16, plus attorney fees in the amount of \$83,038.50. *See* Clark Affidavit at ¶¶ 15-16. Further, Plaintiffs’ request an Order from this Court judicially foreclosing the liens of the Association for such amounts against Ms. Onyeabor’s property for her failure to pay her *pro rata* share of Centennial Pointe’s common expenses.

B. Ms. Onyeabor has Ratified the Association’s Assessment Authority.

Through her conduct, Ms. Onyeabor previously ratified the Association’s authority to assess Ms. Onyeabor for her *pro rata* share of Centennial Pointe’s common expenses for both Lots 1 and 2. In

Swan Creek Village Homeowners Assoc. v. Warner, 2006 UT 22, 134 P.3d 1122, the Utah Supreme Court held that “[w]here property owners have treated an association as one with authority to govern and impose assessments contemplated under the terms of a duly recorded governing declaration, they ratify its authority to act.” *Id.* at ¶ 32. In *Swan*, the court reached its conclusion based upon the fact that the association had been in place for a number of years and the owners accepted its management. *See id.* at ¶ 38. The court explained that the owners paid their dues to the association, and the association managed the property in the development. *See id.* Further, the court explained that the restrictive covenants for the development were recorded and on file, and therefore the owners were on notice of those covenants. *See id.* As such, the court held that the association had the authority delegated to it by the restrictive covenants, which included the authority to assess owners for the development’s common expenses. *See id.* at ¶ 39.

Here, similar to *Swan Creek*, Ms. Onyeabor’s conduct has ratified the Association’s authority to levy and collect assessments from Ms. Onyeabor for Centennial Pointe’s common expenses, as well as impose fines and late fees upon Ms. Onyeabor for her refusal to pay those assessments. The undisputed facts show that Ms. Onyeabor paid her Centennial Pointe assessments for a number of years. *See* Onyeabor Depo. p. 102. Ms. Onyeabor paid her assessments to the Association in 2000, 2001, and 2002, which assessments included water, power, sewer, landscaping and snow removal expenses. *See id.* pp. 104, 109-12. Ms. Onyeabor paid her assessments until such time as she unilaterally decided to “ignore[]” the statements from the Association regarding her *pro rata* share of Centennial Pointe’s

common expenses. *Id.* p. 113. The undisputed facts show that Ms. Onyeabor attended Association meetings, was elected as an officer of the Association, and agreed to assist the Association in obtaining a bid for the maintenance of the landscaped common areas. *See id.* pp. 107-09; *see also* Exhibit 9 to Onyeabor Depo., appended hereto as **Exhibit “K.”**

Similar to *Swan Creek*, the undisputed facts also show that the Restated Amended CC&Rs were duly recorded imparting notice to Ms. Onyeabor of their existence. The Restated Amended CC&Rs clearly provide the Association with the authority to levy assessments and impose late fees and fines. In sum, Ms. Onyeabor’s conduct has ratified the Association’s assessment authority as provided for in the Restated Amended CC&Rs. Therefore, Plaintiffs request an Order from this Court declaring that Ms. Onyeabor is liable to the Association for all past due and owing assessments, late fees and fines in the amount of \$82,463.16, plus attorney fees in the amount of \$83,038.50. Further, Plaintiffs request an Order from this Court judicially foreclosing the Association’s Liens for Common Expenses and costs of collection against Ms. Onyeabor’s property

1. Ms. Onyeabor’s Refusal to Pay Her Share of Centennial Pointe’s Common Expenses has Unduly Burdened and Harmed Centennial Pointe’s Other Owners.

As a matter of fairness, Ms. Onyeabor should be ordered to pay her past due assessments, late fees, and fines. Further, this Court should judicially foreclose the Association’s liens for common expenses against Ms. Onyeabor’s property. The Utah Supreme Court has recognized and adopted the principle that “to promote efficient property management, it is necessary that homeowner associations have the implied power to levy dues or assessments even in the absence of express authority.” *Swan*,

2006 UT 22 at ¶ 36 (quotation marks omitted) (*quoting Evergreen Highlands Ass'n v. West*, 73 P.3d 1, 7 (Colo. 2003)). This principle clearly forecloses any argument that Ms. Onyeabor may proffer to justify her recalcitrant conduct. Regardless of which CC&Rs apply, the Association has the authority to assess Ms. Onyeabor to efficiently manage Centennial Pointe. Ms. Onyeabor cannot carve her property out of the development. Simply put, Ms. Onyeabor never possessed the complete “bundle of sticks” of fee ownership that would allow her the unbridled right to exclude others from portions of her property or to maintain common areas to the exclusion of the Association. Her property is and has at all times been encumbered by restrictions and easements that both burden and benefit her property.

As it stands, Ms. Onyeabor is freeloading off of the other Centennial Pointe owners who are being forced to shoulder Ms. Onyeabor's share of the common expenses. Moreover, Centennial Pointe owners are further being saddled with the cost of the present litigation. The water is still on in her building, yet Ms. Onyeabor is not paying for it. The parking lot and the common areas are still lit at night, but Ms. Onyeabor is not paying for the electricity. The landscaping is still being maintained, the snow is still being plowed, however, Ms. Onyeabor's neighbors are the only ones bearing the burden of paying for these services that plainly benefit her and her property. It is simply unjust to allow Ms. Onyeabor to skirt her financial obligations and responsibilities as a property owner in Centennial Pointe. Accordingly, Ms. Onyeabor should be ordered to pay her past due assessments, late fees, fines, attorney fees and collection costs, and this Court should judicially foreclose the liens for common expenses of the Association as provided in the Restated Amended CC&Rs.

III. MS. ONYEABOR'S COUNTERCLAIM AND THIRD-PARTY CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FAILS AS A MATTER OF LAW.

No legal or factual basis exists to sustain Ms. Onyeabor's emotional distress counterclaim and third-party claim. To establish a claim for intentional infliction of emotional distress under Utah law, a party must prove four elements: (1) the offending party's conduct complained of was outrageous and intolerable in that it offended generally accepted standards of decency and morality; (2) the offending party intended to cause or acted in reckless disregard of a likelihood of causing emotional distress; (3) the moving party suffered severe emotional distress; and (4) the offending party's conduct proximately caused the emotional distress. *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68 ¶ 37, 56 P.3d 524. The question of whether the offending party's conduct was sufficiently outrageous to support a claim for intentional infliction of emotional distress is a question of law for the court. *Id.* at ¶ 38. If this Court determines that Plaintiffs' and Third-Party Defendants' conduct was not outrageous as a matter of law, Ms. Onyeabor's claim fails. *Id.* at ¶ 38. As the *Bear River* court noted:

Outrageous conduct, for purposes of the tort of intentional infliction of emotional distress, is conduct that evokes outrage or revulsion; it must be more than unreasonable, unkind or unfair. *Franco*, 2001 UT 25 at ¶ 28, 21 P.3d 198 (quoting 86 C.J.S. *Torts* § 70 (1997)). Additionally, conduct is not outrageous simply because it is tortious, injurious, or malicious, or because it would give rise to punitive damages, or because it is illegal.

Id. ¶ 38 (citations and quotations omitted).

The conduct that Ms. Onyeabor contends provides the basis for her emotional distress claim is as follows: "Mr. Raile, acting personally and as an agent of LEBR and as the agent of the Association" (1)

“repeatedly accost[ed] Ms. Onyeabor,” (2) “block[ed] loading and unloading areas and parking areas,” (3) “c[ame] into Ms. Onyeabor’s building to repeatedly yell at her,” (4) “depriv[ed] Ms. Onyeabor and Ms. Onyeabor’s employees access to the *[sic]* Ms. Onyeabor’s entrances to the building property by parking and instructing Plaintiffs *[sic]* employees to park in an obstructive matter,” (5) “posting signs and notices on the Property that are offensive,” (6) harassing Ms. Onyeabor on an on-going basis,” (7) “engag[ed] in activities and/or instructing and/or encouraging Plaintiffs employees to engage in certain activities that would cause Ms. Onyeabor distress and harm Ms. Onyeabor’s business.” Amended Counterclaims at 19-20; *see also* Third-Party Complaint.

None of those baseless and factually unsupported allegations, individually or collectively, are sufficient to sustain Ms. Onyeabor’s claim. First, the conduct that Ms. Onyeabor contends amounts to Mr. Raile “repeatedly accosting” her is what she has described as “Mr. Raile talk[ing] down to [her]” and telling her that the parking area and landscaping areas in Centennial Pointe are common areas pursuant to the Restated Amended CC&Rs. *See* Onyeabor Depo. pp. 81-82, 115-19. Ms. Onyeabor admits that Mr. Raile has not engaged in any name calling or threats. *See id.* p. 119. Mr. Raile has not touched Ms. Onyeabor. *See id.* The facts show that Mr. Raile was doing nothing more than informing Ms. Onyeabor of what is contained in Centennial Pointe’s CC&Rs. Even if Mr. Raile did this in a manner that was unkind or malicious, that does not satisfy the legal standard for outrageous conduct. *See Prince*, 2002 UT 68 at ¶ 38. Mr. Raile’s conduct is far from outrageous or revulsive, and is insufficient to sustain Ms. Onyeabor emotional distress claim.

Ms. Onyeabor's allegation that Mr. Raile "c[ame] into Ms. Onyeabor's building to repeatedly yell at her" is simply contrary to Ms. Onyeabor's own testimony. Ms. Onyeabor has testified that Mr. Raile never came into her building during any of his conversations with Ms. Onyeabor. *See id.* p. 117. Ms. Onyeabor's allegation is unfounded. Next, Ms. Onyeabor alleges that Jennifer Clark entered her building and began yelling profanities and racial slurs at Ms. Onyeabor. *See* Amended Counterclaims at 20-21. Ms. Onyeabor erroneously alleges that Ms. Clark is an LEBR employee; however, the facts show that Ms. Clark is not and has never been an LEBR employee. *See* Raile Affidavit at ¶ 5; Clark Affidavit at ¶ 4. The facts show that the encounter between Ms. Onyeabor and Ms. Clark stemmed from, and was provoked by, Ms. Onyeabor's own outrageous conduct in unjustifiably threatening to have Ms. Clark's car towed from the Centennial Pointe common area parking lot. *See* Onyeabor Depo. p. 53.

Ms. Onyeabor testified that Ms. Clark entered her business and asked Ms. Onyeabor if she placed a note on her car threatening to have it towed. *See id.* p. 54. Ms. Onyeabor informed Ms. Clark that she left the note on the car. *See id.* p. 53. Ms. Clark purportedly told Ms. Onyeabor that the parking area was a common area. *See id.* pp. 56-57. Ms. Onyeabor informed Ms. Clark that the parking stalls near the entrance of her building belonged to her and that she had the right to threaten to tow Ms. Clark's car. *See id.* pp. 58-59. Ms. Onyeabor testified that Ms. Clark called her "crazy lady" and the "N" word.³ *Id.* at 55. Ms. Onyeabor testified that she told Ms. Clark "it's time for you to leave." *Id.* at 59. Thereafter, Ms. Clark left the building. *See id.* Ms. Onyeabor testified that since the encounter Ms. Clark has not

³Ms. Clark denies that she made any racial comment to Ms. Onyeabor. *See* Clark Affidavit at ¶ 26, appended hereto as **Exhibit "O."**

returned to Ms. Onyeabor's business and that there has been "no other episode with Ms. Clark." Onyeabor Depo. p. 64. The facts of this matter show that the encounter between Ms. Clark and Ms. Onyeabor was an isolated incident. Ms. Clark has not engaged in any repeated pattern of hostility toward Ms. Onyeabor.

Nevertheless, assuming *arguendo* that Ms. Onyeabor's account of the encounter is accurate, Ms. Clark's reaction to Ms. Onyeabor's threat, even if unkind or malicious, is insufficient as a matter of law to sustain Ms. Onyeabor's emotional distress claim. Threatening to tow a person's vehicle will likely provoke an emotional or heated response from the vehicle's owner, particularly where, as here, there is no legal or justifiable basis for such a threat. Centennial Pointe's parking lot is undisputedly a common area and any owner, tenant, tenant's employee, or invitee has the right to park in any open stall. *See* April CC&Rs Section I, 1.5, XII, 12.8; Restated Amended CC&Rs Section I, 1.6. As such, the person making such a threat should not be aghast or dumbfounded when confronted regarding their own outrageous behavior by the vehicle's owner. As a matter of law, Ms. Clark's conduct is neither outrageous nor revulsive, and is insufficient to sustain Ms. Onyeabor's claim for infliction of emotional distress. *See Prince*, 2002 UT 68 at ¶ 38.

Similarly, Ms. Onyeabor's allegation that Mr. Raile, individually, or as an agent of the Association posted "offensive" signs on Ms. Onyeabor's property is insufficient to sustain her claim for emotional distress. Two signs were posted on the door of a utility room located on Ms. Onyeabor's property. *See* Onyeabor Depo. p. 120. The utility room houses communication equipment that serves

other Centennial Pointe owners. The utility room is defined in the CC&Rs as a common area and the other owners had an access easement to that room. *See id.* p. 121. The two posted signs stated: “Property of Qwest Communications” and “Centennial Pointe Association.” *Id.* p. 120. The conduct that Ms. Onyeabor alleges would not evoke outrage or revulsion, nor is it conduct that would offend “generally accepted standards of decency and morality that conduct.” *Prince*, 2002 UT 68 at ¶¶ 37-38. Further, the content of the two signs is plainly not offensive. Indeed, the content was truthful as Qwest owns the communication equipment and the utility room is a common area managed by the Association. *See Onyeabor Depo.* pp. 120-21.

Further, Ms. Onyeabor’s allegations regarding the parking area and the loading and unloading areas, while unfounded, are also insufficient to sustain Ms. Onyeabor’s emotional distress claim. First, the parking and loading areas are common areas, and all Centennial Pointe owners and the Association have an easement of ingress and egress over those areas. *See Restated Amended CC&Rs* Section I, 1.6; Section IV, 4.5, 4.6. Second, even assuming the allegations are true, the conduct as described does not satisfy the legal standard of outrageous conduct. Conduct is not outrageous simply because it is tortious, injurious, or malicious, or because it would give rise to punitive damages, or because it is illegal. *Prince*, 2002 UT 68 at ¶ 38. Finally, parking a vehicle in a common area parking lot does not and cannot offend “generally accepted standards of decency and morality.” *Id.* at ¶ 37.

Finally, the undisputed facts show that Ms. Onyeabor has not suffered severe emotional distress as a result of any of the conduct of which she complains of. Ms. Onyeabor has not sought medical

attention. *See* Onyeabor Depo. pp. 60, 145. Ms. Onyeabor did not seek treatment from a psychiatrist or a psychologist as a result of the alleged conduct. *See id.* p. 143. Ms. Onyeabor dealt with whatever distress she may have experienced herself. *See id.* p. 145. Ms. Onyeabor was not prescribed any medications, nor did she take any prescribed medications as a result of the alleged conduct. *See id.* p. 60. She testified that she “didn’t need to.” *Id.* Ms. Onyeabor took over-the-counter sleeping medicine for a limited number of days. That plainly does not amount to severe emotional distress. As such, the undisputed facts show that Ms. Onyeabor’s intentional infliction of emotional distress Counterclaim and Third-Party claim fail as a matter of law.

IV. MS. ONYEABOR’S ASSAULT CLAIM AGAINST MR. RAILE FAILS AS A MATTER OF LAW.

The undisputed facts of this matter show that Ms. Onyeabor’s assault claim against Mr. Raile fails as a matter of law. Initially, a review of Ms. Onyeabor’s Third-Party Complaint, “Fourth Claim Against Mr. Raile (Assault)” alleges no conduct on the part of Mr. Raile. All of the allegations concern Ms. Clark’s encounter with Ms. Onyeabor when Ms. Onyeabor threatened to tow Ms. Clark’s car. *See* Third-Party Complaint at 13. Ms. Onyeabor erroneously alleges that Ms. Clark is an employee of LEBR, and that Ms. Clark was acting individually and under the scope of her employment during her encounter with Ms. Onyeabor. *See id.* Ms. Onyeabor is apparently attempting to place liability upon Mr. Raile *individually* for Ms. Clark’s purported conduct. Initially, Ms. Clark is not an LEBR employee. *See* Raile Affidavit at ¶ 5. That said, LEBR is a limited liability company. *See* Raile Affidavit at ¶ 3. Mr. Raile is LEBR’s managing partner. *See id.* at ¶ 4. Assuming *arguendo* that Ms. Clark was an LEBR

employee at the time of the encounter with Ms. Onyeabor, Mr. Raile has no individual liability for the acts that Ms. Onyeabor alleges in her assault claim. *See* Utah Code Ann. § 48-2c-601.

Further, the facts of this matter show that the elements necessary to establish a claim for assault against Mr. Raile are plainly lacking. The elements of civil assault in Utah are: (1) the defendant acted, intending to cause harmful or offensive contact with the plaintiff, or imminent apprehension of such contact; (2) as a result, the plaintiff was thereby put in imminent apprehension of harmful contact; and (3) the plaintiff suffered injuries proximately caused by the defendant's actions. *See DDZ & DZ v. Molerway Freight Lines, Inc.* 880 P.2d 1, 3 (Utah Ct. App. 1994). Liability for assault "requires action by the defendant." *Id.* at 4.

The facts show that Mr. Raile has not engaged in any conduct toward Ms. Onyeabor that would sustain her claim against him for assault. Ms. Onyeabor has testified that Mr. Raile has not engaged in any name calling, nor has Mr. Raile threatened her. *See id.* pp. 118-19. Ms. Onyeabor has testified that Mr. Raile has never touched her. *See id.* p. 119. The gravamen of Ms. Onyeabor's claim is that Mr. Raile "talked down to her." *See id.* This occurred when Mr. Raile informed Ms. Onyeabor that, pursuant to the Restated Amended CC&Rs, the parking lot and landscaped areas in Centennial Pointe were and are common areas. This is undisputedly the case. Such conduct does not amount to assault and is insufficient to sustain Ms. Onyeabor's assault claim against Mr. Raile. Accordingly, Ms. Onyeabor's assault claim against Mr. Raile fails as a matter of law.

V. MS. ONYEABOR'S TRESPASS CLAIM AGAINST MR. RAILE FAILS AS A MATTER OF LAW.

Similar to her claim for assault, Ms. Onyeabor relies upon her encounter with Ms. Clark to sustain a claim for trespass against Mr. Raile. *See* Third-Party Complaint at 14. Mr. Raile is not liable for the purported acts of Ms. Clark. As a matter of law, the allegations regarding Ms. Clark are insufficient to sustain a claim against Mr. Raile for trespass.

Further, Mr. Raile's actions do not support a claim for trespass. An "essential element of trespass is the physical invasion of the land, 'trespass is a possessory action.'" *Walker Drug, Inc. v. La Sal Oil Co.*, 972 P.2d 1238, 1243 (Utah 1998) (citation omitted). Ms. Onyeabor has testified that Mr. Raile has never come into Ms. Onyeabor's building. *See* Onyeabor Depo. p. 117. Ms. Onyeabor testified that all of her encounters with Mr. Raile occurred on the sidewalk or in the parking lot. *See id.* Centennial Pointe's parking lot and sidewalks are common areas and all owners and their invitees have an access easement over those areas. *See* April 2000 CC&R Section I, 1.5, Section IV, 4.7, Section XII, 12.8; Restated Amended CC&Rs Section I, 1.6, Section IV, 4.6. Ms. Onyeabor is precluded from denying access to these areas. Ms. Onyeabor's testimony shows that no basis exists for her trespass claim against Mr. Raile, and that her claim fails as a matter of law.

VI. MS. ONYEABOR'S FRAUD CLAIM AGAINST LEBR AND THE ASSOCIATION FAILS AS A MATTER OF LAW.

The undisputed facts show that Ms. Onyeabor's fraud claim against LEBR and the Association fails as a matter of law. The nine required elements to establish a claim for fraud are as follows:

(1) that a representation was made (2) concerning a presently existing material fact (3) which was false and (4) which the representor either (a) knew to be false or (b) made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it and (6) of inducing the other party, acting reasonably and in ignorance of its falsity, (7) did in fact rely upon it (8) and was thereby induced to act (9) to that party's injury and damage.

Armed Forces Insur. Exch. v. Harrison, 2003 UT 14, ¶ 16, 70 P.3d 35 (quoting *Gold Standard, Inc. v. Getty Oil Co.*, 915 P.2d 1060, 1066-67 (Utah 1996)).

Here, Ms. Onyeabor alleges that LEBR and the Association represented to her that the April 2000 CC&Rs would be applicable to Lot 2, and that she would have control over Lot 2 subject to the easements contained in the April 2000 CC&Rs. However, Ms. Onyeabor's own testimony shows that neither LEBR nor the Association made any such representations. Specifically, Ms. Onyeabor testified that the first time that she had either spoken to or met with Mr. Raile or anyone from LEBR was after she purchased Lot 2. *See* Onyeabor Depo. pp. 149-50. Ms. Onyeabor has testified that her decision to purchase Lot 2 was not based in anyway on any representation by either Mr. Raile or LEBR. *See id.* pp. 146-51. As such, Ms. Onyeabor cannot show that LEBR made any representation to her regarding Lot 2, or that she relied on any representation from LEBR when she purchased Lot 2. Ms. Onyeabor's fraud claim against LEBR fails as a matter of law.

Similarly, Ms. Onyeabor's fraud claim against the Association also fails as a matter of law. Ms. Onyeabor has not proffered any evidence to show that the Association, or any person or entity for that

matter, made any representation to her regarding Lot 2 and the April 2000 CC&Rs. *See* Onyeabor Depo. pp. 148-49. Ironically, Ms. Onyeabor was one of two members of the Association at the time she purchased Lot 2. *See* April 2000 CC&Rs Section VI, 6.1 (“every owner shall be a Member [of the Association]”). Moreover, at the time she purchased Lot 2, Ms. Onyeabor’s title policy clearly disclosed that the Restated Amended CC&Rs burdened Lot 2. *See* **Exhibit “F.”** The undisputed facts show that Centennial Pointe, LLC, and not the Association, owned Lot 2 and sold Lot 2 to Ms. Onyeabor. *See id.* p. 149. Quite simply, there is no evidence to support Ms. Onyeabor’s conclusory allegation that the Association made any misrepresentation to her regarding which CC&Rs would burden Lot 2. The facts also show that Ms. Onyeabor could not reasonably rely on any representation that the April 2000 CC&Rs would burden Lot 2, because she was clearly on both actual and constructive notice that the Restated Amended CC&Rs burdened Lot 2. *See* Section II, *supra*. In fact, Ms. Onyeabor signed and ratified the Restated Amended CC&Rs before she purchased Lot 2. *See id.*, Section I, *supra*. Accordingly, Ms. Onyeabor’s fraud claim against the Association fails as a matter of law.

VII. MS. ONYEABOR’S ASSAULT AND TRESPASS CLAIMS AGAINST LEBR FAIL AS A MATTER OF LAW.

Ms. Onyeabor has asserted claims against LEBR for assault and trespass. The basis for these claims is Ms. Onyeabor’s encounter with Ms. Clark. Ms. Onyeabor alleges that Ms. Clark was “acting within the scope of her employment” when the encounter between Ms. Onyeabor and Ms. Clark occurred. Ms. Onyeabor’s claims against LEBR fail as a matter of law because the facts show that Ms. Clark is not and has never been an LEBR employee. *See* Raile Affidavit at ¶ 5. As such, LEBR cannot

be liable for Ms. Clark's purported conduct. Accordingly, LEBR requests that the Court deny Ms. Onyeabor's assault and trespass claims against LEBR as a matter of law.

CONCLUSION

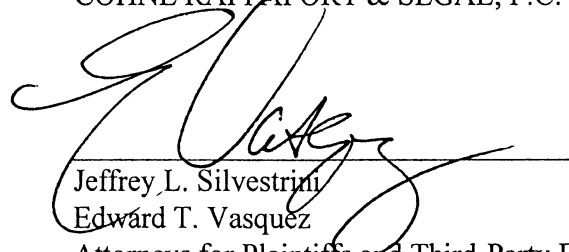
For the foregoing reasons, Plaintiffs and Third-Party Defendants request that this Court grant their Motion for Partial Summary Judgment and issue an Order declaring the Restated Amended CC&Rs valid and encumbering Lots 1 and 2 owned by Ms. Onyeabor. Alternatively, Plaintiffs request an Order from this Court declaring that Lot 2 is encumbered by the Restated Amended CC&Rs and that Lot 1 is encumbered by the April 2000 CC&Rs.

Plaintiffs request an Order from this Court declaring that Ms. Onyeabor is liable to the Association for all past due and owing assessments, late fees and fines in the amount of \$82,463.16, and attorney fees and collection costs in the amount of \$83,038.50. Plaintiffs also request an Order from this Court judicially foreclosing the Association's liens for nonpayment of common expenses recorded against Ms. Onyeabor property.

Finally, Plaintiffs and Third-Party Defendants Bruce Raile and Jennifer Clark request an Order from this Court finding that (1) Ms. Onyeabor's counterclaim and third-party claim for intentional infliction of emotional distress fail as a matter of law; (2) Ms. Onyeabor's third-party claims against Mr. Raile for assault and trespass fail as a matter of law; (3) Ms. Onyeabor's counterclaim against LEBR and the Association for fraud fails as a matter of law; and (4) Ms. Onyeabor's claims against LEBR for assault and trespass fail as a matter of law.

DATED this 30th day of October, 2006.

COHNE RAPPAPORT & SEGAL, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Jeffrey L. Silvestrini, is written over a horizontal line.

Jeffrey L. Silvestrini

Edward T. Vasquez

Attorneys for Plaintiffs and Third-Party Defendants
Bruce Raile and Jennifer Clark

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2006, I caused to be mailed a true and correct copy of the foregoing, postage prepaid, to:

Myriam Onyeabor
P.O. Box 521297
Salt Lake City, Utah 84152

George A. Hunt
Williams & Hunt
257 East 200 South, #500
Salt Lake City, UT 84111

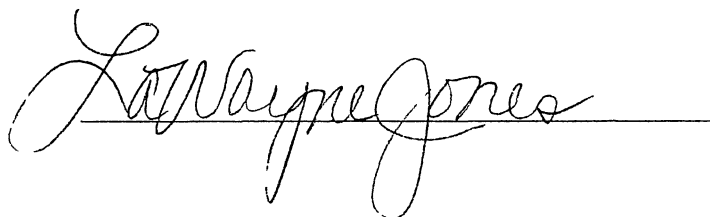
A handwritten signature in cursive script, reading "L. Wayne Jones", is written over a horizontal line.

Exhibit “A”

WHEN RECORDED, MAIL TO
Bryan B. Todd, Esq.
Parsons, Behle & Latimer
PO Box 45898
SLC, UT 84145-0898
(801) 532-1234

Entry No. 7621217

Space Above for Recorder's Use

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK
A PLANNED DEVELOPMENT SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and executed by CENTENNIAL POINTE, L.L.C., a Utah limited liability company ("Declarant").

WHEREAS, Declarant is the fee owner of the Property defined below; and

WHEREAS, Declarant intends to develop the Property in accordance with the Plat defined below and the terms and conditions contained herein; and

WHEREAS, Declarant intends by recording this Declaration and the Plat to impose upon the Property, the Development defined below, and all improvements now or hereafter constructed thereon or as a part thereof, mutually beneficial restrictions under a general plan of improvement for the benefit of all Lots and Owners defined below;

NOW, THEREFORE, the Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration, including the recitals hereto, the following terms shall have the following meaning indicated.

1.1 "Association" shall mean Centennial Pointe Property Owners Association, Inc., a Utah non-profit corporation.

1.2 "Board" shall mean the Association's board of trustees.

1.3 "Buildings" shall mean all buildings (including all elements and components thereof, including all exterior walls and roofs) and other structures, enclosures, exterior lighting, landscaping, fences, walls, and other improvements of any kind existing on a Lot at any time.

1.4 "Bylaws" shall mean and refer to the Bylaws of the Association, as they may be adopted and amended from time to time.

1.5 "Common Areas and Facilities" or "Common Areas" shall mean, refer to, and include:

(a) The Property and interests therein, excluding the Lots,

(b) All Common Areas and Facilities designated as such on the Plat,

(c) All installations outside of the Lots for any and all Utility Lines and other equipment connected with the furnishing of utility services such as electricity, gas, water and sewer (which are sometimes referred to as "Common Utility Facilities") to the Property,

(d) The outdoor lighting, fences, landscaping, walkways, open parking spaces and roads,

(e) All portions of the Property not specifically included within the individual Lots, and

(f) All other parts of the Property normally in common use or necessary or convenient to its use, existence, maintenance, safety or management

1 6 "Common Expenses" shall mean and refer to all sums which are assessed against and expended on behalf of all Owners (as defined below) and all sums which are required by the Association to perform or exercise its functions, duties, or rights under this Declaration, the management agreement for the operation of the Property, if any, and such rules and regulations as the Association may from time to time make and adopt. By way of illustration, but not in limitation, Common Expenses shall include (i) expenses of administration, maintenance, operation, repair and replacement of those components of the Common Areas that must be maintained and/or replaced on a periodic basis together with such reserves as may be from time to time established for the same by the Association, (ii) expenses agreed upon by the Association, or the Owners, and lawfully assessed against the Owners in accordance with this Declaration, (iii) expenses declared to be Common Expenses by this Declaration or the Bylaws, and (iv) any valid charge against the Property as a whole

1 7 "Declarant" shall mean and refer to the Declarant named above as well as any successor in interest of Declarant which, either by operation of law, or through a voluntary conveyance, transfer, or assignment comes to stand in the same relation to the Property as did its predecessor

1 8 "Declaration" shall mean and refer to this instrument and all modifications, amendments and/or supplements hereto made in accordance with the provisions hereof

1 9 "Lot" shall mean any separate space within the Property intended for independent use and occupancy and separate ownership as described herein, and designated as a Lot on the Plat. Any Building located on a Lot, whether constructed by Declarant, another Lot Owner or others, as well as any improvements located outside of a Lot (including but not limited to mechanical equipment, appurtenances, Utility Lines or other utility equipment) but designated and designed to serve only that Lot, shall be considered part of such Lot. Each Lot shall include its appurtenant Percentage Interest in the Common Areas and Facilities

1 10 "Lot Number" shall mean the number, letter or combination thereof designating a Lot

1.11 "Manager" shall mean and refer to any Person (as defined below) designated from time to time by the Association to manage, in whole or in part, the business and affairs of the Association and the Property.

1.12 "Member" shall mean and refer to a member of the Association.

1.13 "Mortgage" shall mean and include any mortgage, deed of trust or other security instrument by which any Lot or part thereof is encumbered.

1.14 "Mortgagee" shall mean and include any mortgagee, beneficiary, or other secured party under any Mortgage.

1.15 "Occupant" shall mean an occupant of a Lot.

1.16 "Official Records" shall mean the official records of the County Recorder for Salt Lake County, Utah.

1.17 "Owner" shall mean any Person, including the Declarant, owning fee title to a Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include any Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.18 "Percentage Interest" shall mean and refer to the undivided percentage interest of each Owner in the Common Areas and Facilities of the Property. The Percentage Interest which is appurtenant to a Lot shall be equal to the ratio between the Size of the Lot (as defined below) and the aggregate Size of all Lots. The Percentage Interest of each Lot is set forth in Exhibit A attached hereto and incorporated herein by reference, and shall have a permanent character and shall not be altered (except as the same may be revised as the result of minor adjustments as provided in Section 4.4) without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

1.19 "Person" shall mean any individual or legal entity.

1.20 "Plat" shall mean the SUBDIVISION PLAT OF AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK, recorded in the Official Records (as defined below) in Book 99-5P of Plats at Page 117, and all modifications, amendments and/or all supplements thereto recorded in accordance with this Declaration. The Plat, however, is hereby amended as follows. (a) the term "lease space" is hereby replaced with the term "Building Size;" and (b) the Building Sizes shall be as set forth on Exhibit A attached hereto.

1.21 "Project" shall mean the Property and all improvements thereto.

1.22 "Property" shall mean that certain real property more particularly as follows, all improvements and structures located thereon, including the Buildings, all easements, rights and

appurtenances belonging to such real property, and all articles of personal property intended for use in connection therewith:

Lots 1 through 7, inclusive, within AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK, recorded in the Official Records (as defined below) in Book 99-5P of Plats at Page 117.

1.23 "Size" shall mean and refer to the surface area within a Lot, in square feet, rounded off to a whole number, which is set forth in Exhibit A hereto. Declarant's determination of the Size of a Lot, as set forth in this Declaration or in any amendment or supplement hereto, shall be conclusive.

1.24 "Utility Lines" shall mean and refer to water, sewer, electricity, gas and other utility lines, pipelines, cable, wire, or similar facility which traverses or partially occupies the Property.

II. SUBMISSION TO DECLARATION

Declarant hereby submits the Property as a planned unit development to the covenants, conditions, restrictions, liens and other provisions herein contained, subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the same or any portion thereof, including, without limitation, any Mortgages; all easements and rights-of-way; any encroachments, or boundary discrepancies; an easement, which is hereby created for the benefit of Declarant and all Owners, for each and every Utility Line at such time as construction of all Property improvements is complete, and for ingress to, egress from, maintenance of, and replacement of all Utility Lines.

Reserving unto Declarant and the Owners, however, such easements and rights of ingress and egress over, across, through and under the Property as may be reasonably necessary for Declarant, the Owners and their assignees and successors (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete the Buildings/Lots and all of the other improvements described in this Declaration or in the Plat, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the Property or any improvement thereon is traversed or partially occupied by a permanent improvement or Utility Line, a perpetual easement for such improvement or Utility Line shall exist. With the exception of such perpetual easements including the perpetual easement specified in (i) above, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire when Declarant no longer owns any part of the Property, or if and when sooner required by law.

III. LOTS

3.1 Description and Legal Status of Lots. The Plat shows each Lot, its Lot Number, location, dimensions from which its Size may be determined, and the Common Areas to which it has immediate access. The undivided ownership interest in the Common Areas and Facilities appurtenant to a Lot may not be partitioned from the balance of the Common Areas and Facilities.

3.2 Contents of Exhibit A. Exhibit A to this Declaration contains the following information with respect to each Lot: (i) the Lot Number; (ii) its Size; (iii) the Building Size on each Lot; and (iv) the Percentage Interest which is assigned to and appurtenant to each Lot.

IV. NATURE AND INCIDENTS OF LOT OWNERSHIP

4.1 Estate of an Owner. Each Owner shall own fee simple title to its Lot(s).

4.2 Title. Title to a Lot may be held or owned by any Person or more than one Person and in any manner in which title to real property may be held or owned in the State of Utah, including, without limitation, joint tenants or tenancy in common.

4.3 Inseparability. No part of a Lot or the legal rights comprising ownership of a Lot may be separated from any other part thereof, so that each Lot and the Percentage Interest appurtenant to such Lot shall always be conveyed, devised, encumbered, or otherwise affected only as a complete Lot. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Lot shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration.

4.4 Adjustments to Percentage Interests. Declarant reserves the right to make minor adjustments in some or all of the Percentage Interests which result from the strict application thereof for the purpose, but only for the purpose, of assuring that the total of all Percentage Interests equals 100%. Percentage Interests shall be for all purposes, including, without limitation, voting and participation in Common Expenses.

4.5 Partition Not Permitted. The Common Areas shall be owned in common by all the Owners, and no Owner may bring any action for partition thereof. No Owner may subdivide or partition its Lot.

4.6 Owner's Rights to Common Areas. Subject to the limitations contained in this Declaration, any Owner shall have the non-exclusive right to use and enjoy the Common Areas.

4.7 Easement for Access to Lots and Parking. Each Owner shall have the right, which right shall be appurtenant to and pass with the title to such Lot, to ingress and egress over, upon and across the Common Areas as reasonably necessary for access to such Owner's Lot, and to park, and have its invitees and licensees park, in such parking stalls as exist on the Property from time to

time, excepting such parking stalls as may be assigned, leased and/or sold as provided in Section 12.8 hereof, on the terms and conditions set forth herein. The Association reserves the right to eject or cause to be ejected from any portion of the Property any person not authorized, empowered or privileged to use the same, or who uses the same in violation of the provisions of this Declaration. No obstruction or interference with the free flow of vehicular or pedestrian traffic over the Common Areas shall be permitted, provided, however, that the Association shall be permitted to obstruct the Common Areas to the extent reasonably necessary (a) for repair, maintenance and traffic regulation and control of the Common Areas and (b) in the opinion of its counsel, to prevent dedication of the Common Areas for public use or the acquisition of any prescriptive rights in the Common Areas, provided further, however, before so closing off any part of the Common Areas as provided herein the Association shall make all reasonable efforts to coordinate such closing with the activities of the Owners so that the activities of the Owners are impacted as little as reasonably practicable. The Association reserves the right to police the Common Areas and establish and enforce reasonable rules and regulations for the use thereof. The Association may post signs and/or implement other mechanisms to regulate the flow of traffic and parking over the Common Areas.

4.8 Easement for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does hereby exist.

4.9 Association's Right to Use of Common Areas. The Association shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and the functions which it is obligated or permitted to perform pursuant to this Declaration and/or the Bylaws.

4.10 Easement for Encroachment and Common Elements.

(a) Declarant and each Owner shall have a perpetual easement for the maintenance, use, repair, reconstruction, rebuilding and replacement of common footings, common foundations, common walls, weather-tight attachment of continuous elements such as roofing, façade, surfacing, etc., and the installation and removal of permitted improvements such as signs, entrances, marquees, canopies, lights and lighting devices, fire doors, awnings, alarm bells, wing walls, support and other columns, pilasters, roof flashings, eaves, roof and building overhangs, etc. (collectively, "Common Elements") as they now exist regarding the Buildings currently located upon the Property. If any part of any Building is destroyed and not restored, then the Person whose improvements are destroyed shall leave in place any Common Elements (or any portions thereof) which were not destroyed. Such rights shall be subject to the condition, however, that all such maintenance, use, repair, reconstruction, rebuilding and replacement shall be in accordance with generally accepted practices in the manner customary for improvements of such type and so as not to impose any increased load on the servient Building, except as may be approved by the Owner thereof. Such easement rights shall include reasonable access to accomplish the foregoing.

(b) It is acknowledged that the Buildings share common walls along the common Lot boundaries ("Common Walls"). All Common Walls shall constitute party walls for all purposes hereof, and except as herein modified or expanded, all legal and equitable principles relating to party walls shall govern and apply to the Common Walls. No Owner shall use or alter any Building or other improvements in any way that would jeopardize the support furnished by, or the soundness or integrity of, any Common Wall. The Owners sharing Common Walls shall equally share all expenses relating to damage, repair, replacement, restoration and maintenance thereof which are necessary or desirable to preserve the soundness or structural integrity thereof; provided, however, that to the extent any such expense becomes necessary or desirable as a result of the act or omission of a particular Owner, such Owner shall bear such expense. Expenses associated with maintenance, repairs or replacements benefiting only one Owner (such as interior painting or redecorating) shall be borne solely by that Owner. Notwithstanding any demolition and/or new construction an Owner may desire to carry out on its Lot and/or related to its Building, such Owner shall not be entitled to damage or demolish any Common Wall to any extent, nor alter or change the exterior design or structure of its Building in any way that might have a negative impact on any Common Wall.

(c) It is further acknowledged that the Buildings may share common Utility Lines ("Shared Utility Lines"). No Owner shall use or alter any Shared Utility Lines without the prior written consent of all other Owners sharing the same. The Owners sharing Shared Utility Lines shall equally share all expenses relating to damage, repair, replacement, restoration and maintenance thereof which are necessary or desirable to preserve the soundness or structural integrity thereof; provided, however, that to the extent any such expense becomes necessary or desirable as a result of the act or omission of a particular Owner, such Owner shall bear such expense. Expenses associated with maintenance, repairs or replacements benefiting only one Owner shall be borne solely by that Owner. Notwithstanding any demolition and/or new construction an Owner may desire to carry out on its Lot and/or related to its Building, such Owner shall not be entitled to damage or demolish any Shared Utility Lines to any extent, nor alter or change the exterior design or structure of its Building in any way that might have a negative impact on any Shared Utility Lines.

(d) Each Owner hereby grants all other Owners with whom it shares Common Walls and/or Shared Utility Lines such easements and rights of ingress over, across, through and under its Lot, including a reasonable right to enter its Building, as is reasonably necessary to permit the former to perform its obligations and/or exercise its rights hereunder.

4.11 Easements Deemed Created. All conveyances of Lots hereafter made, by whatever means, shall be construed to grant and reserve such reciprocal easements as shall give effect to the provisions hereof, even though no specific reference to such easements appears in any such conveyance.

V. LOTS

5.1 Conveyances. Any deed, lease, mortgage, deed of trust, sales contract or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as

follows:

Lot No. ____ contained within AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK, as the same is identified in the Plat recorded in Salt Lake County, State of Utah in Book 99-5P of Plats at Page 117, as said Plat may have heretofore been amended or supplemented, TOGETHER WITH all other rights appurtenant to said Lot as described in the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK A PLANNED DEVELOPMENT SUBDIVISION recorded in Salt Lake County, Utah, as Entry No. _____ in Book _____ at Page _____, as said Declaration may have heretofore been amended or supplemented.

Such description shall be construed to describe the Lot, together with the Percentage Interest in the Common Areas appurtenant thereto, and to incorporate all the rights incident to ownership of such Lot and all the limitations on such ownership as described in the Declaration, including the applicable appurtenant Percentage Interest.

5.2 Maintenance of Lots.

(a) Each Owner and Occupant shall, without cost or expense to the Association or any other Owner or Occupant, keep and maintain, or cause to be kept and maintained, its Lot and all Buildings thereon and improvements thereto in a good and safe state of repair and in a clean, sanitary and orderly condition and in compliance with all applicable laws, ordinances, codes, orders, rules and regulations. Each Owner's and Occupant's obligation to maintain and operate its Lot shall include, without limitation, protecting the surfaces of its Building from weathering, deterioration, aging, and graffiti or other defacement, maintaining, repairing and operating the permitted signs on its Lot, and complying with all applicable requirements of governmental agencies pertaining to the use and maintenance of its Lot including, without limitation, the making of any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about, its Lot under any laws, ordinances, rules, regulations or orders now or hereafter adopted, enacted or made and applicable to its Lot.

(b) In the event that any Owner or Occupant fails to perform or cause to be performed any of its duties or obligations as provided herein, and such failure is not corrected within a reasonable period of time after the Association sends written notice of such failure to such Owner or Occupant, then the Association shall have the right to correct such failure, whereupon all costs and expenses incurred by the Association in connection therewith, with interest thereon at the Default Interest Rate defined below, shall be paid by such Owner or Occupant to the Association upon demand for the same. For the purposes of the preceding sentence, a failure shall be deemed to be corrected "within a reasonable period of time" after notice if such failure is corrected within thirty (30) days after such notice, or, if such failure is such that it cannot be corrected with due diligence within such thirty (30) day period, the Owner or Occupant commences correction of such failure within such thirty (30) day period and thereafter continuously and diligently prosecutes the same to completion as soon as practicable, but in no

event more than ninety (90) days after such notice. The Association shall have an easement to enter each Lot for the purpose of exercising the rights reserved to it pursuant hereto. The failure by any Owner or Occupant to perform its duties and obligations hereunder shall constitute a default by such Owner or Occupant under this Declaration, and the remedies afforded to the Association pursuant to this subsection (b) are in addition to, and not in lieu of, any other remedies available to the Association under this Declaration and at law and in equity.

5.3 Separate Mortgages By Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the Percentage Interest appurtenant to his Lot. Any Mortgage or other encumbrance of any Lot within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

5.4 Taxation of Lots. Each Lot shall be deemed to be a separate parcel and shall upon conveyance thereof by Declarant be assessed separately for all taxes, assessments, and other charges of any political subdivision or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges of each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

5.5 Mechanic's Liens. No labor performed or materials furnished or used in connection with any Lot shall create any right to file a notice of mechanic's lien against any other Lot or against any interest in the Common Areas other than the Percentage Interest appurtenant to the Lot where the work was performed.

VI. THE ASSOCIATION

6.1 Membership. The Association shall be formed and maintained as a Utah nonprofit corporation. Until such time as all Lots have been conveyed by the Declarant to Lot purchasers, Declarant shall be the sole Member. From and after such time as all Lots have been conveyed by the Declarant to Lot purchasers, every Owner shall be a Member. One Membership shall exist for each Lot, shall be inseparably appurtenant thereto and shall automatically transfer therewith but only therewith. If title to any Lot is held by more than one Person, the Membership related to such Lot shall be shared by all such Persons in the same proportionate interests and by the same type of tenancy in which they hold title to such Lot. No Person other than an Owner shall be a Member.

6.2 Board. The Board shall manage the Association, and shall be determined as set forth in the Bylaws. Designees of Declarant, Owners, Mortgagees (or designees of Mortgagees), partners of partnerships, directors or officers of corporations, and members of limited liability companies owning Lots shall be eligible for membership on the Board. The Board shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas and Facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities, if any, of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association and/or, after notice and hearing, in violation of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Members by other provisions of this Declaration, the Bylaws or the Association's Articles of Incorporation (the "Articles");

(d) enter into contracts of any kind pertaining to the affairs of the Association on behalf thereof; and

(e) employ a manager, an independent contractor, and/or such other employees as they deem necessary, and to prescribe their duties.

It shall be the duty of the Board to:

(f) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing in accordance with the Bylaws;

(g) supervise all officers, agents and employees of this Association, and see that their duties are properly performed;

(h) create and adopt a budget for the Association;

(i) fix the amount of, collect and enforce the Assessments;

(j) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid (a reasonable charge may be made by the Association for the issuance of these certificates), and if a certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(k) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(l) cause the Common Areas to be maintained;

(m) maintain current copies of this Declaration, the Articles, the Bylaws, and any rules and regulations, and make the same available for inspection during normal business hours of the Association by Owners and first Mortgagees (and holders, guarantors, or insurers thereof); and

(n) maintain the books and financial records of the Association, and cause the financial statements of the Association for the preceding fiscal year to be audited and made available to the holder, insurer or guarantor of any first mortgage secured by a Lot, upon request of the same.

6.3 Votes and Voting. Votes and voting shall be governed by the Bylaws.

VII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Areas. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of all Common Areas. The cost of such management, operation, maintenance and repair by the Association of the Common Areas shall be borne as provided in Article VIII.

7.2 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel of the Association as it shall be determined to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain on behalf of the Association and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish trash collection, snow removal, ground maintenance, and other common services to each Lot. The cost of such services shall be borne as provided in Article VIII. The Declarant may enter into one or more professional management contracts on behalf of the Association pursuant to the provisions hereof; provided the Association shall have the right to terminate any such contract, without cause, at any time after transfer of control of the Association to Owners.

7.3 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of the Association and all of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportions as their respective Percentage Interests. Such interests shall not be transferable except with the transfer of a Lot, and a transfer of a Lot shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may use such property in accordance with the purpose for which it is intended, subject to rules and regulations adopted by the Association as provided herein, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Lot under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Lot.

7.4 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Lots, Common Areas and Property, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation: (i) a requirement that shades or other interior window coverings, including the interior surfaces of any windows or door glass used in the Buildings, shall present a uniform appearance of type and color from the exterior of the Buildings and that the Association shall have the right to inspect and re-inspect and approve all proposed shades or other interior window coverings to insure compliance with such rules before installation thereof in, and (ii) that Buildings conform to standardized regulations regarding appearance, maintenance and modifications thereof.

7.5 Granting Easements. The Association may, without a vote or consent of the Owners or of any other person, grant or create, on behalf of the Association, on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Areas.

7.6 Implied Rights and Additional Powers. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The Association shall also have the following powers:

- (a) fix, levy, collect and enforce payment by any lawful means, all charges and Assessments pursuant to the terms of this Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Property of the Association;
- (b) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (c) borrow money, and with the assent of Members holding at least 75% of the Percentage Interests, mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (d) dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that the Association may grant such easements as shall be necessary for the development and maintenance of the Property without the consent of the Members. Except with respect to easements, no such dedication, sale or transfer shall be effective unless the same has been approved by Members holding at least 75% of the Percentage Interests;

(e) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Areas, provided that any such merger, consolidation or annexation shall have the assent of Members holding at least 75% of the Percentage Interests.

VIII. ASSESSMENTS

8.1 Agreement to Pay Assessment. Declarant, for each Lot owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants, and each Owner of any Lot by the acceptance of a Deed therefore, whether or not it be so expressed in such Deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association annual assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration ("Assessments").

8.2 Amount of Total Annual Assessments. The total annual Assessments against all Lots shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things: expenses of management, grounds maintenance, taxes and special governmental assessments, until the Lots are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common lighting and heating expenses; water charges; trash collection charges; snow removal expenses; sewer service charges; repairs and maintenance expenses; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Notwithstanding the foregoing, the total amount of annual Assessments shall not exceed the previous year's annual Assessments (determined for an entire 12 month period) by more than 25% without the affirmative vote of Owners holding 67% of the Percentage Interests. The first annual Assessment for Lots shall be for the calendar year 2000, prorated, and shall commence October 1, 2000. The sixty (60) year projection of infrastructure maintenance costs for the Project is attached hereto as Exhibit B. Such projection is just an estimate, however, and the actual costs may vary.

8.3 Apportionment of Annual Assessments. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Owners in proportion to their respective Percentage Interests, as shown on Exhibit A hereto.

8.4 Notice of Annual Assessments and Time for Payment Thereof. Annual Assessments shall be made on a calendar year basis. The Association shall give written notice to each Owner as to the amount of the annual Assessment with respect to his Lot not less than 30 days nor more than 60 days prior to the beginning of the next calendar year. Such Assessment shall be due and payable in equal monthly installments on the first day of each and every month of each year; provided that the first annual Assessment shall be for the balance of the calendar year remaining after the

date fixed by the Association as the date of commencement of the Project but not later than sixty 60 days after the conveyance of the first Lot. Assessments shall be due and payable within 30 days after written notice of the amount thereof shall have been given to the Owners. Each monthly Assessment shall bear interest at the higher of 18% per annum, or 5% in excess of the generally prevailing national "prime" rate or equivalent thereof, (the "Default Interest Rate") from the date it becomes due and payable if not paid within ten days after it first becomes due. In addition to the foregoing, the payment of any delinquent Assessment shall be subject to the payment of a late fee as established by the Association. Failure of the Association to give timely notice of any Assessment as provided herein shall not affect the liability of any Owner for such Assessment, but the date when payment shall become due in such case shall be deferred to a date ten days after such notice shall have been given.

8.5 Special Assessments for Capital Improvements. In addition to the annual Assessments authorized by this Article, the Association may levy in any Assessment year a special Assessment, payable over such period of time as the Association may determine, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interests. Notice in writing of the amount of such special Assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than 30 days after such notice shall have been given. A special Assessment shall bear interest at the Default Interest Rate from the date it becomes due and payable if not paid within 30 days after such date.

8.6 Lien for Assessments. (a) All sums assessed to any Lot pursuant to this Article, together with interest thereon, as provided herein, shall be secured by a lien against such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances against such Lot, except only: (i) valid tax and special assessment liens in favor of any governmental assessing authority; and (ii) encumbrances recorded in the Official Records prior to the date a notice (as provided herein) is recorded which by law would be a lien prior to subsequently recorded encumbrances, including all unpaid obligatory advances to be made pursuant to such encumbrances and all amounts advanced pursuant to such encumbrances and secured by the lien thereof in accordance with the terms of such instrument. All other Mortgagees and lienors shall be deemed to consent that such liens shall be inferior to future liens for Assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

(b) To evidence a lien for sums assessed pursuant to this Article, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner and a description of the Lot. Such a notice shall be signed by an officer of the Association and shall be recorded in the Official Records. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such

lien may be enforced by power of sale or judicial foreclosure by the Association in the same manner in which deeds of trust or mortgages on real property are foreclosed in the State of Utah. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Lot as the Owner thereof.

(c) A release of notice of lien shall be executed by an officer of the Association and recorded in the Official Records upon payment of all sums secured by such lien which has been made the subject of a recorded notice of lien.

(d) Any Mortgagee or encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such Mortgagee or encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

(e) A lien for common area Assessments will not be affected by the transfer or conveyance of a Lot, unless such transfer is pursuant to a foreclosure of a Mortgage with priority. In such event, the prior Owner shall nevertheless remain liable for the delinquent Assessments.

8.7 Personal Obligation of Owner. In addition to running with the Lot, the amount of any annual or special Assessment against any Lot shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association, at its option, without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot.

8.8 Statement of Account. Upon payment of a reasonable fee as established by the Association, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to a Lot, the amount of the current yearly Assessment and the date that such Assessment becomes or became due, and the amount of any credit for advance payments or prepaid items, including, but not limited to, such Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within 10 days, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquires its interest subsequent to requesting such statement, unless such Mortgagee acquires its interest with actual knowledge of the amount of such Assessments. Where a prospective purchaser makes such request, both the lien for such unpaid Assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the 10 day period provided herein and thereafter an additional written request is made by such purchaser and is not complied

with by the Association within an additional 10 days, and the purchaser subsequently acquires the Lot without actual knowledge of the amount of such Assessments.

8.9 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 8.8, a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid Assessments against the Lot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

8.10 Reserve for Replacements. As set forth in this Declaration, the Association shall be required to establish and maintain an adequate reserve fund for the cost of reasonably predictable and necessary major repairs, maintenance and replacement of Common Areas. Such reserve shall be funded out of Common Area Assessments, provided that as of the earlier of: (i) the sale and closing of each Lot by Declarant; or (ii) transfer of control of the Project to the Owners, the Declarant shall fund such reserve with an amount not less than two months' common area Assessments for each Lot in the Project. Any amount paid to this reserve shall not be considered as an advance payment of regular Assessments. This reserve fund shall be transferred to a segregated fund in the name of the Association upon transfer of control of the Association to the Owners. The Declarant shall be prohibited from using the reserve funds to defray any of its expenses, reserve contribution, or construction costs, or make up any budget deficits while it is in control of the Association. Upon transfer, the reserve account provided herein shall be maintained separate from the general operating and Assessment account of the Association, but in the Association's name.

IX. INSURANCE

9.1 Insurance. The Association shall secure and at all times maintain the following insurance coverages for the Common Areas, and each Owner shall secure and at all times maintain the coverages described in the following paragraphs (a) and (b) as to its own Building:

(a) Hazard Coverage. Such hazard insurance as the Association shall deem advisable from time to time.

(b) Public Liability. A comprehensive policy of public liability insurance insuring the Association, the Board and its members, the Manager, and the Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Lot which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Owners. Limits of liability under such insurance shall be not less than \$1,000,000.00 covering all claims for bodily injury and/or property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Owner because of negligent acts of the Association, its committee members, its Officers or the Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(c) Fidelity Insurance or Bond. The Association shall purchase for the benefit of and on behalf of the Association, in amounts not less than three months Assessments for all Lots, and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of Committee members, Officers, employees and others who hold or administer funds, destruction or disappearance of money or securities, and forgery. The fidelity policy or bond shall name the as the insured.

9.2 Additional Provisions. The following additional provisions shall apply with respect to insurance.

(a) In addition to the insurance and bond coverage described above, the Association shall secure and at all times maintain for the benefit of and on behalf of the Association, insurance against such risks as are or hereafter may be customarily insured against in connection with projects similar to the Project in construction, nature and use.

(b) Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association, any Owners or a Mortgagee; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Mortgagee or the Association from collecting insurance proceeds.

(c) The Association, on behalf of all Owners, individually and collectively, shall have the authority to adjust losses with respect to insurance secured and maintained by the Association, to pursue claims, negotiate and settle claims, and to enter into agreements relative to the same, and each Owner shall be deemed to have appointed the Association as an attorney-in-fact for such purpose.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(e) Each policy of insurance obtained by the Association for the benefit of the Association shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Association, the Officers of the Association, any Manager, the Board and its members, the Owners, and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees thereof at least 30 days in advance of the effective date of any substantial modification or cancellation of the policy.

(f) Owners shall be responsible for insuring their Lots. Any such insurance shall not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Owner who individually obtains insurance covering any portion of the Project shall supply the Association with a copy of his policy within 30 days after he acquires such insurance.

(g) Insurance coverage required by this Article must not be prejudiced by (i) any act or neglect of the Owners, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

(h) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(i) The foregoing provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage. In addition to any insurance coverage required hereunder, the Association may obtain such other insurance or additional insurance in such amounts and in such forms as the Association may deem proper from time to time.

(j) The Association shall have no responsibility regarding insurance on Buildings, their contents, or any other personal property of Owners. Each Owner shall acquire for his own protection, adequate insurance on the foregoing.

(k) The maximum deductible amount for policies covering Lots and Common Areas shall be the lesser of \$10,000 or 1% of the policy face amount.

X. DAMAGE OR DESTRUCTION

10.1 Common Areas. In the event of damage of or destruction of part or all of the Common Area improvements, restoration shall be carried out and all Owners shall be assessed for any deficiency in insurance coverage on the basis of their respective Percentage Interests.

10.2 Lots. In the event of any fire or other casualty which damages or destroys all or any part of any Building, then the Owner thereof shall (i) promptly remove any debris resulting from such fire or other casualty, and (ii) as soon as may reasonably be possible after such casualty, either commence full reconstruction or restoration of its Building, or raze the same. Once an Owner commences such reconstruction, restoration, or razing work, such Owner shall proceed diligently and continuously with such work until the same is completed. Any Owner reconstructing or restoring its Building as provided above shall comply with all of the requirements set forth in this Declaration with respect to construction, alteration and reconstruction within the Property. In the event that an Owner does not promptly restore its Building which has been damaged or destroyed

by fire or other casualty, such Owner shall promptly raze the same, remove all debris and take all other action required by good construction practice so that the area which had been occupied by the razed Building will be in a safe and attractive condition, and landscape the same in accordance with plans approved by the Association.

XI. CONDEMNATION

11.1 Consequences of Condemnation. If at any time or times during the continuance of the Project, all or any part of thereof shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

11.2 Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association. The Association, on behalf of all Owners, individually and collectively, shall have the authority to represent the Association and all Owners and in such regard shall represent their interests in proceedings, negotiations, settlement and agreements, and each Owner shall be deemed to have appointed the Association as attorney-in-fact for such purpose.

11.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Project shall terminate. The Condemnation Award for the Common Areas and Facilities shall be apportioned among the Owners in proportion to the respective Percentage Interests, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiations, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On such basis, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practicable in the manner provided in Section 11.4 hereof.

11.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Project shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (a) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury to the Common Areas among Owners in proportion to their respective Percentage Interests, (b) the total amount allocated to severance damages shall be apportioned to those Lots which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Lot and/or improvements an Owner has made within his Lot shall be apportioned to the particular Lot involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees and encumbrancers.

11.5 Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the ownership, voting rights, and Assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration and shall submit such reallocation to the Owners of remaining Lots for amendment of this Declaration as provided herein.

11.6 Reconstruction and Repair. In the event any Lot is affected by any taking or condemnation, such Lot shall be deemed to be damaged by casualty and shall be governed by the procedures specified in Article X, above.

XII. USE OF UNITS AND COMMON AREAS

12.1 Lot Use Restrictions. All Lots within the Project shall used exclusively for uses commonly found in first-class warehouse/office projects of the nature of the Project and for no other purposes. Any lease or rental agreement for a Lot or Building must be in writing and subject to the terms of the Declaration, Bylaws, rules, and regulations, and other documentation of the Association.

12.2 Use of Common Areas. There shall be no obstruction of the Common Areas by the Owners or their tenants, guests, or invitees without the prior consent of the Association. The Association may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for the purpose of protecting the interests of all the Owners or protecting the Lots or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Areas except upon the prior written consent of the Association.

12.3 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or an increase of the rate of the insurance on the Project or any part thereof, over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from such damage or waste caused by him or his invitees, provided that any invitee of the Declarant shall not be under any circumstances deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on in any Lot or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other owner or to any person at any time lawfully occupying a Lot in the Project.

12.4 Rules and Regulations. No Owner or occupant shall violate the rules and regulations for the use of the Lots and/or of the Common Areas as adopted from time to time by the Association.

12.5 Structural Alterations. No structural alterations to any Lot shall be made, no other alterations modifying the external appearance of any Lot and no plumbing, electrical or similar work within the Common Areas shall be done or caused to be done by any Owner without the prior written consent of the Association.

12.6 Restriction on Signs and Attachments. No signs, flags, satellite dishes, windsocks, wind chimes, hanging plants, bird feeders, advertising devices, or other exterior attachments or attachments visible from outside of a Building (collectively, "Attachments") shall be erected, displayed or maintained on any part of the Project without the prior written approval of the Association, except (i) as may be necessary temporarily to caution or warn of danger or to provide directions as required by law, and (ii) such signs as Declarant may erect or maintain incident to sale or lease of Lots. If the Association consents to the erection of any Attachment, the same shall be removed promptly at the request of the Association.

12.7 Animals. No animals of any kind shall be raised, bred, or kept in or on the Property for any purpose, except as may be required under the Americans with Disabilities Act.

12.8 Recreational Vehicles and Parking. No recreational vehicle (boat, camper, trailer, motor home, or similar item) shall be parked on any portion of the Common Areas. All parking stalls are shown on the Plat as Common Area and the Association shall be responsible for the maintenance and repair thereof, and the cost of such management, operation, maintenance and repair by the Association shall be borne as provided herein.

12.9 Exemption of Declarant. The provisions of this Article shall not apply to any improvement or structure constructed on the Property by Declarant prior to the time that all Lots and appurtenant Percentage Interests are conveyed by Declarant to purchasers; and the Declarant shall have the right to use any Lot owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and sale of Lots owned by Declarant.

XIII. MORTGAGEE PROTECTION

13.1 Notice to First Mortgagee. From and after the time a first Mortgagee (or an insurer or guarantor thereof) makes written request to the Association therefor, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) a Mortgage, the Association shall notify such first Mortgagee (or such insurer or guarantor thereof) in writing of the following: (i) in the event that the Owner of the Lot neglects for a period of 60 or more days to cure any failure on his part to perform any of this obligations under this Declaration; (ii) any condemnation or casualty loss that affects either a material portion of the Project or the Lot securing its Mortgage; (iii) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; (iv) any proposed action that requires the

consent of a specified percentage of first Mortgagees; and/or (v) any material changes to the Project, the Bylaws, this Declaration, the Assessments or the Percentage Interests.

13.2 Priority of Liens for Unpaid Assessments. The lien or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to a Mortgage affecting such Lot provided that such Mortgage was recorded prior to recording of such notice of lien or claim levied by the Association, and the Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Lots including the Lot in which the Mortgagee is interested). No Assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Lot affected or previously affected by the Mortgage concerned.

13.3 First Mortgagee Consents. Unless at least 67% of the first Mortgagees (based upon one vote for each Mortgage) of the individual Lots subject to first Mortgages consent in writing, the Association shall not be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Plat;

(b) To partition or subdivide any Lot;

(c) To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Areas (except for the granting of easements for Utility Lines and similar purposes consistent with the intended use of the Common Areas);

(d) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Lots or to the Common Areas) for purposes other than the repair, replacement or reconstruction of such improvements, except as provided in Article IX; or

(e) To change the pro rata interests or obligations of any Lot which apply for purposes of (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, and (ii) determining the pro rata share of ownership of each Lot in the Common Areas, except as such changes may occur as a result of partial condemnation or as otherwise permitted hereunder.

13.4 Miscellaneous Mortgagee Rights.

(a) The Association shall not: (i) alter the provisions of Article IX in such a way as to diminish the insurance protection required to be afforded to the parties designated to be protected thereby; or (ii) fail to maintain the insurance coverage described in said Article.

(b) Any first Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. After the commencement of sale of individual Lots, the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs, maintenance and replacement of the Common Areas and shall cause such reserve to be funded by regular monthly or other periodic Assessments against the Lots rather than by special Assessments.

(c) From and after the time a first Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (i) the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, \$50,000.00; or (ii) any Lot encumbered by the Mortgage held by such Mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of, \$10,000.00. Said notice shall be given within ten days after the Association learns of such damage, loss, taking or anticipated condemnation.

(d) No provision of this Declaration gives or may give any Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

(e) In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

13.5 Implied Approval. In the event that the approval of a first Mortgagee is required pursuant to the provisions of this Article or elsewhere herein, and in the event a first Mortgagee fails to submit a response to any written proposal for an amendment within 20 days after it receives proper notice of the proposal, approval will be deemed to have been given, provided notice was delivered to such Mortgagee by certified or registered mail, "return receipt" requested.

XIV. AMENDMENT

Except as provided below, the vote of Owners holding at least 67% of the Percentage Interests shall be required to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation in the Official Records of an instrument executed by the Association. In such instrument an officer of the Association shall certify that the vote required by this Article for amendment has occurred. The foregoing right of amendment shall, however, be subject to the following:

(a) Any amendment to Article XIII ("Mortgage Protection") shall be subject to the requirements for amendment contained in such Article.

(b) Until the Declarant has sold all Lots, Declarant shall have the right unilaterally to amend and supplement this Declaration and the Plat to correct any technical errors or to clarify any provision to more fully express the intent of the Declarant for development and management of the Project.

(c) Until the Declarant has sold all Lots, no amendment to the Plat or to any provisions of this Declaration shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by the Declarant.

XV. DEVELOPMENT OF PROPERTY; APPROVAL OF PLANS

15.1 Architectural Review. The Association shall be responsible for overseeing the unified and harmonious development of the Property, which shall be developed as a planned unit development.

15.2 Development Standards. No more than one Building shall be constructed on any Lot. All Buildings to be constructed on the Property shall be designed to blend harmoniously and attractively with each other so as to provide the appearance of a unified, integrated, planned unit development. In order to further this objective, the Association may establish and promulgate guidelines (the "Development Standards") which shall set forth the design concepts pertaining to the development of the Lots. The Association shall have the right, at any time and from time to time, to amend, alter or abolish any Development Standards adopted by it. In addition, the Association shall have the right, in its sole discretion, to permit such variances from the provisions of the Development Standards as it deems necessary or proper in connection with the development of the Property. The Association shall have the right and obligation to enforce the provisions of the Development Standards against the Owners. No Owner or Occupant other than the Association shall have the right to enforce the provisions of the Development Standards against any other Owner or Occupant, or to require another Owner or Occupant to abide by the Development Standards, unless authorized to do so by the Association; nor shall any Owner or Occupant have the right to require the Association to enforce the provisions of the Development Standards against any Owner or Occupant. Furthermore, no failure by the Association to enforce the provisions of the Development Standards against any Owner or Occupant, or to require a Owner or Occupant to comply with the Development Standards, shall be deemed to be a waiver of the Association's right to enforce or require compliance with the Development Standards either against that particular Owner or Occupant or any other Owner or Occupant at any time, unless the Association expressly waives the same, in writing, for a particular Owner or Occupant. Copies of the current Design Standards shall be available from the Association, and each Owner shall be responsible for obtaining a copy thereof from the Association.

15.3 Approvals of Plans.

(a) No Building shall be constructed, installed or placed upon any portion of the Property (or, once constructed, altered, added to or reconstructed) unless and until all plans and specifications for the same are submitted and approved in writing by the Association. The plans and specifications to be submitted for review by the Association shall cover such issues, topics and matters, contain such details, and be in such form as are required under the Development Standards. The Association may require that such plans and specifications be submitted in phases, if and as provided in the Development Standards. All plans and specifications to be submitted to the Association shall depict Buildings designed in conformity and in accordance with the Development Standards, unless the Association agrees otherwise.

(b) The Association shall have full and complete discretion in determining whether to approve, conditionally approve or disapprove of any plans and specifications submitted to it, and may review and consider in connection therewith all matters involved with the plans and specifications, including (without limitation) engineering and design characteristics, aesthetic considerations and potential impact on neighboring Lots. The Association will examine each submission in the context of whether it depicts high quality development, consistent and compatible with the rest of the Buildings. In this regard, the Association may base its approval or disapproval on, among other things, (i) compliance with this Declaration and the Development Standards, (ii) conformity and harmony of external design with the development of the Property and each neighboring Lot and types of operations and uses thereof, (iv) relation of topography, grade and finished ground elevation of the Lot to that of each neighboring Lot, (v) proper facing of main elevation with respect to roads, streets and other Lots, (vi) adequacy of screening of mechanical, air conditioning or rooftop installations, and (vii) compliance with all applicable governmental laws and regulations. The Association shall not arbitrarily or unreasonably withhold its approval of any plans or specifications, but the decision of the Association shall be final and non-appealable. The Association shall review all plans and specifications submitted to it pursuant to this Section as soon as may reasonably be practicable (but, in any event, within forty-five (45) days after receipt by the Association of such plans and specifications and all supplemental materials and information required hereunder). In no event shall the Association be required to review partial or piecemeal submissions, and the Association may require strict adherence to all submission requirements prior to the commencement of the forty-five (45) day period referenced above. In the event that the Association does not conditionally approve or disapprove any plans or specifications within the forty-five (45) day period referenced above, then such plans or specifications shall be deemed to have been approved and the submitting Owner shall be deemed to have fully complied with the provisions of this Section (as the provisions relate to the plans or specifications submitted) provided that the submitted plans and specifications are submitted with a separate clear and conspicuous notation to that effect. In any case where the Association shall conditionally approve or disapprove any plans or specifications submitted hereunder, the Association shall send notice of such disapproval or conditional approval to the submitting Owner, together with a statement of the reasons therefor. In any such case, the Association, if requested, shall make reasonable efforts to assist and advise the submitting Owner in the preparation of acceptable plans or specifications, at the sole cost of the submitting Owner.

(c) The provisions of this Section shall apply not only to all initial construction and development of and within the Property, but also in connection with any alteration, addition, restoration or reconstruction of Buildings which are now or may hereafter be constructed or installed on any portion of the Property.

(d) No Occupant or Owner (other than the Association) shall (i) submit to any governmental authority any site plans, design plans or other plans relating to its Lot and/or any Buildings, nor (ii) commence or perform any construction, alteration, addition, restoration or reconstruction work on the Property, unless and until the Association has reviewed and approved the plans and specifications for the same pursuant to this Section. In addition, no Occupant or Owner (other than the Association) shall apply to any governmental authority for any subdivision, rezoning or a zoning variance or waiver with respect to the Property or any Lot. The Association shall have the right to give such notices as it may deem necessary to the governing authorities having jurisdiction over the Property, to ensure that the Association receives notices of any applications for construction or building permits or zoning variances or changes that may be filed with respect to within the Property.

(e) All Buildings shall be constructed or installed in accordance with the plans and specifications approved by the Association. No Buildings shall be altered and no approved plans and specifications shall be modified in any respect pertaining to the exterior appearance or design of the subject Buildings (or any other aspect of the same which is reflected in the plans and specifications previously approved by the Association) unless such alterations or modifications are approved in writing by the Association.

(f) If any construction work is not commenced within twelve (12) months from the date on which the Association approves the plans and specifications pertaining to such construction work, then the approval given pursuant to this Section shall be deemed revoked by the Association, unless the Association extends the time for commencing work in writing.

(g) Neither the Association nor the Declarant nor their respective members, managers, shareholders, officers, directors, partners, beneficiaries, successors, assigns, agents, employees, nor representatives shall have any liability whatsoever (i) as a result of the review of any plans or specifications as provided herein, or with respect to any defects, omissions, inconsistencies, or shortcoming contained in such plans or specifications or in any Buildings constructed or made in accordance with any such plans or specifications, or (ii) in connection with the performance of the duties or rights of the Association as provided in or permitted under this Declaration. Approval by the Association shall not eliminate the need to obtain all approvals required from public and governmental agencies and authorities having jurisdiction over the proposed improvements. Where there exists a potential conflict between the criteria set forth herein and any code or legal requirement, the most restrictive criteria shall apply.

15.4 Signs.

(a) No outdoor sign or indoor sign visible from the Common Areas or any other Building (except such pylon signs, informational and traffic regulation signs and other signs as

may be installed by or at the direction of the Association from time to time) shall be erected, painted, inscribed, installed or affixed on or in any Building unless and until the plans and specification for the same showing the nature, kind, shape, height, materials, color and location thereof are submitted to and approved in writing by the Association. The standards for submission and review of plans and specifications above shall also be applicable with respect to the submission and review of plans and specifications of signs.

(b) Temporary signs may be erected on any Lot by (i) persons offering such Lot for sale or lease, or (ii) builders, lenders and architects involved in the construction and design of such Lot. Such temporary signs shall be designed in accordance with the Development Standards, and the design, size, location and number of such temporary signs shall comply with all applicable governmental rules and regulations and shall be subject to the prior approval of the Association. Signs offering Lots for sale or lease shall be removed within thirty (30) days after completion of sale or lease of the subject Lot. Construction signs shall be removed within thirty (30) days of substantial completion of the shell of the subject Building.

(c) The provisions of this Section shall apply not only to all initial signage within the Property, but also in connection with any alteration, addition, restoration or replacements of signage which is now or may hereafter be constructed, installed or maintained within the Property.

XVI. CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS

16.1 Construction Standards. Each Owner shall perform its construction (which term shall include any and all alteration or reconstruction work) of any and all Buildings upon its Lot in accordance with the following requirements and standards:

(a) All Buildings (and all restorations thereof and additions, alteration and changes thereto) shall be constructed or made strictly in accordance with and in the locations shown on the plans and specifications approved by the Association as provided above,

(b) Upon commencement of any construction, such construction shall be diligently and expeditiously prosecuted to completion, subject only to delays caused by fire, strike, or other catastrophe or contingency beyond such Owner's control;

(c) All construction shall be performed in a good and workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations of all governmental and quasi-governmental agencies and authorities having jurisdiction over such construction;

(d) Each Owner shall use its best efforts to cause its architects, engineers, contractors and subcontractors to cooperate and coordinate its construction with the architects, engineers, contractors, and subcontractors of all other Owners performing construction work on other Lots in the vicinity of its Lot, to the extent necessary to achieve the purposes of this Declaration; and

(e) Each Owner shall perform its construction so as not to impair, disrupt or interfere unreasonably with the construction, use, occupancy or enjoyment of the other Owners.

16.2 Building Schedule. Prior to the commencement of any construction, each Owner shall prepare and submit to the Association a building schedule showing the date upon which such Owner anticipates (i) commencement of construction of its work, (ii) having its Building enclosed, (iii) having its Building substantially completed and (iv) having its Building ready to open to the public. Periodically during the course of construction, at the request of the Association, each Owner shall prepare and submit to the Association updated building schedules showing the status of its construction and, if there shall be any changes in said dates, the revised date or dates for each phase of construction.

16.3 Safety Measures. Each Owner shall at all times take any and all safety measures required under good construction practices to protect the other Occupants and Owners of the Lots, and any and all persons performing work on or visiting the Property, from injury or damage caused by or resulting from the performance of its construction.

16.4 Construction Easement. Each Owner shall have a non-exclusive easement to use the Common Areas in a reasonable manner as a staging area for the construction on its Lot, subject to the other provisions of this Declaration, and provided it uses all reasonable efforts to minimize inconvenience to the other Owners. The specific portions of the Common Areas to be so used, and the hours and time periods during which they may be so used, shall be subject to the prior written approval of the Association. The approvals required pursuant to the preceding sentence shall not be unreasonably withheld or delayed, but shall be conditioned upon: (i) review and approval of sufficiently detailed plans and specifications for the use of such Common Areas, (ii) the constructing Owner's agreement to reimburse the Association and other Owners for any damages suffered as a result of its construction and related activities, (iii) an agreement from the constructing Owner to defend, indemnify and hold harmless the Association and the other Owners from and against any loss, costs, damages, liens, casualties, liabilities and expenses incurred by or asserted against them in connection with or arising out of such activities, (iv) evidence that the constructing Owner has obtained and will maintain adequate insurance concerning all construction activities, as reasonably required by the Association, and (v) evidence that the constructing Owner has obtained all applicable governmental permits for the construction of the subject Building. Approval of such easement shall constitute: (a) designation of the portions of the Common Areas to be used for such easements, and (b) agreement by the constructing Owner to use only those portions of the Common Areas so designated. The cost of repairing and reconstructing any Common Areas, Common Area Facilities or other Lots damaged in connection with the construction activities of an Owner shall be borne by such Owner. In the event that any loose dirt, trash or debris resulting from or attributable to any Owner's construction work accumulates on any Common Areas or other Lots, then the Constructing Owner shall immediately remove the same.

16.5 Indemnity; Insurance.

(a) Each Owner (the "Indemnifying Party") with respect to the work to be performed from time to time in connection with its Lot, shall indemnify, defend and hold harmless each other Owner and Occupant and the Association, and each of their respective agents, representatives, shareholders, officers, directors, members, partners and employees and mortgagees (the "Indemnified Parties") from and against any and all loss, damages, liability, costs or expenses, including but not limited to reasonable attorneys' fees, which each such Indemnified Party may pay or become obligated to pay or which may be incurred by or asserted against such Indemnified Party, on account of any demand, suit or claim, or assertion of liability, or any claim or action founded thereon arising or alleged to have arisen out of or in connection with any act or omission of the Indemnifying Party, its agents, employees, representatives, licensees, invitees, contractors or subcontractors, whether such demand suit or claim is for damages, injury to person or property (including the property of the Indemnified Party), or death of any person, except claims solely resulting from the negligence or willful act or omission of the Indemnified Party.

(b) With respect to the work to be performed by each Owner, at all times until such work is complete (as evidenced by the insurance of a final certificate of occupancy from the appropriate governmental body), and at all times during periods of reconstruction, each such Owner shall, at its own expense, maintain or cause to be maintained in full force and effect, a policy or policies of public liability insurance, fire and extended coverage insurance, replacement cost insurance, business interruption/rental loss insurance and so-called builders' risk insurance, each in form, substance and amount, and issued by insurance companies, subject to the prior written approval of the Association. The public liability insurance to be maintained hereunder shall have a limit of not less than \$3,000,000 per occurrence and shall be in a comprehensive general form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including the Association, all other Owners and all mortgagees of any portion of the Property (provided that such Owner shall have been notified of such mortgagees) as additional insureds; (iii) providing for blanket contractual liability coverage (including, without limitation, the indemnity obligations contained in this Declaration; (iv) broad form property damage coverage; (v) deleting any liquor liability exclusion; (vi) providing for employer's automobile non-ownership liability; and (viii) providing that the policies cannot be canceled, terminated or go un-renewed without at least thirty (30) days' prior written notice to the Association. All such insurance shall be primary and noncontributory; shall provide that an act or omission of one of the insureds or named insureds which would void or otherwise reduce coverage shall not void or reduce coverages to the insured or other additional named insured, as the case may be; and shall afford coverage for all claims based on acts, omissions, injury and damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(c) Prior to the commencement of any construction related to its Lot, each Owner shall furnish to the Association paid certificates of the insurance required to be maintained pursuant to this Declaration. Thereafter, a certificate evidencing the above shall be furnished from time to time as requested by the Association. In the event that the Association is notified of the termination or pending expiration of any insurance policy required to be maintained hereunder, and/or any Owner fails to furnish adequate evidence of the maintenance of insurance

required hereunder, then, in any such event, the Association may (but shall not be obligated to) obtain and pay for, on behalf of the subject Owner, the policies of insurance required hereunder; and all costs and expenses incurred by the Association in connection therewith shall be paid by the such Owner to the Association upon demand and, if not so paid, shall constitute a lien against the Lot of such Owner, which may be foreclosed in the same manner, and which shall have the same priority, as the lien of the Maintenance Assessments, as specified in this Declaration.

XVII. USE OF PROPERTY

17.1 General Restrictions. No Owner or Occupant shall use or permit the use of its Lot for any use or operation which is, in the reasonable opinion of the Association, substantially inconsistent with and/or materially detrimental to the operation of the Project. The following uses and operations shall not be allowed without the prior written consent of the Association:

- (a) Any use which emits or results in an obnoxious odor, noise or sound which may constitute a public or private nuisance;
- (b) Any use which is physically damaging to other portions of the Project or which creates dangerous hazards;
- (c) Any assembly or manufacturing operation which would be permitted only in a heavy manufacturing or heavy industrial zone; or any distillation, refining, smelting, industrial, agricultural, drilling or mining operation;
- (d) Any residential use or use involving animals;
- (e) Any incineration of garbage or refuse;
- (f) Any outdoor storage, except that outdoor storage shall be allowed against the rear of each Building within a fenced area no larger than ten (10) feet in depth and twenty (20) feet in width;
- (g) Any dry cleaning or laundry operation;
- (h) Any activity which unreasonably physically interferes with the business of any other Owner or Occupant;
- (i) Any storage or use of any hazardous materials or substances as defined by any applicable law, except for the use of customary cleaning materials, etc. in reasonable amounts and in accordance with all applicable laws; or
- (j) Any activity or use which conflicts with or violates any applicable zoning or other governmental law, statute, rule, regulation or order.

The Association reserves the right to modify, amend, delete from or add to any of the foregoing list of restricted or prohibited uses and operations from time to time, and such modification, amendment, deletion or addition shall be effective as if set forth above. The Association further reserves the right to grant exclusive or restricted uses of the Property or any portions thereof from time to time for the benefit of any one or more Owner or Occupant, and each Owner and Occupant of an affected portion of the Property shall thereafter hold and occupy its Property subject to such exclusive or restrictive use. The foregoing restrictions shall be enforceable only by the Association, in its discretion.

17.2 Use of Common Areas. No Owner or Occupant shall construct anything of any nature in the Common Areas, use the same for any construction purposes except as specifically provided herein, nor use or permit the use of any portion of the Common Areas for any purposes other than pedestrian movement and the parking, circulation and passage of motor vehicles, and as otherwise specifically provided herein. No Owner or Occupant shall install, place, keep, permit or maintain any fence, barricade or any other obstruction in, on, across or upon any portion of the Common Areas, except, as determined by the Association (i) barricades and obstructions that are necessary or desirable for the orderly control of traffic flow, (ii) minor comfort or convenience facilities (e.g., mailboxes, benches, and public telephones), (iii) light poles and other items pertaining to the lighting system, (iv) approved signs, and (v) such other items that the Association may approve, provided that the same do not unreasonably interfere with the use of the Common Areas for their intended purposes.

17.3 Rules and Regulations. The Association may, from time to time, adopt and enforce reasonable rules and regulations pertaining to the use of all or any portion(s) of the Common Areas by Owners, Occupants and others. All such rules and regulations and other matters affecting Occupants shall apply equitably and without discrimination. Notwithstanding anything to the contrary, non-enforcement of any rules and regulations established hereunder at any time(s) or against any particular Owner(s) or Occupant(s), shall not excuse or permit the non-compliance with such rules and regulations at any other time(s) or by any other Owners or Occupants, or constitute a waiver of the Association's right to enforce same.

17.4 Use of Common Utility Facilities. Each Owner and Occupant shall use the Common Utility Facilities and any Shared Utility Lines only for the purposes for which they were constructed and shall not overload or use the same to excess. No Owner or Occupant shall dispose of any pollutants, contaminants, toxic waste, hazardous substances or any other similar substances or material in the Common Utility Facilities or Shared Utility Lines, or elsewhere in or about the Property.

XVIII. GENERAL PROVISIONS

18.1 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

18.2 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. By acquiring any interest in a Lot or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

18.3 Limitation on Association's and Declarant's Liability. The Association and Declarant shall not be liable for any failure of water service or other utility services to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or Person in or upon the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any part of the Buildings or its drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any Assessment under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or orders of any governmental authority. The Project, including common areas, was initially designed and constructed to satisfy the requirements of the Americans with Disabilities Act. As of the date of this Declaration, the Declarant was not required to make every Lot readily accessible and usable by individuals with disabilities, although a certain number of Lots and all common areas located in the Project were designed accordingly. Consequently each Owner, by his purchase of a Lot, acknowledges that his Lot may not be readily accessible and usable by individuals with disabilities, that claims to the contrary are disclaimed, and that the Association and Declarant shall not be liable for any claimed deficiencies in such regard.

18.4 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented a Lot, but the Owner of a Lot shall have no obligation for expenses or other obligations accruing after the date of conveyance of such Lot. In the event of the rental or lease of a Lot, an Owner shall be deemed to have granted a license to his tenants of his right to use the Common Areas for the term of the lease or the period of rental and such Owner shall have no right to use the Common Areas during the term or period of such lease or rental.

18.5 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both

other genders and the neuter. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof or the validity or enforceability of such portion under different circumstances.

18.6 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being recorded in the Official Records.

18.7 Request for Notice. The Association hereby requests that a copy of any notice of default and a copy of notice of sale under any Mortgage filed for record against any Lot be mailed to the Association at 3084 American Saddler, Park City, UT 84060, pursuant to U.C.A. Section 57-1-26 (1953), as amended.

XIX. ENFORCEMENT AND REMEDIES

If any Owner or occupant fails to comply with any provision hereof, including any of the rules and regulations promulgated hereunder by the Association, within ten days after written notice of violation thereof (except that, where such violation cannot reasonably be cured within ten days, the ten day period will be extended to that reasonably required, as long as the Owner/Occupant commences the cure within such 10 day period and diligently pursues the same to completion) (the "Cure Period"), the Association may:

- a. suspend such Owner's voting rights in the Association during any period or periods during which such Owner or the occupants of its Lot fail to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration; and Owners shall be responsible for any non-compliance hereunder of all occupants of their respective Lots;
- b. take judicial action against the Owner and/or occupant to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law; and/or (at the Association's election); and/or

- c. impose the following fines in connection therewith:

Original Violation:	\$50.00
First Recurrence of same violation:	\$100.00
Second Recurrence of same violation:	\$250.00
Third Recurrence of same violation:	\$500.00
Subsequent Recurrences of same violation:	\$1,000.00

The foregoing amounts may be adjusted by the Association for inflation. The failure to cure a violation within a period equal to the Cure Period after receipt of notice of the imposition of a fine shall constitute a recurrence of such violation. Any fine which is not paid within 15 days after notice thereof is issued shall bear interest from such date at the Default Interest Rate, and there shall be added thereto reasonable attorneys' fees (whether or not legal action is commenced) and, if legal action is commenced, the costs of such action. All fines and charges

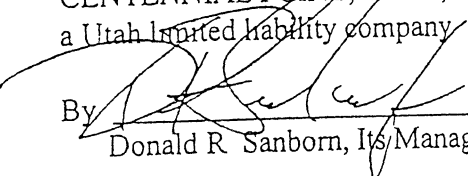
(collectively, "Charges") related to a Lot, the occupants thereof or a particular Owner shall be the personal obligation of such Owner, and shall constitute Assessments under Article VIII, and shall be

secured by lien as described therein

EXECUTED BY DECLARANT on the date of notarization appearing below

DECLARANT

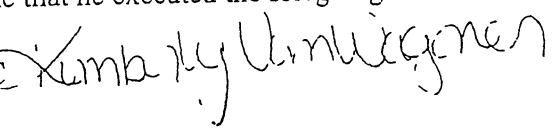
CENTENNIAL POINT, L.L.C.,
a Utah limited liability company

By 
Donald R. Sanborn, Its Manager

Dated April 18, 2000

STATE OF UTAH,
COUNTY OF SALT LAKE

On April 18, 2000 personally appeared before me Donald R. Sanborn, who duly
acknowledged to me that he executed the foregoing instrument in the capacity indicated

NOTARY PUBLIC 

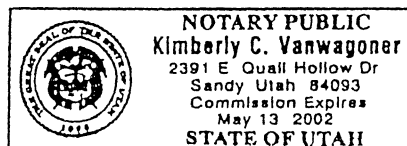


EXHIBIT A
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK
A PLANNED DEVELOPMENT SUBDIVISION

LOT NUMBERS, SIZES, BUILDING SIZES AND PERCENTAGE INTERESTS

Lot Number	Lot Size (sq. ft.)	Building Size (sq. ft.)	Percentage Interest
1	23,384	6,050	15%
2	15,554	6,100	10%
3	38,761	End Unit: 6,050 Adjacent Unit: 6,100	25%
4	22,958	6,050	15%
5	15,132	6,100	10%
6	15,147	6,100	10%
7	22,615	6,050	15%
Totals:	153,551	48,600	100%

EXHIBIT B
TO
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK
A PLANNED DEVELOPMENT SUBDIVISION

SIXTY (60) YEAR PROJECTION OF INFRASTRUCTURE MAINTENANCE
COSTS FOR CENTENNIAL POINTE

Declarant estimates that the cost, per ten year period, for repairs and maintenance of Project infrastructure over the next sixty (60) years is as follows:

Period	1 - 10	11 - 20	21 - 30	31 - 40	41 - 50	51 - 60
Paved Common Area	\$6,240	\$27,300	\$6,240	\$27,300	\$6,240	\$27,300
Curbs and sidewalks	\$0	\$0	\$2,000	\$2,000	\$3,000	\$4,000
Water lines	\$0	\$0	\$1,000	\$2,000	\$3,000	\$3,000
Sewer lines	\$0	\$0	\$1,000	\$2,000	\$3,000	\$3,000
Total	\$6,240	\$27,300	\$10,240	\$33,300	\$15,240	\$37,300

ONYEABOR, EXAM BY SILVESTRINI

1 Q All right. And as far as you understood,
2 Mr. Raile wasn't happy about that, correct?

3 A Well, he -- two of us were happy, but he
4 wasn't happy.

5 Q He wasn't happy. Did he ever come to you
6 and indicate that he wasn't satisfied with the way
7 that your yard was being taken care of?

8 A Mr. Raile and I had an ongoing dispute, and
9 Mr. Raile was constantly complaining about everything
10 about me, so it didn't -- there's nothing that struck
11 me. He was either physically on my property, telling
12 his workers that my property was common area, that
13 they could stay anywhere they wanted, when they
14 wanted, how they wanted, not to listen to me.

15 So at this point in time, that dispute was
16 now -- it got to the point where everything that I
17 did was wrong.

18 Q All right. But Mr. Raile told you that how
19 you were taking care of the landscaping on your --
20 the common area in your lots was wrong, correct?

21 A That's not -- after the fact, they -- the
22 property -- excuse me. The landscaping issues, I
23 think, was in 2004, that he started making
24 landscaping issues. The argument we have had for
25 years was them occupying my property.

ONYEABOR, EXAM BY SILVESTRINI

1 Q But Mr. Raile told you, did he not, that he
2 was not satisfied with the way your landscaping was
3 being maintained?

4 A No, he did not tell me that, anyway. I
5 came out one day, after he and I started the dispute
6 as to the common areas, and I said, "My property is
7 not common areas. I don't want you maintaining any
8 part of my property," and because the people were
9 parking there, Mr. Raile seemed to want to establish
10 that he was, in fact, in charge of my property. So
11 he started coming there physically and bringing
12 people in, and then after a while he said he wanted
13 to maintain it. So I said, you know, "If you
14 maintain it, you will have to pay." That was in my
15 letter.

16 Q Did you ever hear Mr. Raile tell his
17 employees to park in front of your building?

18 A I don't work for him. I'm not in his
19 building.

20 Q So you didn't hear him say that?

21 A He has said that to me.

22 Q Well, have you ever heard him tell his
23 employees that they could park in front of your
24 building? Not what he said to you, but what he --
25 have you ever heard him tell his employees --

ONYEABOR, EXAM BY SILVESTRINI

1 A He told me that he told them.

2 Q He told you that he told them?

3 A Definitely.

4 Q When did that happen?

5 A Oh, he -- Mr. Raile has confronted me
6 physically on my property to establish that he has a
7 right there.

8 Q My question is, when did Mr. Raile tell you
9 that he had told his employees they could park in the
10 parking lot in front of your building?

11 A I would say that we must have had a
12 confrontation mid -- physically, him coming onto my
13 property, mid 2001.

14 Q When you say coming onto your property, you
15 mean onto the common area parts of your property?

16 MR. RICHARDS: Calls for a legal
17 conclusion.

18 THE WITNESS: What you call common areas of
19 my property is my property.

20 Q (BY MR. SILVESTRINI) All right. But we
21 understand that what we're talking about there is the
22 parking lots and the landscaped area of your
23 property?

24 A Exactly. He comes on there and told me --
25 and I said, "You need to" -- "Your workers need to

ONYEABOR, EXAM BY SILVESTRINI

1 stay out of my property." And he told me that they
2 have the right to be anywhere they wanted. He came
3 there --

4 Q Anywhere they wanted in the parking lot?

5 A Anywhere they wanted in the parking lot,
6 even if it was in front of my door. He said it to
7 me. And my workers kept going there, and he kept
8 sending -- his workers would say, "Ms. -- what's her
9 name? -- "Jennifer Clark specifically told me that
10 Mr. Raile said they don't have to do any" -- that
11 this is common areas.

12 Q Okay. Now, did Mr. Raile tell you these
13 things that you say he told you while you were
14 standing in the parking lot or outside of your
15 building?

16 A Outside of my building. Outside, in front
17 of my building, yes.

18 Q And Mr. Raile -- has Mr. Raile ever come
19 inside your building, that you're aware of?

20 A No. Not Mr. Raile, no.

21 Q So all the conversations you had with
22 Mr. Raile have either been at his -- on his business
23 premises or on the parking lot, parking area or
24 sidewalk area outside of your building?

25 A Never on his premises. It's always on

ONYEABOR, EXAM BY SILVESTRINI

1 mine. He's always on mine.

2 Q Did you ever go to any Association meetings
3 in Mr. Raile's building?

4 A Yes.

5 Q So you have been in his building?

6 A Yes.

7 Q Has Mr. Raile done anything else that
8 you're complaining about in this case, other than
9 tell his employees that they can park in the parking
10 lot in front of your building?

11 A Well, Mr. Raile has come on physically and
12 confronted me physically twice.

13 Q What do you mean by confronted you
14 physically?

15 A I mean insulting me, talking -- you know,
16 when people talk down to people, when they talk to
17 you like you are nothing. He comes and he yells. He
18 comes and he yells. I wanted to install a camera. I
19 just didn't get the opportunity. So that people can
20 see how this man talks to me. He comes on my
21 property and screams at me.

22 Q Has he called you names?

23 A Not the kind of Jennifer Clark.

24 Q Okay. So he didn't call you names?

25 A No, but he has -- he has spoken to me in a

ONYEABOR, EXAM BY SILVESTRINI

1 manner that is not very -- it's not -- it's horrific.
2 It's degrading.

3 Q He's condescending? Is that what you said?

4 A He's worse than condescending. He simply
5 talks down to me.

6 Q Without using -- without calling you names?

7 A No, he has not -- he has not called me a
8 name.

9 Q And he hasn't touched you?

10 A No, he has not touched me.

11 Q He hasn't made any threats against you?

12 A Well, he has -- when a man that weighs,
13 what, 200 pounds or so is right on top -- coming at
14 you, it's not -- you know, and they're to the point
15 where you have to leave, that's a threat. And he has
16 come at me screaming, to the point where I had to
17 move, so I don't know --

18 Q He's yelled at you?

19 A Yeah.

20 Q When these conversations or communications
21 you had with Mr. Raile occurred, can you tell me --
22 how do they occur? Were you just out walking outside
23 of your building? How did they start?

24 A Well, the very last one was labels that he
25 was putting on my buildings. I moved them. Somebody

ONYEABOR, EXAM BY SILVESTRINI

1 went and told him, and he came.

2 Q That was a sign --

3 A He was on his property.

4 Q He put a sign on the utility room door,
5 correct?

6 A Yeah. Not one sign. Several signs, yes.

7 Q And that's what you're talking about?

8 A The utility room door is my building.

9 Q What did the signs that Mr. Raile put on
10 the utility room door say?

11 A One sign said "Centennial Pointe
12 Association." The other sign said "Property of Qwest
13 Communications."

14 Q And there's telephone equipment inside that
15 room, correct?

16 A Yes.

17 Q And do you know whether that -- who that
18 telephone equipment belongs to?

19 A The telephone equipment belongs to Qwest
20 Communications, but the property is my property.

21 Q Any other signs that Mr. Raile put on that
22 door, other than the two you've described?

23 A No. Just those two. The one sign stayed
24 there for over a year despite repeated demands to
25 remove it. It was on my property for a year, almost

ONYEABOR, EXAM BY SILVESTRINI

1 a year.

2 Q It was on the door to the utility room
3 that's part of the common area?

4 A Yeah. On the door to the utility room on
5 my property.

6 (Whereupon Deposition Exhibit- No. 10 was
7 marked for identification.)

8 Q (BY MR. SILVESTRINI) Let me show you
9 Exhibit No. 10. These are three notes here. I'd
10 like to know if you can tell me if you recognize
11 these three notes.

12 A Yeah. What is this one here? Is this --

13 Q You're referring to the third page of this
14 exhibit?

15 A Yes.

16 Q Do you recognize this document?

17 A The third page?

18 Q Yes.

19 A It's just an address.

20 Q Is that your handwriting?

21 A Yes.

22 Q And there's a stamp on this document that
23 says -- and I'm not sure if it's a stamp or if this
24 is a copy of an envelope and that's a return address,
25 but there's a --

ONYEABOR, EXAM BY SILVESTRINI

1 A Computer & Equipment Warehouse?

2 Q Yeah. Do you recognize that part of this
3 document?

4 A Yeah. That would be my address. That's my
5 little tag from my office.

6 Q Do you know if this was an envelope that
7 you addressed to Mr. Raile?

8 A An envelope? I can't remember. What was
9 the envelope saying? I can't remember.

10 Q Do you know why you wrote the third page of
11 Exhibit No. 10?

12 A I don't remember, unless -- is this an
13 envelope? Then I need to know what was in it. I
14 don't know what it is.

15 Q Let's look at the first two pages of
16 Exhibit 10. Are these notes that you wrote and left
17 on cars in the parking lot at Centennial Pointe?

18 A Definitely. Yes, yes.

19 Q Do you know how many notes you've left on
20 cars in the parking lot at Centennial Pointe?

21 A I've left them on all the vehicles I've
22 seen in front of my door.

23 Q Yeah. How many?

24 A Oh, they line them up. I didn't count.

25 Q Have you written ten notes?

ONYEABOR, EXAM BY SILVESTRINI

1 A Yeah. Any car that's parked there that
2 refuses to stop parking there, I would leave a note.

3 Q In fairness to you, you don't remember how
4 many notes, but you wrote a lot --

5 A I don't remember.

6 Q You wrote a lot of notes?

7 A (Witness nods.)

8 Q Did you write notes -- let me ask you about
9 this -- the first page of this exhibit. Do you
10 remember when you wrote this note?

11 A Hmm. It must have been maybe 2004.

12 Q Was this note written at the time that the
13 police officer was called out to Centennial Pointe
14 parking lot by you?

15 A No, no. This is prior to that.

16 Q Okay. This note is prior to that?

17 A Yeah. This note was early -- maybe mid
18 2004.

19 Q Did you leave a note on a car when the
20 police were called the last time that they came out?

21 A No, I did not leave a note. I did not
22 leave a note. There was an order in place from Judge
23 Henriod that they should not park there.

24 Q And there was an order in place saying that
25 neither party was supposed to threaten the other with

ONYEABOR, EXAM BY SILVESTRINI

1 towing cars, too, correct?

2 A Say that again.

3 Q The court -- you understood the court order
4 that was in effect from Judge Henriod also instructed
5 both parties not to threaten to tow vehicles from the
6 parking lot?

7 A If we can't run a business, we need to move
8 the vehicles to go into the office.

9 Q But you understood the court order said
10 don't threaten to tow cars, correct?

11 A Somebody was not supposed to park there.

12 Q But you understood the court order said you
13 weren't supposed to threaten that, correct? It's a
14 "yes" or "no" question.

15 A Yes.

16 Q And, in fact, when the police officer came,
17 you did threaten to tow a car, did you not?

18 A Well, the police officer is an agent of the
19 law. The police officer came and said, "Obey the
20 order. Move the vehicle." And they refused. They
21 were screaming again. And that's when I said, "If it
22 doesn't work from me and doesn't work from the judge,
23 then we have no choice but to move the vehicle."

24 Q It's your testimony that the Sun Optics
25 employee whose car you were complaining about refused

ONYEABOR, EXAM BY SILVESTRINI

1 to move the vehicle when the police officer came?

2 A Well, the gentleman was nice. He's always
3 been nice. What's his name again? Blanchard. I
4 have told him several times to move his vehicle, and
5 I put this on his car. He moves. But Ms. Jennifer
6 Clark was the one screaming in front of the police
7 officers.

8 Q You say that this gentleman was nice. Did
9 he ever explain to you why he had parked where he had
10 parked?

11 A After one, two, three times, "Don't put
12 your vehicle there," I don't know what else he can
13 explain to me. I've spoken to him a few times, but
14 he would move it.

15 Q Do you know if, at the times that Sun
16 Optics people, especially this gentleman who you said
17 was nice, parked in front of your building, whether
18 there were other parking spots available in the
19 parking lot which he could have chosen to park in?

20 A We had -- it wasn't a question of choosing
21 to park. It was a question of we are running a
22 business before we come in that day to drop off
23 something off for me.

24 Q But sometimes the lot is full, correct?

25 A The what now?

ONYEABOR, EXAM BY SILVESTRINI

1 Q Sometimes the parking lot gets full,
2 correct?

3 A Yeah. Mostly they come there and they park
4 in front of our building, and then we have nowhere to
5 park.

6 Q Because the lot is full?

7 A I don't know what their lot -- what's going
8 on with their property. It's not my business.

9 Q But all I'm asking -- you've been there on
10 a daily basis. You've observed how full the parking
11 lot is. Occasionally the parking lot fills up, does
12 it not?

13 A That's their cup of tea over there. It's
14 not my -- it has nothing to do with them.

15 Q Well, have you observed the parking lot
16 being full from time to time when you've been there?

17 A I -- no.

18 Q "No" or "yes"?

19 A I don't think about it. I have no idea.

20 Q You don't remember? You never observed the
21 parking lot being full or empty or otherwise?

22 A I just don't bother with them. I'm
23 interested in my own business and my own property,
24 and that's what I was concerned about, is just my
25 business and my property.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Do you maintain, for Computer Warehouse --
2 Computer & Equipment Warehouse, do you maintain a
3 general ledger for that business?

4 A No. I --

5 Q How do you keep track of your income so
6 that you can tabulate it on your tax returns?

7 A I said have these forms that I -- this is
8 not -- this is not like this big corporation. This
9 is a company that's just run on a very -- five -- two
10 employees at one time. It's really small. And so
11 I -- we have forms. I fill these forms in as to what
12 comes and what doesn't come, so that's what we do.

13 MR. RICHARDS: I think a lot of that has
14 been asked and answered, and I'll object to all
15 financial questions regarding Computer Warehouse.

16 THE WITNESS: This is a very small company.

17 Q (BY MR. SILVESTRINI) What other kinds of
18 business records do you have from which we could
19 determine the income and expenses that your company
20 has incurred for the last five years?

21 MR. RICHARDS: Same objection.

22 MR. SILVESTRINI: Well, counsel, if you're
23 going to make -- if your client is going to make
24 claims that her business has been damaged as a result
25 of my client's conduct, we have to be able to

ONYEABOR, EXAM BY SILVESTRINI

1 *evaluate whether there's actually been damage and the*
2 *magnitude of that damage.*

3 THE WITNESS: I will supply you those forms
4 that I fill out. I fill them out.

5 Q (BY MR. SILVESTRINI) Other than these
6 handwritten forms that you have, what other business
7 records do you have that would show your income or
8 expenses?

9 A I don't know that I need anything else.
10 It's a small company. That's what works for me, and
11 that's just the way it works for me.

12 Q Do you -- do you deposit the payments that
13 your company receives into a bank account?

14 A Uh-huh.

15 Q What bank account do you deposit those
16 into?

17 A I have personal bank accounts.

18 Q Do you have a bank account for Computer &
19 Equipment Warehouse?

20 A You mean today or then?

21 Q In the last five years.

22 A Yes.

23 Q Where is that -- has there been more than
24 one account?

25 A Just one.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Where is that account?

2 A It's at the U.S. Bank.

3 Q Do you maintain any accounts for Computer &
4 Equipment Warehouse at America First Credit Union?

5 A Just my personal account.

6 Q Do you have statements from U.S. Bank for
7 the Computer & Equipment Warehouse account?

8 A That account is in limbo right now because
9 of the problem the company is in.

10 Q How long has it been in limbo?

11 A About a year and something.

12 Q How long have you maintained that account
13 for Computer & Equipment Warehouse?

14 A I've maintained it for quite a while.
15 Since 2000.

16 Q Since 2000?

17 A Yes.

18 Q And do you have statements going back to
19 2000 for that account?

20 A I will check and see.

21 Q You don't know?

22 A I don't know.

23 Q Other than bank statements, do you have any
24 other records that would show the income that you've
25 received for this business?

ONYEABOR, EXAM BY SILVESTRINI

1 A I don't have any. It's a small dba.

2 Q Are you making any claims for damages in
3 this case on behalf of Thunder Graphics?

4 A Huh-uh.

5 Q No?

6 A No.

7 Q So I don't need to make any inquiry into
8 the financial information about Thunder Graphics,
9 because you're not making any claims against any of
10 my clients, Bruce Raile, Jennifer Clark, LEBR, or
11 Centennial Pointe Owners Association --

12 A No. Because mostly Computer & Equipment
13 Warehouse was in the two buildings at that time.

14 Q So all your damage claims relate to either
15 yourself personally or Computer & Equipment
16 Warehouse?

17 A Uh-huh.

18 Q Do you have any income -- let me ask this.
19 Let me rephrase it. From the period from 2000 until
20 the present, do you have any income outside of
21 Computer & Equipment Warehouse?

22 A Huh-uh.

23 Q That's a "no"?

24 A Yeah, that's a "no."

25 Q So all of your -- all of your income from

ONYEABOR, EXAM BY SILVESTRINI

1 any source comes from Computer & Equipment Warehouse
2 for the last five plus years?

3 A Uh-huh.

4 Q Did you pay the employees that worked for
5 you on the checking account of Computer & Equipment
6 Warehouse?

7 A Uh-huh.

8 Q Did you do your own payroll?

9 A Yes.

10 Q Did you make withholdings from their wages
11 for taxes?

12 A No.

13 Q Did you pay unemployment insurance for
14 them?

15 A No.

16 Q Did you pay workers' compensation insurance
17 for them?

18 A Well, we -- yes. We have something -- a
19 form we need to fill out with the Department of
20 Commerce, I think.

21 Q Did you withhold Social Security tax or
22 FICA tax for your employees?

23 A No.

24 Q What about yourself? Did you obtain a
25 paycheck from Computer & Equipment Warehouse?

ONYEABOR, EXAM BY SILVESTRINI

1 A Yes.

2 Q And how much did you make from Computer &
3 Equipment Warehouse from 2000 to the present? I
4 think you can answer that by -- did you pay yourself
5 a monthly salary?

6 A Yes. It depends -- it's literally on
7 commission. Some months -- it varies some months.
8 It depends on what percentage -- what they make and
9 how much percentage I can withdraw for that month.

10 Q So you paid yourself on a cash-available
11 basis?

12 A On commission, yes.

13 Q On commission?

14 A Uh-huh.

15 Q And the commission was based upon the
16 volume of sales?

17 A Yes.

18 Q Did you pay your other employees on
19 commission basis, too?

20 A No, no.

21 Q How were they paid?

22 A Hourly.

23 Q And can you tell me their range of hourly
24 wages you paid?

25 A I had from \$10 an hour to \$15 an hour.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Do you know roughly what the profit of --
2 do you understand what I mean by profit? How much
3 the company made over its expenses, how much revenue
4 it earned, less of all its bills -- for the year
5 2000?

6 A The year 2000 was a wonderful year. I
7 think we had sales of about 400,000, and expenses was
8 about half of that.

9 Q Okay. And what about for 2001?

10 A About the same.

11 Q So you had a profit of about 200,000?

12 A Yes.

13 Q What about for 2002?

14 A About the same.

15 Q What about 2003?

16 A Off the top of my head, I cannot remember
17 exactly, but I think it was probably about the same.

18 Q And what about 2004?

19 A 2004 it was closed.

20 Q About the same as 2003? --

21 A I say it was closed.

22 Q Okay. "Close" means about the same?

23 MR. RICHARDS: The business was closed.

24 Q (BY MR. SILVESTRINI) Oh. When was the
25 business closed in 2004?

ONYEABOR, EXAM BY SILVESTRINI

1 A Before the lawsuits, when I heard there was
2 another CC&R.

3 Q And the business has remained closed
4 throughout all of 2005?

5 A Yes.

6 Q And so far, all of 2006?

7 A Yes.

8 Q Do you have any plans to reopen the
9 business?

10 A As soon as this lawsuit is over.

11 Q Okay. Is there any reason that you haven't
12 relocated the business to another location, rather
13 than closing it?

14 A I was psychologically drained. That was a
15 precaution of my family, too, just so I don't lose
16 it. I was losing it.

17 Q Have you ever tried to rent the building
18 that Computer & Equipment Warehouse occupies, or
19 occupied?

20 A I'm hoping to open. I'm hoping that this
21 ends and I can reopen, because that company makes me
22 money.

23 Q Have you ever considered renting that
24 building and trying to rent another building in which
25 to operate Computer & Equipment Warehouse?

ONYEABOR, EXAM BY SILVESTRINI

1 A Well, I rented that -- the first one -- the
2 second one -- excuse me -- the Building Lot Number 2,
3 and I'm hoping that I can reopen in Building Number 1
4 and run a warehouse, and if I run a warehouse -- I've
5 got to have a warehouse, because if I go somewhere
6 else, I'm going to rent, anyway, you know, so -- the
7 case is taking longer than I estimated, but I'm
8 hoping to reopen in Building Number 1.

9 Q Did you have -- I take it your business
10 operates -- that you have contracts with the military
11 to provide the parts that you provide.

12 A Some of them. Not really -- not really
13 contracts as such. We supplied the military machines
14 you can't find anymore. We call them "hard to find."
15 "Hard to find machines." So we provide them services
16 on a demand basis.

17 Q Do you have contracts with anyone else,
18 standing contracts to provide services?

19 A We had a contract -- a standing contract
20 with Fisher-Rosemount, which ended after the business
21 closed in 2004.

22 Q Did that end because it expired?

23 A No, no, no, no. This whole thing fell
24 apart. I was psychologically drained. I was ill.

25 Q Do you have a copy of that contract with

ONYEABOR, EXAM BY SILVESTRINI

1 Rosemount?

2 A I don't know where it would be. I'll see
3 if I can find it.

4 Q Are there any other contracts that you had,
5 other than that contract?

6 A Honeywell. We supplied to Honeywell.

7 Q Do you have a copy of that contract?

8 A Well, it's not really a contract. It's
9 demand -- you send the equipment when they need to
10 have it, you know, done.

11 Q When's the last time they sent you a demand
12 for equipment?

13 A We have not done any business with them for
14 about a year.

15 Q They haven't made any requests from you
16 within a year?

17 A No. They made a request -- the guy who
18 fixes those machines, I can't pay him, so he's not
19 there.

20 Q When's the last time that you had a demand
21 for any service under the Rosemount contract?

22 A Oh, it's been -- it's been over a year.
23 Just about the time this thing closed.

24 Q When you say "a demand," what I understand
25 you to mean is they make a request for --

ONYEABOR, EXAM BY SILVESTRINI

1 A They make a request. They're very
2 specialized machines that only an engineer can fix,
3 and that engineer -- I couldn't pay him.

4 Q But you haven't had a request from them,
5 anyway, for more than a year?

6 A No, because I told them the engineer is
7 gone.

8 Q Do you have any correspondence with them,
9 with Rosemount or with Honeywell, relating to these
10 contracts?

11 A No, not right now.

12 Q Who is your contact with Rosemount?

13 A Rosemount is now merged with -- actually,
14 Rosemount is now bought over by a company in -- I've
15 forgotten the name -- a company now in -- I think in
16 PA -- which I understand was bought by a company from
17 Dubai. So it's going to be hard to find. Rosemount
18 is now merged with -- gosh, Solution Products, or
19 something like that, in PA.

20 Q "PA" meaning Pennsylvania?

21 A Pennsylvania. And my understanding now is
22 that that company has been bought over by another
23 company in Dubai, so...

24 Q So you may not have a relationship with
25 them, anyway, because they've been bought out?

ONYEABOR, EXAM BY SILVESTRINI

1 A Well, it doesn't matter. Those are
2 machines that only us can fix, if I had that one
3 engineer. He's the only one. He worked for -- he
4 worked for Evans & Sutherland and understands these
5 strange machines, and if you can't pay him, he can't
6 work for you.

7 Q How did you pay him? Hourly?

8 A Yes, I paid him hourly. I paid him \$15 an
9 hour.

10 Q And did he work for you full time?

11 A Quite a while he did, yes.

12 Q What period of time did he work for you
13 full time?

14 A He worked -- he was -- he worked before
15 2000. He was in the old place where we were. So
16 1996, '7, there, and then we moved to the new
17 warehouse, and he was there, too. And then I
18 couldn't pay him anymore.

19 Q What's his name?

20 A His name is -- gosh, my brain is clouded
21 now. Hold on. I'll remember. It's been a while.
22 Bowring, B-O-W-R-I-N-G.

23 Q Bowring. That's the last name, is it?

24 A Yeah.

25 Q What's his first name?

ONYEABOR, EXAM BY SILVESTRINI

1 A First name is Charles.

2 Q Does he still live in the area? Do you
3 know?

4 A I don't know. I've been looking for him.

5 Q You have been looking for him?

6 A I've been looking for all of them, yes.

7 Q Do you have any payroll records or anything
8 that contain his address?

9 A Oh, when he was here, he was married, and I
10 know his wife is in Alaska now, and I spoke to
11 somebody who spoke to the wife who said she's
12 remarried, because I've been looking for him.

13 Q What's his wife's -- his ex-wife's name?

14 A Heidi, or something like that, but I don't
15 remember. She's moved over to Alaska now.

16 Q When's the last time you talked to her?

17 A I didn't talk to her. I talked to somebody
18 who said they saw her and she was now remarried.
19 Now, Chuck -- at this time, Chuck was ill, the last I
20 heard from him. At this time, Chuck will be 70 years
21 old. He was retired from Evans & Sutherland when he
22 started working for me, so he's not young. I just
23 want you to know that.

24 Q Did you file a W-2 for him?

25 A No, no. Those -- no. We had -- most of

ONYEABOR, EXAM BY SILVESTRINI

1 those workers, were part time. Part time, like --
2 Chuck, he was not young anymore. He made his hours.
3 Like he had a few hours here and a few hours there,
4 and he'd come in sometimes on Saturday to work on
5 those machines, because he had to schedule his own
6 time. He wasn't young anymore.

7 Q So you paid him, but you didn't withhold
8 taxes for him?

9 A No, no.

10 Q And you didn't give him a W-2?

11 A No, no.

12 Q Did you give him a 1099?

13 A No. We just reported in our own form that
14 we paid this person, Social Security number, so much
15 money.

16 Q Did you provide him with a Form 1099 for
17 the income that you paid to him?

18 A Yes.

19 Q Do you have copies of that?

20 A No.

21 Q Do you have copies of any of the records
22 relating to the employees that you paid?

23 A Yeah. I can look. I think I've still got
24 Chuck's information. I'll look and see what I have
25 on him.

ONYEABOR, EXAM BY SILVESTRINI

1 MR. RICHARDS: If we could just go off the
2 record for a minute.

3 (Discussion off the record.)

4 Q (BY MR. SILVESTRINI) So if I understand
5 what you're testifying, Chuck is the only one who did
6 this specific type of work for you?

7 A Uh-huh. Actually, most of those that are
8 hard-to-find machines -- what we call "hard to find"
9 in the market, he did them, because only he can
10 understand those.

11 Q What did he do? Do you know?

12 A He's an engineer, so he -- those are very,
13 very hard-to-fix machines, and he -- they're very
14 old.

15 Q What types of machines are they?

16 A They're Tektronix, they are NCDs, they're
17 machines -- some of the machines are the machines
18 that you have in aircraft, and they are -- they're
19 machines that only he could deal with.

20 Q But he only ever worked for you part time?

21 A Yeah. He worked -- well, the way -- he
22 worked his schedule, his time, because I gave him
23 that leeway. That's the only way I could keep him.
24 I gave him that freedom in exchange for not paying
25 him full, because the guy was worth a lot more,

ONYEABOR, EXAM BY SILVESTRINI

1 so --

2 Q How many hours did he work? How many hours
3 a week did he work when he was working?

4 A He worked -- it varied. Some weeks, 25;
5 some weeks, 30. It just varied.

6 Q Twenty-five hours or 30 hours a week?

7 A Yes, depending on what he had to do.

8 Q Did you have any other employees who worked
9 for you full time?

10 A Yeah. Most of them were warehouse guys.
11 Now, the difference between Chuck and the warehouse
12 guys is the warehouse guys just refurbished
13 equipment, put them together, unloaded stuff, loaded
14 stuff, and that's the difference between him and
15 them.

16 Q Did you prepare 1099s or W-2s for those
17 other warehouse guys?

18 A No. They didn't work full time. All of
19 them were part-time workers.

20 Q So you didn't prepare 1099s for them at
21 all?

22 A Huh-uh.

23 Q You didn't make --

24 A I just wrote the Social Security numbers in
25 our tax form, like I was advised to do, and say, "We

ONYEABOR, EXAM BY SILVESTRINI

1 paid them this amount," for that year.

2 Q When you say you put their Social Security
3 numbers in their tax form, what tax form --

4 A My tax form. The Computer & Equipment
5 Warehouse. Gosh, I don't know the number, but
6 there's a tax form that's filled that states who you
7 paid out to. You were asked, who did you -- you
8 know, your employees, paid so much amount, Social
9 Security number, and that's the kind of form. It was
10 a very simplified form.

11 Q Do you have copies of those?

12 A I think I could find them.

13 Q You don't remember the number on that form?

14 A No, I don't remember the number now. I
15 wasn't prepared for that type of questioning, so I
16 didn't get the information.

17 Q Have you ever sought treatment from a
18 psychologist or a psychiatrist?

19 A No.

20 Q You're not currently under the care of a
21 psychologist or psychiatrist?

22 A No.

23 Q You never sought medical attention for
24 anything that happened to you in connection with this
25 case?

ONYEABOR, EXAM BY SILVESTRINI

1 A Well, I didn't specialize in clinical
2 psychology, but all the diagnostic courses that need
3 to be taking for clinical psychology, I took them
4 all, so I know what's wrong with me. I can tell
5 what's wrong with me.

6 Q What's your educational background?

7 A I've got a doctoral.

8 Q Doctoral degree?

9 A Yes.

10 Q In what?

11 A I studied social psychology. I took
12 courses in clinical psychology. I am not a
13 clinician, but I took courses. I took all the
14 diagnostic courses, so I can tell what's wrong with
15 me.

16 Q Where was your -- which institution --

17 A I studied at the University of Utah. I got
18 a doctorate here. I started at the University of
19 Nice on the coast of France, and then I did a
20 doctorate here at the University of Utah.

21 Q What's your doctoral degree in from the
22 University of Utah?

23 A Social psychology and medical sociology.

24 Q When did you obtain that degree?

25 A 19- -- I finished my dissertation in -- I

ONYEABOR, EXAM BY SILVESTRINI

1 defended my dissertation in 1991. I became a
2 candidate in 1987.

3 Q And do you have a degree from the
4 institution you attended in Nice, France?

5 A Yes. I got a master's there.

6 Q And what's that master's in?

7 A The same thing. The same thing.

8 Q And did you go to undergraduate school
9 someplace?

10 A I did my undergraduate at the University of
11 Nice, France.

12 Q University of what?

13 A University of Nice. I got a bachelor's and
14 a master's.

15 Q Where were you born?

16 A Where was I born? On the coast of France.
17 I don't want to call it self-medication, but most of
18 the time when I know what's wrong with me -- I have
19 young children at home, so I don't take pills. I
20 just fix it myself.

21 Q By fixing it yourself, you mean you deal
22 with it yourself?

23 A I deal with it. I know what I need to do
24 so that I can wake up and my kids don't go crazy, you
25 know. But did it hit me? Yes. It hit me hard.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Did you ever discuss the amended
2 declarations for Centennial Pointe with Mr. Sanborn?

3 A No.

4 Q Mr. Sanborn never gave you a copy of those
5 declarations and asked you to review them or sign
6 them?

7 A No. I don't remember ever talking about
8 that -- the second declaration. After they showed me
9 the first one and the second signing, I didn't even
10 know that anything had changed.

11 Q You've made some --

12 A So I didn't ask any questions.

13 Q You've made some claims in your
14 counterclaim that you were defrauded or deceived. I
15 want to know how Mr. Sanborn defrauded or deceived
16 you, in your view.

17 A Well, Mr. Sanborn sold me a piece of
18 property, and by virtue of turning around and
19 claiming part of the property belongs to Centennial
20 Pointe, was under the control of Centennial Pointe,
21 he defrauded me. That's fraud.

22 Q You're claiming that Mr. Sanborn never
23 discussed the amended declarations with you?

24 A He and I never talked about it.

25 Q And he never gave you a copy of them?

ONYEABOR, EXAM BY SILVESTRINI

1 A I wasn't aware of it at all.

2 Q And you never had any discussions with him
3 about the reason that the declarations were required,
4 the amended declarations were required?

5 A No.

6 Q Did you ever have any discussions about the
7 declarations with Bryan Todd?

8 A Who is that?

9 Q He's a lawyer at Parsons Behle & Latimer,
10 which is a law firm here in Salt Lake City. Or at
11 least he was with that firm.

12 A Bryan Todd?

13 Q His name is on the original declaration,
14 which is Exhibit 8, and it's also on the amended or
15 restated --

16 A And he says he knows me?

17 Q I haven't said that. I just want to
18 know if you ever discussed --

19 A No, absolutely not.

20 Q It says when recorded.

21 A Oh, okay.

22 Q This is the restated one. That's Exhibit
23 3. His name is also on the original declarations,
24 which is Exhibit 8. Do you see that?

25 A Yes.

ONYEABOR, EXAM BY SILVESTRINI

1 Q My question is: Have you ever had any
2 discussions with Mr. Todd about these declarations?

3 A No. I don't know who Mr. Todd is at all.

4 Q Now, you had a realtor who represented you
5 in connection with your purchase of the Centennial
6 Pointe lots, correct?

7 A Yes, yes.

8 Q And that is who?

9 A The realtor directly working with me was
10 Mr. Travis Healy.

11 Q I can call his Travis?

12 A Travis, yes.

13 Q Did Travis ever discuss the amended
14 declarations, Exhibit 3, with you?

15 A Not the amended one. He and I read the
16 original one.

17 Q So he never gave you the amended one, the
18 restated declaration, Exhibit 3?

19 A No.

20 Q He never gave that to you so that you could
21 sign it?

22 A He never indicated to me at all that there
23 was any changed document.

24 Q So when you say that Mr. Sanborn defrauded
25 you, it's not based upon anything he actually told

ONYEABOR, EXAM BY SILVESTRINI

1 you about the amended declarations, correct?

2 A Anything he told me?

3 Q He never -- you said you never discussed
4 them with him, so the fraud claim can't be based on
5 anything he told you about the amended declarations.

6 A He and I never talked about an amended
7 declaration.

8 Q You understood that at the time you bought
9 your property, Mr. Sanborn was principal of
10 Centennial Pointe, LLC?

11 A Uh-huh.

12 Q And that's the seller that sold the
13 properties to you, correct?

14 A Yes.

15 Q Both Lot 1 and Lot 2?

16 A Uh-huh.

17 Q When did you first meet Bruce Raile?

18 A I met Bruce Raile -- it must have been
19 after the meeting, after the -- after the property
20 was done being sold or something. I think I remember
21 meeting him at maybe a meeting where they said,
22 "These are the new owners." You know, these things
23 are very vague. It's 2000. But I think that I must
24 have met him -- I must have walked into a room and
25 they said, "These are the new owners of Centennial

ONYEABOR, EXAM BY SILVESTRINI

1 Pointe." That's what I vaguely remember happening.

2 Q So you met Mr. Raile after he or his --

3 Let me rephrase it, and let me finish,
4 please. It's hard, I know. I do it too, so, no
5 problem, but --

6 A Sorry.

7 Q You met Mr. Raile for the first time after
8 Mr. Raile or the company that he owns that bought the
9 property in Centennial Pointe had actually purchased
10 that property?

11 A Yes.

12 Q You never talked with Mr. Raile before he
13 bought the property in Centennial Pointe?

14 A I didn't know Mr. Raile.

15 Q And do you know that Mr. Raile bought his
16 property in Centennial Pointe after you bought Lot 2?

17 A That's right, yes.

18 Q So you never spoke to Mr. Raile or any
19 company that he was involved in before you bought Lot
20 2?

21 A Absolutely not. I remember walking into a
22 room, vaguely somebody saying, "These are the new
23 owners," or, "the new owner," something to that
24 effect. And that's just -- this is 2000. It's been,
25 like, forever. But I remember walking into a room --

ONYEABOR, EXAM BY SILVESTRINI

1 I don't know where that room was -- and somebody
2 said, "This is the new owner," and that's when I met
3 him.

4 Q Okay. And so you didn't make any -- no
5 part of your decision to buy your property was in any
6 respect based upon anything that Mr. Raile said or
7 did, that you're aware of?

8 A No.

9 Q Do you know the last time that you paid any
10 common area expenses to Centennial Pointe Owners
11 Association? We talked about some documents that
12 were showing payments being made in 2002.

13 A Uh-huh. I think it was maybe 2003. I
14 don't remember.

15 Q We can find the records for that, but you
16 have not been paying your payments lately, correct?

17 A And I explained why.

18 Q But you have not been paying them, correct?
19 You have to answer my question out loud.

20 A Paying what?

21 Q I said, you have not been paying your
22 common area assessments to the Centennial Owners
23 Association recently, correct?

24 A Let me talk to him for a minute.

25 Q Sure.

ONYEABOR, EXAM BY HUNT

1 (Discussion between the witness and
2 Mr. Bell.)

3 THE WITNESS: No.

4 MR. SILVESTRINI: That's all I have.

5 EXAMINATION

6 - BY MR. HUNT:

7 Q Ms. Onyeabor, my name is George Hunt. I
8 represent Don Sanborn. I have just a couple of
9 questions for you, if I might.

10 A All right.

11 Q You've testified that you were represented
12 by Mr. Travis Healy, a real estate agent, in both the
13 purchase of Lot 1 and Lot 2; is that correct?

14 A Uh-huh.

15 Q Did Mr. Healy handle the negotiations for
16 the purchase of Lot 1 and Lot 2 on your behalf?

17 A Uh-huh.

18 THE REPORTER: Yes?

19 THE WITNESS: Yes, please. Sorry.

20 Q (BY MR. HUNT) And do you know whether
21 Mr. Healy worked directly with Mr. Sanborn, or did he
22 work with a real estate agent on behalf of
23 Mr. Sanborn?

24 A He worked -- Mr. -- this is what they did,
25 so that you know how much I understood, is I dealt

ONYEABOR, EXAM BY HUNT

1 with Mr. Healy, and I had no idea what they did over
2 there.

3 Q Okay.

4 A Okay? If there was any further
5 information, they needed to come to me. They took it
6 to Mr. Healy, so I have no clue what went on over
7 there.

8 Q Very good. So if -- so I understand you
9 correctly, you didn't have direct contact with
10 Mr. Sanborn's realtor or Mr. Sanborn, but, rather,
11 you worked through Mr. Healy, and he made the
12 contacts and the discussions; is that fair?

13 A Let me look at the circumstances, how many
14 times we ever met and what happened. Give me a
15 minute. Let me see if I can recall the way they did
16 it, because I remember Mr. Bob Mills -- I remember
17 Mr. Bob Mills was involved on the part of Commerce
18 CRG, and Mr. -- for the most part, yes. I was here
19 for the most part.

20 Q As you sit here today, can you recall any
21 specific discussions with either Mr. Sanborn or
22 Mr. Mills that took place directly between you and
23 them?

24 A Yes. We had a few meetings in which
25 Mr. Sanborn was there.

ONYEABOR, EXAM BY BELL

1 Q Was this before the purchase or after?

2 A I think it was before the purchase. There
3 was one meeting before the purchase, and then there
4 was maybe one or two other meetings in which
5 Mr. Sanborn was there.

6 Q Do you remember any specific statement made
7 by Mr. Sanborn during those meetings, as you sit here
8 today?

9 A No. It was 2000. I can't remember.

10 MR. HUNT: That's all I have. Thank you.

11 EXAMINATION

12 BY MR. BELL:

13 Q I just have a few questions to clarify a
14 few of your points. The first one -- we were talking
15 back about Exhibit 9 and a memo that you wrote.
16 There we go. The fax track on the top is "Page 9 of
17 30," and this is a memo that you wrote, addressed to
18 Bruce and Laura Raile.

19 A Uh-huh.

20 Q In this memo, in the second paragraph, it
21 states, "This memorandum is merely a formal request
22 that, starting June 1st, all maintenance done on my
23 premises will be henceforth handled by me." I'd like
24 to give you an opportunity to explain what you meant
25 when you said that.

ONYEABOR, EXAM BY BELL

1 A Oh, okay. The -- now, you can see -- as
2 you see, the memorandum -- or the memoranda, excuse
3 me, that existed prior to this date, there was -- it
4 was always with someone bringing a bid about
5 landscape. So nothing was really sure. It was all,
6 "What should we do?" or, "What should we not do?"
7 And at this point in time, we had already agreed that
8 the answer to it all is everybody get their own
9 solutions. And I needed to write a formal request to
10 tell Mr. -- now, at this point in time, actually what
11 had happened, I remember specifically that my workers
12 did my lawn. And then they said that Mr. Raile sent
13 somebody else to do the lawn, so I said, "You can't
14 do the lawn twice," because my workers were doing the
15 lawn.

16 So now I found the need to send a formal --
17 this thing, so he understood very clearly. We have
18 already agreed. Mr. Bezdjian is doing his own
19 property, I'm doing my own, you stay on yours, is
20 basically what it was. And that was a formal written
21 letter to tell him that.

22 Q When did Mr. Raile try to start performing
23 maintenance?

24 A Mr. Raile -- after Mr. Sanborn -- remember,
25 Mr. Sanborn was doing all this while he was trying to

ONYEABOR, EXAM BY BELL

1 sell, right?. And he sold -- I think the last sale
2 was in 2000, maybe two thousand -- maybe the
3 beginning of January of 2001. I think there's
4 another lot he sold in the back or something. I
5 think that -- up to that point, Mr. Sanborn was doing
6 all this. Mr. Sanborn was doing landscape and
7 everything else in between.

8 Now, when we started the Association, it
9 was touch and go. What should we do? Now these two
10 men are fighting. What should we do? Should we do
11 this? Should we do that? Then Mr. Raile decided he
12 wants -- Mr. Bezdjian said, "No, you can't."
13 Mr. Raile said, "I want to do it myself. The
14 Association ought to do it." Mr. Raile said --
15 Mr. Bezdjian said, "No. Let us all do it."

16 So now I had to write a formal letter to
17 make sure that they understood what my position is,
18 that I'm going with Mr. Bezdjian. You do yours, like
19 we all agreed, and I do mine. And that's why I wrote
20 this letter.

21 Q So after this date, did Mr. Bezdjian
22 perform his own maintenance?

23 A He was performing his own maintenance. I
24 was also performing mine. But Mr. Raile once in a
25 while would bring his men in, and it was confusing,

ONYEABOR, EXAM BY BELL

1 so, you know, I spoke to a few people who know law,
2 and they said, "Write him a formal letter."

3 "I wish to thank you all for the effort you
4 have made" is formal. Just being nice. Nobody made
5 any extra effort. I was just being nice to
6 everybody, which is what you should do. Be polite
7 and nice. I like everybody to be -- you know, for
8 the effort you have made. There is no effort being
9 made here. We are all working hard to find an answer
10 to a common problem that we had at that point in
11 time.

12 Q Okay. And earlier, you -- when we were
13 discussing this, you were talking about a new
14 Association, when the new Association started. What
15 do you mean by "the new Association"?

16 A Well, the new Association is the new
17 Association with the members, what we actually
18 consider to be the Association. That is, the
19 Association that now didn't have Mr. Sanborn, because
20 Mr. Sanborn was coming out of the other meetings.
21 Now, this was now a new member Association, which was
22 Mr. Raile, Mr. Paul Bezdjian, and myself. That's
23 what I meant by "the new Association."

24 Now, the new Association that we form
25 now -- I don't know the exact date. Maybe somewhere

ONYEABOR, EXAM BY BELL

1 on this document it will say the exact date that they
2 started, but we were beginning to form it. What
3 shall we do or what shall we not do, and it was a
4 debate that was going on.

5 Q So when you say there was a debate, are you
6 talking about who was to pay for what maintenance?

7 A That's right. Who should do what, and we
8 had agreed -- and Mr. Paul Bezdjian is still here.
9 He's still in Salt Lake -- that, in fact, everybody
10 should pay for their own stuff. And I cited
11 Mr. Bezdjian.

12 At the same time, I -- I was on his side.
13 I said, "Everybody do their own property." So I
14 wrote him a formal letter, because they said that my
15 workers were beginning to say that they did the job,
16 and he will come -- another guy would show up. So I
17 said, "We need to write him a formal letter." So
18 that's what that is.

19 Q Okay. Now, there were some questions asked
20 about your business records, your financial records,
21 and your profits between the years 2000 and 2003. If
22 I remember correctly, you said that between 2000 and
23 2003, you made a profit of about 200,000 a year?

24 A Uh-huh.

25 Q In 2004 you went out of business. What is

ONYEABOR, EXAM BY BELL

1 that 2000 year based on? Is that based on any
2 records you brought today, or just your memory?

3 A Oh, I know -- I know what my taxes say. I
4 don't have the paperwork here, but I know that I
5 definitely made that kind of money.

6 Q So you do have forms --

7 A Nobody told me to bring those documents,
8 but, in fact, I remember, because I write most of
9 them down.

10 Q Okay. Then the last question I have is --
11 you were asked if you'd paid your assessments
12 recently. You said no. Why haven't you paid?

13 A Okay. The reason that I have not paid my
14 assessments is, first of all, as soon as the
15 Association went beyond its duties and started
16 claiming my property, I felt that they had violated
17 the contract we signed and I was no longer obligated
18 by that contract.

19 I felt that if they were showing up on my
20 property and blocking my way -- I tell them at the
21 same time to pay them for something, especially the
22 part of the property that's my own property that I
23 had already told them, "Do not take care of it for
24 me. I will take care of it myself," that I have been
25 taking care of until he insisted -- I mean, literally

ONYEABOR, EXAM BY SILVESTRINI

1 A Exactly.

2 Q So Jennifer Clark came across your desk
3 from you?

4 A Right in my face.

5 Q And she asked you if you had left a note on
6 her car, correct?

7 A Yes.

8 Q And you had left a note --

9 A I definitely left a note.

10 Q The note that she had in her hand that she
11 was showing to you, or waving around, or whatever,
12 was, in fact, a note that you had left on a car in
13 the parking lot?

14 A That's right.

15 MR. RICHARDS: Speculation. You wouldn't
16 have known -- did you know for sure that was the
17 note, or was it just a piece of paper?

18 THE WITNESS: What, now?

19 MR. RICHARDS: My objection is she may not
20 have known that it was the exact note --

21 MR. SILVESTRINI:, I think that's not a --

22 THE WITNESS: The piece of paper -- the
23 paper that she brought in, it was -- the paper that
24 they had been -- you know, I think it was the same
25 thing.

ONYEABOR, EXAM BY SILVESTRINI

1 Q (BY MR. SILVESTRINI) Was it one of the
2 notes that you'd left on one of the cars?

3 A Yes, I think --

4 Q You saw it and you recognized it as that?

5 A Yes.

6 Q What did your note say?

7 A My note said, "Do not" -- "We have" -- I
8 don't remember the exact words. I think it was in
9 the tone of, "We have asked you guys not to block our
10 way. If you do it again, we will take it off. We
11 will get rid of it."

12 Q And did the note threaten to tow the car?

13 A Oh, definitely. The cars are blocking my
14 door. I can't get in.

15 Q Was anyone else in your office with you
16 when Jennifer came in?

17 A I think the last guy just went out the back
18 door. It was the end of the day. I was just going
19 through the paperwork.

20 Q No one else was there but you?

21 A Yeah, nobody else was there but me.

22 Q How many employees did you have in August
23 of -- or in 2004 when this happened?

24 A Around that time, I probably had four or
25 five.

ONYEABOR, EXAM BY SILVESTRINI

1 Q And so none of those employees were able to
2 see what happened?

3 A No, no. It was at the end of the day. I
4 was just closing down. I was going through the
5 paperwork.

6 Q All right. So you testified that Jennifer
7 asked you whether you had left this note on her car,
8 correct?

9 A That was the initial thing and then -- that
10 was the initial question, and then --

11 Q What else did she say after that?

12 A Then she started spewing garbage. I can't
13 repeat some of them here.

14 Q I don't want you to tell me what you
15 think -- how you interpret what she said. I want you
16 to tell me exactly what Jennifer said to you.

17 A Oh. Well, I remember Jennifer calling me
18 names.

19 Q What names? You have to be specific here.
20 Do you remember the names that she called you?

21 A I remember her saying, "You crazy lady."

22 Q Okay. Anything else?

23 A Oh. Do I have to say some of these things?

24 MR. RICHARDS: Yes. You don't need to be
25 embarrassed, either.

ONYEABOR, EXAM BY SILVESTRINI

1 Q (BY MR. SILVESTRINI) I want you to tell me
2 what you remember her telling you. Word for word, if
3 you can. In fact, I want you to tell me word for
4 word. I don't want you to embellish it or I don't
5 want you to paraphrase it. I want you to tell me
6 exactly what she told you.

7 A She called me "This crazy lady." She used
8 the "N" word, too. She stood in my office for a very
9 long time.

10 Q How long?

11 A I wish I had --

12 Q How long?

13 A I wish I had --

14 Q How long was Jennifer Clark in your office?

15 A Wait a minute. She was there quite a
16 while. I would say -- it was hard -- I threatened to
17 call the police before she left.

18 Q Well, how long is "quite a while"?

19 A I would say at least four minutes, five.
20 It's a long time for somebody -- I never seen this
21 lady before.

22 Q What else did she say to you besides what
23 you've told me?

24 A She was also referring to the things that
25 happened that -- she was literally quoting -- I

ONYEABOR, EXAM BY SILVESTRINI

1 didn't -- at that point in time -- now I know that
2 she's part of Centennial Pointe Association board, or
3 she was the secretary at that time. She was saying
4 things that were very private that I didn't even
5 think -- I thought only myself, Mr. Raile, the owners
6 of the property knew.

7 Q I don't want you to tell me what you
8 thought. What did she tell you?

9 A She referred to -- she talked about my
10 vehicle being parked out there.

11 Q What did she tell you about the
12 Association?

13 A She mentioned things about the
14 Association -- well, first of all, she started
15 literally -- she started to recite the CC&R the wrong
16 way. She was literally reciting her own version of
17 the CC&R.

18 Q What did she say?

19 A Okay. Which is that the property is
20 community property, is what she called it, and that I
21 had no rights. And I'm like, "That's my front door."
22 But then I have a person that wasn't even a member of
23 the Association, so I didn't know what to do with
24 her, but she knew the details. She was reciting the
25 CC&R.

ONYEABOR, EXAM BY SILVESTRINI

1 Q I want you to tell me what she said.

2 A She said it was not my property.

3 Q The common elements were not --

4 A And in between that were curse words and
5 all the other names.

6 MR. RICHARDS: And he wants to hear exactly
7 what was said, so, to the best of your recollection,
8 please tell us exactly what she said, whether it be
9 common property, not your property, curse words.
10 It's very important that that come out.

11 THE WITNESS: Well, I've already said what
12 the curse words were, so -- in between all of that.
13 And then, "It's not your property. You don't have
14 any right over here. You" -- it was -- you know, at
15 that point in time, I said, "Okay. Now you're going
16 to have to leave."

17 Q (BY MR. SILVESTRINI) We're sticking to
18 what she told you now, okay?

19 A Uh-huh.

20 Q What else did she tell you?

21 A She said that I left an abandoned -- my
22 van -- she said that I left my van -- it was an
23 abandoned property. I said, "My van is in front of
24 my building." And then she said it's -- what else?
25 She said, "They're telling me the" -- what the CC&R

ONYEABOR, EXAM BY SILVESTRINI

1 said.

2 Q Did she have the copy of the CC&Rs with
3 her?

4 A She was saying things that I thought only
5 us who owned the property knew, so I was shocked by
6 this lady coming in here. I never seen this lady
7 before.

8 Q My question is, did she have a copy of the
9 CC&R with her?

10 A No, she did not have it, but she knew a
11 lot. And she was saying things that -- to the effect
12 that none of it was my property, and she was emphatic
13 about it, that, "This is not your property. You
14 don't own any of this. This is all community
15 property." And I'm like, you know, "This is my
16 property, and I have the right to leave a note on
17 your door. You're blocking my way and" -- you know,
18 just trying to explain to her. It was when she
19 literally walked like that over to the table and come
20 across to me and I said --

21 Q I'm trying to find out when -- what else
22 she said to you.

23 A Gosh. I wish -- you know, I can't remember
24 all the curse -- abuse. She was just simply verbally
25 abusing me, is what it was.

ONYEABOR, EXAM BY SILVESTRINI

1 Q What did you say to her?

2 A I remember telling her, "It's time to
3 leave."

4 Q Did you argue with her about what the CC&Rs
5 meant?

6 A Well, we -- when she started saying, "It is
7 not your property," I said, "No. It is my property."
8 And then I said, you know, "It's time for you to
9 leave."

10 Q So you engaged her in a discussion, at
11 least, about --

12 A It wasn't a discussion. This lady was
13 screaming at the top of her voice.

14 Q Did you scream back at her?

15 A No, no.

16 Q Are you sure of that?

17 A Absolutely not. Absolutely not. I was
18 just sitting at my desk. It was when she -- like
19 spitting right in my face. And then I said, "I'm
20 going to call the police. I'm going to call the
21 police to come and get you out." It was like she
22 would never leave.

23 Q Did you call the police?

24 A I was just about to. I was just about
25 ready to call the police when she left. I went and

ONYEABOR, EXAM BY SILVESTRINI

1 got the phone.

2 Q And you said that you mentioned that she
3 came -- did she do anything -- you said she was
4 across the desk from you?

5 A Uh-huh. Oh, she was spitting right in my
6 face. I mean, screaming at me, spitting right in my
7 face.

8 Q Did she move from that position --

9 A Oh, the paper -- that paper -- remember,
10 she had a paper in her hand that was all over my
11 face, too.

12 Q She was waving that around?

13 A Yes, right. That's right.

14 Q She didn't touch you, did she?

15 A No.

16 Q Now, as a result of that incident, have you
17 sought any medical attention?

18 A I have not sought any medical attention,
19 but my business is closed.

20 Q You haven't seen a doctor with respect to
21 this episode?

22 A No.

23 Q You haven't been placed on any medication
24 as a result of this episode?

25 A I didn't need to -- I didn't see a doctor.

ONYEABOR, EXAM BY SILVESTRINI

1 I got medicated myself.

2 Q How did you medicate yourself?

3 A It was distressing to me. I had to take
4 sleeping pills to sleep for several nights. This is
5 like getting up and losing your property. So I had
6 to go and buy the medication.

7 Q What sleeping pills did you buy?

8 A Just over the counter.

9 Q Do you take those all the time?

10 MR. RICHARDS: Relevancy.

11 THE WITNESS: No.

12 Q (BY MR. SILVESTRINI) Have you ever taken
13 them since this episode?

14 A No.

15 Q Do you remember what kind of sleeping pills
16 they were?

17 A Just over-the-counter sleeping pills.

18 Q Do you remember the brand of them?

19 MR. RICHARDS: Again, relevancy.

20 THE WITNESS: I don't know. I don't
21 remember.

22 Q (BY MR. SILVESTRINI) Do you have the
23 receipt for them? Do you know how much you spent on
24 that?

25 A I did not -- it's not the receipt. It's

ONYEABOR, EXAM BY SILVESTRINI

1 getting my body to sleep.

2 Q Do you have any -- have you had to pay any
3 specific damages, any specific amount of money that
4 you had to pay out of your pocket as a result of that
5 episode with Jennifer Clark?

6 A The business is closed.

7 Q Apart from that. The business is closed.
8 You decided to close your business.

9 A That's my life. That's my children's life.

10 Q You decided to close your business, right?

11 A That's my children's life. That's all we
12 had. I literally had to run away.

13 Q Ms. Onyeabor, you have to answer my
14 questions, okay?

15 A Uh-huh.

16 Q When did you close your business?

17 A A year and a half -- just about -- after
18 the lawsuit. After the -- before -- just before the
19 lawsuit. After the Jennifer Clark incident. What
20 was the other incident? Mr. Raile. Actually,
21 Mr. Raile leaving labels on my building.

22 Q My question is, when did you close your
23 business?

24 A This is 2006, right?

25 Q And I think you said it was after the

ONYEABOR, EXAM BY SILVESTRINI

1 lawsuit.

2 A Yeah. 2005. About a year and a half ago.

3 Q And it was after the lawsuit was filed?

4 A Before the lawsuit was filed.

5 Q Do you have any documents that would
6 show --

7 A I wrote a letter to you guys just before
8 closing that document, and I don't have it here --
9 before closing the business.

10 Q You wrote a letter to us guys?

11 A To them. I was angry in that letter. I
12 told them what they were doing to me. That's the
13 letter that I wrote, and then that time I was real
14 unhappy.

15 Q Do you have a copy of that letter?

16 A I think I -- they have it. That letter is
17 with Mr. Raile.

18 Q Do you have a copy of it?

19 A Yes, I do, but I don't have it here.

20 Q Did Jennifer Clark ever come back to your
21 business on another occasion after that?

22 A You know, I do not know whose cars -- who
23 owns which car, but there were a few of them that
24 lingered after her that kept coming back.

25 Q Kept parking in the parking lot?

ONYEABOR, EXAM BY SILVESTRINI

1 A Kept blocking my way, yes. They didn't all
2 go at once. These are all workers.

3 Q What I'm trying to find out is, was there
4 another episode with Jennifer Clark?

5 A After that, there was no other episode with
6 Jennifer Clark.

7 Q So that one episode is the only episode --

8 A Oh, yeah. The last one here was the --
9 that was the day that the police officer came to get
10 them off the parking lot again, and that was 2004,
11 and I don't remember the date. A police officer came
12 to get them to not block my door, because Judge
13 Henriod had ordered them not to.

14 So I showed it to the police and the police
15 told them to go and move those cars. And she came
16 out there and she went at it again. She started
17 calling me -- this time it was "This woman."

18 Q That was in the presence of the police
19 officers, right?

20 A That's right. "This woman."

21 Q And you had called the police officers
22 because there was a truck parked in front of your
23 business?

24 A Exactly.

25 Q And in that instance -- that was after

ONYEABOR, EXAM BY SILVESTRINI

1 Judge Henriod had issued his injunction?

2 A Exactly. Exactly.

3 Q Now, let me ask you this: Before you
4 closed your business, about how many -- I understand
5 that your business has deliveries and you have
6 shipments that come to your business.

7 A Uh-huh.

8 Q And you also have shipments that you make
9 from your business?

10 A Uh-huh.

11 Q And this is the Computer Warehouse
12 business, correct?

13 A Yes, that's right.

14 Q Tell me, while you were operating your
15 business there, what was the business of Computer
16 Warehouse? What did it do?

17 A What we do is we supply printer parts and
18 terminals, what they call service, terminal service,
19 and we take the printers apart, plotters, big
20 machines, take them apart.

21 Q You take them apart and do what with them?

22 A We sell them whole, we sell them in parts.
23 Sometimes we repair them. So we do every kind of
24 thing with those Xerox machines.

25 Q So are you buying used --

ONYEABOR, EXAM BY SILVESTRINI

1 A We'll buy them. They come in in truckloads
2 sometimes, and sometimes we sell them in truckloads,
3 too.

4 Q So you buy Xerox plotters and other
5 computer equipment?

6 A Yes.

7 Q You break it down and sell it for parts?

8 A Yes. Some of them we sell for parts. Some
9 of them we sell them as whole machines. Some of them
10 we sell in truckloads. Some of them we sell as
11 single machines.

12 Q So you have deliveries coming to your
13 business where this computer equipment and these
14 plotters, or whatever, are being delivered to you,
15 correct?

16 A That's right.

17 Q And then your employees help take the
18 equipment apart in cases where you take it apart?

19 A Yes.

20 Q And otherwise they -- when you receive an
21 order, you prepare the parts for shipment and send
22 them out?

23 A Uh-huh.

24 Q So then you have other trucks coming to
25 pick up parts and equipment?

ONYEABOR, EXAM BY SILVESTRINI

1 A Exactly.

2 Q And you ship this equipment in boxes? Is
3 that how it's done?

4 A Some of them -- the smaller items -- the
5 way that we set up the warehouse is the smaller items
6 go up front. We have shelving in the manner to where
7 the small items go up front. The bigger palletized
8 equipment, the huge plotters -- some of them go to
9 the back. But then when we talk about small
10 equipment in our warehouse, we supply some equipment
11 to the military, and when you hear "small," you think
12 it's small. Small is about 60 pounds. The small
13 ones are about 60 pounds. So some of the things we
14 sell to the military are big bulky machines.

15 Q Okay. And you have -- the layout of your
16 buildings -- you have a loading dock in the rear of
17 the building, correct?

18 A Yes, we have a loading dock.

19 Q And there's essentially a space between the
20 two rows of buildings in Centennial Park where the
21 loading docks are for all of those buildings,
22 correct?

23 A Yeah.

24 Q And then on the other side of the building
25 is your front door, correct?

ONYEABOR, EXAM BY SILVESTRINI

1 A Yes.

2 Q And all the front doors of all the
3 buildings are on that side of the building, correct?

4 A Yes. All the other front doors, yes.

5 Q You receive deliveries and make shipments
6 both from the front --

7 A And the back.

8 Q -- and the back?

9 A Yes.

10 Q When it's a big item, you have them come to
11 the back to the loading dock, right?

12 A Yes. The big palletized -- the things
13 going on pallets, they go to the dock. The ones in
14 front -- like I say, when you hear "small," they're
15 not small. They're like 40-pound, 50-pound monitors.
16 A monitor that weighs heavy, 80-pound monitors,
17 because some of the military equipments are heavy.
18 Those ones are picked up by FedEx, DHL. Those guys
19 come through the front. Then the pallets, the big
20 trucks, go through the back.

21 Q The front of your building has a storefront
22 door that's just a normal door width, correct?

23 A Yes.

24 Q It's maybe three feet wide? Two and a
25 half, three feet wide?

ONYEABOR, EXAM BY SILVESTRINI

1 A Yes.

2 Q And it's a single door, correct?

3 A Yes, it's a single door.

4 Q So that small items that you ship have to
5 be able to fit --

6 A Yeah.

7 Q -- through that single door?

8 A Twenty-four, 24, 24. Thirty-two, 24, 28.

9 Q All right.

10 A Those go through the front door, too.

11 Q That's the size of boxes in inches?

12 A That's right. Those -- because I know the
13 equipment that go in these boxes, and even though
14 they're big, DHL can pick those up through the front.

15 Q Okay. And then if things are larger than
16 that, they won't fit through that front door?

17 A That's right. They go on a pallet through
18 the back.

19 Q All right. And you use DHL, Federal
20 Express. Do you use United Parcel Service?

21 A Yeah. We use -- yes, we use United -- all
22 those come through the front. The trucking
23 companies, which is United, Global Transportation,
24 the other big trucking companies. Those are the ones
25 that do the pallets in the back.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Do you have records with respect to the
2 deliveries that you've received in your business? Do
3 you have bills of lading or any documents that show
4 when deliveries were made to your business?

5 A Oh, yeah. Well, I can certainly find
6 those. I mean -- what are you saying? Are we --
7 yeah. If -- I can find some of them, if that's what
8 you want.

9 Q What kind of records do you have that would
10 be able to show how many deliveries you received
11 during the course of a day?

12 A Well, let me tell you one thing. Like I
13 said, sometimes we sell things in truckloads. It's
14 not those kind of companies where things are
15 quantified like that. When you have a truckload, a
16 truckload is -- there's a pallet that came in that
17 has this -- so much equipment in it. We're going to
18 sell you the entire truckload, and you buy whatever
19 is on that truckload.

20 So it's not -- people don't understand the
21 kind of business that I was running. It's not those
22 kind of -- you know, where you have -- if there's a
23 truckload, there could be, what, 500 stuff on the
24 truckload, and then it all goes on the truckload.

25 Q But you'd have some kind of a paper record

ONYEABOR, EXAM BY SILVESTRINI

1 to show that you received the delivery of the
2 contents of a truckload?

3 A That's right, yes.

4 Q And you'd also have some kind of a record
5 that would show when you received a delivery from
6 Federal Express or UPS or DHL through the front door,
7 correct?

8 A Yeah. I don't know how far they go or if I
9 can find them.

10 Q Tell me what kind of records -- what would
11 you be looking for to prove that you received
12 deliveries --

13 A Usually what happens is, when they show up,
14 they have like four of these papers, okay? Then they
15 give us a copy. Then they keep the other copy. Then
16 the copy we have, we stack it.

17 Q It's like a bill of lading --

18 A That's right.

19 Q -- or invoice?

20 A Yeah. We stack it in -- it's like a bill
21 of lading that's signed by us that we received this.
22 But then this is the trick with those bill of
23 ladings. If a shipment is satisfied, okay, there's
24 no more questions about a shipment, no claims are
25 being made, more than likely we will destroy it.

ONYEABOR, EXAM BY SILVESTRINI

1 Q So you wouldn't retain those records?

2 A No. More than likely we'll destroy it, if
3 there is no reason to keep it, because that's too
4 much paperwork, because once they come in here -- you
5 sign this, okay? We wait a few months. No more
6 questions about the shipment. We're not going to
7 make any claims. We got what they ordered -- they
8 got what we ordered, stuff like that, then that
9 document, more than likely we'll destroy it.

10 Q Did you ever receive any complaints from
11 any of these delivery companies about their
12 difficulty in getting access to your business?

13 A Oh, definitely.

14 Q Which ones?

15 A The UPS guy complained so many times,
16 because the UPS guys, the DHL guys, they have always
17 had problems with when those guys would park in front
18 of our doors all the time.

19 Q Do you know the names of the drivers? Do
20 you have any records of that?

21 A I don't remember their names. They come
22 and go.

23 Q Did you ever receive anything in writing
24 from any of them about problems with making
25 deliveries?

ONYEABOR, EXAM BY SILVESTRINI

1 A No, we have not. We have not, no. We have
2 not sought to receive documents, but --

3 Q Who would you call as a witness to prove
4 the claim that you're making with respect to that?

5 A Well, there's a gentleman that I knew --
6 see, UPS -- all those guys, they trade their people
7 very quickly. They circulate them. They trade them.
8 It's not some guy that came for the past six months
9 that's going to come another six months. So you kind
10 of have to track them, keep track of them. There's a
11 particular guy that stayed longer than all of them
12 that I've been trying to find.

13 Q You don't know his name?

14 A I don't remember his name, no.

15 Q Do you have any records of deliveries by
16 UPS for the last three, four years?

17 A Like I said, if we're satisfied, we will
18 destroy it.

19 Q When did you destroy those records?

20 A Once the equipment is -- the delivery is
21 satisfied, we don't have any claims, we don't have
22 any arguments over what the shipment was, if it's as
23 described -- if the equipment is as described -- see
24 what I'm saying? If it's as described, then there's
25 no more dispute about it.

ONYEABOR, EXAM BY SILVESTRINI

1 Q So we're going to need to go to UPS and
2 subpoena the records about the deliveries that were
3 made to you? You don't have the records for that?

4 A If you -- if you want to do that, that's
5 fine. That's fine with me. You know, that's -- if
6 you want to do that.

7 Q I'm just trying to figure out a way to get
8 what we need to get. You're going to need to find
9 that stuff to prove your damages in this case, I
10 would think.

11 A Well, one thing I know for sure is your
12 guys know that we have been arguing with them, so I
13 expect them to tell the truth. What can I say? They
14 know that we would tell them to move. We've been
15 telling them to move. They've said, "This is common
16 area. We're not moving."

17 Q You've had a tenant in part of your
18 property for a period of time, correct?

19 A That's right, yes.

20 Q What's the name of your tenant?

21 A It's Walker Design.

22 Q And who is the principal of Walker Design?

23 A James Walker.

24 Q How long have they been your tenant?

25 A About -- almost a year.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Did you have another tenant before them?

2 A Huh-uh.

3 Q That's the only tenant you've ever had

4 at --

5 A That's the only tenant I've ever had.

6 Q How much rent do they pay you?

7 A How much rent do they pay me?

8 Do I have to say this?

9 MR. RICHARDS: Yes.

10 THE WITNESS: Okay. 2,600.

11 Q (BY MR. SILVESTRINI) And they're still
12 your tenant right now?

13 A Uh-huh.

14 Q They're current on their rent?

15 A Yes.

16 MR. RICHARDS: Is that per month?

17 THE WITNESS: Per month, yes.

18 Q (BY MR. SILVESTRINI) How much of the space
19 that you own do they occupy?

20 A They occupy 50 percent.

21 Q So is it -- which unit are they in?

22 A Unit 2.

23 Q They have all of Unit 2?

24 A Uh-huh.

25 Q When's the last time you were out at

ONYEABOR, EXAM BY SILVESTRINI

1 Centennial Park?

2 A I was over there -- I'd go almost every
3 day. Usually in the evenings. I go there when I
4 can, when I'm not -- when I'm well, I'm strong, or
5 when there's -- there isn't -- I just go there to
6 check things out, make sure everything is normal.

7 Q So you're there almost on a daily basis?

8 A Well, not really. I just go there when I
9 have -- I feel like I need to check the place, you
10 know, make sure -- like in winter, you've got to make
11 sure there's no water breakage or something, you
12 know. You can't just lock up the place and leave.
13 So mostly what I do is make sure that the water --
14 the taps -- nothing is breaking, there's no leakage.

15 And I do that when I have a home that
16 nobody is occupying. I do that to any home I have
17 that's not occupied. I have to go in there and check
18 and make sure there's no water -- there's no
19 breakage, there's no -- nothing going on.

20 Q Did you go to the property, the Centennial
21 Pointe property on a daily basis during the time that
22 you were operating your business there?

23 A Oh, yeah. I went every day and checked the
24 paperwork when they're done.

25 Q So I understand this, you're saying that

ONYEABOR, EXAM BY SILVESTRINI

1 you closed your business down about a year and a half
2 ago?

3 A Yes.

4 Q And since then, you haven't conducted any
5 business out of the Centennial Pointe property?

6 A Not really. Sometimes we have an old
7 thing, something -- an old deal that comes back out,
8 you know, like somebody ships something back. We
9 need to have it replaced. Like a new customer, I
10 have not done anything there.

11 Q Is Computer & Equipment Warehouse operating
12 from some other location?

13 A No, no.

14 Q So you just shut the business down
15 completely?

16 A I just shut it down. I need men to run it.

17 Q Except for loose ends with respect to the
18 wrapping up your business, returns or --

19 A Yes, yes.

20 Q Okay.

21 (Discussion off the record.)

22 Q (BY MR. SILVESTRINI) Are there any other
23 actions of Jennifer Clark that you're complaining
24 about in this lawsuit that we haven't discussed?

25 A No.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Let's talk about your claims against Bruce
2 Raile. What is it that you claim that Bruce Raile
3 has done to you or your business?

4 A When it comes to Bruce Raile, it's hard to
5 isolate what he did, because he's acting -- he acts
6 under the guise of Centennial Pointe, so most of the
7 time it's kind of hard to say what did Bruce really
8 do, what did Centennial Pointe do, see, because he's
9 one and the same person.

10 Bruce Raile is the master of this whole
11 thing. Bruce Raile is the person who decided that my
12 personal property belongs to him at Centennial
13 Pointe. So I would say whether you look at him as
14 Centennial Pointe or you look at him as Mr. Raile, he
15 is the one who decided that my property belongs to
16 somebody else.

17 Q When you say that, you mean he's the one
18 that decided to enforce the amended declarations and
19 how they treat the common elements of the property,
20 correct?

21 A I don't know what he's enforcing. I just
22 know that, from my understanding, that's my personal
23 property. Mr. Raile comes there and stays there. He
24 comes there physically, confronts me. He comes there
25 physically. He comes there in person.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Let's talk about that. When did Mr. Raile
2 come and confront you physically?

3 A Mr. Raile has come and confronted me at
4 least three or four isolated times that I can
5 remember right now.

6 Q Okay. When were those?

7 A He's come -- there was the time that
8 Mr. Bezdjian was there. Mr. Bezdjian was the
9 original owner, another one of the first three
10 original owners of Centennial Pointe. There was
11 three of us. And Mr. Bezdjian and Mr. Raile were
12 having arguments over Mr. Raile encroaching on --
13 trying to control us.

14 So we had agreed -- the three of us called
15 a meeting, and at that meeting I said, "Okay. We
16 have to agree to where everybody will stay away and
17 leave everybody else alone." The understanding was
18 everybody now, whatever you can do to isolate
19 yourself from the rest of us, turn your lights --
20 take your lights off from the rest of us, and do your
21 own lawn, do your own stuff, so this fighting will
22 stop, because at that point in time, I was playing
23 peace -- peacemaker between the two men. I was
24 trying to make sure they don't fight this, because
25 Mr. Bezdjian came to my house on a Saturday or

ONYEABOR, EXAM BY SILVESTRINI

1 Sunday --

2 Q Was this back in the beginning of -- the
3 end of 2000?

4 A That's right. That's right. He was
5 furious. And he said that they've been arguing. All
6 right. I'm going to be the peacemaker here. We went
7 to a meeting and we agreed. I said, "The answer is,
8 everybody stay on their property so we don't have
9 this." And we agreed at that meeting. That's why we
10 need to get a copy of the minutes at that point in
11 time, because I did state at the meeting, everybody
12 needs to be -- we all agreed. Three of us agreed.

13 So Mr. Bezdjian took his light --
14 disconnected his light from the rest of us.
15 Mr. Bezdjian also did something else. He
16 disconnected his water from the rest of us.

17 I tried to disconnect the water and the
18 lights from Mr. Raile and myself, and the City was,
19 like, "You have to give us a large amount" -- it was
20 just so complicated that I'm like, "Okay. Why don't
21 we see if there's another answer." They have to like
22 put a pipe through, another extra -- a brand new pipe
23 and come into the building.

24 So between Mr. Raile and myself, it became
25 complicated. But Mr. Bezdjian was able to disconnect

ONYEABOR, EXAM BY SILVESTRINI

1 his water, disconnect his lights, start doing his own
2 lawn, mind his own business. Now the fighting
3 between the two men stopped.

4 Then, because I wasn't able to do mine,
5 Mr. Raile start saying --

6 Q Because you weren't able to separate --

7 A Separate mine, that's right. In my own
8 case, it was harder to separate, because a brand new
9 pipe had to be put in, from what the City was telling
10 me. It was a huge complicated thing. So we were
11 going through the process of how should it be done
12 and how shouldn't it be done when Mr. Raile decided
13 that, you know, Mr. Bezdjian sold his property, and
14 then Mr. Raile just came and said, "Well, all the
15 odds are off. It's not a new system. I am enforcer,
16 I am Centennial Pointe, and this whole thing is
17 common areas." And I'm like, "No, my property is not
18 common areas." And that's when the whole thing
19 started. So he started coming physically on my
20 property.

21 Q All right. When you say that he came --
22 that the whole thing was common area, Mr. Raile was
23 claiming that the parking areas and the lawn were
24 common areas?

25 A That's right. He was saying that they were

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1 common areas.

2 Q He wasn't saying that your building was
3 common area, was he?

4 A No. He was saying that the parking lot,
5 the lawn was common areas.

6 Q There's one exception to the building, and
7 that is there's a utility room in your building
8 that's part of the common elements, too, is it not?

9 A Yeah. The utility room is common elements,
10 yes.

11 Q And some of the telephone equipment that
12 services Mr. Raile's business is located in that
13 room, is it not?

14 A Yes. Those were part of the things that
15 were supposed to be separated that were not
16 separated.

17 Q Because it was too complicated?

18 A Exactly. It was too complicated. He came
19 up with \$10,000, is what he came up with. I got
20 somebody who gave me a \$7,000 bill -- bid, excuse me.
21 Mr. Raile came up with a \$10,000 bid. So now it got
22 complicated, and I wasn't sure anybody was willing to
23 shell out that kind of money.

24 So it went on and on, but then he said
25 they're coming and enforcing it and sitting on my

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1 property, and that's where the problem between he and
2 I started.

3 Q Let's mark an exhibit now, because maybe it
4 will help you with your testimony.

5 (Whereupon Deposition Exhibit No. 9 was
6 marked for identification.)

7 Q (BY MR. SILVESTRINI) This is Exhibit 9.
8 This is a compilation -- this is a bunch of different
9 documents. And, in fact, what I can tell you is that
10 before you retained your new attorney, you had asked
11 for -- that we provide copies of the minutes of
12 Centennial Pointe.

13 A Uh-huh.

14 Q And at least for the period that you
15 requested those records, these are the documents that
16 my client sent to me to provide to you, so some of
17 these relate to earlier minutes and some relate to
18 later things, and we'll just refer to things page by
19 page for now.

20 But, first of all, let's look at the first
21 page of Exhibit 9, and this appears to be a
22 communication -- it's on the letterhead of Sanborn
23 Development Company, and it's addressed to the
24 members of Centennial Pointe Property Owners
25 Association. Do you see that?

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1 A Uh-huh.

2 Q And it's dated November 27, 2000. Do you
3 remember receiving this?

4 A Do I remember receiving this? Hmm. Yes.
5 I think we had a meeting after this, so I must have
6 received it.

7 Q This document references a meeting. It
8 says that -- it says, "Attached you find an agenda
9 and copies of Association bylaws and articles of
10 incorporation for our meeting this Thursday at 10:00
11 a.m." Do you see that?

12 A Uh-huh.

13 Q Okay. And so you think you received this?

14 A Uh-huh.

15 THE REPORTER: Yes?

16 THE WITNESS: Yes.

17 Q (BY MR. SILVESTRINI) And then look at the
18 second page of this document. This appears to be
19 another communication from Sanborn Development
20 Company to the members of the Centennial Pointe
21 Owners Association, dated November 28, 2000, and
22 this -- I think Mr. Sanborn is telling you that you
23 had permission to meet at a conference room at the
24 ProLogis offices.

25 A Uh-huh.

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1 Q Is that -- do you remember having a meeting
2 at the ProLogis offices on December 8 at eleven
3 o'clock?

4 A Oh, gee. It's been so long, I can't
5 remember.

6 Q But you remember -- this is the time frame
7 of the meeting that you testified where you said
8 there was a dispute between Mr. Bezdjian and
9 Mr. Raile? I'm trying to find if this is the same
10 meeting you're talking about that you testified
11 about.

12 A December 11th, right?

13 Q Well, that, I think --

14 A Sanborn, Myriam. The meeting was called to
15 order --

16 MR. RICHARDS: Let him direct the
17 questions.

18 THE WITNESS: Oh, sorry.

19 Q (BY MR. SILVESTRINI) I'm not sure when the
20 meeting occurred, because -- I can tell you that this
21 says -- this has a handwritten note, and I don't know
22 whose it is. It says "Friday, December 8." But then
23 the next document talks about a meeting that happened
24 on December 11th, so I don't know when the meeting
25 happened, but I'm going to ask you about that.

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1 The question I should ask you is, do you
2 remember receiving the second page of Exhibit 9?

3 A It's been so long, I don't remember
4 anything. It's been so long, I don't remember. I
5 don't remember seeing this document before, though.
6 So -- are you saying they sent me this?

7 Q Yeah. I'm asking --

8 A Exhibit No. 2? This?

9 MR. RICHARDS: Right. That would be Page
10 Number 2.

11 THE WITNESS: Page number -- this one here?

12 MR. RICHARDS: Yeah.

13 THE WITNESS: No.

14 Q (BY MR. SILVESTRINI) Do you know whether,
15 at the time in November of 2000, your fax number was
16 487-9005?

17 A 2000? I don't remember.

18 Q Okay.

19 MR. RICHARDS: I just want to put an
20 objection on the record regarding the photocopying of
21 the handwritten material on the bottom of Page 2 of
22 Exhibit 9 for authentication purposes. I don't know
23 when that was added or --

24 THE WITNESS: Who wrote it?

25 MR. RICHARDS: -- who wrote it.

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1 Q (BY MR. SILVESTRINI) It's not your
2 handwriting, correct?

3 A No, no, no.

4 Q Do you remember a meeting that happened in
5 December 2000 where you talked about insurance
6 covered by each owner so far?

7 MR. RICHARDS: Could you repeat the
8 question?

9 Q (BY MR. SILVESTRINI) Yeah. I'm
10 wondering -- the top item on the handwriting says
11 "Insurance covered by each owner so far," in the
12 handwriting. Did you discuss each owner providing
13 insurance in December of -- in a meeting with the
14 Centennial Pointe owners in September of -- or
15 December of 2000?

16 A That's right. I told you that everybody
17 had to take care of their property. That's in
18 keeping with that agreement we had.

19 Q What I'm trying to figure out is if this
20 document relates to what you were testifying about
21 before about the discussions between Mr. Bezdjian and
22 Mr. Raile and yourself. Were you the peacemaker
23 about --

24 A That's right. Everybody take care of their
25 property. Pay your insurance, take care of your

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1 lawn, and stay away from all the other people.

2 Q Does this document relate to that meeting
3 that you --

4 A I don't know about this document -- the
5 entire document relating to it, but this "insurance
6 provided by each owner so far" is definitely
7 referring to what we said, that everybody stay on
8 your property, don't come here and bother people. No
9 more fights. That's the same principle.

10 Q Down at the bottom of this document there's
11 some handwriting. It says, "Common bills paid by" --
12 I think "Association" -- "\$160," and then it says,
13 "Insurance, landscaping, snow removal, water, sewer,
14 maintenance of common area." Do you see that?

15 A Yes. Common bills.

16 Q Did you have a meeting in December of 2000
17 where you discussed those items?

18 A I don't remember, but can I explain
19 something? Is it possible?

20 Q Sure.

21 A Okay. Common bills paid by the Association
22 at that point in time -- remember, we couldn't -- he
23 and I couldn't separate our water and the security
24 lights? That's all the common bill he and I had at
25 that time.

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1 Q So there were -- at this time, in December
2 of 2000, there were common expenses that you couldn't
3 separate, couldn't get separately metered?

4 A Water and security lights.

5 Q And at this time, did you also contribute
6 to having the parking lots plowed? This is winter,
7 December of 2000.

8 A I was doing -- everybody was doing their
9 own property.

10 Q Did anybody arrange to have all of the
11 parking lot plowed at any time?

12 A No, never. Mr. Raile started doing that.

13 Q Mr. Raile started doing that?

14 A That's right. That's what he wanted to do,
15 because he's Centennial Pointe, and everybody was
16 doing their own property.

17 Q But when Mr. Raile started doing that, he
18 had the entire parking lot for the development
19 plowed, correct?

20 A No. We started doing that in -- I think it
21 was 2004.

22 Q Okay. You don't remember the whole parking
23 lot being plowed by someone that the Association paid
24 to have do it before 2004?

25 A No, no. That was not done before 2004,

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1 unless there's -- I don't know. Unless there's an
2 isolated case, until I get that information, then I
3 will look at that specific case, but up to that
4 point, everybody was doing their property. The only
5 common thing we had was the water and the security
6 lights.

7 Q Are you saying that everybody was doing
8 their own property or that there was a discussion
9 that that's what you wanted to do back in December of
10 2000?

11 A No. To be honest with you, when we -- they
12 were having this fight, I did not understand why they
13 were having the fight. I just thought, "Well, here
14 we go. These are men." And I didn't know why they
15 were having this fight. I had no clue why they were
16 having that fight. They said -- Mr. Bezdjian was
17 saying, "Mr. Raile wants to control everything," so
18 I'm like, "Okay. This is control stuff here," and I
19 dealt with it from that angle, personally. I didn't
20 see that there was really anything to argue over. I
21 just told him, "Why don't we just all" -- "everybody
22 be nice and stay on their own property so we don't
23 have fights here?" And --

24 Q When did you say this?

25 A At that meeting. That's why I wanted that

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1 meeting, the minutes of the meeting, but apparently
2 -- is this what the minutes are? There was not much
3 written down.

4 Q Let's look at the third page of Exhibit No.
5 9. This is another communication. It looks like
6 this one may have been -- I'm not sure-who sent this
7 one, but "Sanborn Development" is crossed out. Do
8 you see that at the top?

9 A Uh-huh.

10 Q And then it says, "To members of Centennial
11 Pointe Owners Association," and your name and fax
12 number are listed there, together with Mr. Raile and
13 Mr. Bezdjian. Did you receive this document?

14 A Which one was that?

15 MR. RICHARDS: Page 3.

16 THE WITNESS: Oh, this one here?

17 MR. RICHARDS: Yes. It's dated December
18 2000.

19 THE WITNESS: Uh-huh. This came from
20 Sanborn?

21 Q (BY MR. SILVESTRINI) I don't know. It's
22 crossed out. But I'm just wondering if you received
23 this.

24 A It's kind of hard for me to say what I
25 received. I don't even know who sent this and when

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1 and to who.

2 Q It's not familiar to you at all?

3 A I don't remember this document.

4 Q It asks for you to concur. It says, "If
5 you concur with the actions taken in the attachment,
6 please acknowledge below and fax to Bruce at his fax
7 number above. We would appreciate your responding to
8 this by the end of business on Wednesday, December
9 13, 2000." And then it says, "Acknowledged," and
10 there are places to sign for both Paul and yourself.

11 Do you remember ever signing this document
12 or a document like this?

13 A No. It doesn't say, "Sign here."

14 Q Let's look at the next page of this
15 exhibit, which is Page 4 of Exhibit 9. This appears
16 to be minutes of a meeting on December 11, 2000.

17 A Uh-huh.

18 Q And then it says that the meeting was
19 called to order by Donald Sanborn at 11:00 a.m., and
20 then it has a list of people attending the meeting
21 and a list of people who are absent, and you're in
22 the list of people that are absent. Do you see that?

23 A Uh-huh.

24 Q And I'm wondering if you were ever sent a
25 copy of this document or remember receiving it

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1 before.

2 A Huh-uh, no.

3 Q This document says that the following --
4 down the middle of the page, it says, "The following
5 were elected to serve as trustee of the Association,"
6 and it lists Bruce, Paul, and you. Do you remember
7 being elected to -- being notified that you were
8 elected to be a trustee of the Association back in
9 2000?

10 A I was saying that I wasn't there. It says
11 over here I wasn't there. I don't know, no.

12 Q But it looks like they elected you -- even
13 though you weren't there, they elected you as a
14 trustee and also as secretary. Farther down the page
15 it shows officers being elected, and they have Bruce
16 as president and Paul as vice-president and you as
17 secretary.

18 A I was not there. I was not aware of this.

19 Q Then it says, down later in the document,
20 that -- it says, "Bruce Raile agreed to obtain bids
21 for landscape, snow removal, and parking lot sweeping
22 from Eagle Gate Landscaping, the company that Paul
23 currently uses, and others as he may deem necessary."

24 Do you remember discussing with Paul that
25 he used Eagle Gate Landscaping for the snow removal

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1 and landscaping on his property?

2 A All I remember is that everybody was doing
3 their lawn. There was never any question of anybody
4 else doing anybody's lawn. Everybody was doing his
5 lawn until Bruce -- Mr. Raile -- after Paul sold his
6 property and left, Mr. Raile decided that Centennial
7 Pointe was in charge of everything and that he had to
8 take charge of it. My property, which I consider my
9 property, is common areas. And then he started
10 taking care of it.

11 Q Okay. I want to have you skip a few pages.
12 Let's go to the seventh page of Exhibit No. 9, and
13 this is a letter to Paul and Myriam. You're on the
14 same page I'm on now. It has a handwritten date of
15 May 23, 2002 at the top.

16 A Uh-huh.

17 Q And then it says, "Dear Paul and Myriam,"
18 and it's a letter from Bruce Raile. Did you receive
19 a copy of this letter?

20 A You say it's May of 2000? Okay.

21 Q I'm not sure that's even the date it was
22 sent, but -- what I'm wondering is, do you remember
23 receiving this letter?

24 MR. RICHARDS: The question is simply, do
25 you remember receiving this letter? The contents

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1 aren't at issue right now.

2 Jeff, please correct me if I've mis- --

3 MR. SILVESTRINI: No, that's correct.

4 THE WITNESS: I can't say for sure. I
5 don't remember.

6 Q (BY MR. SILVESTRINI) This letter is a --
7 contains an invitation or is a notice of a meeting,
8 the annual meeting of the Association to be held on
9 May 23rd at 5:00 p.m. at LEBR's office, correct?

10 A Uh-huh.

11 Q And down in the bottom third of the letter,
12 it says, "As president and treasurer, Laura and I
13 will bring the annual budget." And then it says, "As
14 secretary, Myriam should bring all minutes, records,
15 bylaws, amendments, and plat maps." Do you see that?

16 A Oh, okay. Uh-huh.

17 Q Do you remember being asked to bring the
18 minutes and the other documents to an annual meeting?

19 A No. First of all, I didn't know there was
20 an election that I'm supposed to bring minutes. I
21 never had any minutes. I can't bring something I
22 don't have.

23 Q Let me turn to the next page of this
24 Exhibit 9. Do you recognize this as a memorandum
25 that you sent to Bruce and Laura Raile, which I

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1 believe is dated May 22, 2002?

2 A Yes.

3 Q This is your letter, correct?

4 A Uh-huh.

5 Q And you sent this the day before the
6 meeting that they noticed, correct?

7 A Uh-huh.

8 Q And in this letter, you said -- you say --
9 first of all, you say, "I wish to thank all of you
10 for the effort you have made so far in keeping the
11 Association going," correct?

12 A Uh-huh.

13 Q And then you say, "I have explained to some
14 of you the constraints that I face which make it
15 impossible for me to participate fully in these
16 affairs, burdened as I already am," correct?

17 A Uh-huh, yes.

18 Q Those were true statements?

19 A Uh-huh.

20 Q And so I take it that you did not attend,
21 and by this letter, you were advising them that you
22 were not going to be able to attend the May 23
23 meeting, the meeting the day after this letter?

24 A No, because the letter is dated 23, which
25 means I must have received it after I wrote this

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1 letter.

2 Q I'm going to suggest to you it's not dated
3 May 23rd. That's handwritten on this after. It's
4 not typed. It's handwritten. But this letter says
5 that there's going to be a meeting on May 23, and
6 then you write to Mr. -- to Bruce and Laura Raile the
7 day before that meeting is scheduled, and what I want
8 to find out is, did you write this letter, this May
9 22, 2000 letter to advise them that you were not
10 going to be able to attend?

11 A No, no, no. This letter, specifically -- I
12 would like you to pay attention. This letter
13 specifically was the letter in which I informed them
14 that -- that was when he started enforcing Centennial
15 Pointe on my -- started to enforce Centennial
16 Pointe's CC&R on my property, the new one that I
17 didn't know existed at that point in time, that is,
18 trying to maintain the property.

19 And I wrote them this formal letter to say,
20 "If you maintain it, you will pay for it." That's
21 all the letter was.

22 Q In your May 22, 2002 letter to Bruce and
23 Laura Raile, in the second paragraph you state, "This
24 memorandum is merely a formal request that, starting
25 June 1, all the maintenance done on my premises will

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1 be henceforth handled by me."

2 A Uh-huh.

3 Q Okay. Now, that suggests that before June
4 1, the maintenance on your premises was not being
5 handled by you, but that you wanted to start doing it
6 yourself beginning June 1, correct?

7 A Okay. Let me -- can I --

8 Q You can answer my question, first of all.
9 Is that what this says? Is that what you meant?

10 A No, that's not what it means.

11 Q Is it possible that you were confused when
12 you testified that the dispute between Mr. Raile and
13 Mr. Bezdjian happened in 2000? Is it possible that
14 you were confused and it was really happening more in
15 the time frame of May of 2002?

16 A That -- the dispute between those two men
17 continued.

18 Q Isn't it true that before 2002, the
19 maintenance -- the snow removal and the lawn
20 mowing -- had always been done by the Association,
21 but that at this time, in May of 2002, you wanted to
22 change that?

23 A Now, let me show you something.

24 Q Isn't that what your letter says? "This is
25 a request that, starting June 1, all the maintenance

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1 will henceforth," meaning in the future, "be done by
2 me, be handled by me"?

3 A Can I explain something?

4 Q No. You can answer my question.

5 A I can answer your question. No.

6 Q Is that what you meant by this letter?

7 A No, that's not what I meant. That's not
8 what I want. If you won't let me explain, then
9 that's not what I meant.

10 Q You'll get an opportunity to explain when
11 your attorney examines you.

12 And do you remember -- well, strike that.

13 I want you to turn to the next page of
14 Exhibit No. 9, and this is a memorandum from David
15 Castleton to Bruce and Laura Raile, and there's a
16 handwritten note that says, "To Myriam from Bruce
17 Raile," and then there's another handwritten note
18 that says, "Myriam, I hope this helps explain our
19 situation. Please check with your own attorney to
20 verify. We have to work together."

21 Did you receive this document from Bruce
22 Raile? And this document is a four-page document.

23 A I don't remember this specific document.

24 Q The beginning of Mr. Castleton's memorandum
25 says, "Thank you for sending me a copy of Myriam

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1 Onyeabor's letter concerning Centennial Pointe
2 Property Owners Association." Do you see that?

3 A They did not refer to the date on the
4 letter, so --

5 Q Did you send any other letter to Centennial
6 Pointe Property Owners Association other than the
7 previous page, which is your letter of May 22, 2002?

8 A Yes, uh-huh.

9 Q During this same time frame? Did you send
10 any letter before Mr. Castleton's memorandum dated
11 June 11, 2002?

12 A No. I don't remember sending --

13 Q So is Mr. Castleton referring to your memo?
14 As far as you know, the only thing he'd be referring
15 to when he refers to a copy of Myriam Onyeabor's
16 letter is your letter of May 22, which we just talked
17 about?

18 A Possibly, yes.

19 Q You don't remember sending any other letter
20 other than that May 22 letter to Centennial Pointe in
21 2002?

22 A No.

23 Q All right. The next document in this after
24 Mr. Castleton's memorandum is a -- is, again, on the
25 Sanborn Development letterhead, and it's dated

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1 December 16, 2000, addressed to the members of
2 Centennial Pointe Owners Association. And I want to
3 know if you recognize that or received it.

4 MR. RICHARDS: December 16th?

5 MR. SILVESTRINI: December 16.

6 Q It has -- it talks about -- down in the
7 middle of the page it says -- it requests
8 reimbursement from each of you as follows, and then
9 asks for \$1,028.42 from Myriam Onyeabor. Do you
10 remember receiving this?

11 A Mr. Sanborn, right?

12 Q Right.

13 A Yes, I think I remember this.

14 Q And then did you send Mr. Sanborn the funds
15 that he requested, the \$1,028.42?

16 A Yes.

17 Q And for a time you paid your assessments to
18 the Centennial Pointe Owners Association, did you
19 not?

20 A Yes. The assessments -- at that point in
21 time, I had no dispute with Centennial Pointe. The
22 contract we had, they were -- you know, my property
23 was being respected, and Mr. Sanborn never at any
24 point in time told me he owned my property or that my
25 property was common areas. He never did that, so, in

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1 fact, I paid him.

2 Q You paid your assessments for a period of
3 years, in fact, until the -- until it became an issue
4 before this lawsuit was filed, correct?

5 A That's right.

6 MR. HUNT: Jeff, do you mind if we take a
7 break?

8 MR. SILVESTRINI: Yeah, that's fine.

9 (Recess.)

10 Q (BY MR. SILVESTRINI) Ms. Onyeabor, we were
11 looking at the page of Exhibit 9 that was a memo
12 dated December 16, 2000 to the members of the
13 Centennial Pointe Owners Association, and I had just
14 asked you about that document. After that --

15 A Is that the one?

16 Q Yeah, you're on the right page with me
17 there. After that document, there are at least
18 three -- at least two other pages that appear to bear
19 the same fax track on the bottom of the page. If you
20 note -- actually, what I'm going to ask you to do is
21 turn the pages so that they're -- do you see the fax
22 track on the bottom of the page? I'm going to point
23 this out to you. On the first page of this
24 communication there is a -- it says "Page 1," and it
25 says "December 16, 2000, 4:48 p.m.," if I'm reading

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1 that right, "Donald Sanborn," and there's a fax
2 number and there's a "Page 1." Do you see that?

3 A Uh-huh.

4 Q On the following page, there's the same
5 type of information about a fax from Mr. Sanborn,
6 only it says "Page 2." Do you see that?

7 A Yes.

8 Q And then on the next page, the same -- you
9 can't see all of it because of the way it was copied,
10 but it's the same phone number, and it says "Page 3."
11 Do you see that?

12 A Uh-huh.

13 Q What I want to know is, do you remember
14 seeing pages that are -- from the fax track that are
15 identified as Page 2 and Page 3, which are the two
16 pages following the memorandum dated December 16? Do
17 you remember receiving those documents?

18 A If I paid him, yeah.

19 Q Pardon?

20 A I said if I paid him, yeah.

21 Q Okay. So you --

22 A I paid him this money, right?

23 Q Well, you testified you did.

24 A Uh-huh.

25 Q All right. And I just want to have you

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1 look at -- you understood that this -- on the
2 second -- on fax track Page 2, up at the top it says
3 "Utah Power." Do you see that? Let's get you on the
4 right page with me.

5 A This one?

6 Q Yeah, that one. Do you see that? It says
7 "Utah Power," and then it's showing amounts that were
8 billed by Utah Power during various months.

9 A Yes.

10 Q And it shows how that was broken out
11 between you and the Railes and Paul Bezdjian.

12 A Uh-huh.

13 Q And you understood that paying Mr. Sanborn
14 the money he was asking to be reimbursed, you were
15 paying for -- part of that was paying for the power
16 bill?

17 A Yes.

18 Q And the next entry on this is landscaping
19 for Eagle Landscaping, and it shows that there were
20 amounts billed for that, and you understood you were
21 reimbursing Mr. Sanborn for providing landscaping for
22 the common elements of Centennial Pointe, correct?

23 A Uh-huh.

24 Q And the same thing with respect to the
25 water and sewer? You were paying your share of the

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1 water and sewer?

2 A Yes.

3 Q Now, if you look at the following page,
4 which has the fax track Page 3 on it -- split the
5 page with me, would you, please?

6 A Oh, the next one?

7 Q Right. This says "Centennial Pointe Owners
8 Association common area expenses projection for
9 2001," and you understood that this was a projection
10 of what Mr. Sanborn was saying the expected expenses
11 for the Association would be for the year 2001,
12 correct?

13 A Uh-huh, yes.

14 Q And the items that were going to be paying
15 were for electric and insurance and landscaping and
16 water and sewer, correct?

17 A Uh-huh.

18 Q Did you -- and you paid the expenses in
19 those categories for 2001, your share of them, did
20 you not?

21 A 2001 -- 2001 I think I paid only water. By
22 then, we had split. By then, the Association had
23 started and I paid only water and security lights,
24 unless I have the information in front of me, but I
25 think that by now we had split. I think that at this

ONYEABOR, EXAM BY SILVESTRINI

1 time we had already started a new Association and
2 that in the new Association now, all we paid him was
3 water and security lights.

4 This is just a projection that Mr. Sanborn
5 did, but once the Association started -- the new
6 Association with the new members started, we had --
7 each -- after a while -- we tried it -- I think we
8 tried it for awhile and it didn't work out. So we
9 opted that everybody take care of their stuff and the
10 water and the lights. Since Mr. Raile and I could
11 not separate ours, I was still paying them, because
12 they were receiving the bills.

13 Q Okay. Let's look at -- I'm going to have
14 you look at two pages more in the exhibit, Number 9.
15 Flip past that page that you're on.

16 A Underneath?

17 Q Yes, underneath. Flip past that page, too.
18 Now, I'm referring to a page that, at the top,
19 says -- it's actually -- over on the top right-hand
20 corner, it says "Page 19 of 30."

21 A Uh-huh.

22 Q And this document appears to be a memo from
23 Bruce and Laura Raile to members of the Centennial
24 Pointe Property Owners Association, and it's dated
25 October 17, 2001. Do you see that?

ONYEABOR, EXAM BY SILVESTRINI

1 A October, uh-huh, 2001.

2 Q Do you remember receiving this?

3 A Let me go through it for a minute, okay?
4 Yes, I think I remember seeing this.

5 Q This -- down in the -- the subject of this
6 memorandum is a meeting of the Centennial Pointe
7 Owners Association at Sun Optics on October 29, 2001.
8 Do you see that?

9 A Yes.

10 Q And then there's an agenda for the meeting,
11 correct?

12 A Yes.

13 Q And then down in the bottom quarter of the
14 page, it says, "The meeting was called to order with
15 all members in attendance. The following actions
16 were taken and approved." Do you see that?

17 A Uh-huh.

18 Q Do you remember attending this meeting on
19 October 29 of 2001 with Mr. and Mrs. Raile and Paul?

20 A I don't remember, but if they say I was
21 there, then maybe I was there.

22 Q Do you remember a meeting about this time
23 where it was discussed that payments were due to
24 Laura Raile from each of the members of Centennial
25 Pointe for common area expenses?

ONYEABOR, EXAM BY SILVESTRINI

1 A What element are you talking about now?
2 Which one?

3 MR. RICHARDS: No. He's -- it's a general
4 question.

5 THE WITNESS: Oh, a general question.
-6 Okay. Would you rephrase it?

7 Q (BY MR. SILVESTRINI) Yeah. I'm wondering
8 if you remember being present at a meeting about this
9 time where you talked about the need to reimburse
10 Laura Raile for common area expenses?

11 A Oh, definitely, yes.

12 Q And those expenses are -- if you look at
13 the bottom quarter of the page again where it says
14 "Action," Paragraph 2 there, it says, "Payments due
15 to Laura Raile." Do you remember talking about you
16 being responsible for reimbursing her for payments to
17 Salt Lake City? And it says 25 percent of the house
18 meter, 50 percent landscape, 25 percent insurance.
19 Do you remember discussing those at this meeting?

20 A You know, they -- I do not remember the
21 specifics. That's what they write here.

22 Q Okay. And then down in Paragraph 4 it
23 says, "Myriam will obtain information on a landscape
24 and snow removal bid. Laura will distribute the bid
25 information by fax" -- "FX" -- "to the members for

ONYEABOR, EXAM BY SILVESTRINI

1 a" -- I think it says "a decision."

2 Do you remember indicating that you were
3 going to obtain information on a bid for landscape
4 and snow removal?

5 A I don't know. It's a generalized question.
6 - I need -- landscape and snow removal for who? If
7 it's for me, then -- you know, I may have done that
8 for me, because --

9 Q There wouldn't be any reason for Laura to
10 fax that out to all the members, unless it affected
11 everybody, would it?

12 A I don't remember the specifics, anyway,
13 but --

14 Q All right.

15 A It's written here.

16 Q Look at the next page of this document.
17 The fax track at the top says it's Page 20 of 30, and
18 that's a fax track to my office, so that's just --
19 that doesn't mean anything on the document, but...

20 The subject of this -- it says it's dated
21 November 20, 2001, which is just after this October
22 document that we just talked about, and it shows --
23 the subject is "Payments due for services described
24 below, November 26, 2001. Make checks payable to
25 Bruce Raile. Thank you." And then it shows -- it

ONYEABOR, EXAM BY SILVESTRINI

1 says "Myriam," and it shows several categories of
2 expenses, correct? It shows Salt Lake City Corp,
3 house meter, the landscape, and the insurance?

4 A Uh-huh.

5 Q Did you pay Bruce Raile the \$2,745.19 that
6 this document --

7 A Uh-huh. I may have. I must have if they
8 sent me the bill.

9 Q And the bill that you paid Mr. Raile
10 included charges for landscaping and insurance and
11 house meter and Salt Lake City Corporation?

12 A That's what it says here.

13 Q Let's look at the next page of this
14 document. This appears to be -- this is marked, on
15 the fax track, when it was sent to my office, as Page
16 21 of 30, and it's a document -- it says, "Myriam,
17 2001," and then it has a -- it breaks down these
18 expenses by month.

19 A Uh-huh.

20 Q And the amount shows the -- the amount on
21 this document is the same as on the previous page,
22 \$2,745.20, correct?

23 A Uh-huh.

24 Q Did you receive this document?

25 A Yeah. I paid them. I must have received

ONYEABOR, EXAM BY SILVESTRINI

1 it. This is Check --

2 Q Then look at the next document.

3 A So I paid it.

4 Q This is a -- this document appears to be a
5 common area expense projection. It says, I think,
6 "Fiscal year budget, January 2002 to December 2002."
7 Did you receive this as part of that same document?

8 A Yeah, uh-huh.

9 Q Then the next page of this exhibit, which
10 is -- has the fax track 23 of 30, this looks like
11 it's a form of an invoice to you, correct, for
12 \$147.53?

13 A Uh-huh.

14 Q Did you receive this?

15 A Yeah. Yes.

16 MR. RICHARDS: Just answer with a loud
17 "yes" or "no." So the answer is?

18 THE WITNESS: Yes.

19 Q (BY MR. SILVESTRINI) And did you pay the
20 remaining due for January 2002 in the amount of
21 \$147.53?

22 A Yes.

23 Q The next page of this exhibit, bearing the
24 fax track number at the top 24 of 30, appears to be a
25 form of an invoice to you dated March 27, 2002, and

ONYEABOR, EXAM BY SILVESTRINI

1 it says, "Write a check to Bruce Raile for \$345.33."

2 Do you see that?

3 A Yes.

4 Q Did you receive this document?

5 A Yes.

6 Q Did you pay Mr. Raile this amount?

7 A Uh-huh, yes.

8 Q And this -- what you were paying him for
9 was for water bills, electric bills, landscaping, and
10 snow removal and insurance, correct?

11 A Yes.

12 Q The next page of this exhibit is a
13 handwritten document. It looks -- it's Page 25 of
14 30. It looks like it's a handwritten memorandum to
15 Myriam at Computer & Equipment Warehouse from Laura
16 Raile, dated May 24 and maybe May 28 of 2002. Do you
17 see that?

18 A Uh-huh.

19 Q Did you receive this?

20 A Yes.

21 Q Then the next page in this exhibit is a
22 document addressed to Paul and Myriam, and the
23 subject is -- it's dated January 10, 2003, and
24 it's -- the subject is "Payments are past due for
25 utilities. Notice Number 3." Do you see that?

ONYEABOR, EXAM BY SILVESTRINI

1 A Uh-huh.

2 Q Did you receive this document?

3 A What's the date again? Oh, this is January
4 of 2003. Yeah. Yes.

5 Q In fact, from this period forward, from two
6 thousand -- in fact, let's say from January of 2003
7 forward, you have received invoices from the owners'
8 association for common area expenses, have you not?

9 A From what time forward?

10 Q From January of 2003 forward.

11 A Oh. From January 2003 -- I wrote them the
12 letter in May, right?

13 Q May of 2002.

14 A Yeah, May 2002. I sent them a check for
15 that May 2002, and at this point in time -- it's kind
16 of hard to remember the details, but what I think may
17 have happened is that after I sent them the letter,
18 we started having a big dispute there and that I went
19 ahead with my -- taking care of my own property,
20 anyway, and ignored it.

21 Q And the dispute that you were having is
22 that you wanted to provide the landscaping and snow
23 removal for your -- for the common area that was part
24 of your lots?

25 A I did not want. I was providing it.

Exhibit “B”

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

COPY

-----)
CENTENNIAL POINTE PROPERTY) CIVIL NO. 040918762
OWNERS' ASSOCIATION, INC.;)
and LEBR ASSOCIATES, LLC,) DEPOSITION OF:
) MYRIAM ONYEABOR
Plaintiffs,)
) Held March 23, 2006
vs.)
) REPORTED BY:
MYRIAM ONYEABOR,) RENEE L. STACY, CSR, RPR
)
Defendant)
)
MYRIAM ONYEABOR,)
)
Third-Party Plaintiff,)
)
vs.)
)
BRUCE M. RAILE; JENNIFER)
CLARK; and DONALD R.)
SANBORN,)
)
Third-Party Defendants.)
-----)



333 SOUTH RIO GRANDE, SUITE F,
SALT LAKE CITY, UTAH 84101
(801) 328-1188 / 1-800-DEPOMAX
FAX 328-1189



Deposition of MYRIAM ONYEABOR, taken on behalf of the Plaintiffs, at 257 East 200 South, Suite 700, Salt Lake City, Utah, commencing at 9:04 a.m. on March 23, 2006, before RENEE L. STACY, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public in and for the State of Utah, pursuant to Notice.

* * * *

A P P E A R A N C E S

FOR THE PLAINTIFFS
and THIRD-PARTY
DEFENDANTS RAILE
and CLARK:

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I N D E X

EXAMINATION

BY MR. SILVESTRINI	5
BY MR. HUNT.	152
BY MR. BELL.	154
BY MR. SILVESTRINI	160

E X H I B I T S

<u>Exhibit No.</u>	<u>Marked</u>	<u>Discussed</u>
1 Special Warranty Deed	9	9
2 Warranty Deed	9	9
3 Restated Declaration, etc.	10	10
4 Affidavit of Myriam Onyeabor	10	19
5 Copy of Ms. Onyeabor's driver's license	20	20
6 Driver's license number and signature	23	23
7 Date, time, name, address	25	25
8 Declarations of Covenants, etc.	30	30
9 11-27-00 memo to members of Centennial Pointe Owners Association	83	83
10 Handwritten notes	121	121

ONYEABOR, EXAM BY SILVESTRINI

March 23, 2006

9:04 a.m.

P R O C E E D I N G S

MYRIAM ONYEABOR

called as a witness at the instance and request of the Plaintiffs, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SILVESTRINI:

Q Good morning, Ms. Onyeabor.

A Good morning.

Q As you probably know, I'm Jeff Silvestrini. Eddie Vasquez is here. We represent the plaintiffs, Centennial Pointe Property Owners Association, LEBR, and also the third-party defendants, Bruce Raile and Jennifer Clark.

In your deposition today -- first of all, you've had the opportunity to discuss the procedures we follow in a deposition with your counsel, have you not?

A Yes. Briefly, yes.

Q If any of my questions are unclear to you as we go forward today, please let me know and I'll rephrase them.

ONYEABOR, EXAM BY SILVESTRINI

1 A Definitely.

2 Q If you need to take a break, you know, for
3 any reason, you just let me know and we'll do that.

4 A Okay.

5 Q I prefer to do that after, you know, a
6 question has been answered. Is there any reason why
7 we shouldn't go forward today? Are you under the
8 influence of any medications or drugs?

9 A No. I'm fine. I'm fine.

10 Q All right. Would you state your full name,
11 please.

12 A My name is Myriam Onyeabor.

13 Q And where do you reside?

14 A I reside in Salt Lake City.

15 Q And your address?

16 A 4657 South Farm Meadow Lane.

17 Q Are you a citizen of the United States?

18 A Yes.

19 Q And when did you become a citizen of the
20 United States?

21 THE WITNESS: I don't want to answer these
22 questions.

23 MR. RICHARDS: Pardon?

24 THE WITNESS: I don't want to answer these
25 questions.

ONYEABOR, EXAM BY SILVESTRINI

1 MR. RICHARDS: You need to answer the
2 question. We'll put an objection on the record for
3 relevancy, but you still need to answer the question.
4 Do you need to revise your first answer?

5 THE WITNESS: Yes.

6 MR. RICHARDS: Okay. Could you please ask
7 the first question?

8 Q (BY MR. SILVESTRINI) Yes. The first
9 question I asked you, I believe, was, are you a
10 citizen of the United States?

11 A Resident.

12 Q Okay. Are you a citizen of a foreign
13 country?

14 A Yes.

15 Q And what country -- in what country do you
16 hold citizenship?

17 A I have citizenship of France and Nigeria.

18 Q And how long have you resided in the United
19 States?

20 A I have resided in the United States for --
21 on and off since '81.

22 Q 1981?

23 A Yes.

24 Q Have you ever resided at the address of
25 1078 East 2700 South in Salt Lake City?

ONYEABOR, EXAM BY SILVESTRINI

1 A Yes, yes.

2 Q And do you still own that property?

3 A Yes.

4 Q When did you reside at -- give me an idea
5 of the time frame of when you resided at 1078 East
6 2700 South.

7 A When I resided there?

8 Q Yes.

9 A I resided over there before I went back to
10 Africa. That must have been -- I went back in '94.
11 I came back in ninety -- '94.

12 Q Is that when you lived there, in 1994?

13 A Yeah. I -- yeah. I've been on and off,
14 and I come back and -- you know, I go in and out of
15 the country, so --

16 Q Okay. That's a place that you moved into
17 and out of several times as you traveled?

18 A Yes.

19 Q Okay. Let me ask you this. This case
20 concerns two properties that you own in the
21 Centennial Pointe development. You own Lot 1,
22 correct?

23 A Yes.

24 Q And you also own Lot 2?

25 A Yes.

ONYEABOR, EXAM BY SILVESTRINI

1 Q And you acquired Lot 1 in April of 2000,
2 did you not?

3 A Yes.

4 (Whereupon Deposition Exhibits 1 and 2 were
5 marked for identification.)

6 Q (BY MR. SILVESTRINI) Ms. Onyeabor, I'm
7 going to show you what we've marked as Exhibit 1 to
8 your deposition. Can you identify this as a copy of
9 the deed by which you received the title to Lot 1 of
10 Centennial Industrial Park?

11 A Yes.

12 Q And it's accurate that you received -- you
13 purchased this property and received title to it on
14 April 24th of 2000?

15 A Yes.

16 Q Next I'm going to show you Exhibit 2. Can
17 you identify this as the deed to the other lot that
18 you own in the Centennial Park Development, Lot 2?

19 A Yeah, okay. That's the number, right? The
20 lot number is over here?

21 MR. RICHARDS: And here.

22 THE WITNESS: Lot 2. Okay. And this is --

23 MR. RICHARDS: Lot 1.

24 THE WITNESS: All right. Yeah. Okay.

25 That's Lot 2.

ONYEABOR, EXAM BY SILVESTRINI

1 Q (BY MR. SILVESTRINI) So that's Lot 2. And
2 you received this deed and the title to this property
3 on or about the 28th of September of 2000, correct?

4 A Yes.

5 Q Do you know, did you reside at 1078 East
6 27th South during the time that you bought Lot 1 of
7 the Centennial Park Development?

8 A Yes.

9 Q And did you also reside at that same
10 address when you bought Lot 2 in September of 2000?

11 A Yes. I mean, resided -- you mean did I own
12 it or did I reside?

13 Q Did you live there?

14 A Yes, yes.

15 Q You did live there?

16 A Uh-huh.

17 Q All right.

18 (Whereupon Deposition Exhibits 3 and 4 were
19 marked for identification.)

20 Q (BY MR. SILVESTRINI) Let me show you what
21 we marked as Exhibit 3 to your deposition.

22 A Okay.

23 Q Do you recognize this document?

24 A Yeah. They're the covenants of the --
25 they're the covenants -- whatever the -- the

ONYEABOR, EXAM BY SILVESTRINI

1 so-called amended documents.

2 Q This is the amended or the restated
3 declaration of covenants and conditions for the
4 Centennial Park Development, correct?

5 A Uh-huh.

6 Q And the document shows that this document
7 was recorded on August 24th, 2000, correct?

8 A Yes. That's what this -- the recordation
9 says, yes.

10 Q Did you live at the 1078 East 2700 South
11 property address in August of 2000 as well?

12 MR. RICHARDS: Objection. Relevancy.

13 THE WITNESS: I really don't know. See,
14 I'm in and out of the country. It's kind of hard for
15 me to say what date I was where.

16 Q (BY MR. SILVESTRINI) Let me ask you this:
17 During the year 2000, did you reside at any other
18 address in Utah other than the 1078 East 2700 South
19 address?

20 A Yes, uh-huh.

21 Q Where else did you reside during 2000 in
22 Utah?

23 MR. RICHARDS: Once again, relevancy
24 objection.

25 THE WITNESS: I may have been in Arizona

ONYEABOR, EXAM BY SILVESTRINI

1 this date -- on that date, because -- I mean, it's
2 kind of hard for me to remember what happened on that
3 date.

4 Q (BY MR. SILVESTRINI) Did you have an
5 address in Arizona in 2000?

6 A I have a brother that -- I'm in and out.
7 I'm over there most of the time, too, so it's kind of
8 hard for me to say where I was.

9 Q Did you live with your brother during
10 2000 or just visit him?

11 A I'd go there. I just go there and I stay
12 there for some time, and I come back here and --

13 Q But you didn't change your mail to go to
14 the Arizona address?

15 A No, no.

16 Q Your mail -- you considered your address
17 your residence, the 1078 East 2700 South address,
18 during 2000?

19 A No, because 2000 -- the year 2000 -- now
20 that I'm thinking, no. Actually, at this point in
21 time -- remember the first address I gave you? I was
22 already there. See, I -- the 4657, I was already
23 there in the year 2000.

24 Q When did you --

25 A Because I purchased 4657 in '98, so I was

ONYEABOR, EXAM BY SILVESTRINI

1 not at 1078 East. I was at 4657, which is the first
2 one I gave to you, Farm Meadow Lane.

3 Q All right. So you're changing what you
4 said before, and you're saying that during April of
5 2000 --

6 A Because that's why I said "residency or
7 ownership," because I did own the property.

8 Q I want to know residency.

9 A I didn't live there. I lived on 4657,
10 which is what I -- I bought it in '98, I think. 96,
11 '98. And after I bought it, that's where I lived.

12 Q Is that -- is the property at 46 -- it's
13 4657?

14 A Yes.

15 Q Is that property in your name?

16 A Yes.

17 Q And has it always been in your name?

18 A Yes. I own that property, and I've been
19 there since '98.

20 Q I'm going to ask you -- let's look at
21 Exhibit 3 again.

22 A Uh-huh.

23 Q I'd like you to turn in this document --
24 it's about four pages from the end, I believe. Four
25 pages from the end of the document. Does your

ONYEABOR, EXAM BY SILVESTRINI

1 signature appear on this page of the document?

2 A No.

3 Q That's not your signature there --

4 A Huh-uh.

5 Q -- where it says "Myriam Onyeabor" down at
6 the bottom?

7 A No, that's not mine.

8 Q Did you ever appear before Jo Ellen
9 Crockett and sign this document?

10 A No. I do not recollect anything -- anybody
11 named Jo Ellen Crockett.

12 Q Is this a matter that -- when you say "I
13 don't recollect," I want to find out --

14 A I do not know her. I did investigate. I
15 sent people to investigate who this lady is to me. I
16 went all the way to the Capitol to find this lady, so
17 if I knew her, then I would say yes, I knew her. I
18 wouldn't go to the Capitol looking for her.

19 Q What I want to find out, though,
20 Ms. Onyeabor is -- you said "I don't recollect." I
21 want to know whether you just don't remember signing
22 this document, or whether you did not sign this
23 document.

24 A I did not sign the document. That's why
25 say I went I went to the Capitol looking for this

ONYEABOR, EXAM BY SILVESTRINI

1 lady. I went all the way to the Capitol.

2 Q If you didn't sign the document, I'm
3 curious as to why you would go to the Capitol to --

4 A I was looking for her because I never heard
5 the name before. I never heard of anything
6 concerning her. I called them and they said, "You
7 need to come in." So I went over there to see if
8 there was somebody who would investigate to find who
9 this lady is. They said -- they sent me up to the
10 Capitol and they said there was a Lieutenant
11 Governor's Office.

12 MR. RICHARDS: Lieutenant's Governor's
13 Office?

14 THE WITNESS: That's right. I went
15 physically there and I met a gentleman there. I
16 said, "There's a lady's name here that I want to" --
17 "They say you guys know who the notaries are." So I
18 think he run the name through the computer and there
19 was no -- they never come up with her. I was looking
20 for this lady to find out -- so I can see, have I
21 ever seen her. I've never seen her, I don't know
22 her, so that's not my signature.

23 Q (BY MR. SILVESTRINI) But you're saying
24 categorically and under oath --

25 A Yeah.

ONYEABOR, EXAM BY SILVESTRINI

1 Q -- that that's not your signature on this
2 document?

3 A No.

4 Q And that you never signed this document?

5 A No.

6 Q And you never signed this document before
7 Jo Ellen Crockett --

8 A No.

9 Q -- who is listed as a notary public on this
10 document?

11 A No. I don't know her. I never saw this
12 document in 2004.

13 Q And you understand the meaning of an oath?

14 A I definitely --

15 Q You understand you're sworn to tell the
16 truth?

17 A I definitely understand the meaning of an
18 oath.

19 Q You understand the penalties that apply if
20 you violate that oath, if you commit perjury?

21 A I would not being looking for this lady if
22 I knew anything about this document.

23 Q My question is, do you understand the
24 penalties for perjury?

25 A I definitely understand everything. I

ONYEABOR, EXAM BY SILVESTRINI

1 understand. And I'm saying I do not know this lady.
2 I do not know anything about this document in 2004.

3 Q Have you ever had an account at America
4 First Credit Union?

5 A Yes, I have an account at America First
6 Credit Union.

7 Q What branch is that account at?

8 A My branch was -- is at 500 South and -- I
9 think it's about -- I think -- I don't think
10 there's -- 500 South and about 50 East. 500 South
11 500 East. Just around that area.

12 Q Did you ever -- do you ever do any banking
13 with America First Credit Union at its Brickyard
14 office?

15 A The Brickyard office? Oh, I -- yes, I've
16 stopped by the Brickyard office, yes.

17 Q You've stopped by the Brickyard office of
18 America First Credit Union?

19 A Yes, I have stopped over there.

20 Q Do you still maintain an account at America
21 First Credit Union?

22 A Yes, I do.

23 Q And is it -- do you maintain any accounts
24 that you know that are at the Brickyard office of
25 America First Credit Union?

ONYEABOR, EXAM BY SILVESTRINI

1 A Huh-uh.

2 Q Do you have a Utah driver's license?

3 A Uh-huh.

4 MR. RICHARDS: Objection. Relevancy.

5 Q (BY MR. SILVESTRINI) Do you have that
6 license with you today?

7 MR. RICHARDS: Again, objection.
8 Relevancy.

9 Q (BY MR. SILVESTRINI) Do you have your
10 driver's license with you today?

11 A Yeah.

12 Q Could you tell me what the number is on
13 your driver's license?

14 MR. RICHARDS: Relevancy. If you've got
15 it, pull it out. It's all right.

16 THE WITNESS: Do I have to pull it out?

17 MR. RICHARDS: Yes.

18 THE WITNESS: Oh, I have to pull it out?

19 MR. RICHARDS: Yes, if you've got it.

20 MR. SILVESTRINI: Could I see -- we'd
21 actually like to mark this as an exhibit. Can I make
22 a copy of this and come right back? Edward, would
23 you do that?

24 MR. RICHARDS: Would you make a couple
25 copies?

ONYEABOR, EXAM BY SILVESTRINI

1 MR. SILVESTRINI: Yeah, we'll give you a
2 copy.

3 Q We'll go ahead until he gets back. I'd
4 like to have you turn to -- I don't know if I gave
5 this to you yet. I didn't give it to you yet. Let
6 me provide that to you. Do you recognize Exhibit 4
7 as an affidavit that you filed in this lawsuit?

8 A Yes.

9 Q And did you sign this affidavit?

10 A Yes.

11 Q And you signed it before a notary public,
12 correct?

13 A Yes.

14 Q And you understood that when you were
15 signing this that you were swearing that the matters
16 that were in this affidavit were true and correct?

17 A Uh-huh.

18 Q And did you understand that what you were
19 saying in this affidavit was being said under penalty
20 of perjury?

21 A Yes.

22 Q And are the statements that are in this
23 affidavit still all true and correct, as far as you
24 know?

25 A Yes, yes.

ONYEABOR, EXAM BY SILVESTRINI

1 Q You don't want to change anything that's in
2 this affidavit at this time?

3 THE WITNESS: Do you want to just read this
4 and tell me? That's the affidavit that I swore.
5 There's nothing there that I know that's false.

6 MR. RICHARDS: Well, then you've answered
7 his question. I'll object, saying asked and
8 answered, but I think -- give him your answer one
9 more time. Is there anything you'd like to change in
10 that affidavit?

11 THE WITNESS: No.

12 Q (BY MR. SILVESTRINI) Ms. Onyeabor, I'm
13 going to hand you back your driver's license.

14 A Thank you.

15 (Whereupon Deposition Exhibit No. 5 was
16 marked for identification.)

17 MR. SILVESTRINI: A photocopy of her
18 driver's license will be Exhibit 5.

19 Q Let me show you what we've marked as
20 Exhibit 5. I'd like you to compare that to the
21 original of your driver's license. Is Exhibit 5 a
22 true and correct photocopy of your driver's license?

23 A Uh-huh, yes.

24 Q Okay. And is there anything on the back of
25 your driver's license?

ONYEABOR, EXAM BY SILVESTRINI

1 A Let me find the original. I think I forgot
2 it at home.

3 Q I'm sorry?

4 A I think I forgot it at home.

5 Q Okay. But at least on what you presented
6 to me today, there's nothing on the back of what you
7 presented me today?

8 A Yes. I don't remember anything being
9 there, except a tag number that runs across, is all I
10 remember being on the back of the driver's license.

11 Q Is it a tag number for renewal of the
12 license?

13 A No. It's one of these code reading
14 numbers. That's just what I remember. Just the back
15 of the driver's license. That's all I -- I just
16 forgot it at home, and that's why I kept this copy of
17 it.

18 Q All right. So your number of your driver's
19 license, as you understand it, is 145527129, correct?

20 A Uh-huh, yes.

21 Q And the address listed is the 1078 East
22 2700 South address, correct?

23 A Yes.

24 Q Were you living at that address when you
25 applied for this driver's license?

ONYEABOR, EXAM BY SILVESTRINI

1 A No. This thing has been renewed over the
2 phone.

3 Q Okay.

4 A And they sent it in to me, and I just sent
5 them money, and then they renew it. And it's just
6 been the same. I've hardly had to go and re-test.
7 It's always been over the phone.

8 Q But this particular license says, I
9 believe, that it was issued on May 17, 2004. Do you
10 see where it says "Iss"?

11 A Yes, uh-huh.

12 Q And that's the last -- is that your -- do
13 you recall that this particular driver's license was
14 issued around that time?

15 A Yes.

16 Q And at that time, did you reside at 1078
17 East 2700 South?

18 A No. If they put that address on there,
19 it's because I owned the house.

20 Q Okay. Do you frequently give out that 1078
21 East 2700 South address when you're asked to provide
22 your address?

23 A Huh-uh.

24 MR. RICHARDS: Relevancy.

25 THE WITNESS: No.

ONYEABOR, EXAM BY SILVESTRINI

1 Q (BY MR. SILVESTRINI) I want to ask you one
2 more time, are you -- I'm going to have you refer to
3 Exhibit 3 again, which is the amended declarations.
4 Are you absolutely positive that you did not sign
5 this document?

6 A I did not.

7 MR. RICHARDS: Asked and answered.

8 Q (BY MR. SILVESTRINI) You're absolutely
9 positive?

10 MR. RICHARDS: Asked and answered.

11 THE WITNESS: What, now?

12 MR. RICHARDS: Oh, I'm speaking to her as
13 -- you've asked and answered that.

14 Q (BY MR. SILVESTRINI) You still need to
15 answer the question.

16 MR. RICHARDS: You've answered the
17 question. You still need to answer the question.

18 Q (BY MR. SILVESTRINI) Are you absolutely
19 positive you didn't sign this?

20 A I'm positive, yes.

21 (Whereupon Deposition Exhibit No. 6 was
22 marked for identification.)

23 Q (BY MR. SILVESTRINI) Ms. Onyeabor, I'm
24 going to show you what we've marked as Exhibit 6 to
25 your deposition. Have you ever seen that document

ONYEABOR, EXAM BY SILVESTRINI

1 before?

2 A No.

3 Q Let me ask you -- there's a signature next
4 to the "X" that's been circled at the bottom
5 right-hand side of the page. Do you see that?

6 A Uh-huh, uh-huh.

7 Q Is that your signature?

8 A I can't tell what's my signature. I can't
9 say that this is the signature that's presented in
10 front of me and it is my signature.

11 Q Over on the bottom left-hand side --

12 A All I can say by the signature, it may look
13 like mine a little bit.

14 Q Does it look like yours?

15 A A little bit.

16 Q You don't remember signing that, though?

17 A No, I do not.

18 Q Can you say that that is not your
19 signature?

20 A There's a few things I can look at and say,
21 "That's not my signature," definitely. There's a few
22 things I can look at and say, "This is not my
23 signature," but I'm not an expert.

24 Q I appreciate that, but you think that's not
25 your signature?

ONYEABOR, EXAM BY SILVESTRINI

1 A I think it's not my signature.

2 Q But you're not absolutely sure about that?

3 A I'm not an expert, so I don't know. I
4 can't say for sure this is -- I'm not a handwriting
5 expert. I don't know.

6 Q Look over on the bottom left-hand corner of
7 the page. There is an indication that says "UTDL
8 number," and that number is the same number that's on
9 your driver's license, is it not?

10 A That's right, yes.

11 Q That's not your handwriting?

12 A Definitely not. This was written by
13 somebody else, I can tell.

14 Q Do you know who it was written by?

15 A I have no idea. That's definitely not me.
16 I can tell if it looks like what I would write, but
17 it's not me. I didn't write that.

18 (Whereupon Deposition Exhibit No. 7 was
19 marked for identification.)

20 Q (BY MR. SILVESTRINI) I'm going to show you
21 now what we've marked as Exhibit No. 7 to your
22 deposition.

23 A Okay.

24 Q Do you recognize this document?

25 A No, not at all. This one here?

ONYEABOR, EXAM BY SILVESTRINI

1 Q Yes.

2 A No. No idea.

3 Q This document on the bottom left-hand
4 corner bears a date, August 3, 2000. Do you see
5 that? It says "8-3-00."

6 A Uh-huh.

7 Q "11:51 a.m." Did you go -- on August 3rd
8 of 2000 --

9 A Where did this document come from?

10 Q Have you ever seen it before?

11 THE WITNESS: Can I ask a question?

12 MR. RICHARDS: Just answer his question,
13 and we can take a break at some point in time.

14 Q (BY MR. SILVESTRINI) It's your testimony
15 you've never seen Exhibit 7 before, correct?

16 A No, no.

17 Q You don't know what Exhibit 7 is?

18 A No.

19 Q Did you go to America First Credit Union in
20 the Brickyard on August 3, 2000 at approximately
21 11:51 a.m. to sign Exhibit 3, which is the restated
22 declaration of covenants for Centennial Pointe?

23 A I do not remember anything like that.

24 Q Are you saying you don't remember it? Do
25 you know whether you went or not? You don't know?

ONYEABOR, EXAM BY SILVESTRINI

1 A You're telling me that I went. I have no
2 idea of knowing what I did in 2000.

3 Q Well, and I'm trying to -- you know, you've
4 testified under oath that you did not sign this
5 Exhibit 3, and I want to know whether this is a
6 matter that you don't remember signing it, or if
7 you're saying, "I definitely did not sign it." So
8 which is the case?

9 A I didn't sign -- I don't -- I did not sign
10 this. So are you saying I wrote this down? Are you
11 saying I wrote this?

12 Q I'm not saying you wrote that down. I'm
13 just asking if you recognize the document, and --

14 A Because I can tell you this is not my
15 handwriting again.

16 Q And it's your testimony that you did not go
17 to America First Credit Union at the Brickyard on
18 August 3, 2000 at 11:51 a.m. and sign Exhibit 3?

19 A No. I saw this document in the year 2004.
20 Mr. Trueblood gave me a copy. I went to the City and
21 got a copy. That's when I saw this document, 2004.
22 So I don't know anything else about anybody saying I
23 signed it then. I saw it in 2004. And I've said
24 that over and over.

25 Q And when you say that you -- the document

ONYEABOR, EXAM BY SILVESTRINI

1 you saw in 2004 with Mr. Trueblood, you're talking
2 about Exhibit 3?

3 A That's right. In 2004, I said. 2004,
4 that's right. Mr. Trueblood gave me this document in
5 2004. I went to the City and I saw -- they gave me a
6 copy of this document in 2004.

7 Q Your testimony is the first time you ever
8 saw Exhibit 3 or a copy of Exhibit 3 was in 2004?

9 A That's when I saw it. That's when I saw
10 it. That's when I knew that there was something
11 called a restated document. That's when I became
12 aware of an existence of such a document.

13 Q I'm going to shift gears here a little bit.
14 When you -- I'm going to go back to when you
15 purchased your properties in Centennial Pointe. When
16 you purchased Lot 1 in April of 2000, did you
17 obtain -- were you provided a copy or a policy of
18 title insurance?

19 A A copy of title insurance? What's that?

20 Q A policy -- were you provided a policy of
21 title insurance when you bought the property?

22 A That is insurance on the property?

23 Q Title insurance on the property, not --

24 A What's that?

25 Q -- liability insurance, but title

ONYEABOR, EXAM BY SILVESTRINI

1 insurance. When you closed --

2 A Oh, yeah. Okay. The big document that
3 they sent me in the mail? Like a folder? Like a
4 pamphlet that says something "title," like Landmark
5 Title?

6 Q Right.

7 A Yes, I got that.

8 MR. RICHARDS: Let me go on record saying
9 she might not fully understand what a title insurance
10 policy is, but we'll continue.

11 Q (BY MR. SILVESTRINI) Do you still have
12 that document in your possession?

13 A Every document they gave me that day I have
14 it.

15 Q Do you remember looking at a commitment for
16 title insurance or a title report about Lot 1 before
17 you purchased it?

18 A Oh, no, nothing like that. The only thing
19 I looked at was the declaration -- the guy who was
20 selling me the property, who is Mr. -- it's Commerce
21 CRG. Mr. Travis had brought the CC&R, and he and I
22 had read it, because I made it very clear -- I said I
23 did not want anything but a property that was owned
24 by itself, and so we read that. That's the only
25 thing I remember reading with anyone.

ONYEABOR, EXAM BY SILVESTRINI

1 (Whereupon Deposition Exhibit No. 8 was
2 marked for identification.)

3 Q (BY MR. SILVESTRINI) Ms. Onyeabor, I'm
4 going to show you what we marked as Exhibit 8. This
5 is the declaration and covenants of Centennial
6 Industrial Park, and this document was recorded on or
7 about April 18, 2000.

8 A Yes, uh-huh.

9 Q Is this the document that you referred to
10 that you said Mr. Travis provided you a copy of when
11 you bought Lot 1?

12 A Yes.

13 MR. RICHARDS: Just want to go on record
14 with an objection. This is not the official recorded
15 copy, though we don't doubt the content.

16 MR. SILVESTRINI: And you are correct.
17 It's not. I don't have a copy of that.

18 Q Mr. Travis provided you with a copy of a
19 declaration on the Centennial Industrial Park that
20 was dated in April of 2000 when you bought the
21 property?

22 A Yes. He brought a document to me that he
23 said was a declaration at that point in time. I read
24 it.

25 Q Did you -- when you purchased Lot 1, the

ONYEABOR, EXAM BY SILVESTRINI

1 first lot in Centennial Industrial Park, did you go
2 to the title company to sign papers?

3 A Yes. On the signing? What they called a
4 signing?

5 Q Yes.

6 A The day of the signing? Yes.

7 Q The closing.

8 A Closing. Excuse me. Yes.

9 Q And where did you -- do you know where you
10 went to sign those papers for the closing?

11 A That must have been on 21st and Seventh
12 East.

13 Q Do you know the name of the title company?

14 A I don't remember. I think -- is it
15 Landmark Title?

16 Q I don't know. Is that what you remember?

17 A Because there's a place on 21st and Seventh
18 East.

19 Q When you bought your second lot -- you
20 bought Lot 2 about four months later, correct? In
21 August?

22 A Yeah, uh-huh.

23 Q Did you also go to a closing at a title
24 company when you bought that lot?

25 A Yes.

ONYEABOR, EXAM BY SILVESTRINI

1 Q And were you given any papers to review
2 before you went to the closing for that lot?

3 A No. They called me and they said the
4 paperwork is ready. The second signing, they already
5 had all my information. That is Lot Number 2, is
6 what you're talking about now?

7 Q Right.

8 A They already had all my information, and
9 there was really nothing else to do. They just
10 called me and said the paperwork is ready, and I went
11 over there.

12 Q In my question to you I said August, but I
13 think actually it was the end of September when you
14 bought Lot 2. The deed says the 28th of September.
15 Is that consistent with your memory?

16 A That's right, yeah, uh-huh.

17 Q So the same question -- let me ask this:
18 When you went to buy Lot 2 in September of 2000, were
19 you given a commitment for title insurance at the
20 closing?

21 A I don't remember. I remember them bringing
22 a whole -- what happened is Travis was right there,
23 and then I had the paperwork, and then they opened it
24 and I signed it.

25 Q Did you get papers from the closing when

ONYEABOR, EXAM BY SILVESTRINI

1 you bought the second lot, as well as --

2 A Yeah. That's the paper. I told you. It
3 was like a book.

4 Q Okay.

5 A Then they opened the page and said,
6 "Myriam, initial over here," and I initialed. Then
7 they opened over here and they said, "Myriam, you
8 sign over here," and I signed. That's what happened
9 that day.

10 Q So when you talked before about the book
11 and you said something about a cover sheet that may
12 have said Landmark Title, you're referring to
13 documents that you received when you purchased the
14 second lot?

15 MR. RICHARDS: I think there may be some
16 misstatement of testimony. I'm not sure. Did you
17 indicate it was Landmark Title? I think you
18 indicated it may have been Landmark Title.

19 THE WITNESS: I have no idea what this
20 particular book you're talking about --

21 MR. RICHARDS: Please rephrase the
22 question.

23 Q (BY MR. SILVESTRINI) I'll rephrase the
24 question.

25 You testified that when you bought one of

ONYEABOR, EXAM BY SILVESTRINI

1 these lots -- I'm not sure that we did a good job of
2 figuring out which one -- but you got a stack of
3 papers at the end of the closing --

4 A Yeah, every one of them, actually. When
5 you get over there, there's -- the rest of them you
6 see that way. You walk in there and they say, "Okay.
7 The paperwork is here. Myriam, you initial over
8 here," and you initial. "Myriam, you sign over
9 here," and you sign. "Myriam, this is over here,"
10 and then you do that.

11 Q And so you got a stack of papers for both
12 lots, when you purchased the first lot in Centennial
13 Pointe and when you purchased the second lot?

14 A That's right.

15 Q And do you still have those papers?

16 A Yes.

17 Q You still have the papers for both Lot 1
18 and Lot 2?

19 A Uh-huh.

20 Q I'm going to ask that you produce those.
21 Not here, but I'm going to be sending a request for
22 documents, so I'm just going to ask you, don't do
23 anything to those documents. Keep them so that you
24 can produce them to me -- produce copies of them to
25 me through your attorney when the time comes, okay?

ONYEABOR, EXAM BY SILVESTRINI

1 A Okay. Sure.

2 Q After you bought your lot in the Centennial
3 Pointe, did you receive any notices about meetings of
4 the owners' association for the development?

5 A Yes. There might have been a couple
6 meetings. I think the first meeting we had was an
7 emergency meeting called by Paul --

8 Q Do you know when that was?

9 A -- Bezdjian. That was the end of the year
10 or in about December or January of -- the December of
11 2000 or January of 2001.

12 Q Did you attend that meeting?

13 A Yes, I was at the meeting.

14 Q Have you attended other meetings of the
15 owners' association for Centennial Pointe besides
16 that meeting?

17 A Maybe a couple more.

18 Q And you've received other -- you received
19 notices of other meetings of the Association?

20 A The one -- the one -- really notices -- at
21 that point in time we didn't really have an
22 association. It was a question of the first -- the
23 initial time they were having a dispute -- Paul and
24 Mr. Raile were having a dispute, and Paul came to my
25 house and asked that I come to a meeting, because

ONYEABOR, EXAM BY SILVESTRINI

1 they were disputing that Mr. Raile was bothering him.
2 And I said Bezdjian came to my house.

3 Q Is that the meeting you talked about that
4 happened in either December of 2000 or January of
5 2001?

6 A I think that must be in the beginning of
7 2000, 2001.

8 Q I want to ask -- change gears a little bit.
9 You operate a business out of the Centennial Park --
10 Centennial Pointe property?

11 A Yes.

12 Q And which -- do you occupy both of your
13 units or only one of them?

14 A Lately, since I closed the business down a
15 year ago, I've leased Lot Number 2, and that was
16 probably about nine months to a year now. And before
17 then, I occupied both of them. I occupied both lots.

18 Q And what business did you have that
19 occupied both lots?

20 A Computer.

21 Q Computer Warehouse?

22 A Yes, Computer Warehouse.

23 Q Is that -- is Computer Warehouse, is that a
24 corporation or limited liability company?

25 A No. It's a -- it's just a dba.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Just a dba. And are you the sole owner of
2 Computer Warehouse?

3 A My children and I.

4 Q Pardon?

5 A My children and I.

6 Q And what percentage of Computer Warehouse
7 do you personally own, as opposed to your children?

8 MR. RICHARDS: Relevancy.

9 THE WITNESS: I don't -- I don't remember.
10 We didn't -- we just --

11 Q (BY MR. SILVESTRINI) What are the names of
12 your children who also own some interest in Computer
13 Warehouse?

14 A Chi, C-H-I.

15 Q Is that Chi Onyeabor?

16 A Uh-huh. And Geoffrey.

17 Q J-E --

18 A G-E.

19 Q G-E-O?

20 A Uh-huh.

21 Q F-F-R-E-Y?

22 A Uh-huh.

23 Q Onyeabor?

24 A Uh-huh.

25 Q Just those two?

ONYEABOR, EXAM BY SILVESTRINI

1 A Yeah.

2 Q And so you don't know how much Chi owns of
3 Computer Warehouse?

4 A No, because, you know, we have been moving
5 things around and changing things. It's a dba.

6 Q How old is Chi?

7 MR. RICHARDS: Relevancy.

8 THE WITNESS: Chi is 18 -- 18 and a half.

9 Q (BY MR. SILVESTRINI) And how old is
10 Geoffrey?

11 MR. RICHARDS: Same objection.

12 THE WITNESS: 17.

13 Q (BY MR. SILVESTRINI) Do you know if -- did
14 Chi earn any income from Computer Warehouse in the
15 last five years?

16 MR. RICHARDS: Same relevancy objection.

17 THE WITNESS: We all file our taxes
18 together.

19 Q (BY MR. SILVESTRINI) That's what I was
20 getting to. So you --

21 A All three of us file our taxes together.
22 We don't percentage -- percentile. We file our taxes
23 together, all three of us, so I don't know. I don't
24 split it up.

25 Q When you say you file your taxes together,

ONYEABOR, EXAM BY SILVESTRINI

1 what do you mean by that?

2 A Everybody is on our tax form, all of us on
3 one tax form.

4 Q And do you file a separate income tax
5 return for Geoffrey?

6 A No, because we all file on the Computer &
7 Equipment Warehouse, and also on the one tax.

8 MR. RICHARDS: I'm going to object to all
9 questions regarding taxes and income to the partners
10 of the business for general relevancy reasons.

11 Q (BY MR. SILVESTRINI) Do you have an
12 accountant who prepares tax returns for the Computer
13 Warehouse?

14 MR. RICHARDS: Same objection.

15 THE WITNESS: Sometimes I prepare them
16 myself. Prepare them myself.

17 Q (BY MR. SILVESTRINI) You may do that, but
18 do you have -- is there an accountant who does it
19 ever?

20 A I have had people -- workers just a few
21 months. Just for a few months. I do that mostly
22 myself.

23 Q But did the workers that you've had for a
24 few months prepare your tax returns?

25 A Yes, yes. They help me with the money

ONYEABOR, EXAM BY SILVESTRINI

1 aspect of it.

2 Q Have you filed a tax return, a 1040 tax
3 return in the United States for every year during the
4 last five years?

5 MR. RICHARDS: Same objection. Relevancy.

6 THE WITNESS: Yes.

7 Q (BY MR. SILVESTRINI) And do you know if
8 Chi Onyeabor has his own Social Security number?

9 A All three of us are on the tax form. All
10 three of us have Social Security numbers.

11 Q And are separate returns filed for Chi?

12 A We all file the same business. Computer &
13 Equipment Warehouse is our business, and we file the
14 tax with that, with the -- with the Computer &
15 Equipment Warehouse under the same -- the same tax
16 form.

17 Q Maybe I'm just not understanding what
18 you're saying, what you're telling me, but I
19 understand, as a dba, Computer & Equipment Warehouse
20 is not a separate entity, that any income that it
21 earns is reported --

22 A That's what I'm saying.

23 MR. RICHARDS: Asked and answered.

24 THE WITNESS: There are three of us. I
25 have already answered that question. The three of

ONYEABOR, EXAM BY SILVESTRINI

1 us, we have all Social Security numbers. We file the
2 same -- I think they call it 1099 -- for all three of
3 us for Computer & Equipment Warehouse, and then we
4 file another form -- I think it's the 1040 -- for
5 tax, so under the same heading, all three of us.

6 Q (BY MR. SILVESTRINI) Do you all three file
7 on the same 1040 return, or do you file individual
8 1040 returns?

9 MR. RICHARDS: Same objection.

10 THE WITNESS: There's just one form. Just
11 one.

12 Q (BY MR. SILVESTRINI) Just one return?

13 A Now, the 1040 is which one? Now, the 1040,
14 is it the main tax form?

15 Q It's the main tax return.

16 A Because I know there's something that they
17 prepare for Computer & Equipment Warehouse for the
18 three of us, and then there's another paper, which I
19 think is the ten something that we get from the
20 library, get a copy from the library -- I think it's
21 1041 or something -- and fill it out. I don't look
22 at the numbers on this paperwork, but I just go and
23 get them and fill them out.

24 Q Let me just ask you this: For the last
25 five years, have you prepared your own tax returns?

ONYEABOR, EXAM BY SILVESTRINI

1 MR. RICHARDS: Same objection.

2 Q (BY MR. SILVESTRINI) I want to know if
3 you've gone to a tax preparer to get help or if
4 you've done it yourself.

5 A Is the Internet a tax help? Because
6 sometimes you go on the Internet and get help.

7 Q Okay. So you've gone on the Internet
8 to --

9 A Get help.

10 Q -- look up things to prepare your tax
11 return?

12 A Yeah, that's right.

13 Q But you've done that yourself?

14 A Yes.

15 Q If I wanted to find out how much money
16 Computer & Equipment Warehouse made each year for the
17 last five years, what records do you have that would
18 show me that?

19 MR. RICHARDS: Objection. Relevancy.

20 THE WITNESS: What records do I have? Just
21 the annual report -- annual report we have of how
22 much we made.

23 Q (BY MR. SILVESTRINI) How do you compile
24 that annual report?

25 MR. RICHARDS: Same objection.

ONYEABOR, EXAM BY SILVESTRINI

1 THE WITNESS: I have a form that I fill
2 out.

3 Q (BY MR. SILVESTRINI) Do you keep records
4 about the income of Computer & Equipment Warehouse on
5 a computer?

6 A No. There's a -- I think we're required to
7 keep the record for -- is it three years? I don't --
8 the old ones, I may not even know where they are.
9 Did you say five years?

10 Q I said five years, right.

11 A I don't know that I can -- I thought we
12 were required to keep the records for three years
13 only, is what I heard, what I was told.

14 MR. RICHARDS: I'm just going to make a
15 general objection regarding all financial questions
16 regarding Computer Warehouse on relevancy grounds.

17 Q (BY MR. SILVESTRINI) Ms. Onyeabor, you've
18 made an accusation or an allegation in the
19 counterclaim and the third-party complaint in this
20 case that conduct by Bruce Raile that you have
21 alleged caused harm to your business, correct?

22 A Yes.

23 Q What harm -- let me ask you -- I want to
24 know if you have an idea about the dollar value of
25 the harm that you claim Bruce Raile caused to your

ONYEABOR, EXAM BY SILVESTRINI

1 business.

2 A Enormous.

3 Q Do you have a dollar number?

4 A Enormous. I just know that my -- every
5 year we make at least two hundred and something
6 thousand, and it's just been --

7 MR. RICHARDS: The question calls for some
8 speculation and drawing a legal conclusion, because
9 it hasn't been decided yet, but do your best to
10 answer, Myriam.

11 Q (BY MR. SILVESTRINI) You said that you
12 think your business --

13 A I would say this man has cost me at least
14 -- for five years now, he has cost me at least
15 \$100,000.

16 MR. RICHARDS: Each year, or total?

17 THE WITNESS: For each year. Excuse me. I
18 mean -- excuse me -- 200,000 per year for five years
19 now. I'm not thinking right. 200,000 per year for
20 five years is what? Do we have a calculator?

21 MR. RICHARDS: That's a million dollars.

22 THE WITNESS: It's a million dollars, yes.

23 Q (By MR. SILVESTRINI) So you're claiming
24 Mr. Raile cost you --

25 A Oh, definitely. This man has cost me at

ONYEABOR, EXAM BY SILVESTRINI

1 least 200,000 a year.

2 Q Was there a year in which the revenues of
3 Computer & Equipment Warehouse went down \$200,000
4 from the prior year?

5 A Oh, the last year and a half it's been
6 closed.

7 Q I'll go back to my question. Do you
8 maintain any records for Computer & Equipment
9 Warehouse on any computer bookkeeping program such as
10 QuickBooks or a similar program?

11 MR. RICHARDS: Same objection. Relevancy.

12 THE WITNESS: No. I have a paper form that
13 I fill -- that's the form that I use to prepare the
14 taxes.

15 Q (BY MR. SILVESTRINI) So I understand the
16 business that you're claiming Mr. Raile has harmed by
17 his conduct is Computer & Equipment Warehouse,
18 correct?

19 A Yes.

20 Q You don't have any other business that you
21 operated at Centennial Pointe other than that
22 business, do you?

23 A In Building 2 I operated Thunder Graphics.

24 Q What is Thunder Graphics?

25 A Thunder Graphics is a company that I

ONYEABOR, EXAM BY SILVESTRINI

1 started that just almost took off as a production
2 company, and then I had to close it down right after
3 we started fighting.

4 Q Was that a separate entity? Was it a
5 corporation?

6 A Yes, yes.

7 Q Was it incorporated in Utah?

8 A Yes, yes.

9 Q It was a corporation as opposed to a
10 limited liability --

11 A No. That's a limited -- that's a dba, too.
12 And it was registered in 19 -- no, in 2000 or 2001.
13 I'm not 100 percent sure about that.

14 Q Did that company ever have any income?

15 A Oh, yeah.

16 Q Did you report that income on your personal
17 tax return?

18 A Yes.

19 MR. RICHARDS: Again, relevancy.

20 Q (BY MR. SILVESTRINI) What records do you
21 have of the income that Thunder Graphics earned
22 during any period of time?

23 A I fill all this stuff in forms.

24 Q What forms?

25 A There are forms that I provided, you know,

ONYEABOR, EXAM BY SILVESTRINI

1 specific to us. That's easy for me to understand,
2 since I do a lot of the taxes, and it's a very
3 peculiar form, and I fill in those -- that
4 information in the forms.

5 Q This is a handwritten form?

6 A No, no, no. It's -- it's -- it's a form,
7 yeah. We fill it in. I fill it in.

8 Q You fill it in with handwriting?

9 A That's right.

10 MR. RICHARDS: Again, I'm going to object
11 to all questions relating to the finances or taxes of
12 Thunder Graphics for relevancy reasons.

13 Q (BY MR. SILVESTRINI) Are you claiming any
14 damage to Thunder Graphics by virtue of any conduct
15 by Mr. Raile or Jennifer Clark?

16 A Jennifer Clark came in to --

17 Q My question is --

18 A Yes, I am. Yes, I am. Yes, I am.

19 Q When did Jennifer Clark come into your
20 place of business and commit the acts that you've
21 alleged in your third-party complaint against her?

22 A 2004.

23 Q When in 2004?

24 A Let me think. That was -- I know it was
25 prior to August, because I remember that I wrote the

ONYEABOR, EXAM BY SILVESTRINI

1 letter, and I complained in that letter about the
2 situation in August, so it was prior to -- just maybe
3 a few months before that letter I wrote in August,
4 which I was really angry in.

5 Q What happened relating to Jennifer Clark
6 and what you're complaining about?

7 A Well, because we had nicely asked them not
8 to park in front of our doors, and it got to a point
9 where Mr. Raile -- I mean, this -- they would become
10 belligerent, confront my workers, and my workers told
11 me. So I said, "Okay. I know what I'm going to do.
12 I'm going to start leaving notes." I didn't say
13 "fight him back." I didn't say "hit anybody." I
14 didn't say "do anything." I didn't say "move any
15 car." I said, "Write a note. I'm going to write him
16 a note."

17 I wrote a note and put it on the doors of
18 their cars. They're blocking our way. Very simple
19 note. I put it on the door. And all the other
20 people -- some of them were nice, because when they
21 saw the note, then they stopped coming back in front
22 of my door. Jennifer Clark decided to come in and
23 attack.

24 Q Did you leave a note on Jennifer Clark's
25 car?

ONYEABOR, EXAM BY SILVESTRINI

1 A That's right, I did.

2 Q Did you know that it was her car when you
3 left the note on it?

4 A I had never seen Jennifer Clark until the
5 day she walked in my office.

6 Q So you left a note on Jennifer's car?

7 A I left a note on cars that were parked in
8 front of our doors. I left a note on all the cars.
9 A lot of other people's cars. I said --

10 Q Then what happened?

11 A -- "You are blocking our way."

12 Q Then what happened?

13 A I remember the gentleman came over to me
14 and apologized. The other -- and another lady did
15 apologize. The rest -- Jennifer Clark is the only
16 one that jumped -- came out and attacked.

17 Q So Jennifer Clark came to your place of
18 business?

19 A Inside.

20 Q Okay. She walked in the door?

21 A That's right.

22 Q The door was open, correct?

23 A No. The door is automatic close. It
24 cannot be opened. It closes itself automatically, so
25 they had to open it.

ONYEABOR, EXAM BY SILVESTRINI

1 Q The door wasn't locked, correct?

2 A No, the door was not locked.

3 Q You were open for business at the time?

4 A We were open, yes.

5 Q And Jennifer Clark came into your place of
6 business through the unlocked door?

7 A Yes.

8 Q And what did she do?

9 A Oh, she -- she -- I mean, she -- I was
10 sitting there right -- at the end of the day -- here.
11 I was sitting there and just going through the
12 paperwork, through the deal. And then I heard the
13 door, poof, and she just jumped in.

14 Q What did she say to you?

15 A She said, "Did you leave this on our door?"

16 Q Excuse me. You may be going too fast.
17 What did she say?

18 A "Did you leave this on my car?"

19 Q Okay. And she was -- and you're gesturing.
20 You're picking up a piece of paper and showing it to
21 me, like -- did Jennifer Clark show you a --

22 A She had a piece of paper, and she just
23 came -- I was like where you are, and she came
24 through the door, and then I was sitting there going
25 through my paperwork, and then she came -- walked

ONYEABOR, EXAM BY SILVESTRINI

1 through the door --

2 Q How close to you was she when she --

3 A Oh, she -- she came close.

4 Q Was she across the desk?

5 A My table -- yeah. My desk is like this.

6 By the time it was over, now we had moved -- I was --
7 -- I had moved from there, but by then I was telling
8 her -- I said, "Okay. Now, you scream at me long
9 enough, it's time to get out the door. I'm going to
10 call the police."

11 Q Okay. Let's take this -- I'm sorry to
12 interrupt you. Let's take this one step at a time.
13 Let's talk about your desk. How big is your desk?

14 A It's about half this -- I would say -- not
15 very wide. Just about half of this table. So she
16 was pretty close to me.

17 MR. RICHARDS: Is that three feet, two
18 feet?

19 THE WITNESS: Yeah, three feet. About two
20 and a half. Just this narrow. This wide of a table.

21 Q (BY MR. SILVESTRINI) About two and a half
22 feet?

23 A That's right.

24 Q So your desk is about two and a half feet
25 wide?

ONYEABOR, EXAM BY SILVESTRINI

1 insisted on coming on there. I said, "Well, if you
2 insist, that's fine. I've written you this
3 letter" -- and I'm glad they acknowledge that I wrote
4 it to them. I said, "You take care of it. It's my
5 property. You call it common areas. It's not common
6 areas. You insist it's common areas. You maintain
7 it. You pay for it."

8 That's why I have not been paying them the
9 water and the other bills here, is that they do not
10 want to -- you know, I do not feel at this point in
11 time, actually, that I owe the Centennial Pointe
12 Association anything that's cost me so much injury,
13 financial injury. And I don't have, even, the money
14 to pay anybody anything anymore. My property is
15 gone. I mean, they're sitting on it, basically, is
16 what I'm saying.

17 MR. BELL: Okay. That's all I have.

18 FURTHER EXAMINATION

19 BY MR. SILVESTRINI:

20 Q I just have maybe one or two questions
21 more.

22 You're still using the City water that's
23 provided to the premises through the pipes that run
24 into your property, correct?

25 A There's nobody there.

ONYEABOR, EXAM BY SILVESTRINI

1 Q Well, the water is still turned on, isn't
2 it?

3 A Well, they have -- they have the option --
4 they had the option, excuse me -- I gave him the
5 option that we separate it, and he didn't want to.
6 These are choices they have to make.-

7 Q You're still using the water when you go in
8 there, do you not?

9 A Well, if they insist on literally occupying
10 the place and doing the things they're not supposed
11 to be doing, that's their choice to make.

12 Q So the answer to my question is "yes"?

13 A Nobody is there. Nobody is in the
14 building. I'm not doing anything there.

15 Q You go in there and you never get a drink
16 of water and never use the bathroom?

17 A I never hardly do anything there. I'm just
18 in and out.

19 Q The water is still on to your property,
20 isn't it?

21 A Yeah. I do believe that right now they owe
22 me for what they done to me. They owe me.

23 Q Just answer my question, please. The water
24 is still on to your property?

25 A I don't know. He knows. He's the one

ONYEABOR, EXAM BY SILVESTRINI

1 running everything.

2 Q You have no idea right now that the water
3 is still on to your property?

4 A I said I hardly even go there. I go there
5 once in a while. I go in and I come out.

6 MR. SILVESTRINI: No further questions.

7 MR. HUNT: I have nothing. Thank you.

8 MR. BELL: I'm done. Thanks.

9 (Whereupon the taking of the deposition was
10 concluded at 12:35 p.m.)

11 * * * *

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

I, RENEE L. STACY, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public for the State of Utah, certify:

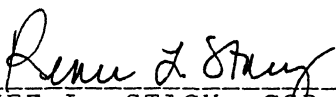
That the foregoing deposition of MYRIAM ONYEABOR was taken before me pursuant to Notice at the time and place therein set forth, at which the witness was put on oath by me;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing deposition is a true record of the testimony and of all changes made by the witness and of all objections made at the time of the examination.

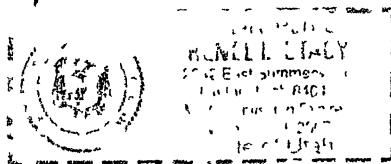
I further certify that I am neither counsel for nor related to any party to said action nor in anyway interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name and affixed my seal this 29th day of March, 2006.



RENEE L. STACY, CSR, RPR
Notary Public in and for the
County of Salt Lake, State of Utah

My Commission Expires:
November 9, 2007



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

MYRIAM ONYEABOR deposes and says: that she is the witness referred to in the foregoing deposition, taken March 23, 2006; that she has read the same and knows the contents thereof; that the same are true of her own knowledge.

MYRIAM ONYEABOR

SUBSCRIBED and SWORN to before me this
_____ day of _____, 2006.

Notary Public

Residing at _____

My commission expires:

C O R R E C T I O N S

Deposition of: MYRIAM ONYEABOR

Taken: March 23, 2006

Case Name: LEBR Associates, et al. vs. Onyeabor

Case No: 040918762

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Exhibit “C”

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Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited	:	
liability company, and CENTENNIAL	:	
POINTE PROPERTY OWNERS	:	AFFIDAVIT OF DONALD SANBORN
ASSOCIATION (Registered on November	:	
29, 2004), a Utah Nonprofit Corporation,	:	
	:	Civil No. 040918762
Plaintiffs,	:	
	:	Judge Randall Skanchy
v.	:	
	:	
MYRIAM ONYEABOR,	:	
	:	
Defendant.	:	
	:	

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

Donald Sanborn, being first duly sworn and upon oath, deposes and states as follows:

1. I am over 18 years of age and am competent to testify in a court of law.
2. I have personal knowledge of the facts set forth herein.

3. Centennial Pointe, LLC is a Utah limited liability company.
4. I was Centennial Pointe, LLC's managing member.
5. Centennial Pointe, LLC purchased a parcel of real property in Salt Lake County, which came to be known as Amended Lot 5 Phase 5 Centennial Pointe Industrial Park ("Centennial Pointe").
6. Centennial Pointe, LLC purchased Centennial Pointe with the intent of developing the property into a light industrial planned unit development.
7. On April 18, 2000, Centennial Pointe, LLC, executed Centennial Pointe's Declaration of Covenants, Conditions and Restrictions ("April 2000 CC & Rs"), which were recorded by the Salt Lake County Recorder's office on April 19, 2000 as Entry No. 7631217.
8. The April 2000 CC&Rs were intended to benefit and burden all Lots in Centennial Pointe.
9. The April 2000 CC&Rs were intended to create common areas throughout Centennial Pointe with access and use easements being granted to all Centennial Pointe owners, tenants, tenant's employees and invitees.
10. These common areas were to include, *inter alia*, the parking lot and all parking stalls, sidewalks, accessways and roads, and landscaped areas throughout the Centennial Pointe development.
11. The April 2000 CC&Rs were intended to establish a Centennial Pointe Owners Association ("Association") to manage and maintain the common areas, and to vest the Association with the authority to levy and collect assessments for, *inter alia*, the costs associated

with maintaining and repairing Centennial Pointe's common areas.

12. However, contrary to Centennial Pointe, LLC's intent that Centennial Pointe be developed and managed as a light industrial planned unit development, the April 2000 CC&Rs contained some conflicting and overlapping definitions regarding Centennial Pointe's common areas.

13. To clarify those conflicting and ambiguous definitions contained in the April 2000 CC&Rs, Centennial Pointe, LLC caused to be prepared Centennial Pointe's Restated Declaration of Covenants, Conditions and Restrictions ("Restated Amended CC&Rs").

14. Centennial Pointe, LLC's intent was that the Restated Amended CC&Rs would supercede and amend the April 2000 CC&Rs.

15. Centennial Pointe, LLC intended that the Restated Amended CC&Rs would benefit and burden all Lots in Centennial Pointe.

16. The Restated Amended CC&Rs define the common areas as Utility Lines, lighting not attached to Buildings, fences, landscaping, Accessways, parking spaces, loading/receiving areas, and all other portions of Centennial Pointe other than the Buildings, which was consistent with Centennial Pointe, LLC's intent that Centennial Pointe be developed and managed as a planned unit development.

17. The Restated Amended CC&Rs were not intended to and do not alter or affect any Centennial Pointe owners' ownership interest in their Lot.,

18. I signed the Restated Amended CC&Rs on behalf of Centennial Pointe, LLC.

19. At the time Centennial Pointe, LLC executed the Restated Amended CC&Rs, it

owned all of the Lots in Centennial Pointe except Lot 1 owned by Myriam Onyeabor.

20. On August 24, 2000, the Restated Amended CC&Rs were recorded by the Salt Lake Recorder's Office as entry no. 7704757.

21. From approximately April 2000-December 2000, I oversaw the Association, as its president.

22. During that time, the Association maintained Centennial Pointe's common areas, including, but not limited to, the landscaping and snow removal in the Centennial Pointe development.

23. This included lawn care and landscaping maintenance on and around Ms. Onyeabor's property.

24. The Association also paid the water, sewer, power and liability insurance for the Centennial Pointe development.

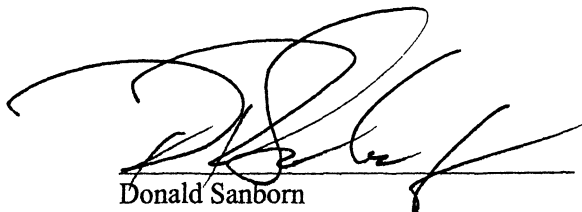
25. This included water usage for Ms. Onyeabor's property.

26. The Association assessed Centennial Pointe's owners, including Ms. Onyeabor, for their *pro rata* share of Centennial Pointe's common expenses.

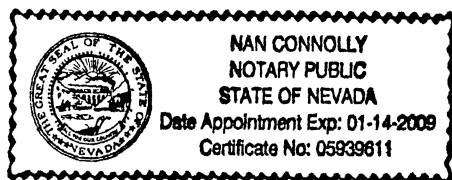
27. Ms. Onyeabor paid her Association assessments from the period of April 2000-December 2000.


28. During my tenure as president of the Association, Ms. Onyeabor never challenged the validity of the Association nor its authority to assess Centennial Pointe's owners for their *pro rata* share of Centennial Pointe's common expenses.

DATED this 25 day of October, 2006.


Donald Sanborn

SUBSCRIBED AND SWORN to before me this 25~~th~~ day of October, 2006.




NOTARY PUBLIC
STATE OF NEVADA
COUNTY OF CLARK

F:\EDDIE\Sanborn MSI Aff.wpd

Exhibit “D”

4/6

WHEN RECORDED, MAIL TO.
Bryan B. Todd, Esq.
Parsons, Behle & Latimer
PO Box 45898
SLC, UT 84145-0898
(801) 532-1234

7704757
08/24/2000 02:46 PM 82.00
Book - 8383 Pg - 1233-1266
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: RDJ, DEPUTY - WI 34 p.

Space Above for Recorder's Use

7704757

**RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK**

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and executed by **CENTENNIAL POINTE, L.L.C.**, a Utah limited liability company, as to Lots 2-7 of the Property described below, and **MYRIAM ONYEABOR**, as to Lot 1 of the Property described below (collectively "**Declarant**"), and amends and supersedes that certain Declaration of Covenants, Conditions and Restrictions of Amended Portion of Lot 5, Phase V, Centennial Industrial Park recorded April 19, 2000 as Entry No. 7621217 in Book 8356 beginning at Page 2534, Salt Lake County Records, in its entirety. The Property and the Development defined below shall be subject to the provisions hereof.

I. DEFINITIONS

When used in this Declaration, including the recitals hereto, the following terms shall have the following meaning indicated.

1.1 "**Accessways**" shall mean the walkways, entrances, exits, drive aisles, driveways, interior roads and any other access ways to, from and/or over the Property.

1.2 "**Association**" shall mean Centennial Pointe Property Owners Association, Inc., a Utah non-profit corporation.

1.3 "**Board**" shall mean the Association's board of trustees.

1.4 (a) "**Buildings**" shall mean all buildings (including all elements and components thereof, including all exterior walls and roofs and above-ground attachments thereto).

(b) "**Building Areas**" shall mean the areas designated as "Lease Spaces" on the Plat, and shall be the only areas on the Lots within which Buildings may be located, and shall not necessarily be subject, nor in any way limited to, being leased.

1.5 "**Bylaws**" shall mean to the Bylaws of the Association, as they may be adopted and amended from time to time.

1.6 "**Common Elements**" shall mean all Utility Lines, lighting not attached to Buildings, fences, landscaping, Accessways, parking spaces, loading/receiving areas, and all other portions of the Property other than the Buildings.

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1.7 **"Common Expenses"** shall mean and refer to all sums which are assessed against and expended on behalf of all Owners and all sums which are required by the Association to perform or exercise its functions, duties, or rights under this Declaration, the management agreement for the operation of the Property, if any, and such rules and regulations as the Association may from time to time make and adopt. By way of illustration, but not in limitation, Common Expenses shall include: (i) expenses of administration, maintenance, operation, repair and replacement of those components of the Common Elements that must be maintained and/or replaced on a periodic basis together with such reserves as may be from time to time established for the same by the Association; (ii) expenses agreed upon by the Association, or the Owners, and lawfully assessed against the Owners in accordance with this Declaration; (iii) expenses declared to be Common Expenses by this Declaration or the Bylaws; and (iv) any valid charge against the Property as a whole.

1.8 **"Declarant"** shall mean and refer to the Declarant named above as well as any successor in interest of Declarant which, either by operation of law, or through a voluntary conveyance, transfer, or assignment comes to stand in the same relation to the Property as did its predecessor.

1.9 **"Declaration"** shall mean and refer to this instrument and all modifications, amendments and/or supplements hereto made in accordance with the provisions hereof.

1.10 **"Lot"** shall mean each Lot shown on the Plat, including the Building and any other improvements located thereon.

1.11 **"Lot Number"** shall mean the number designating a Lot as shown on the Plat.

1.12 **"Manager"** shall mean and refer to any Person designated from time to time by the Association to manage, in whole or in part, the business and affairs of the Association and the Property.

1.13 **"Member"** shall mean and refer to a member of the Association.

1.14 **"Mortgage"** shall mean and include any mortgage, deed of trust or other security instrument by which any Lot or part thereof is encumbered.

1.15 **"Mortgagee"** shall mean and include any mortgagee, beneficiary, or other secured party under any Mortgage.

1.16 **"Occupant"** shall mean an occupant of a Lot.

1.17 **"Official Records"** shall mean the official records of the County Recorder for Salt Lake County, Utah.

1.18 **"Owner"** shall mean any Person owning fee title to a Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall

not mean or include any Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.19 The **"Percentage Interest"** which is appurtenant to a Lot shall be as set forth in **Exhibit A** attached hereto and incorporated herein by reference, and shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

1.20 **"Person"** shall mean any individual or legal entity.

1.21 **"Plat"** shall mean the SUBDIVISION PLAT OF AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK, recorded in the Official Records in Book 99-5P of Plats at Page 117, and all modifications, amendments and/or all supplements thereto recorded in accordance with this Declaration. The Plat, however, is hereby amended to change the Building Sizes shown thereon to the Building Sizes set forth on Exhibit A attached hereto.

1.22 **"Property"** shall mean that certain real property more particularly as follows, all improvements and structures located thereon, including the Buildings, and all easements, rights and appurtenances belonging thereto:

LOTS 1-7, AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK, recorded in the Official Records in Book 99-5P of Plats at Page 117.

1.23 **"Size"** shall mean and refer to the surface area within a Lot of Building, as applicable, in square feet, rounded off to a whole number, which is set forth in **Exhibit A** hereto. The Sizes of the Lots and or Buildings as set forth in this Declaration or in any amendment or supplement hereto shall be conclusive.

1.24 **"Utility Lines"** shall mean and refer to all water, sewer, electricity, gas and other utility lines, pipelines, cables, wires, and similar facilities and equipment connected therewith which services the Property.

II. SUBMISSION TO DECLARATION

The Property shall be subject to the covenants, conditions, restrictions, liens and other provisions herein contained, subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the same or any portion thereof, including, without limitation, any Mortgages; all easements and rights-of-way; any encroachments, or boundary discrepancies; an easement, which is hereby created for the benefit of all Owners and the Association, for each and every Utility Line at such time as construction of all Property improvements is complete, and for ingress to, egress from, maintenance of, and replacement of all Utility Lines.

Reserving unto the Association and the Owners, however, such easements and rights of ingress and egress over, across, through and under the Property as may be reasonably necessary for the Association, the Owners and their assignees and successors (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct, complete, repair and maintain the Buildings and Lots and all of the other improvements described in this Declaration or in the Plat, and to do all things reasonably necessary or proper in connection therewith; and (ii) to improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all Owners as the Association may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the Property or any improvement thereon is traversed or partially occupied by a permanent improvement or Utility Line, a perpetual easement for the same shall exist.

III. LOTS

3.1 Description and Legal Status of Lots. The Plat shows each Lot, its Lot Number, location, Size and dimensions.

3.2 Contents of Exhibit A. Exhibit A to this Declaration contains the following information with respect to each Lot: (i) the Lot Number; (ii) its Size; (iii) the Building Size on each Lot; and (iv) the Percentage Interest which is assigned to and appurtenant to each Lot.

IV. NATURE AND INCIDENTS OF LOT OWNERSHIP

4.1 Estate of an Owner. Each Owner shall own fee simple title to its Lot(s).

4.2 Title. Title to a Lot may be held or owned by any Person or more than one Person and in any manner in which title to real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.

4.3 Inseparability. No part of a Lot or the legal rights comprising ownership of a Lot may be separated from any other part thereof. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Lot shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration.

4.4 Partition Not Permitted. No Owner may subdivide or partition its Lot.

4.5 Owner's Rights to Use of Common Elements. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Elements.

4.6 Access Easement. Each Owner shall have the right, which right shall be appurtenant to and pass with the title to such Lot, to ingress and egress over, upon and across the Accessways as reasonably necessary for access to such Owner's Lot, on the terms and conditions set forth herein. The Association reserves the right to eject or cause to be ejected from any portion of the

Property any person not authorized, empowered or privileged to use the same, or who uses the same in violation of the provisions of this Declaration. No obstruction or interference with the free flow of vehicular or pedestrian traffic over the Accessways shall be permitted; provided, however, that the Association shall be permitted to obstruct the Accessways to the extent reasonably necessary (a) for repair, maintenance and traffic regulation and control of the Accessways and (b) in the opinion of its counsel, to prevent dedication of the Accessways for public use or the acquisition of any prescriptive rights in the Accessways; provided further, however, before so closing off any part of the Accessways as provided herein, the Association shall make all reasonable efforts to coordinate such closing with the activities of the Owners so that the activities of the Owners are impacted as little as reasonably practicable. The Association reserves the right to police the Accessways and establish and enforce reasonable rules and regulations for the use thereof. The Association may post signs and/or implement other mechanisms to regulate the flow of traffic and parking over the Accessways.

4.7 Association's Right to Use of Common Elements. The Association shall have a non-exclusive easement to make such use of the Common Elements as may be necessary or appropriate to perform the duties and the functions which it is obligated or permitted to perform pursuant to this Declaration and/or the Bylaws.

4.8 Easement for Encroachment and Common Elements.

(a) The Association and each Owner shall have a perpetual easement for the maintenance, use, repair, reconstruction, rebuilding and replacement of common footings, common foundations, common walls, weather-tight attachment of continuous elements such as roofing, façade, surfacing, etc., and the installation and removal of permitted improvements such as signs, entrances, marquees, canopies, lights and lighting devices, fire doors, awnings, alarm bells, wing walls, support and other columns, pilasters, roof flashings, eaves, roof and building overhangs, etc. (collectively, "**Shared Elements**") as they now exist regarding the Buildings currently located upon the Property. If any part of any Building is destroyed and not restored, then the Person whose improvements are destroyed shall leave in place any Shared Elements (or any portions thereof) which were not destroyed. Such rights shall be subject to the condition, however, that all such maintenance, use, repair, reconstruction, rebuilding and replacement shall be in accordance with generally accepted practices in the manner customary for improvements of such type and so as not to impose any increased load on the servient Building, except as may be approved by the Owner thereof. Such easement rights shall include reasonable access to accomplish the foregoing.

(b) It is acknowledged that the Buildings share common walls which are believed by Declarant to be located along the common Lot boundaries ("**Common Walls**"). All Common Walls shall constitute party walls for all purposes hereof, and except as herein modified or expanded, all legal and equitable principles relating to party walls shall govern and apply to the Common Walls. No Owner shall use or alter any Building or other improvements in any way that would jeopardize the support furnished by, or the soundness or integrity of, any Common Wall. The Owners sharing Common Walls shall equally share all expenses relating to damage, repair, replacement, restoration and maintenance thereof which are necessary or desirable to

preserve the soundness or structural integrity thereof; provided, however, that to the extent any such expense becomes necessary or desirable as a result of the act or omission of a particular Owner, such Owner shall bear such expense. Expenses associated with maintenance, repairs or replacements benefiting only one Owner (such as interior painting or redecorating) shall be borne solely by that Owner. Notwithstanding any demolition and/or new construction an Owner may desire to carry out on its Lot and/or related to its Building, such Owner shall not be entitled to damage or demolish any Common Wall to any extent, nor alter or change the exterior design or structure of its Building in any way that might have a negative impact on any Common Wall.

(c) It is further acknowledged that the Buildings may share Utility Lines (“**Shared Utility Lines**”). No Owner shall use or alter any Shared Utility Lines without the prior written consent of all other Owners sharing the same. The Owners sharing Shared Utility Lines shall equally share all expenses relating to damage, repair, replacement, restoration and maintenance thereof which are necessary or desirable to preserve the soundness or structural integrity thereof; provided, however, that to the extent any such expense becomes necessary or desirable as a result of the act or omission of a particular Owner, such Owner shall bear such expense. Expenses associated with maintenance, repairs or replacements benefiting only one Owner shall be borne solely by that Owner. Notwithstanding any demolition and/or new construction an Owner may desire to carry out on its Lot and/or related to its Building, such Owner shall not be entitled to damage or demolish any Shared Utility Lines to any extent, nor alter or change the exterior design or structure of its Building in any way that might have a negative impact on any Shared Utility Lines.

(d) Each Owner hereby grants all other Owners with whom it shares Common Walls and/or Shared Utility Lines such easements and rights of ingress over, across, through and under its Lot and Building, including a reasonable right to enter its Building, as is reasonably necessary to permit the former to perform its obligations and/or exercise its rights hereunder. In addition, if and to the extent that any Common Wall is not currently located along a common Lot boundary, an easement shall exist over, across, through and under the Lot which is thereby encroached upon for such encroachment, the maintenance of the Common Wall in its current location, and the exclusive use by the Owner of the encroaching Building of the portion thereof so encroaching. All easements created under this Section 4.8 shall be perpetual.

4.9 Easements Deemed Created. All conveyances of Lots hereafter made, by whatever means, shall be construed to grant and reserve such reciprocal easements as shall give effect to the provisions hereof, even though no specific reference to such easements appears in any such conveyance.

V. LOTS

5.1 Maintenance of Lots.

(a) Each Owner and Occupant shall, without cost or expense to the Association or any other Owner or Occupant, keep and maintain, or cause to be kept and maintained, its Building(s) in a good and safe state of repair and in a clean, sanitary and orderly condition and in compliance with all applicable laws, ordinances, codes, orders, rules and regulations. Each

Owner's and Occupant's obligation to maintain and operate its Lot shall include, without limitation, protecting the surfaces of its Building from weathering, deterioration, aging, and graffiti or other defacement, maintaining, repairing and operating the permitted signs on its Lot, and complying with all applicable requirements of governmental agencies pertaining to the use and maintenance of its Lot including, without limitation, the making of any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about, its Lot under any laws, ordinances, rules, regulations or orders now or hereafter adopted, enacted or made and applicable to its Lot.

(b) In the event that any Owner or Occupant fails to perform or cause to be performed any of its duties or obligations as provided herein, and such failure is not corrected within a reasonable period of time after the Association sends written notice of such failure to such Owner or Occupant, then the Association shall have the right to correct such failure, whereupon all costs and expenses incurred by the Association in connection therewith, with interest thereon at the Default Interest Rate, shall be paid by such Owner or Occupant to the Association upon demand for the same. For the purposes of the preceding sentence, a failure shall be deemed to be corrected "within a reasonable period of time" after notice if such failure is corrected within thirty (30) days after such notice, or, if such failure is such that it cannot be corrected with due diligence within such thirty (30) day period, the Owner or Occupant commences correction of such failure within such thirty (30) day period and thereafter continuously and diligently prosecutes the same to completion as soon as practicable, but in no event more than ninety (90) days after such notice. The Association shall have an easement to enter each Lot for the purpose of exercising the rights reserved to it pursuant hereto. The failure by any Owner or Occupant to perform its duties and obligations hereunder shall constitute a default by such Owner or Occupant under this Declaration, and the remedies afforded to the Association pursuant to this subsection (b) are in addition to, and not in lieu of, any other remedies available to the Association under this Declaration and at law and in equity.

5.2 Separate Mortgages By Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. Any Mortgage or other encumbrance of any Lot within the Property shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

5.3 Taxation of Lots. Each Lot shall be deemed to be a separate parcel and shall upon conveyance thereof by Declarant be assessed separately for all taxes, assessments, and other charges of any political subdivision or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges of each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

5.4 Mechanic's Liens. No labor performed or materials furnished or used in connection with any Lot shall create any right to file a notice of mechanic's lien against any other Lot or against any interest in the Common Elements.

VI. THE ASSOCIATION

6.1 Membership. The Association shall be formed and maintained as a Utah nonprofit corporation. Every Owner shall be a Member. One Membership shall exist for each Lot, shall be inseparably appurtenant thereto and shall automatically transfer therewith but only therewith. If title to any Lot is held by more than one Person, the Membership related to such Lot shall be shared by all such Persons in the same proportionate interests and by the same type of tenancy in which they hold title to such Lot. No Person other than an Owner shall be a Member.

6.2 Board. The Board shall manage the Association, and shall be determined as set forth in the Bylaws. Designees of Declarant, Owners, Mortgagees (or designees of Mortgagees), partners of partnerships, directors or officers of corporations, and members of limited liability companies owning Lots shall be eligible for membership on the Board. The Board shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Elements, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

- (b) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association and/or, after notice and hearing, in violation of published rules and regulations;

- (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Members by other provisions of this Declaration, the Bylaws or the Association's Articles of Incorporation (the "Articles");

- (d) enter into contracts of any kind pertaining to the affairs of the Association on behalf thereof; and

- (e) employ a manager, an independent contractor, and/or such other employees as they deem necessary, and to prescribe their duties.

It shall be the duty of the Board to:

- (f) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing in accordance with the Bylaws;

- (g) supervise all officers, agents and employees of this Association, and see that their duties are properly performed;

- (h) create and adopt a budget for the Association;
- (i) fix the amount of, collect and enforce the Assessments;
- (j) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid (a reasonable charge may be made by the Association for the issuance of these certificates), and if a certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (k) procure and maintain adequate liability and hazard insurance on property owned by the Association;
- (l) cause the Common Elements to be maintained;
- (m) maintain current copies of this Declaration, the Articles, the Bylaws, and any rules and regulations, and make the same available for inspection during normal business hours of the Association by Owners and first Mortgagees (and holders, guarantors, or insurers thereof); and
- (n) maintain the books and financial records of the Association, and cause the financial statements of the Association for the preceding fiscal year to be audited and made available to the holder, insurer or guarantor of any first mortgage secured by a Lot, upon request of the same.

6.3 Votes and Voting. Votes and voting shall be governed by the Bylaws.

VII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Elements. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management, control, maintenance and repair of the Common Elements and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The cost of such management, operation, maintenance and repair shall be borne as provided in Article VIII.

7.2 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel of the Association as it shall be determined to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain on behalf of the Association and pay for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration. The Association may arrange with others to furnish trash collection, snow removal, ground maintenance, and other common services to each Lot. The cost of such services shall be borne as provided in Article VIII. The Declarant may enter into one or more professional

management contracts on behalf of the Association pursuant to the provisions hereof; provided the Association shall have the right to terminate any such contract, without cause, at any time after transfer of control of the Association to Owners.

7.3 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of the Association and all of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise. Each owner may use such property in accordance with the purpose for which it is intended, subject to rules and regulations adopted by the Association as provided herein, without hindering or encroaching upon the lawful rights of other Owners.

7.4 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Lots, Common Elements and Property, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation: (i) a requirement that shades or other interior window coverings, including the interior surfaces of any windows or door glass used in the Buildings, shall present a uniform appearance of type and color from the exterior of the Buildings and that the Association shall have the right to inspect and re-inspect and approve all proposed shades or other interior window coverings to insure compliance with such rules before installation thereof in, and (ii) that Buildings conform to standardized regulations regarding appearance, maintenance and modifications thereof.

7.5 Granting Easements. The Association may, upon the affirmative vote of those Members holding 75% of the Percentage Interests, grant or create, on behalf of the Association, on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Elements.

7.6 Implied Rights and Additional Powers. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The Association shall also have the following powers:

(a) fix, levy, collect and enforce payment by any lawful means, all charges and Assessments pursuant to the terms of this Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Property of the Association;

(b) acquire (by gift, purchase or otherwise) , own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(c) borrow money, and with the assent of Members holding at least 75% of the Percentage Interests, mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(d) grant such easements as shall be necessary for the development, operation and maintenance of the Property with the consent of the Members holding at least 75% of the Percentage Interests;

(e) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional property and Common Elements, provided that any such merger, consolidation or annexation shall have the assent of Members holding at least 75% of the Percentage Interests.

VIII. ASSESSMENTS

8.1 Agreement to Pay Assessment. Each Owner of any Lot by the acceptance of a Deed therefore, whether or not it be so expressed in such Deed, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association annual assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration ("**Assessments**").

8.2 Amount of Total Annual Assessments. The total annual Assessments against all Lots shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Elements, which estimates may include, among other things: expenses of management, grounds maintenance, taxes and special governmental assessments, until the Lots are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common lighting and heating expenses; water charges; trash collection charges; snow removal expenses; sewer service charges; repairs and maintenance expenses; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Notwithstanding the foregoing, the total amount of annual Assessments shall not exceed the previous year's annual Assessments (determined for an entire 12 month period) by more than 25% without the affirmative vote of Owners holding 67% of the Percentage Interests. The first annual Assessment for Lots shall be for the calendar year 2000, prorated, and shall commence October 1, 2000. The sixty (60) year projection of infrastructure maintenance costs for the Property is attached hereto as Exhibit B. Such projection is just an estimate, however, and the actual costs may vary.

8.3 Apportionment of Annual Assessments. Expenses attributable to the Common Elements and to the Property as a whole shall be apportioned among all Owners in proportion to their respective Percentage Interests.

8.4 Notice of Annual Assessments and Time for Payment Thereof. Annual Assessments shall be made on a calendar year basis. The Association shall give written notice to each Owner as to the amount of the annual Assessment with respect to his Lot not less than 30 days nor more than 60 days prior to the beginning of the next calendar year. Such Assessment shall be due and payable in equal monthly installments on the first day of each and every month of each year; provided that the first annual Assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Property but not later than sixty 60 days after the conveyance of the first Lot. Assessments shall be due and payable within 30 days after written notice of the amount thereof shall have been given to the Owners. Each monthly Assessment shall bear interest at the higher of 18% per annum, or 5% in excess of the generally prevailing national "prime" rate or equivalent thereof, (the "**Default Interest Rate**") from the date it becomes due and payable if not paid within ten days after it first becomes due. In addition to the foregoing, the payment of any delinquent Assessment shall be subject to the payment of a late fee as established by the Association. Failure of the Association to give timely notice of any Assessment as provided herein shall not affect the liability of any Owner for such Assessment, but the date when payment shall become due in such case shall be deferred to a date ten days after such notice shall have been given.

8.5 Special Assessments for Capital Improvements. In addition to the annual Assessments authorized by this Article, the Association may levy in any Assessment year a special Assessment, payable over such period of time as the Association may determine, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Property or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interests. Notice in writing of the amount of such special Assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than 30 days after such notice shall have been given. A special Assessment shall bear interest at the Default Interest Rate from the date it becomes due and payable if not paid within 30 days after such date.

8.6 Lien for Assessments. (a) All sums assessed to any Lot pursuant to this Article, together with interest thereon, as provided herein, shall be secured by a lien against such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances against such Lot, except only: (i) valid tax and special assessment liens in favor of any governmental assessing authority; and (ii) encumbrances recorded in the Official Records prior to the date a notice (as provided herein) is recorded which by law would be a lien prior to subsequently recorded encumbrances, including all unpaid obligatory advances to be made pursuant to such encumbrances and all amounts advanced pursuant to such encumbrances and secured by the lien thereof in accordance with the terms of such instrument. All other Mortgagees and lienors shall be deemed to consent that such liens shall be inferior to future liens for Assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

(b) To evidence a lien for sums assessed pursuant to this Article, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner and a description of the Lot. Such a notice shall be signed by an officer of the Association and shall be recorded in the Official Records. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by power of sale or judicial foreclosure by the Association in the same manner in which deeds of trust or mortgages on real property are foreclosed in the State of Utah. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Lot as the Owner thereof.

(c) A release of notice of lien shall be executed by an officer of the Association and recorded in the Official Records upon payment of all sums secured by such lien which has been made the subject of a recorded notice of lien.

(d) Any Mortgagee or encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such Mortgagee or encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

(e) A lien for Assessments will not be affected by the transfer or conveyance of a Lot, unless such transfer is pursuant to a foreclosure of a Mortgage with priority. In such event, the prior Owner shall nevertheless remain liable for the delinquent Assessments.

8.7 Personal Obligation of Owner. In addition to running with the Lot, the amount of any annual or special Assessment against any Lot shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association, at its option, without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Lot.

8.8 Statement of Account. Upon payment of a reasonable fee as established by the Association, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to a Lot, the amount of the current yearly Assessment and the date that such Assessment becomes or became due, and the amount of any credit for advance payments or prepaid items, including, but not limited to, such Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within 10 days, all unpaid Assessments which became due prior to the date of

making such request shall be subordinate to the lien of a Mortgagee which acquires its interest subsequent to requesting such statement, unless such Mortgagee acquires its interest with actual knowledge of the amount of such Assessments. Where a prospective purchaser makes such request, both the lien for such unpaid Assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the 10 day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with by the Association within an additional 10 days, and the purchaser subsequently acquires the Lot without actual knowledge of the amount of such Assessments.

8.9 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 8.8, a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid Assessments against the Lot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

8.10 Reserve for Replacements. As set forth in this Declaration, the Association shall be required to establish and maintain an adequate reserve fund for the cost of reasonably predictable and necessary major repairs, maintenance and replacement of Common Elements. Such reserve shall be funded out of Assessments, provided that as of the earlier of: (i) the sale and closing of each Lot by Declarant; or (ii) transfer of control of the Property to the Owners, the Declarant shall fund such reserve with an amount not less than two months' Assessments for each Lot in the Property. Any amount paid to this reserve shall not be considered as an advance payment of regular Assessments. This reserve fund shall be transferred to a segregated fund in the name of the Association upon transfer of control of the Association to the Owners. The Declarant shall be prohibited from using the reserve funds to defray any of its expenses, reserve contribution, or construction costs, or make up any budget deficits while it is in control of the Association. Upon transfer, the reserve account provided herein shall be maintained separate from the general operating and Assessment account of the Association, but in the Association's name.

IX. INSURANCE

9.1 Insurance.

(a) Hazard Insurance. The Association shall secure and at all times maintain hazard insurance for the Common Elements and the Buildings insuring against loss or damage resulting from fire, windstorm, flood, sinkhole, and such other hazards, casualties, contingencies and perils as the Association shall deem appropriate, in the amount of the full replacement cost thereof, as available.

(b) Liability Insurance. The Association shall maintain as to the Common Elements, and each Owner shall maintain as to its Lot(s), a comprehensive policy of public liability insurance insuring the Association, the Board and its Officers and members, the Manager, and the Owners (collectively, the "Insureds") against any liability incident to the ownership, use, or operation thereof which may arise among themselves, to the public, or to any invitees, or tenants of the Property, or of the Owners. Limits of liability under such insurance shall be not less than \$1,000,000.00 covering all claims for bodily injury and/or property damage arising out of a

single occurrence, including protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others. Such insurance policies shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Insured because of negligent acts of another Insured. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar properties in location, construction and use.

9.2 Additional Provisions. The following additional provisions shall apply with respect to insurance:

(a) In addition to the insurance coverage described above, the Association shall secure and at all times maintain for the benefit of and on behalf of the Association, insurance against such risks as are or hereafter may be customarily insured against in connection with properties similar to the Property in construction, nature and use.

(b) Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against any Insured or Mortgagee; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Insured from collecting insurance proceeds.

(c) The Association, on behalf of all Owners, individually and collectively, shall have the authority to adjust losses with respect to insurance secured and maintained by the Association, to pursue claims, negotiate and settle claims, and to enter into agreements relative to the same, and each Owner shall be deemed to have appointed the Association as an attorney-in-fact for such purpose.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(e) Each policy of insurance obtained by the Association for the benefit of the Association shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located; a waiver (if available) of the insurer's subrogation rights with respect to the Insureds and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees thereof at least 30 days in advance of the effective date of any substantial modification or cancellation of the policy.

(f) Insurance coverage required by this Article must not be prejudiced by (i) any act or neglect of the Owners, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

(g) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(h) The foregoing provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage. In addition to any insurance coverage required hereunder, the Association may obtain such other insurance or additional insurance in such amounts and in such forms as the Association may deem proper from time to time.

(i) The Association shall have no responsibility regarding insurance on Building contents or any other personal property of Owners. Each Owner shall acquire for his own protection, adequate insurance on the foregoing.

(j) The maximum deductible amount under any policy carried by the Association shall be the lesser of \$10,000 or 1% of the policy face amount. Deductible amounts under such policies shall be Common Expenses.

X. DAMAGE OR DESTRUCTION

10.1 Common Elements. In the event of damage of or destruction of part or all of the Common Elements, restoration shall be carried out and all Owners shall be assessed for any deficiency in insurance coverage on the basis of their respective Percentage Interests.

10.2 Lots. In the event of any fire or other casualty which damages or destroys all or any part of any Building, then the Owner thereof shall (i) promptly remove any debris resulting from such fire or other casualty, and (ii) as soon as may reasonably be possible after such casualty, either commence full reconstruction or restoration of its Building, or raze the same. Once an Owner commences such reconstruction, restoration, or razing work, such Owner shall proceed diligently and continuously with such work until the same is completed. Any Owner reconstructing or restoring its Building as provided above shall comply with all of the requirements set forth in this Declaration with respect to construction, alteration and reconstruction within the Property. In the event that an Owner does not promptly restore its Building which has been damaged or destroyed by fire or other casualty, such Owner shall promptly raze the same, remove all debris and take all other action required by good construction practice so that the area which had been occupied by the razed Building will be in a safe and attractive condition, and landscape the same in accordance with plans approved by the Association.

XI. CONDEMNATION

11.1 Consequences of Condemnation. If at any time or times during the continuance of the Property, all or any part of thereof shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

11.2 Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association. The Association, on behalf of all Owners, individually and collectively, shall have the authority to represent the Association and all Owners and in such regard shall represent their interests in proceedings, negotiations, settlement and agreements, and each Owner shall be deemed to have appointed the Association as attorney-in-fact for such purpose.

11.3 Complete Taking. In the event that the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Property shall terminate. The Condemnation Award for the Common Elements shall be apportioned among the Owners in proportion to the respective Percentage Interests, provided that if a standard different from the value of the Property as a whole is employed to measure the Condemnation Award in the negotiations, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. On such basis, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practicable in the manner provided in Section 11.4 hereof.

11.4 Partial Taking. In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Property shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (a) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury to the Common Elements among Owners in proportion to their respective Percentage Interests, (b) the total amount allocated to severance damages shall be apportioned to those Lots which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Lot and/or improvements an Owner has made within his Lot shall be apportioned to the particular Lot involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees and encumbrancers.

11.5 Reorganization. In the event a partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the ownership, voting rights, and Assessment ratio determined in

accordance with this Declaration according to the same principles employed in this Declaration and shall submit such reallocation to the Owners of remaining Lots for amendment of this Declaration as provided herein.

11.6 Reconstruction and Repair. In the event any Lot is affected by any taking or condemnation, such Lot shall be deemed to be damaged by casualty and shall be governed by the procedures specified in Article X, above.

XII. USE OF UNITS AND COMMON ELEMENTS

12.1 Lot Use Restrictions. All Lots within the Property shall be used exclusively for uses commonly found in first-class warehouse/office properties of the nature of the Property and for no other purposes. Any lease or rental agreement for a Lot or Building must be in writing and subject to the terms of the Declaration, Bylaws, rules, and regulations, and other documentation of the Association.

12.2 Use of Common Elements. There shall be no obstruction of the Common Elements by the Owners or their tenants, guests, or invitees without the prior consent of the Association. The Association may by rules and regulations prohibit or limit the use of the Common Elements as may be reasonably necessary for the purpose of protecting the interests of all the Owners or protecting the Lots or the Common Elements. Nothing shall be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Elements except upon the prior written consent of the Association.

12.3 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Lot or in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Property or any part thereof or an increase of the rate of the insurance on the Property or any part thereof, over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Lot or in the Common Elements or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from such damage or waste caused by him or his invitees. No noxious, destructive or offensive activity shall be carried on in any Lot or in the Common Elements or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other owner or to any person at any time lawfully occupying a Lot in the Property.

12.4 Rules and Regulations. No Owner or occupant shall violate the rules and regulations for the use of the Lots and/or of the Common Elements as adopted from time to time by the Association.

12.5 Structural Alterations. No structural alterations to any Lot shall be made, no other alterations modifying the external appearance of any Lot and no plumbing, electrical or similar work within the Common Elements shall be done or caused to be done by any Owner without the prior written consent of the Association.

12.6 Restriction on Signs and Attachments. No signs, flags, satellite dishes, windsocks, wind chimes, hanging plants, bird feeders, advertising devices, or other exterior attachments or attachments visible from outside of a Building (collectively, "Attachments") shall be erected, displayed or maintained on any part of the Property without the prior written approval of the Association, except (i) as may be necessary temporarily to caution or warn of danger or to provide directions as required by law, and (ii) such signs as Declarant may erect or maintain incident to sale or lease of Lots. If the Association consents to the erection of any Attachment, the same shall be removed promptly at the request of the Association.

12.7 Animals. No animals of any kind shall be raised, bred, or kept in or on the Property for any purpose, except as may be required under the Americans with Disabilities Act.

12.8 Recreational Vehicles and Parking. No recreational vehicle (boat, camper, trailer, motor home, or similar item) shall be parked on any portion of the Common Elements.

XIII. MORTGAGEE PROTECTION

13.1 Notice to First Mortgagee. From and after the time a first Mortgagee (or an insurer or guarantor thereof) makes written request to the Association therefor, stating both its name and address and the Lot number or address of the Lot on which it has (or insures or guarantees) a Mortgage, the Association shall notify such first Mortgagee (or such insurer or guarantor thereof) in writing of the following: (i) in the event that the Owner of the Lot neglects for a period of 60 or more days to cure any failure on his part to perform any of his obligations under this Declaration; (ii) any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its Mortgage; (iii) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; (iv) any proposed action that requires the consent of a specified percentage of first Mortgagees; and/or (v) any material changes to the Property, the Bylaws, this Declaration, the Assessments or the Percentage Interests.

13.2 Priority of Liens for Unpaid Assessments. The lien or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to a Mortgage affecting such Lot provided that such Mortgage was recorded prior to recording of such notice of lien or claim levied by the Association, and the Mortgagee thereunder which comes into possession of or which obtains title to the Lot shall take the same free of such lien or claim for unpaid Assessments or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior Assessments or charges resulting from a pro rata reallocation thereof to all Lots including the Lot in which the Mortgagee is interested). No Assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to

burden a Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Lot affected or previously affected by the Mortgage concerned.

13.3 First Mortgagee Consents. Unless at least 67% of the first Mortgagees (based upon one vote for each Mortgage) of the individual Lots subject to first Mortgages consent in writing, the Association shall not be entitled, by act, omission, or otherwise:

(a) To abandon or terminate the Property or to abandon or terminate the arrangement which is established by this Declaration and the Plat;

(b) To partition or subdivide any Lot;

(c) To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Elements (except for the granting of easements for Utility Lines and similar purposes consistent with the intended use of the Common Elements);

(d) To use hazard insurance proceeds resulting from damage to any part of the Property (whether to Lots or to the Common Elements) for purposes other than the repair, replacement or reconstruction of such improvements, except as provided in Article IX; or

(e) To change the pro rata interests or obligations of any Lot which apply for purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, except as such changes may occur as a result of partial condemnation or as otherwise permitted hereunder.

13.4 Miscellaneous Mortgagee Rights.

(a) The Association shall not: (i) alter the provisions of Article IX in such a way as to diminish the insurance protection required to be afforded to the parties designated to be protected thereby; or (ii) fail to maintain the insurance coverage described in said Article.

(b) Any first Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. After the commencement of sale of individual Lots, the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs, maintenance and replacement of the Common Elements and shall cause such reserve to be funded by regular monthly or other periodic Assessments against the Lots rather than by special Assessments.

(c) From and after the time a first Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (i) the Common Elements involving an amount in excess of, or reasonably estimated to be in excess of, \$50,000.00; or (ii) any Lot encumbered by the Mortgage held by such Mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of, \$10,000.00.

Said notice shall be given within ten days after the Association learns of such damage, loss, taking or anticipated condemnation.

(d) No provision of this Declaration gives or may give any Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Elements.

(e) In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

13.5 Implied Approval. In the event that the approval of a first Mortgagee is required pursuant to the provisions of this Article or elsewhere herein, and in the event a first Mortgagee fails to submit a response to any written proposal for an amendment within 20 days after it receives proper notice of the proposal, approval will be deemed to have been given, provided notice was delivered to such Mortgagee by certified or registered mail, "return receipt" requested.

XIV. AMENDMENT

Except as provided below, the vote of Owners holding at least 67% of the Percentage Interests shall be required to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation in the Official Records of an instrument executed by the Association. In such instrument an officer of the Association shall certify that the vote required by this Article for amendment has occurred. The foregoing right of amendment shall, however, be subject to the following:

(a) Any amendment to Article XIII ("**Mortgagee Protection**") shall be subject to the requirements for amendment contained in such Article.

(b) Until the Declarant has sold all Lots, Declarant shall have the right unilaterally to amend and supplement this Declaration and the Plat to correct any technical errors or to clarify any provision to more fully express the intent of the Declarant for development and management of the Property.

(c) Until the Declarant has sold all Lots, no amendment to the Plat or to any provisions of this Declaration shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by the Declarant.

XV. DEVELOPMENT OF PROPERTY; APPROVAL OF PLANS

15.1 Architectural Review. The Association shall be responsible for overseeing the unified and harmonious development of the Property.

15.2 Development Standards. No more than one Building shall be constructed on any Lot. All Buildings to be constructed on the Property shall be designed to blend harmoniously and attractively with each other so as to provide the appearance of a unified, integrated development. In order to further this objective, the Association may establish and promulgate guidelines (the "Development Standards") which shall set forth the design concepts pertaining to the development of the Lots. The Association shall have the right, at any time and from time to time, to amend, alter or abolish any Development Standards adopted by it. In addition, the Association shall have the right, in its sole discretion, to permit such variances from the provisions of the Development Standards as it deems necessary or proper in connection with the development of the Property. The Association shall have the right and obligation to enforce the provisions of the Development Standards against the Owners. No Owner or Occupant other than the Association shall have the right to enforce the provisions of the Development Standards against any other Owner or Occupant, or to require another Owner or Occupant to abide by the Development Standards, unless authorized to do so by the Association; nor shall any Owner or Occupant have the right to require the Association to enforce the provisions of the Development Standards against any Owner or Occupant. Furthermore, no failure by the Association to enforce the provisions of the Development Standards against any Owner or Occupant, or to require a Owner or Occupant to comply with the Development Standards, shall be deemed to be a waiver of the Association's right to enforce or require compliance with the Development Standards either against that particular Owner or Occupant or any other Owner or Occupant at any time, unless the Association expressly waives the same, in writing, for a particular Owner or Occupant. Copies of the current Design Standards shall be available from the Association, and each Owner shall be responsible for obtaining a copy thereof from the Association.

15.3 Approvals of Plans.

(a) No Building or other improvements shall be constructed, installed or placed upon any portion of the Property (or, once constructed, altered, added to or reconstructed) unless and until all plans and specifications for the same are submitted and approved in writing by the Association. The plans and specifications to be submitted for review by the Association shall cover such issues, topics and matters, contain such details, and be in such form as are required under the Development Standards. The Association may require that such plans and specifications be submitted in phases, if and as provided in the Development Standards. All plans and specifications to be submitted to the Association shall depict Buildings and improvements designed in conformity and in accordance with the Development Standards, unless the Association agrees otherwise.

(b) The Association shall have full and complete discretion in determining whether to approve, conditionally approve or disapprove of any plans and specifications submitted to it, and may review and consider in connection therewith all matters involved with the plans and

specifications, including (without limitation) engineering and design characteristics, aesthetic considerations and potential impact on neighboring Lots. The Association will examine each submission in the context of whether it depicts high quality development, consistent and compatible with the rest of the Buildings. In this regard, the Association may base its approval or disapproval on, among other things, (i) compliance with this Declaration and the Development Standards, (ii) conformity and harmony of external design with the development of the Property and each neighboring Lot and types of operations and uses thereof, (iv) relation of topography, grade and finished ground elevation of the Lot to that of each neighboring Lot, (v) proper facing of main elevation with respect to roads, streets and other Lots, (vi) adequacy of screening of mechanical, air conditioning or rooftop installations, and (vii) compliance with all applicable governmental laws and regulations. The Association shall not arbitrarily or unreasonably withhold its approval of any plans or specifications, but the decision of the Association shall be final and non-appealable. The Association shall review all plans and specifications submitted to it pursuant to this Section as soon as may reasonably be practicable (but, in any event, within forty-five (45) days after receipt by the Association of such plans and specifications and all supplemental materials and information required hereunder). In no event shall the Association be required to review partial or piecemeal submissions, and the Association may require strict adherence to all submission requirements prior to the commencement of the forty-five (45) day period referenced above. In the event that the Association does not conditionally approve or disapprove any plans or specifications within the forty-five (45) day period referenced above, then such plans or specifications shall be deemed to have been approved and the submitting Owner shall be deemed to have fully complied with the provisions of this Section (as the provisions relate to the plans or specifications submitted), provided that the submitted plans and specifications are submitted with a separate clear and conspicuous notation to that effect. In any case where the Association shall conditionally approve or disapprove any plans or specifications submitted hereunder, the Association shall send notice of such disapproval or conditional approval to the submitting Owner, together with a statement of the reasons therefor. In any such case, the Association, if requested, shall make reasonable efforts to assist and advise the submitting Owner in the preparation of acceptable plans or specifications, at the sole cost of the submitting Owner.

(c) The provisions of this Section shall apply not only to all initial construction and development of and within the Property, but also in connection with any alteration, addition, restoration or reconstruction of Buildings and/or improvements which are now or may hereafter be constructed or installed on any portion of the Property.

(d) No Occupant or Owner (other than the Association) shall (i) submit to any governmental authority any site plans, design plans or other plans relating to its Lot and/or any Buildings, nor (ii) commence or perform any construction, alteration, addition, restoration or reconstruction work on the Property, unless and until the Association has reviewed and approved the plans and specifications for the same pursuant to this Section. In addition, no Occupant or Owner (other than the Association) shall apply to any governmental authority for any subdivision, rezoning or a zoning variance or waiver with respect to the Property or any Lot. The Association shall have the right to give such notices as it may deem necessary to the governing authorities having jurisdiction over the Property, to ensure that the Association receives notices

of any applications for construction or building permits or zoning variances or changes that may be filed with respect to the Property.

(e) All Buildings and improvements shall be constructed or installed in accordance with the plans and specifications approved by the Association. No Buildings or improvements shall be altered and no approved plans and specifications shall be modified in any respect pertaining to the exterior appearance or design of the subject Buildings or improvements (or any other aspect of the same which is reflected in the plans and specifications previously approved by the Association) unless such alterations or modifications are approved in writing by the Association.

(f) If any construction work is not commenced within twelve (12) months from the date on which the Association approves the plans and specifications pertaining to such construction work, then the approval given pursuant to this Section shall be deemed revoked by the Association, unless the Association extends the time for commencing work in writing.

(g) Neither the Association nor the Declarant nor their respective members, managers, shareholders, officers, directors, partners, beneficiaries, successors, assigns, agents, employees, nor representatives shall have any liability whatsoever (i) as a result of the review of any plans or specifications as provided herein, or with respect to any defects, omissions, inconsistencies, or shortcoming contained in such plans or specifications or in any Buildings or improvements constructed or made in accordance with any such plans or specifications, or (ii) in connection with the performance of the duties or rights of the Association as provided in or permitted under this Declaration. Approval by the Association shall not eliminate the need to obtain all approvals required from public and governmental agencies and authorities having jurisdiction over the proposed improvements. Where there exists a potential conflict between the criteria set forth herein and any code or legal requirement, the most restrictive criteria shall apply.

15.4 Signs.

(a) No outdoor sign or indoor sign visible from the Common Elements or any other Building (except such pylon signs, informational and traffic regulation signs and other signs as may be installed by or at the direction of the Association from time to time) shall be erected, painted, inscribed, installed or affixed on or in any Building or on any Lot unless and until the plans and specifications for the same showing the nature, kind, shape, height, materials, color and location thereof are submitted to and approved in writing by the Association. The standards for submission and review of plans and specifications above shall also be applicable with respect to the submission and review of plans and specifications of signs.

(b) Temporary signs may be erected on any Lot by (i) persons offering such Lot for sale or lease, or (ii) builders, lenders and architects involved in the construction and design of such Lot. Such temporary signs shall be designed in accordance with the Development Standards, and the design, size, location and number of such temporary signs shall comply with all applicable governmental rules and regulations and shall be subject to the prior approval of the Association. Signs offering Lots for sale or lease shall be removed within thirty (30) days after

completion of sale or lease of the subject Lot. Construction signs shall be removed within thirty (30) days of substantial completion of the shell of the subject Building.

(c) The provisions of this Section shall apply not only to all initial signage within the Property, but also in connection with any alteration, addition, restoration or replacements of signage which is now or may hereafter be constructed, installed or maintained within the Property.

XVI. CONSTRUCTION OF BUILDINGS AND IMPROVEMENTS

16.1 Construction Standards. Each Owner shall perform its construction (which term shall include any and all alteration or reconstruction work) of any and all Buildings and/or other improvements upon its Lot in accordance with the following requirements and standards:

(a) All Buildings and/or other improvements (and all restorations thereof and additions, alteration and changes thereto) shall be constructed or made strictly in accordance with and in the locations shown on the plans and specifications approved by the Association as provided above;

(b) Upon commencement of any construction, such construction shall be diligently and expeditiously prosecuted to completion, subject only to delays caused by fire, strike, or other catastrophe or contingency beyond such Owner's control;

(c) All construction shall be performed in a good and workmanlike manner and in accordance with all applicable laws, ordinances, rules and regulations of all governmental and quasi-governmental agencies and authorities having jurisdiction over such construction;

(d) Each Owner shall use its best efforts to cause its architects, engineers, contractors and subcontractors to cooperate and coordinate its construction with the architects, engineers, contractors, and subcontractors of all other Owners performing construction work on other Lots in the vicinity of its Lot, to the extent necessary to achieve the purposes of this Declaration; and

(e) Each Owner shall perform its construction so as not to impair, disrupt or interfere unreasonably with the construction, use, occupancy or enjoyment of the other Owners.

16.2 Building Schedule. Prior to the commencement of any construction, each Owner shall prepare and submit to the Association a building schedule showing the date upon which such Owner anticipates (i) commencement of construction of its work, (ii) having its Building enclosed, (iii) having its Building substantially completed and (iv) having its Building ready to open to the public. Periodically during the course of construction, at the request of the Association, each Owner shall prepare and submit to the Association updated building schedules showing the status of its construction and, if there shall be any changes in said dates, the revised date or dates for each phase of construction.

16.3 Safety Measures. Each Owner shall at all times take any and all safety measures required under good construction practices to protect the other Occupants and Owners of the Lots, and any and all persons performing work on or visiting the Property, from injury or damage caused by or resulting from the performance of its construction.

16.4 Construction Easement. Each Owner shall have a non-exclusive easement to use the Common Elements in a reasonable manner as a staging area for the construction on its Lot, subject to the other provisions of this Declaration, and provided its uses all reasonable efforts to minimize inconvenience to the other Owners. The specific portions of the Common Elements to be so used, and the hours and time periods during which they may be so used, shall be subject to the prior written approval of the Association. The approvals required pursuant to the preceding sentence shall not be unreasonably withheld or delayed, but shall be conditioned upon: (i) review and approval of sufficiently detailed plans and specifications for the use of such Common Elements, (ii) the constructing Owner's agreement to reimburse the Association and other Owners for any damages suffered as a result of its construction and related activities, (iii) an agreement from the constructing Owner to defend, indemnify and hold harmless the Association and the other Owners from and against any loss, costs, damages, liens, casualties, liabilities and expenses incurred by or asserted against them in connection with or arising out of such activities, (iv) evidence that the constructing Owner has obtained and will maintain adequate insurance concerning all construction activities, as reasonably required by the Association, and (v) evidence that the constructing Owner has obtained all applicable governmental permits for the construction of the subject Building. Approval of such easement shall constitute: (a) designation of the portions of the Common Elements to be used for such easements, and (b) agreement by the constructing Owner to use only those portions of the Common Elements so designated. The cost of repairing and reconstructing any Common Elements or other Lots damaged in connection with the construction activities of an Owner shall be borne by such Owner. In the event that any loose dirt, trash or debris resulting from or attributable to any Owner's construction work accumulates on any Common Elements or other Lots, then the Constructing Owner shall immediately remove the same.

16.5 Indemnity; Insurance.

(a) Each Owner (the "**Indemnifying Party**") with respect to the work to be performed from time to time in connection with its Lot, shall indemnify, defend and hold harmless each other Owner and Occupant and the Association, and each of their respective agents, representatives, shareholders, officers, directors, members, partners and employees and mortgagees (the "**Indemnified Parties**") from and against any and all loss, damages, liability, costs or expenses, including but not limited to reasonable attorneys' fees, which each such Indemnified Party may pay or become obligated to pay or which may be incurred by or asserted against such Indemnified Party, on account of any demand, suit or claim, or assertion of liability, or any claim or action founded thereon arising or alleged to have arisen out of or in connection with any act or omission of the Indemnifying Party, its agents, employees, representatives, licensees, invitees, contractors or subcontractors, whether such demand suit or claim is for damages, injury to person or property (including the property of the Indemnified Party), or death

of any person, except claims solely resulting from the negligence or willful act or omission of the Indemnified Party.

(b) With respect to the work to be performed by each Owner, at all times until such work is complete (as evidenced by the insurance of a final certificate of occupancy from the appropriate governmental body), and at all times during periods of reconstruction, each such Owner shall, at its own expense, maintain or cause to be maintained in full force and effect, a policy or policies of public liability insurance, fire and extended coverage insurance, replacement cost insurance, business interruption/rental loss insurance and so-called builders' risk insurance, each in form, substance and amount, and issued by insurance companies, subject to the prior written approval of the Association. The public liability insurance to be maintained hereunder shall have a limit of not less than \$3,000,000 per occurrence and shall be in a comprehensive general form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including the Association, all other Owners and all mortgagees of any portion of the Property (provided that such Owner shall have been notified of such mortgagees) as additional insureds; (iii) providing for blanket contractual liability coverage (including, without limitation, the indemnity obligations contained in this Declaration; (iv) broad form property damage coverage; (v) deleting any liquor liability exclusion; (vi) providing for employer's automobile non-ownership liability; and (viii) providing that the policies cannot be canceled, terminated or go un-renewed without at least thirty (30) days' prior written notice to the Association. All such insurance shall be primary and noncontributory; shall provide that an act or omission of one of the insureds or named insureds which would void or otherwise reduce coverage shall not void or reduce coverages to the insured or other additional named insured, as the case may be; and shall afford coverage for all claims based on acts, omissions, injury and damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(c) Prior to the commencement of any construction related to its Lot, each Owner shall furnish to the Association paid certificates of the insurance required to be maintained pursuant to this Declaration. Thereafter, a certificate evidencing the above shall be furnished from time to time as requested by the Association. In the event that the Association is notified of the termination or pending expiration of any insurance policy required to be maintained hereunder, and/or any Owner fails to furnish adequate evidence of the maintenance of insurance required hereunder, then, in any such event, the Association may (but shall not be obligated to) obtain and pay for, on behalf of the subject Owner, the policies of insurance required hereunder; and all costs and expenses incurred by the Association in connection therewith shall be paid by the such Owner to the Association upon demand and, if not so paid, shall constitute a lien against the Lot of such Owner, which may be foreclosed in the same manner, and which shall have the same priority, as the lien of the Assessments, as specified in this Declaration.

XVII. USE OF PROPERTY

17.1 General Restrictions. No Owner or Occupant shall use or permit the use of its Lot for any use or operation which is, in the reasonable opinion of the Association, substantially inconsistent

with and/or materially detrimental to the operation of the Property. The following uses and operations shall not be allowed without the prior written consent of the Association:

- (a) Any use which emits or results in an obnoxious odor, noise or sound which may constitute a public or private nuisance;
- (b) Any use which is physically damaging to other portions of the Property or which creates dangerous hazards;
- (c) Any assembly or manufacturing operation which would be permitted only in a heavy manufacturing or heavy industrial zone; or any distillation, refining, smelting, industrial, agricultural, drilling or mining operation;
- (d) Any residential use or use involving animals;
- (e) Any incineration of garbage or refuse;
- (f) Any outdoor storage;
- (g) Any dry cleaning or laundry operation;
- (h) Any activity which unreasonably physically interferes with the business of any other Owner or Occupant;
- (i) Any storage or use of any hazardous materials or substances as defined by any applicable law, except for the use of customary cleaning materials, etc. in reasonable amounts and in accordance with all applicable laws; or
- (j) Any activity or use which conflicts with or violates any applicable zoning or other governmental law, statute, rule, regulation or order.

The Association reserves the right to modify, amend, delete from or add to any of the foregoing list of restricted or prohibited uses and operations from time to time, and such modification, amendment, deletion or addition shall be effective as if set forth above.

17.2 Use of Common Elements. No Owner or Occupant shall construct anything of any nature in the Common Elements, use the same for any construction purposes except as specifically provided herein, nor use or permit the use of any portion of the Common Elements for any purposes other than pedestrian movement and the parking, circulation and passage of motor vehicles, and as otherwise specifically provided herein. No Owner or Occupant shall install, place, keep, permit or maintain any fence, barricade or any other obstruction in, on, across or upon any portion of the Common Elements, except, as determined by the Association (i) barricades and obstructions that are necessary or desirable for the orderly control of traffic flow, (ii) minor comfort or convenience facilities (e.g., mailboxes, benches, and public telephones), (iii) light poles and other items pertaining to the lighting system, (iv) approved signs, and (v)

such other items that the Association may approve, provided that the same do not unreasonably interfere with the use of the Common Elements for their intended purposes.

17.3 Rules and Regulations. The Association may, from time to time, adopt and enforce reasonable rules and regulations pertaining to the use of all or any portion(s) of the Common Elements by Owners, Occupants and others. All such rules and regulations and other matters affecting Occupants shall apply equitably and without discrimination. Notwithstanding anything to the contrary, non-enforcement of any rules and regulations established hereunder at any time(s) or against any particular Owner(s) or Occupant(s), shall not excuse or permit the non-compliance with such rules and regulations at any other time(s) or by any other Owners or Occupants, or constitute a waiver of the Association's right to enforce same.

17.4 Use of Utility Lines. Each Owner and Occupant shall use the Utility Lines and any Shared Utility Lines only for the purposes for which they were constructed and shall not overload or use the same to excess. No Owner or Occupant shall dispose of any pollutants, contaminants, toxic waste, hazardous substances or any other similar substances or material in the Utility Lines or Shared Utility Lines, or elsewhere in or about the Property.

XVIII. GENERAL PROVISIONS

18.1 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

18.2 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or in the Property, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. By acquiring any interest in a Lot or in the Property, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

18.3 Limitation on Association's and Declarant's Liability. The Association and Declarant shall not be liable for any failure of water service or other utility services to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or Person in or upon the Property, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any part of the Buildings or its drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of

any Assessment under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Property or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or orders of any governmental authority. The Property, including Common Elements, was initially designed and constructed to satisfy the requirements of the Americans with Disabilities Act. As of the date of this Declaration, the Declarant was not required to make every Lot readily accessible and usable by individuals with disabilities, although a certain number of Lots and all Common Elements located in the Property were designed accordingly. Consequently each Owner, by his purchase of a Lot, acknowledges that his Lot may not be readily accessible and usable by individuals with disabilities, that claims to the contrary are disclaimed, and that the Association and Declarant shall not be liable for any claimed deficiencies in such regard.

18.4 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented a Lot, but the Owner of a Lot shall have no obligation for expenses or other obligations accruing after the date of conveyance of such Lot. In the event of the rental or lease of a Lot, an Owner shall be deemed to have granted a license to his tenants of his right to use the Common Elements for the term of the lease or the period of rental and such Owner shall have no right to use the Common Elements during the term or period of such lease or rental.

18.5 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders and the neuter. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof or the validity or enforceability of such portion under different circumstances.

18.6 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being recorded in the Official Records.

18.7 Request for Notice. The Association hereby requests that a copy of any notice of default and a copy of notice of sale under any Mortgage filed for record against any Lot be mailed to the Association at 3084 American Saddler, Park City, UT 84060, pursuant to U.C.A. Section 57-1-26 (1953), as amended.

XIX. ENFORCEMENT AND REMEDIES

If any Owner or Occupant fails to comply with any provision hereof, including any of the rules and regulations promulgated hereunder by the Association, within ten days after written notice of violation thereof (except that, where such violation cannot reasonably be cured within ten days, the ten day period will be extended to that reasonably required, as long as the Owner/Occupant

commences the cure within such 10 day period and diligently pursues the same to completion) (the "Cure Period"), the Association may:

- a. suspend such Owner's voting rights in the Association during any period or periods during which such Owner or the occupants of its Lot fail to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration; and Owners shall be responsible for any non-compliance hereunder of all occupants of their respective Lots;
- b. take judicial action against the Owner and/or occupant to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law; and/or (at the Association's election); and/or
- c. impose the following fines in connection therewith:

Original Violation:	\$50.00
First Recurrence of same violation:	\$100.00
Second Recurrence of same violation:	\$250.00
Third Recurrence of same violation:	\$500.00
Subsequent Recurrences of same violation:	\$1,000.00

The foregoing amounts may be adjusted by the Association for inflation. The failure to cure a violation within a period equal to the Cure Period after receipt of notice of the imposition of a fine shall constitute a recurrence of such violation. Any fine which is not paid within 15 days after notice thereof is issued shall bear interest from such date at the Default Interest Rate, and there shall be added thereto reasonable attorneys' fees (whether or not legal action is commenced) and, if legal action is commenced, the costs of such action. All fines and charges (collectively, "Charges") related to a Lot, the occupants thereof or a particular Owner shall be the personal obligation of such Owner, and shall constitute Assessments, and shall be secured by lien as described therein.

EXECUTED BY DECLARANT on the date of notarization appearing below:

DECLARANT:

CENTENNIAL POINT, L.L.C.,
a Utah limited liability company

By: [Signature]
Donald R. Sanborn, Its Manager

[Signature]
MYRIAM ONYEABOR

State of Utah
County of Salt Lake

On August 3, 2000, Myriam Onyeabor
appeared before me, signing this
document and proving her identity. 1
1
3



NOTARY PUBLIC
Jo Ellen Crockett
1344 West 4675 South
Ogden, Utah 84405
My Commission Expires
February 5, 2001

EXHIBIT A
TO
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK

LOT NUMBERS, LOT SIZES, BUILDING SIZES AND PERCENTAGE INTERESTS

Lot Number	Lot Size (sq. ft.)	Building Size (sq. ft.)	Percentage Interest
1	23,384	6,050	12.5%
2	15,554	6,100	12.5%
3	38,761	End Unit: 6,050 Adjacent Unit: 6,100	25%
4	22,958	6,050	12.5%
5	15,132	6,100	12.5%
6	15,147	6,100	12.5%
7	22,615	6,050	12.5%
Totals:	153,551	48,600	100%

EXHIBIT B
TO
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF AMENDED PORTION OF LOT 5, PHASE V, CENTENNIAL INDUSTRIAL PARK

SIXTY (60) YEAR PROJECTION OF INFRASTRUCTURE
MAINTENANCE COSTS FOR CENTENNIAL POINTE

Declarant estimates that the cost, per ten year period, for repairs and maintenance of Property infrastructure over the next sixty (60) years is as follows:

Period	1-10	11-20	21-30	31-40	41-50	51-60
Paved Areas:	\$6,240	\$27,300	\$6,240	\$27,300	\$6,240	\$27,300
Curbs and sidewalks:	\$0	\$0	\$2,000	\$2,000	\$3,000	\$4,000
Water lines:	\$0	\$0	\$1,000	\$2,000	\$3,000	\$3,000
Sewer lines:	\$0	\$0	\$1,000	\$2,000	\$3,000	\$3,000
Total	\$6,240	\$27,300	\$10,240	\$33,300	\$15,240	\$37,300

BK8383PG123

1138

Exhibit “E”

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

LEBR ASSOCIATES, LLC, a Utah
limited liability company, and
CENTENNIAL POINTE PROPERTY
OWNERS ASSOCIATION, a Utah
non-profit corporation,

Plaintiffs,

vs,

MYRIAM ONYEABOR,
an individual,

Defendant.

COPY

Case No. 040918762

Judge:

Stephen L. Roth

DEPOSITION UPON ORAL EXAMINATION OF:

JO ELLEN CROCKETT

TAKEN AT: COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
Salt Lake City, Utah 84111

DATE: May 24, 2006

REPORTED BY: Susan S. Sprouse, CSR/RPR



333 SOUTH RIO GRANDE SUITE F
SALT LAKE CITY UTAH 84101
(801) 328 1188 / 1 800 DEPOMAX
FAX 328 1189



1 A P P E A R A N C E S

2 FOR PLAINTIFFS:

3 JEFFREY L. SILVESTRINI
4 COHNE, RAPPAPORT & SEGAL P.C.
5 257 East 200 South, Suite 700
6 P.O. Box 1108
7 Salt Lake City, Utah 84147-0008

8 FOR DEFENDANT:

9 G. OLIVER MELGAR
10 THE RICHARDS LAW OFFICE
11 4190 South Highland Drive, Suite 111
12 Salt Lake City, Utah 84124

13 FOR DON SANBORN:

14 GEORGE A. HUNT
15 WILLIAMS & HUNT
16 257 East 200 South, #500
17 Salt Lake City, Utah 84111

18 FOR JO ELLEN CROCKETT AND AMERICA FIRST
19 CREDIT UNION:

20 TIMOTHY W. BLACKBURN
21 VANCOTT BAGLEY CORNWALL & McCARTHY
22 2404 Washington Blvd. #900
23 Ogden, Utah 84401

24 ALSO PRESENT:

25 TOM BURNS

26 I N D E X

27	EXAMINATION	PAGE
28	Examination by Mr. Silvestrini	3
29	Examination by Mr. Melgar	25

30 E X H I B I T S

31	NO.	DESCRIPTION	PAGE
32	1	Affidavit of Jo Ellen Crockett	23

1 Wednesday, May 24, 2006

12:05 p.m.

2 P R O C E E D I N G S

3
4 JO ELLEN CROCKETT,

5 called as a witness, having been first duly sworn,
6 was examined and testified as follows:

7 MR. SILVESTRINI: Let the record show this
8 is the time and place pursuant to notice and a
9 subpoena duces tecum for taking the deposition of Jo
10 Ellen Crockett.

11 Ms. Crockett, my name is Jeff Silvestrini
12 and I represent Centennial Pointe Property Owners
13 Association and the rest of the plaintiffs in this
14 case.

15 We have -- Mr. Hunt represents Mr. Sanborn
16 and Mr. Melgar represents Myriam Onyeabor.

17 EXAMINATION

18 BY MR. SILVESTRINI:

19 Q Before today's deposition I prepared a
20 subpoena which I asked Mr. Blackburn to accept on
21 your behalf rather than having you having the
22 inconvenience of being served with that. I did send
23 it to him. I don't know that I got the acceptance
24 back, Tim, but what I had asked you to bring in
25 connection with this deposition is a copy of your

1 notary log book that I understand you maintain. And
2 it's correct that you do maintain a notary log book?

3 A You bet, yes.

4 Q And you maintained such a log book back in
5 August of 2000?

6 A Yes.

7 Q Okay. It's -- I have some copies from that
8 log book which you previously provided to me and
9 we'll see how this goes with you identifying those,
10 but we may ask you to, you know, make that log book
11 available to us. We're really only interested in one
12 entry on it but -- so I mean we can make appropriate
13 arrangements to safeguard any concern you have about
14 the privacy of other people that may be in there but
15 we may need to see the original of that to satisfy
16 the insurance we have in this case.

17 A Okay.

18 Q Okay? All right. So I understand then
19 you've not brought any documents with you today?

20 A Correct. Just the affidavit I think that
21 you served.

22 Q Okay. And we'll get to that in a minute.
23 Would you state your full name and address for the
24 record then, please.

25 A Jo Ellen Crockett, 2695 South 1500 East,

1 Salt Lake City, Utah, 84106.

2 Q And where are you currently employed?

3 A America First Credit Union.

4 Q And what position do you hold?

5 A Senior loan officer/MCLO which is a mortgage
6 consumer loan officer.

7 Q And how long have you been employed by
8 America First Credit Union?

9 A Thirteen and a half years.

10 Q So you were an employee of America First
11 Credit Union in August of 2000?

12 A Yes, I was.

13 Q Where did you work -- let me ask you this
14 first, where do you work now?

15 A At the Met -- the Salt Lake Metro office,
16 455 East 5th South.

17 Q And where did you work in August of 2000?

18 A At the Brickyard office. That's 3190 South
19 Richmond Street. It's 33rd South and 13th East
20 approximately.

21 Q What was your job responsibility in August
22 of 2000 for America First?

23 A I believe I was a loan officer. I hadn't
24 gotten my senior yet, so just loan officer.

25 Q Are you a notary public?

1 A Yes, I am.

2 Q And how long have you been a Notary Public?

3 A Approximately ten years.

4 Q And so you were a Notary Public in August of
5 2000?

6 A Yes.

7 Q Did you have occasion to notarize documents
8 for customers of America First Credit Union while you
9 were working at the Brickyard office in 2000?

10 A Yes.

11 Q Can you tell me what period of time during
12 2000 or what period of time did you work for America
13 First at the Brickyard office?

14 A I'm not understanding the question.

15 Q I'm just trying to have the dates if you
16 remember them when you worked at the Brickyard
17 office.

18 A It would be a Tuesday through Saturday
19 schedule up until I think 2002 and then they went to
20 a full Monday through Saturday schedule. So I would
21 be a Monday through Saturday depending on days off.
22 But I believe it was Tuesday through Saturday at the
23 time.

24 Q Okay. And what I'm really trying to find
25 out is what years you worked at that office as

1 opposed to the office where you work now.

2 A Okay.

3 Q Can you tell me --

4 A I started there in March of '97 when they
5 built the office. That is when they first opened is
6 it March of '97 in Brickyard. So I was there prior
7 to -- at '97, March '97 is when I got started in
8 Brickyard.

9 Q You worked there continuously at that
10 office --

11 A Correct.

12 Q -- until when?

13 A December 10th of 2005 which -- or 2004, I
14 apologize, when I was asked to go to the metro
15 office.

16 Q And was that in connection with a promotion?

17 A Nope.

18 Q Can you tell me a little bit about your
19 educational background?

20 A Just high school and then I have some
21 college. I don't have any degrees. I do have some
22 credits with college but got board with it.

23 Q I understand you take a test in order to
24 maintain your notary license?

25 A Yes.

1 Q Do you know the last time you renewed your
2 license?

3 A I believe it was about a year ago.

4 Q And I take it you passed the test?

5 A I did hundred percent.

6 Q Have you had any other training with respect
7 to how to function as a Notary Public?

8 A Well, we -- just the trainings that America
9 First provides. Then we had Fran Fisch come in and
10 talk to us about notaries. And then we take a test
11 and there's a book that they give you prior to the
12 tests to read everything and then take the test. So
13 it's just notary training.

14 Q The training America First does is that
15 something they do in-house?

16 A Yes.

17 Q And when -- had you had that type of
18 training -- had that type of notary training prior to
19 August of 2000?

20 A Yes.

21 Q Can you tell me a little bit about the
22 nature of that training?

23 A Questions and answers. We brought Fran
24 Fisch in who is with the Utah State -- I guess she's
25 a big guru over notaries and she asked a lot -- or we

1 asked her a lot of questions. She would answer about
2 notaries and how to do them and if this comes up what
3 do we do. So it was mostly a question and answer.
4 And some people had notaries before, some had never
5 been notaries.

6 Q Okay. We talked a little bit about before
7 we started your deposition off the record that you
8 maintained a notary log in connection with your
9 function as a notary, correct?

10 A Yes.

11 Q When did you start maintaining a notary log?

12 A When I started as a notary.

13 Q And so were you maintaining a notary log
14 when you -- or in August of 2000?

15 A Yes.

16 Q What -- how do you use the notary log? What
17 do you do with it?

18 A Well, it's got a date and I put in the time
19 under the date. And then there's a second place for
20 a date and then it's for the document, type of
21 document and then it's the member's name with their
22 address. Then there's a place for the I.D. on the
23 next page. Then we have them sign the next page. It
24 just goes all the way across the book. And it's --

25 Q Okay. In your practice as a notary do

1 you -- is it your practice to require persons for
2 whom you notarize signatures to produce
3 identification to you?

4 A Yes.

5 Q And did you do that -- do you do that all
6 the time?

7 A Yes.

8 Q Did you do that all the time in August of
9 2000?

10 A Yes.

11 Q What type -- what form of identification do
12 you require before you notarize something?

13 A What they have on them, generally driver's
14 licenses is what most people produce. And I believe
15 that's what Myriam Onyeabor produced was a Utah
16 driver's license.

17 Q And what do you do with the driver's license
18 when they produce it?

19 A I look at it. I do not take a copy of it.
20 I look at it and verify the signature because they've
21 signed the book and I keep the I.D. And once they've
22 signed the book, I compare the identification, make
23 sure it's correct, make sure that the I.D. doesn't
24 look fraudulent or tampered with in any way.

25 Q Is it your practice to record the number of

1 the driver's license --

2 A Yes.

3 Q -- in your notary log?

4 A Yes. Sorry.

5 Q Do you remember notarizing a document from
6 Myriam Onyeabor in August of 2000?

7 A Yes, I do.

8 Q Okay. Tell me what you remember about that.

9 A I remember she was a striking woman. I
10 believe she was dark skinned and her name was a
11 different name. And I believe that I had to write
12 her name in on the document because it wasn't typed
13 in there. I think I had to write my wordage in there
14 as well and sign my name to it.

15 Q Do you remember anything about the way Ms.
16 Onyeabor spoke?

17 A I believe she had an accent. I couldn't
18 tell you what kind of an accent, but I believe she
19 had an accent.

20 Q You say she was dark skinned. Can you
21 describe for me -- I mean was she very dark skinned
22 or --

23 A Pretty brown. It wasn't black/black but
24 pretty brown.

25 Q Okay. Ms. Crockett, I'm going to show you

1 what we had previously marked as Deposition Exhibit
2 No. 5 to the deposition of Myriam Onyeabor. Can you
3 tell me if the person depicted on this exhibit is the
4 person that you remember that you notarized the
5 document for in August of 2000?

6 A It looks similar. She has a real nice
7 smile. I remember she had real striking features.

8 Q Does that look like her, though?

9 A It does for as much as I can remember. I
10 hate -- boy, I hate to say that, but I wouldn't,
11 like, swear on my husband's life, though.

12 Q It's been quite sometime ago. I understand
13 that.

14 A That looks similar to the person that sat at
15 my desk.

16 Q Okay. Thank you. I'm going to ask you also
17 to look at what was marked to Ms. Onyeabor's
18 deposition as Exhibit No. 6 and 7. First look at
19 Exhibit No. 6.

20 And Counsel, do you have copies of these? I
21 apologize I didn't -- I have another copy.

22 MR. BLACKBURN: I got them.

23 MR. MELGAR: I have copies.

24 MR. SILVESTRINI: I don't --

25 MR. HUNT: I'll look over your shoulder if

1 it's not offensive.

2 MR. SILVESTRINI: It's not offensive at all.

3 Q (By Mr. Silvestrini) Can you identify
4 Exhibit 6 to Myriam Onyeabor's deposition?

5 A This is my handwriting and her driver's
6 license and this is her signature. And I circled
7 this for -- to point out to her where she needed to
8 sign.

9 Q I'm going to go back there and try to make a
10 record of this. We're looking at the page and so the
11 writing on the page is oriented so it's facing you
12 and it's properly oriented, it's right side up for
13 you?

14 A Uh-huh.

15 Q And over here on the left-hand side of the
16 page it says, UTDL and then there's a number. And
17 it's your testimony that that's your handwriting?

18 A Correct.

19 Q What does the Utah DL in that number
20 represent?

21 A That's a Utah driver's license. That is the
22 driver's license number. That is when it expires.

23 Q Okay. When you say that's -- it says Utah,
24 DL Utah driver's license, and that's -- this first
25 number, the 145527129 --

1 A Correct.

2 Q -- is the number of the driver's license,
3 correct?

4 A Correct.

5 Q And then what you said that when it expires
6 that's the number, the date that's written in the
7 circle?

8 A Correct.

9 Q And that expires 11 of 2003?

10 A Correct.

11 Q Okay. And then, then the next column, more
12 towards the middle of the page is blank. And then
13 the next column over almost to the right -- excuse
14 me, I'm upside down.

15 A You're correct. That is to the right.

16 Q Can you tell me what this represents?

17 A That represents her signature.

18 Q Okay. Now did you draw -- did you draw the
19 circle around the X --

20 A Yes, I did.

21 Q -- to mark where she should sign?

22 A Correct.

23 Q And then did you witness her sign this?

24 A Yes, I did.

25 Q So you made a point of watching her sign

1 this?

2 A Yes, I did.

3 Q And this is a page out of your notary log
4 book?

5 A It is. And I took it myself.

6 Q And you still have possession of the notary
7 log book that you used in August of 2000?

8 A Yes.

9 Q Now, I'm just going to ask you as we talked
10 about it before in the event that anyone wants to
11 examine the original of that log book that you retain
12 the log book so we can do that if we need to, okay?

13 A Okay.

14 Q Thank you very much.

15 A Tim is going to be my guide on that.

16 Q Let's now turn to Exhibit No. 7 to the
17 Myriam Onyeabor deposition. Can you identify this
18 document?

19 A Yes, this is my handwriting. This is --

20 Q Tell me first what this documents is.

21 A Okay. This is just the other side of the
22 book. So this is the date, and I always put the time
23 in. I look at my computer and see exactly what time
24 the computer says and write it in there.

25 Q So we have a good record, once again you are

1 looking at the left-hand column --

2 A Yes.

3 Q -- and you are saying that the date which is

4 I believe 8-3-00, August 3, 2000, correct?

5 A Correct.

6 Q And then the time 11:51 a.m. that you wrote

7 that in the notary log book?

8 A Correct.

9 Q And that's the date in time when you were

10 meeting with Ms. Onyeabor?

11 A Correct.

12 Q Okay. And then the next column is blank and

13 what does the next gray shaded column more towards

14 the middle of the page, it says 8-3-2000 represent?

15 A The date.

16 Q Okay.

17 A Date in two places.

18 Q And then what is the next column over that

19 says -- can you read that?

20 A It says, Restated declaration.

21 Q And is that in your handwriting?

22 A It is.

23 Q Is everything on this page on Exhibit 7 in

24 your handwriting?

25 A Yes.

1 Q And what's -- what does the Restated
2 declaration represent?

3 A That is the name of the document that I
4 notarized for her.

5 Q And then the next column says Myriam
6 Onyeabor has an address, correct?

7 A Correct.

8 Q And what does that represent?

9 A That is her name and her address that she
10 gave me and her date and her zip code, Utah state zip
11 code.

12 Q Did you ask for confirmation of Ms.
13 Onyeabor's address in addition to what appeared on
14 her driver's license?

15 A No.

16 Q Pardon?

17 A No.

18 Q You just asked -- you just --

19 A As I recall she's an account holder. And
20 I -- I don't know if we did other things, but I
21 remember this was close to my address. I didn't say
22 that to her but I just -- I believe the addresses
23 were the same on the account as she stated here.

24 Q Okay. Thank you. And now I'm going to have
25 you look at what was marked as Exhibit 3 to

1 Ms. Onyeabor's deposition and ask -- you can take a
2 minute. This is a multipage document.

3 A It is.

4 Q It's entitled Restated Declaration of
5 Covenants, Conditions and Restrictions, etcetera.
6 And I'm just -- you're free -- I'd like you to look
7 at it, but I want you to pay special attention if you
8 would to the page that is marked at the bottom. I
9 think it's page -- I can't read that. Is that 31?

10 MR. HUNT: Thirty-two.

11 A I think that says 31.

12 MR. HUNT: You're right.

13 Q (By Mr. Silvestrini) Yes. Follows 30. So
14 anyway, just look at that document.

15 Have you had a chance to look at it?

16 A Uh-huh.

17 Q Now I recognize that this document bears
18 recording information on it that was apparently put
19 on on August 24th, 2000 when it was recorded. And I
20 also recognize that it contains a signature of
21 another individual named Donald Sanborn and notary
22 information from -- on page 32 of this document would
23 appear to indicate that his signature on this
24 document was notarized on August 14 which is after
25 the date that you've testified you notarized

1 Ms. Onyeabor's signature. But apart from those
2 differences do you recognize Exhibit 3 to
3 Ms. Onyeabor's deposition?

4 A This right here?

5 Q Yes.

6 A Yes.

7 Q And have you seen this document before?

8 A Yes.

9 Q Can you -- do you recognize any of the
10 handwriting on page 31 of this exhibit?

11 A Yes.

12 Q Tell me what handwriting you recognize.

13 A This is all my handwriting, State of Utah,
14 County of Salt Lake, everything that I put here I
15 want certain wordage on there. I wasn't --

16 Q So the handwriting on the bottom right-hand
17 corner of that page where it says, State of Utah,
18 County of Salt Lake and everything below that is
19 handwriting that you put on this page?

20 A Correct.

21 Q And did you notarize Myriam Onyeabor's
22 signature on the left-hand side of the page on the
23 bottom line?

24 A Yes.

25 Q Did she sign this in your presence?

1 A Yes.

2 Q You witnessed her sign it?

3 A Yes.

4 Q You're certain it was her and not some other
5 person?

6 A Yes.

7 Q Can you tell me why you bothered to hand
8 write the information that you wrote on the bottom
9 left-hand corner of page 31 of this exhibit?

10 A Yes. I felt that if I would just put my
11 stamp and my signature, they could have misconstrued
12 that I had notarized Don's signature as well. So I
13 just wanted to make sure that everybody knew that I
14 was notarizing Myriam's signature.

15 Q And you notice that on page 32 of this
16 document there's a notary block apparently for Myriam
17 Onyeabor's signature. You see that?

18 A Yes.

19 Q So you decided to notarize it and put your
20 seal on the page where she actually signed to show
21 that's what you notarized was her signature?

22 A I don't believe this page was there.

23 Q Okay. You don't remember seeing page 32?

24 A Nope. If I had seen that, I would have
25 notarized that.

1 Q You said that you believe Ms. Onyeabor was
2 an account holder at America First Credit Union
3 during this time period?

4 A Yes.

5 Q Do you know -- did you verify she was an
6 account holder before you notarized her signature?

7 A I don't know. I'm not sure. I don't know
8 if she had other transactions or not, but I do
9 remember that she was a member. So I don't know if
10 it was in conversation that I pulled up her account
11 or -- I'm not sure.

12 Q Was she someone that you recognized as an
13 account holder who came into the branch on other
14 occasions?

15 A No.

16 Q But you just remember either from some
17 conversation with her or some other -- possibly some
18 other business that you don't recall specifically she
19 was an account holder?

20 A Correct.

21 Q Let me ask you this. Let me just turn to
22 the front page of this deposition. Actually, it's
23 not the best thing. Let me have you look at -- first
24 of all I will show you -- actually I don't know if
25 you have seen this before but this is the subpoena

1 that we prepared for you for your deposition today.

2 First of all have you seen this before?

3 A No.

4 Q Okay. I just want you to look over what we
5 call the caption of this case and the parties who are
6 identified as plaintiffs. There is a company called
7 LEBR Associates, LLC, a Utah limited liability
8 company. Do you see that?

9 A Uh-huh.

10 Q Do you have any connection to LEBR
11 Associates, LLC?

12 A No.

13 Q Do you know who they are?

14 A No.

15 Q Do you know who the principals of that
16 company are?

17 A No.

18 Q Okay. What about Centennial Pointe Property
19 Owners Association, a Utah nonprofit corporation, do
20 you have any association with that company?

21 A No.

22 Q Do you know who the principals of that
23 company are?

24 A No.

25 Q Never had any contact with them whatsoever?

1 A No.

2 Q You haven't ever received a benefit or any
3 remuneration or anything from either of those
4 entities, have you?

5 A No.

6 MR. SILVESTRINI: Will you mark that?

7 (Exhibit No. 1 marked for identification.)

8 Q Ms. Crockett, I'm going to hand you what
9 we've marked as Exhibit 1 to your deposition and I
10 just want to have you look at this document and tell
11 me if you can identify this document?

12 A Yes. This is the one that I notarized --
13 that I had notarized at my office. I believe Eddie
14 Vasquez?

15 Q Eddie Vasquez.

16 A He -- we talked on the phone and he wrote
17 all this up for me. And then I think he faxed it to
18 me and I had it notarized and then we had a runner
19 come and pick it up.

20 Q So when you say you had it notarized --
21 first of all this is an affidavit you signed for our
22 office, correct?

23 A Correct.

24 Q And you spoke with Edward T. Vasquez of my
25 office in connection with preparing this affidavit?

1 A Yes.

2 Q And then you signed the affidavit on page 4?

3 That's your signature?

4 A That is my signature.

5 Q And that was notarized by someone else who

6 works with you?

7 A Right.

8 Q Sarah Hamilton?

9 A Right.

10 Q You understand this is an affidavit; it's a

11 sworn statement? Is everything that's in this

12 document true and correct?

13 A Yes, it is.

14 Q And let me just ask you, your affidavit

15 identifies this but attached to the affidavit as

16 Exhibit A are two pages, and these are copies of the

17 same two pages we were discussing earlier from your

18 notary log, are they not?

19 A They are.

20 Q And they are -- they were true and correct

21 copies from your notary log?

22 A Correct. Took them myself.

23 Q I just want to ask you one more -- maybe not

24 one more but do you know an individual named Donald

25 Sanborn?

1 A No, just from the paperwork that Mr. Vasquez
2 had sent me, the notarized picture, and I saw that
3 his name was there, but I don't know him personally.

4 Q Okay. You never worked for Mr. Sanborn?

5 A Not to my knowledge, no.

6 Q He's never paid you anything?

7 A No.

8 Q You don't have any association with him
9 whatsoever other than seeing his name in this
10 lawsuit?

11 A No. That's correct.

12 MR. SILVESTRINI: I think that's everything
13 I have.

14 MR. MELGAR: Okay. I have a few questions
15 for you.

16 EXAMINATION

17 BY MR. MELGAR:

18 Q When you claim that Myriam Onyeabor signed
19 your journal and documents was there a credible
20 witness present?

21 A No. There was no one but me. There were
22 other people in the office.

23 Q Okay. Now what was your current address on
24 August 3rd, 2000?

25 A 2695 South 1500 East, Salt Lake City, Utah

1 84106.

2 Q Okay. Now since your initial commission as
3 a notary of the State of Utah, have you ever changed
4 your name or address?

5 A No.

6 Q Are you commissioned as a notary in any
7 other state --

8 A No.

9 Q -- besides Utah? Have you ever resigned
10 your notarial commission in Utah or any other state?

11 A No.

12 Q Have you ever been denied issuance of a
13 notarial commission?

14 A No.

15 Q Has your Utah notarial commission ever been
16 revoked, suspended or restricted?

17 A No.

18 Q Have you ever had any professional license
19 issued by Utah or any other state revoked or
20 suspended?

21 A No.

22 Q Have you ever had any restrictions on any
23 professional licenses issued by Utah or any other
24 state?

25 A No.

1 Q Have you ever been involved in any other
2 lawsuits regarding the authenticity of your -- of
3 anything that you have notarized?

4 A No.

5 Q Has any discipline action ever been taken on
6 you by the State of Utah with regards to any
7 authenticity --

8 A No.

9 Q -- of anything you notarized? Have you ever
10 been convicted of a crime involving dishonesty or
11 moral turpitude?

12 A No.

13 Q Have you ever plead omission to a crime?

14 A No.

15 Q Have you ever bounced a check?

16 A Not intentionally.

17 Q Okay. Can you explain the reason?

18 A Well, I think my husband wrote a check and
19 he didn't tell me that he wrote one and it bounced,
20 so -- but I covered it the next day.

21 Q So it wasn't you?

22 A It wasn't me. It was him. But it was on my
23 account.

24 Q Now have you ever notarized a document to
25 which you were a signer or where you were named in

1 the document?

2 A No.

3 Q Have you ever notarized a document or
4 transaction to which you had a beneficial interest or
5 were a personal beneficiary?

6 A No.

7 Q Have you ever notarized a document
8 containing statements you knew to be false or had the
9 intent to deceive or defraud?

10 A No.

11 Q Now have you ever notarized a signature not
12 made or acknowledged in your presence?

13 A No.

14 Q Now have you ever been subject of any
15 discipline at your current work?

16 MR. BLACKBURN: Objection, irrelevant, but
17 you can answer it.

18 MR. SILVESTRINI: Joined.

19 A I don't really understand. Discipline for,
20 you know, being tardy or something?

21 Q (By Mr. Melgar) Any discipline.

22 A I've probably been talked to about being
23 tardy a couple of times.

24 Q Okay. Is that the only discipline?

25 A Uh-huh.

1 MR. SILVESTRINI: You have to answer out
2 loud.

3 A Oh, sorry. Yes. A little bit of
4 discipline.

5 Q (By Mr. Melgar) Now -- now going to the
6 procedures that we've discussed earlier, how do you
7 assure that the person that presents an I.D. is a
8 person they claim they are?

9 A Well, I have been in this business for quite
10 awhile with the identification. I worked at First
11 Security Bank from '79 and I learned a lot about
12 identification through working there. And I'm
13 comfortable with identification they present and I
14 look at it. If I'm not comfortable, then I won't
15 notarize the document.

16 Q Do you ever ask for two forms of ID?

17 A Yes, I do.

18 MR. MELGAR: That's all I have.

19 MR. HUNT: I have no questions.

20 MR. SILVESTRINI: Thank you very much.

21 MR. MELGAR: Thank you.

22 (Proceedings concluded at 12:28 p.m.)
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C E R T I F I C A T E

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the deposition of
JO ELLEN CROCKETT, the witness in the foregoing
deposition named, was taken before me, Susan S.
Sprouse, a Registered Professional Reporter and
Notary Public in and for the State of Utah, residing
in Salt Lake County.

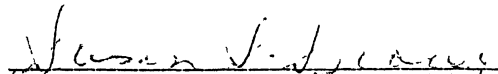
That the said witness was by me, before
examination, duly sworn to testify the truth, the
whole truth, and nothing but the truth in said cause.

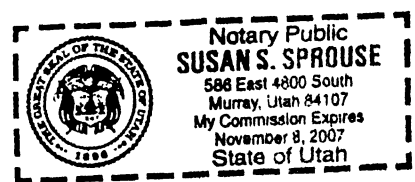
That the testimony of said witness was by
me reported in Stenotype, and thereafter caused to be
transcribed into typewriting, and that a full, true,
and correct transcription of said testimony so taken
and transcribed is set forth in the foregoing pages,
numbered from 1 to 29 inclusive, and said witness
deposed and said as in the foregoing annexed
deposition.

I further certify that the original
transcript of the same was delivered to JEFFREY L.
SILVESTRINI, signature having been waived by the
witness.

I further certify that I am not of kin or
otherwise associated with any of the parties to said
cause of action, and that I am not interested in the
event thereof.

WITNESS MY HAND and official seal at Salt
Lake City, Utah, this 29 day of May, 2006.


SUSAN S. SPROUSE, RPR/CSR



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11-2-05

Jeffrey L. Silvestrini (Bar No. 2959)
Ray M. Beck (Bar No. 3798)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84111
Telephone (801) 532-2666
Facsimile (801) 355-1813

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

CENTENNIAL POINTE PROPERTY
OWNERS ASSOCIATION

Plaintiff,

v.

MYRIAM ONYEABOR,

Defendant.

AFFIDAVIT OF
JO ELLEN CROCKETT

Civil No. 040918762

Judge Stephen L. Roth

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

Jo Ellen Crockett, being first duly sworn and upon oath, deposes and states as follows:

1. I am over 18 years of age and am competent to testify in a court of law.
2. I have personal knowledge of the facts set forth herein.
3. I am and have been a licensed Notary Public in the State of Utah for

approximately ten years.

1177



4. I am employed as a Notary Public at America First Credit Union.
5. As a standard practice throughout my career as a Notary, I verify the identity of each individual requesting that I notarize their signature on a document.
6. As a standard practice throughout my career as a Notary, I have maintained log books containing, for each individual whose signature that I have notarized, the individual's name, address, driver's license number or other acceptable identification, and the date and time the individual appeared before me. I also require that the individual sign the log book.
7. As a standard practice throughout my career as a Notary, before an individual signs a document that I am to notarize, I ask the person if he or she has read the document and if he or she understands the contents of the documents.
8. As a standard practice throughout my career as a Notary, I require that the individual signs the document that I am to notarize in my presence.
9. In August 2000, I was employed as a Notary Public for America First Credit Union and worked out of America First Credit Union's Brickyard office in Salt Lake City, Utah.
10. On August 3, 2000, a woman approached me at the Brickyard office and requested that I notarize her signature on a document titled Restated Declaration of Covenants, Conditions and Restrictions of Amended Portion of Lot 5, Phase V, Centennial Industrial Park ("Restated Declaration of the CCRs").
11. The woman identified herself as Myriam Onyeabor and provided me with her Utah Driver's License.

12. The Utah Driver's License she provided to me confirmed that she was Myriam Onyeabor.

13. I entered Ms. Onyeabor's name, address and driver's license number in my notary log book, as well as the date and time, 11:51 a.m., that Ms. Onyeabor appeared before me and requested that I notarize her signature on the Restated Declaration of the CCRs.

14. Ms. Onyeabor signed my log book in my presence.

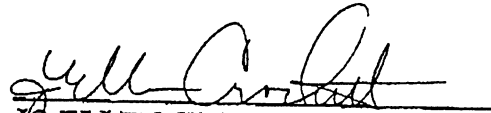
15. A true and correct copy of the page from my log book reflecting the foregoing information is attached hereto as **Exhibit "A."**

16. Before Ms. Onyeabor signed the Restated Declaration of the CCRs, I asked her if she had read and understood the contents of the document. Ms. Onyeabor told me that she had read the document, and that she understood the contents of the document.

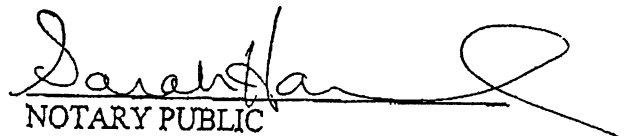
17. I observed Ms. Onyeabor sign the Restated Declaration of the CCRs and thereafter I notarized Ms. Onyeabor's signature by affixing my notary stamp to the Restated Declaration of the CCRs.

18. Ms. Onyeabor did not appear to me to be under any duress at the time she signed the Restated Declaration of the CCRs, nor did she appear to me to have been forced to sign the document. To the contrary, she wanted me to notarize her signature on the document.

DATED this 2ND day of November, 2005.


JO ELLEN CROCKETT

SUBSCRIBED AND SWORN to before me this 2 day of November, 2005.


NOTARY PUBLIC

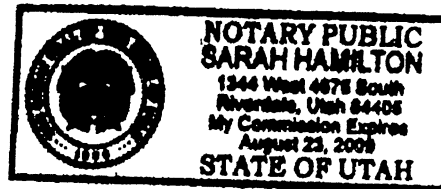


EXHIBIT A

D Cards — Describe each card below
Credible Witness(es) — include signature of each witness

WFOC# 145527129

11/03

☐ Personally known by the Notary
☐ ID Cards — Describe each card below



Top of thumb here

6	08-03-00	08-03-00	Restored	Myriam Onteado
	1051 AM		Declaration	1078E 2700 so
				SLC UT 84106

Exhibit “F”

9412031

WHEN RECORDED MAIL TO:

Ray M. Beck
COHNE, RAPPAPORT & SEGAL, P.C.
P.O. Box 11008
Salt Lake City, UT 84147-0008

9412031

06/22/2005 04:23 PM \$14.00

Book - 9148 Pg - 7697-7698

GARY W. OTT

RECORDER, SALT LAKE COUNTY, UTAH

COHNE RAPPAPORT & SEGAL

PO BOX 11008

SLC UT 84147-0008

BY: AMF, DEPUTY - WI 2 P. BY AMF

**NOTICE OF LIEN FOR NONPAYMENT OF
COMMON AND ASSOCIATION EXPENSES**

2-2
The undersigned, **Centennial Pointe Owners Association**, a Utah nonprofit corporation (the "Association"), hereby claims a lien for nonpayment of common expenses and association expenses, pursuant to Utah Code Ann. § 57-8-20, by **Miriam Onyeabor dba Computer & Equipment Warehouse**, owner of the following described property:

Lots 1 and 2 of the Amend Portion of Lot 5 Phase V Centennial Industrial Park, a Planned Development Subdivision as recorded upon the official records of the Salt Lake County Recorders Office.

Tax Parcel No. 15-18-326-006
15-18-326-007

Said lien arises from the default by Miriam Onyeabor and Computer & Equipment Warehouse, in payment of common expenses and association expenses in the amount of \$6,863.01 owed pursuant to Centennial Pointe's Restated Declaration of Covenants, Conditions and Restrictions of Amended Portion of Lot 5, Phase V, Centennial Industrial Park, which was recorded with the Salt Lake County Recorder on or about April 24, 2000 as Entry 7704757, as amended by a Restated and Amended Declaration recorded on August 24, 2000, as Entry No. 7704757 in Book 8383 at page 1233-1266 (the "Declaration"), plus interest, costs and attorney's fees.

Together with, costs, penalties and interest in accordance with the Declaration of the Association. This lien shall be construed to include attorney fees, filing fees, recording fees, and all expenses and interest accruing and unpaid after the date hereof, pursuant to the Declaration of the Association.

If the Association elects to foreclose this lien as a Deed of Trust, as allowed by Utah Code Ann. § 57-8-20(4), **Ray M. Beck**, a member of the Utah State Bar, is hereby appointed Trustee.

Dated this 22 day of June, 2005

CENTENNIAL POINTE OWNERS
ASSOCIATION, INC.,

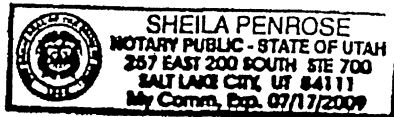
By: Ray M. Beck

Ray M. Beck

Authorized Representative

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

On the 22nd day of June, 2005, personally appeared before me, Ray M. Beck, who being by me duly sworn, did say that he is the duly authorized agent of the Centennial Pointe Owners Association, Inc., and that said instrument was signed in behalf of said Association at the direction of its Board of Trustees, and that said Association executed the same.




NOTARY PUBLIC

Exhibit “2”

4-7-06
80

FILED
DISTRICT COURT

APR -7 PM 7:45

THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY

DEPUTY CLERK

Jeffrey L. Silvestrini (Bar No. 2959)

Edward T. Vasquez (Bar No. 8640)

COHNE, RAPPAPORT & SEGAL P.C.

257 East 200 South, Suite 700

P.O. Box 11008

Salt Lake City, Utah 84147-0008

Telephone (801) 532-2666

Facsimile (801) 355-1813

Attorneys for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited
liability company, and CENTENNIAL
POINTE PROPERTY OWNERS
ASSOCIATION (Registered on November
29, 2004), a Utah Nonprofit Corporation,
Plaintiffs,

v.

MYRIAM ONYEABOR,

Defendant.

CERTIFICATE OF SERVICE

Civil No. 040918762

Judge Stephen L. Roth

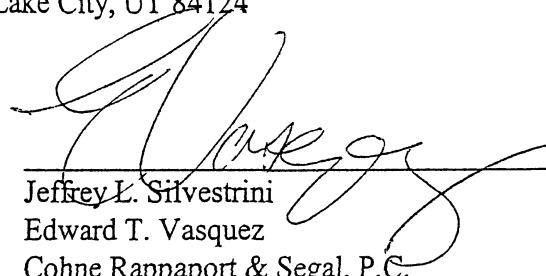
I hereby certify that on the 7th day of April, 2006, I caused to be mailed a true and correct copy of PLAINTIFFS' AND THIRD-PARTY DEFENDANTS BRUCE M. RAILE'S AND JENNIFER CLARK'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO MYRIAM ONYEABOR, FIRST SET OF INTERROGATORIES, and this CERTIFICATE OF SERVICE, postage prepaid, to:

1188

George A. Hunt
Williams & Hunt
257 East 200 South, #500
Salt Lake City, UT 84111

John D. Richards III
The Richards Law Office
4190 South Highland Drive, Suite 111
Salt Lake City, UT 84124

DATED this 7th day of April, 2006.



Jeffrey L. Silvestrini
Edward T. Vasquez
Cohne Rappaport & Segal, P.C.
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of April, 2006, I caused to be mailed a true and correct copy of the foregoing, postage prepaid, to:

George A. Hunt
Williams & Hunt
257 East 200 South, #500
Salt Lake City, UT 84111

John D. Richards III
The Richards Law Office
4190 South Highland Drive, Suite 111
Salt Lake City, UT 84124

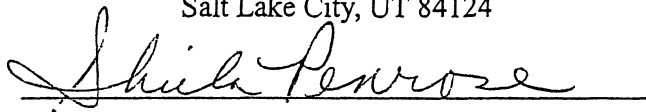
A handwritten signature in cursive script, reading "Shula Penrose", is written over a horizontal line.

Exhibit “3”

OWNERS SCHEDULE A

Order No. 24909

Policy No. O-9993-1980019

Date of Policy: September 29, 2000 at 3:23 p.m.

Amount of Insurance: \$335,000.00

Premium Amount: \$859.00

1. Name of Insured: MYRIAM ONYEABOR

2. The estate or interest in the land which is covered by this Policy is:
FEE SIMPLE

3. Title to the estate or interest in the land is vested in:
MYRIAM ONYEABOR

4. The land referred to in this Policy is described as follows: situated in Salt Lake County, State of Utah, to-wit:

PARCEL 1:

Lot 2, AMENDED PORTION OF LOT 5 PHASE V CENTENNIAL INDUSTRIAL PARK, according to the official plat thereof, filed in Book "99-5P" of Plats at Page 117 of the Official Records of the Salt Lake County Recorder.

PARCEL 2:

The right of ingress and egress over common areas as defined in the Declaration Of Covenants, Conditions And Restrictions Of Amended Portion Of Lot 5, Phase V, Centennial Industrial Park, A Planned Development Subdivision recorded April 19,
(Continued)

Order No. 24909

Attached to and forming a part of Policy No. O-9993-1980019

SCHEDULE A (LEGAL DESCRIPTION CONTINUED)

2000 as Entry No. 7621217 in Book 8356 at Page 2534 of the Official Records.

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1193

ONLY 0002

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SCHEDULE B

This policy does not insure against loss by reason of the matters shown or referred to in this Schedule.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public record.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Any adverse claim based upon the assertion that (a) some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof; (b) the boundary of the land has been affected by a change in the course or water level of a navigable river or lake; (c) the land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
8. (Affects this and other property)
The lien of all general real and personal property taxes for the year 2000, and thereafter, not yet due or payable. General real property taxes for the year 1999 have been paid under Mother Sidwell No. 15-18-326-001. (Tax District No. 13F)

NOTE: New Sidwell Number for the tax year 2000 are: Lot 2: 15-18-326-007.

9. Said property lies within the boundaries of Salt Lake City, and is subject to any and all charges and assessments thereof.
10. The terms of Declaration of Covenants, Conditions and Restriction, recorded December 30, 1968 as Entry No. 2272001, in Book 2718, at Page 631 of the Official Records and by that certain Correction Instrument recorded May 20, 1969 as Entry No. 2288434 in Book 2755 at Page 600 of the Official Records, including all provisions, covenants, conditions, restrictions, easements, charges, assessments, liens or rights, if any, created therein, but deleting those matters based upon race, color, creed, religion, sex, handicap, familial status or national origin unless and only to the extent that said matters, or any portion thereof, are exempt under relevant provisions of the United States Code or relate to handicap, but do not discriminate against handicapped persons.
11. A right-of-way and/or easement in favor of MOUNTAIN FUEL SUPPLY COMPANY to maintain and operate a four-inch (4") gas pipe line, together with other recited terms and conditions, as constructed on or across the property herein described but not specifically defined as to exact location as created by Agreement recorded October 10, 1980 as Entry No. 3488436 in Book 5162 at Page 1193 of the Official Records.

(Continued)

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a
ONLY 0003

Order No. 24909

Attached to and made a part of Stewart Title Guaranty Company Policy No. O-9993-1980019

SCHEDULE B (EXCEPTIONS CONTINUED)

12. Easements for public utilities and incidental purposes over, along and across the West 15 feet of said property as shown on the recorded plat of said subdivision.
13. A Lease Space and Notice to Purchasers as shown on the recorded plat of said subdivision.
14. The following exception and reservation contained in that certain Quit Claim Deed recorded April 22, 1982 as Entry No. 3668271, in Book 5364, at Page 938 of the Official Records, wherein UNION PACIFIC LAND RESOURCES CORPORATION appears as the Grantor, and UPLAND INDUSTRIAL DEVELOPMENT COMPANY appears as the Grantee, to-wit:

"Reserving unto Grantor, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of, said minerals by any means or methods suitable to Grantor, its successors and assigns, but without entering upon or using the surface of the lands hereby quit claimed, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Grantee, its successors and assigns."

Note: The Company has not made a search or examination of any such rights and therefore makes no representations as to any matters pertaining thereto.

15. The following exception and reservation contained in that certain Special Warranty Deed recorded June 14, 1991 as Entry No. 5082489, in Book 6326, at Page 2275 of the Official Records, wherein KULMER & SCHUMACHER appears as the Grantor, and CENTENNIAL PARK, LIMITED appears as the Grantee, to-wit:

"Grantee, for itself, its successors and assigns, agree to join in any petition to Salt Lake City that may reasonably be required to establish a local improvement district for street lighting in Centennial Industrial Park and Grantee further agrees, for itself, its successors and assigns, to assume Grantee's proportionate share of assessments levied by Salt Lake City upon the lands described in Exhibit A for the construction, maintenance and operation of said street lighting system."

(Continued)

Order No. 24909

Attached to and made a part of Stewart Title Guaranty Company Policy No. O-9993-1980019

SCHEDULE B (EXCEPTIONS CONTINUED)

16. The terms of Declaration of Covenants, Conditions and Restrictions, recorded August 3, 1979 as Entry No. 3317190, in Book 4915, at Page 795 of the Official Records, including all provisions, covenants, conditions, restrictions, easements, charges, assessments, liens or rights, if any, created therein, but deleting those matters based upon race, color, creed, religion, sex, handicap, familial status or national origin unless and only to the extent that said matters, or any portion thereof, are exempt under relevant provisions of the United States Code or relate to handicap, but do not discriminate against handicapped persons.

Amended Covenants, Conditions, Restrictions and/or Easements recorded June 25, 1980 as Entry No. 3447409 in Book 5116 at Page 387 of the Official Records.

Amended Covenants, Conditions, Restrictions and/or Easements recorded October 17, 1980 as Entry No. 3491728 in Book 5166 at Page 371 of the Official Records.

Amended Covenants, Conditions, Restrictions and/or Easements recorded March 25, 1986 as Entry No. 4219334 in Book 5748 at Page 1496 of the Official Records.

Amended Covenants, Conditions, Restrictions and/or Easements recorded September 30, 1987 as Entry No. 4530751 in Book 5966 at Page 1982 of the Official Records.

An Assignment And Assumption Agreement recorded June 18, 1991 as Entry No. 4930168 in Book 6229 at Page 1935 of the Official Records.

An Assignment And Assumption Agreement recorded June 14, 1991 as Entry No. 5082490 in Book 6326 at Page 2288 of the Official Records.

17. The terms of that certain Declaration Of Covenants, Conditions And Restrictions Of Amended Portion Of Lot 5, Phase V, Centennial Industrial Park, a Planned Development Subdivision, recorded April 19, 2000 as Entry No. 7621217, in Book 8356, at Page 2534 of the Official Records, including all provisions, covenants, conditions, restrictions, easements, charges, assessments, liens or rights, if any, created therein, but deleting those matters based upon race, color, creed, religion, sex, handicap, familial status or national origin unless and only to the extent that said matters, or any portion thereof, are exempt under relevant provisions of the United States Code or relate to handicap, but do not discriminate against handicapped persons.

Amended Covenants, Conditions, Restrictions and/or Easements recorded August 24, 2000 as Entry No. 7704757 in Book 8383 at Page 1233 of the Official Records.

(Continued)

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ONY 0005

Order No. 24909

Attached to and made a part of Stewart Title Guaranty Company Policy No. O-9993-1980019

SCHEDULE B (EXCEPTIONS CONTINUED)

18. The effects of that certain Abstract of Findings and Order, executed by Salt Lake City Planning Commission, Case No. 410-319, recorded April 15, 1999 as Entry No. 7323598, in Book 8268, at Page 5499 of the Official Records.
19. Matters disclosed by that certain Survey, dated November 17, 1997, prepared by LARSEN & MALMQUIST, INC., as Job 03599-97, certified by M. CARL LARSEN, License No. 142765, and filed with the office of the Salt Lake County Surveyor as Survey No. S98-01-0093.
20. Matters disclosed by that certain ALTA/ACSM Survey, dated July 1, 1998, prepared by LAND DESIGN & DEVELOPMENT, as Job No. D-98-112-B, certified by RICHARD KEITH JOHANSON, License No. 152956.
21. Avigation Easement to SALT LAKE CITY CORPORATION for a perpetual and assignable easement for the free and unrestricted passage of aircraft of any and all kinds now or hereafter developed for the purpose of transporting person or property through the air, in, through, across and about the airspace over the real property described in Schedule A hereof, as disclosed by Instrument recorded July 7, 1998 as Entry No. 7029037 in Book 8038 at Page 595 of the Official Records.
22. A Deed of Trust to secure an indebtedness of the amount stated herein and for any other amounts payable under the terms thereof:

Dated : September 28, 2000
Trustor : MYRIAM ONYEABOR
Amount : \$210,000.00
Trustee : LANDMARK TITLE COMPANY
Beneficiary : KEB ENTERPRISES, L.P.
Recorded : September 29, 2000 as Entry No. 7729576 in Book 8391 at Page 2550 of the Official Records.

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ltg

ONY 0006

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[illegible]

CONDITIONS AND STIPULATIONS Continued
(continued and concluded from reverse side of Policy Face)

7 DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described

(a) The liability of the Company under this policy shall not exceed the least of

(i) the Amount of Insurance stated in Schedule A, or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy and improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy, or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorney's fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations

8 APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy

9 LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company

10 REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto

11 LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner

12 PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter

13 SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) **The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation

(b) **The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy

14 ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters, when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules

A copy of the Rules may be obtained from the Company upon request

15 LIABILITY LIMITED TO THIS POLICY, POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company

16 SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect

17 NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at P O Box 2029, Houston, Texas 77252-2029

ONY 0008

Exhibit “4”

THIS DOCUMENT IS VOID IF BACKGROUND DESIGN IS NOT COLORED

AMERICA FIRST
CREDIT UNION

A Member-Owned Credit Union
P.O. Box 9199 • Ogden, Utah 84409

Cashier's Check

97-7751
3243

Nº 3043049

DATE 09/28/00

VOID AFTER 90 DAYS

PAY ONE HUNDRED THIRTY SEVEN THOUSAND DOLLARS AND 00 CENTS

\$ 137,000.00

TO THE ORDER OF LANDMARK TITLE
RE: MIRIAM NE ONYEABOR

PURCHASER

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK HOLD IT UP TO THE LIGHT

⑈3043049⑈ ⑆324377516⑆ 00101060400 0⑈

MIRIAM ONYEABOR

1078 E. 2700 S.
SALT LAKE CITY, UT 84106

9-89

DATE

09/28/00

1782

97-7751/3243
30

PAY TO THE
ORDER OF

Landmark
One hundred eighty-one 44
DOLLARS

AMERICA FIRST

CREDIT UNION
P.O. BOX 9199, OGDEN, UTAH 84409

FOR

⑆324377516⑆74600309288 1⑈ 1782

120/
ONLY 0026

Exhibit “G”

Return To:
Myriam Onyeabor
1078 East 2700 South
Salt Lake City, Utah 84106

7729575
09/29/2000 03:23 PM 10.00
Book - 8391 Pg - 2549
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: KCC, DEPUTY - WI 1 P.

WARRANTY DEED

CENTENNIAL POINTE, L.L.C., a Utah Limited Liability Company who
acquired title as CENTENNIAL POINTE, L.L.C.

of Park City, County of Summit, State of Utah, hereby
CONVEYS and WARRANTS to

Myriam Onyeabor

of Salt Lake City, County Salt Lake, State of Utah,
for the sum of TEN DOLLARS AND NO/100 -----DOLLARS,
and other good and valuable consideration

the following described tract of land in Salt Lake County,
State of Utah:

PARCEL 1:

Lot 2, AMENDED PORTION OF LOT 5 PHASE V CENTENNIAL INDUSTRIAL
PARK, according to the official plat thereof, filed in Book
"99-5P" of Plats at Page 117 of the Official Records of the Salt
Lake County Recorder.

PARCEL 2:

The right of ingress and egress over common areas as defined in
the Declaration Of Covenants, Conditions And Restrictions Of
Amended Portion Of Lot 5, Phase V, Centennial Industrial Park, A
Planned Development Subdivision recorded April 19, 2000 as Entry
No. 7621217 in Book 8356 at Page 2534 of the Official Records.

FOR REFERENCE PURPOSES ONLY: Tax Parcel/Serial No. 15-18-326-007

SUBJECT TO current general taxes, easements, restrictions and
rights of way of record.

WITNESS, the hand of said grantor, this 28th day of, September,
A.D. 2000

CENTENNIAL POINTE, L.L.C., a Utah Limited
Liability Company

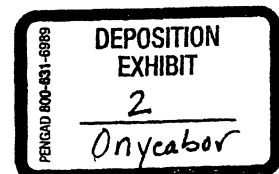
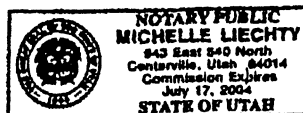
By: _____
Donald R. Sanborn, Manager

STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

On the 28th day of September, A.D. 2000, personally appeared
before me Donald R. Sanborn, Manager of CENTENNIAL POINTE, L.L.C.,
a Utah Limited Liability Company who acquired title as CENTENNIAL
POINTE, L.L.C.. The signer of the within instrument, who duly
acknowledged to me that he executed the same, for and on behalf of
CENTENNIAL POINTE, L.L.C., a Utah Limited Liability Company who
acquired title as CENTENNIAL POINTE, L.L.C., as manager therein.

NOTARY PUBLIC

My Commission Expires: 7/17/04 Residing at: Centerville, Utah



BK8391 PG2549

Exhibit “H”

Jeffrey L. Silvestrini (Bar No. 2959)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813

Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited	:	
liability company, and CENTENNIAL	:	
POINTE PROPERTY OWNERS	:	AFFIDAVIT OF BRUCE RAILE
ASSOCIATION (Registered on November	:	
29, 2004), a Utah Nonprofit Corporation,	:	
	:	Civil No. 040918762
Plaintiffs,	:	
	:	Judge Randall Skanchy
v.	:	
	:	
MYRIAM ONYEABOR,	:	
	:	
Defendant.	:	
	:	

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

Bruce Raile, being first duly sworn and upon oath, deposes and states as follows:

1. I am over 18 years of age and am competent to testify in a court of law.
2. I have personal knowledge of the facts set forth herein.

3. LEBR Associates, LLC ("LEBR") is a Utah Limited Liability Company.
4. I am a member of LEBR, and its managing partner.
5. Jennifer Clark is not and has never been an employee of LEBR.
6. In November 2000, LEBR purchased Lots 3, 4, and 5 in the Centennial Pointe development.
7. On December 11, 2000, during a Centennial Pointe Owners Association (the "Association") meeting that I attended, I was elected to serve as president of the Association.
8. During that same meeting, the Association elected Myriam Onyeabor to serve as secretary of the Association.
9. During my tenure as the Association's president, Ms. Onyeabor paid her Association assessments from December 2000-October 2002.
10. These assessments included costs for maintaining the landscaped areas in Centennial Pointe, snow removal, water, power, and insurance.
11. In May 2002, I received a letter from Ms. Onyeabor informing me and the other members of the Association that beginning June 1, 2002 she would (1) no longer participate as a member of the Association, (2) maintain the landscaping and common area on or around her two Lots, (3) no longer pay her *pro rata* share of Centennial Pointe's common expenses, and (4) have vehicles towed that were parked in the Centennial Pointe parking stalls "within her legal boundary," or on her property. A copy of the letter that I received from Ms. Onyeabor is appended hereto as **Exhibit "1."**
12. I forwarded Ms. Onyeabor's May 22, 2002 letter to Dave Castleton the

Association's attorney.

13. Mr. Castleton provided me with a memorandum responding to Ms. Onyeabor's letter, which I forwarded to Ms. Onyeabor with my handwritten comments. A copy of the Memorandum that I forwarded to Ms. Onyeabor is appended hereto as **Exhibit "2."**

14. In October 2002, Ms. Onyeabor ceased paying her Association assessments for Centennial Pointe's common expenses.

15. Since that time, Ms. Onyeabor has (1) refused to allow the Association to mow the lawn near Ms. Onyeabor's property, and has failed and refused to mow the lawn herself; (2) threatened to deny Centennial Pointe owners and the Association access to the Utility Room located on Ms. Onyeabor's property, but subject to an access easement in Restated Amended CC&Rs; (3) threatened a Qwest repairman who was working in the Utility Room that she would bring criminal charges against the repairman if he did not leave her property; and (4) threatened to have cars towed parked "on her property," in the Centennial Pointe parking lot.

16. Ms. Onyeabor has failed to maintain the landscaped common area on and around Lots 1 and 2 in a manner acceptable to LEBR and the Association.

17. I am familiar with Centennial Pointe's parking lot, including the parking area near the entrance to Ms. Onyeabor's business. Any vehicle parked in the space s near the entrance of Ms. Onyeabor's business would not prevent a person ~~of~~ person with a hand truck from entering Ms. Onyeabor's business.

18. I have not instructed employees of either LEBR or Sun Optics, LEBR's tenant, to park in the stalls in front of Ms. Onyeabor's business.

19. I am familiar with Centennial Pointe's loading area. To my knowledge no trucks delivering goods to either LEBR or Sun Optics have blocked access to the loading area for Ms. Onyeabor's property, nor have they interfered with any deliveries to Ms. Onyeabor's property.

DATED this 20th day of October, 2006.



Bruce Raile

SUBSCRIBED AND SWORN to before me this 20 day of October, 2006.

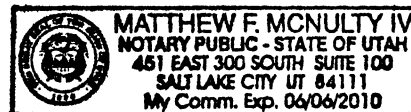

NOTARY PUBLIC

Exhibit “1”

To: Dave Castleton
From: Bruce Raile
2 Pages

Computer & Equipment Warehouse
P.O Box 521297
Salt Lake City, Utah. 84152. USA
801-487-9006 fax 801-487-9005

ATTN: DAVE CASTLETON

Memorandum

0522/02

Bruce/ Laura Raile
Cc: Paul
Members of the Centennial Point Association
Salt lake Utah 84104

Sir/ Madam,

I wish to thank all of you for the effort you have made so far in keeping the association going. I have explained, to some of you, the constraints that I face which make it impossible for me to participate fully in these affairs, burdened as I already am.

This memorandum is merely a formal request that, starting June 1, all the maintenance done on my premises will be henceforth handled by me. Any further work done on my premises, without my express written approval, will henceforth, not be paid for by me. I also suggest that we find ways of separating our electrical and water bills so that we all take care of their own bills. This request is based on my personal disposition and availability.

I am quite firm on these decisions and will not be pressured into doing things otherwise. Thanks for your understanding. I would also add that I can accept temporary parking in any of the areas within my legal boundary but would very much appreciate it if the persons parking would also clean up after they are done, no stray tissues etc. Mechanical repair work on my premises will not be allowed. Permanent parking will also not be allowed, and I might be compelled to tow away such vehicles.

Sincerely yours,
Myriam Onyeabor

Exhibit “2”

TO: MIRIAM
FROM: BRUCE & LAURE
4 PAGES

Memorandum

To: Bruce and Laura Raile
From: Dave Castleton
Date: June 11, 2002
Subject: Centennial Pointe Property Owners Association, Inc.

I hope this helps
explain our situation.
Please check with your
own attorney to verify
to work together.

Thank you for sending me a copy of Myriam Onyeabor's letter concerning Centennial Pointe Property Owners Association (the "Association"). It appears that she has not been advised concerning the nature of the ownership interest she has and the effect of the recorded documents establishing various covenants, conditions and restrictions with respect to her property. The purpose of this memo is to explain how the Association works and how it relates to the interest of the owners in their respective parcels, what it would take to change the current structure, and to offer suggestions about future management and operation.

A. CURRENT STRUCTURE

1. The owners of Lots 1-7 of Amended Portion of Lot 5, Phase V, Centennial Industrial Park (the "Property"), have taken title subject to certain covenants, conditions and restrictions, as set forth in the Restated Declaration of Covenants, Conditions and Restrictions of Amended Portion of Lot 5, Phase V, Centennial Industrial Park recorded August 24, 2000 (the "Declaration"). Because Lots 1 - 7 have different owners and because the Lots share access, driveways, landscaping, utility lines and other common areas, the Declaration was established to provide a means to control and manage such common areas for the mutual benefit of all owners. Owners cannot opt out of the provisions of the Declaration without the consent of all owners and any other party having an interest in the Property.
2. The Declaration defines the Common Elements to be the portion of the Property other than the Buildings. Section 17.2 allows all of the Owners to use the Common Elements subject to rules and regulations adopted from time to time by the Association. The Association has the exclusive responsibility to manage, control, maintain and repair the Common Elements and all improvements thereon.
3. The Association may handle the day to day management by its governing board or individual Trustees, or it may hire a

manager to perform the management duties. The costs of the management and the services provided are to be paid through assessments to the owners.

4. The Declaration contemplates that the Association will make annual assessments against all of the Lots to pay for the estimated expenses growing out of or connected with the maintenance and operation of the Common Elements, including a fee for management services.
5. Regular Assessments are to be made prior to the end of a calendar year for the next calendar year. Assessments are payable in monthly installments and any late payments are to bear interest at the higher of 18% or 5% above the prime rate or equivalent thereof. The Association may also place liens upon a lot if the lot owner fails to pay all assessments. The owner is also personally liable for any annual or special assessment.
6. Special Assessments may also be levied by the Association for the purpose of capital improvements.
7. Failure of an owner to comply with the Declaration or the rules and regulations adopted from time to time by the Association may result in fines being imposed on the owner.

B. ASSOCIATION

8. The Bylaws and certain provisions in the Declaration govern the operation of the Association.
9. The Members of the Association are the Lot owners. The Members elect a governing Board of Trustees consisting of three individuals. The Board has all the powers and duties set forth in the Declaration, including the power to hire a manager and to adopt rules and regulations concerning the Property. The Board also determines the assessments, however, the Board may not have an increase of more than 25% in any one year without the consent of owners holding 67% of the ownership interests.
10. The Board of Trustees elects officers to handle the day to day operations of the Association.

C. BREAK-UP OF ASSOCIATION

11. Changing the way the Property is maintained and operated is not an easy task. Because the Property was developed as a planned unit development with common elements, all the recorded documents and plats reflect that type of

arrangement. Therefore, you must have the unanimous consent of all parties who have an interest in the Property, including all the lenders, agree to any other proposal.

12. The Property is currently platted as a planned development because the Lots cannot stand on their own. In order to be separate and distinct parcels the lots would have to be redrawn so that each building is on a separate parcel. This may be close to impossible because the buildings could not meet set back and other requirements imposed by law.
13. Separation of the lots would also require a new plat be made and all necessary plat approvals obtained. Such a process would be expensive and time consuming. As stated above, it is unlikely that the Property could be split in a way that would be approved. I am sure that is the reason it was designed as a planned development in the first place.
14. If all the parties having an interest in the Property agreed, you could change the terms of the Declaration. However, because all parties need access over certain driveways owned by the Association, you would still need common areas or cross easement agreements to insure access. The parking stalls are currently controlled by the Association. This allows flexibility in meeting the needs of all owners.
15. Maintenance of the entire Property would not be solved by having everyone simply take care of the property adjacent to their Lot. What if they do not maintain it? One Lot owner's negligence may affect the look or safety of the entire Property. What remedies would you instigate that would be better than the ones already established in the Declaration?
16. You may experience great difficulty among the lenders to change the terms of the Declaration at this stage. It may be difficult to come up with an arrangement that would give you the flexibility you want, and still protecting their security.

E. SUGGESTIONS

17. We spent a considerable amount of time back at the time you purchased your Lots to make the Declaration a workable document. It is designed to provide a method of maintenance and operation of the entire Property that is in the best interest of all owners. It is true that you give up some of the flexibility that you would have if you were the owner of your own separate parcel, however, each of the parties knew

when they acquired their lots that they were simply a piece of a planned development.

18. Whoever handles the management of the Association, arranging for the maintenance, collecting assessments, paying bills, etc., should be compensated. If the owners do not want to pay Laura for such work, then the Board can pick another person or entity to manage the Property. The management fee should be included in the annual assessment and should be agreed upon by the Board of Trustees in advance.
19. All owners should be prepared to meet their obligations under the Declaration. If they don't, the Declaration has adequate remedies, including penalties and interest and the right to lien the property. I recommend that you follow the Declaration in all aspects so all parties are treated the same.
20. There is no reason you should be fronting the funds to pay expenses. That is what assessments are for. It is a good idea for the Association to have a reserve so it can handle emergencies or delinquent owners. The individual owners cannot determine what to pay. The amount and timing is determined by the Board of Trustees. It is in everyone's best interest to cooperate to keep the costs down and keep the management efficient.
21. There is a chance that utilities could be separately metered, however, it is my understanding that most of that has been done except for common area utilities. If that is not the case you could check with the appropriate utility to see what it would cost to establish a separate meter or even if it is possible.

Please let me know if you have any further questions concerning the Association. I believe it can work to benefit all the owners if the terms of the Declaration and Bylaws are followed.

Exhibit “I”

Sanborn Development Company

251 W. River Park Dr. Suite 200
Provo, UT 84606
Telephone 801-234-8684 Fax 801-434-9577
Cell 801-541-2105
Email: dsanborn@pragdata.com
FACSIMILE COVER SHEET

To: Members of Centennial Pointe Owners Association

Date: December 16, 2000

Destination facsimile number:

Bruce Raile 266-7720
Paul Bezdjian 974-0160
Myriam Onyearbor 487-9005

new address

Number of Pages (including this page): 3

Attached is a spread sheet showing the total expenses that I have paid for the Association starting from April 2000. I hope that it is clear. Based on this spreadsheet I hereby request reimbursement from each of you as follows:

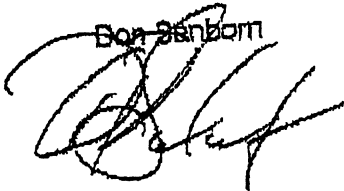
Bruce Raile	\$264.27
Paul Bezdjian	\$2,085.65
Myriam Onyearbor	\$1,028.42

I would appreciate it if you would send me a check for the above amount. Please make your checks payable Sanborn Development Company and mail them to 3084 American Saddler, Park City, UT 84060.

I have also prepared for your consideration a proposed budget for 2001.

I appreciate your attention to this matter, please call if you have any questions.

Don Sanborn



2

Utah Power User	Address	Meter #	12/4	1/1/4	10/8	8/5	8/10	7/7	6/5	5/4	5/4
House Meter.	1755 S 4400 W	2351915	\$28.09	\$280.73	\$209.20	\$180.89	\$84.82	\$94.10	\$164.64	\$89.13	\$229.33
Myriad Oxygenator	1756 S 4400 W Suite A -	2367273	\$4.65	\$92.29	\$140.71	\$220.23	\$107.95	\$39.39	\$8.74	\$4.35	\$4.35
Myriad Oxygenator	1757 S 4400 W Suite C -	2367212	\$0.00	\$6.03	\$9.10	\$8.78	\$4.35	\$4.35	\$8.74	\$4.35	\$4.35
Danone & Lactra Raiffe	1758 S 4400 W Suite E -	2360483	\$0.00	\$73.37	\$8.10	\$8.76	\$4.35	\$4.35	\$8.74	\$4.35	\$4.35
Bruce & Laura Raiffe	1759 S 4400 W Suite G -	2367214	\$0.00	\$73.37	\$8.10	\$8.76	\$4.35	\$4.35	\$8.74	\$4.35	\$4.35
Paul Bezjian	4453 W 1730 S Suite A -	1276434	\$4.65	\$9.39	\$9.10	\$8.78	\$4.35	\$4.35	\$8.74	\$4.35	\$4.35
Paul Bezjian	4454 W 1730 S Suite C -	2367243	\$4.65	\$9.39	\$9.10	\$8.78	\$4.35	\$4.35	\$8.74	\$4.35	\$4.35
Paul Bezjian	4455 W 1730 S Suite E -	2367223	\$4.65	\$9.39	\$9.10	\$8.78	\$4.35	\$4.35	\$8.74	\$4.35	\$4.35
Paul Bezjian	4456 W 1730 S Suite G -	2367218	\$4.65	\$9.39	\$9.10	\$8.78	\$4.35	\$4.35	\$8.74	\$4.35	\$4.35

[illegible]

Owner	Purchase date	%	These amounts include	Owners payed share of TOTAL above plus their electric meter charges
Myrlson Onyearbor	4/2/00	12.5%	\$49.55	\$138.41
Myrlson Onyearbor	10/1/00	12.5%	\$49.55	\$128.50
Bruce & Laura Ralke	11/14/00	25.0%	\$98.10	\$128.65
Paul Bezdekyn	8/24/00	50.0%	\$218.31	\$128.67
Sandra M. (C)			\$15.41	
Reimbursment Totals			\$477.74	\$128.35
Myrlson Onyearbor				\$133.44
Bruce & Laura Ralke				783.55
Paul Bezdekyn				723.94
Total reimbursement				1587.93

\$1,028.42
 \$284.27
 \$2,085.65
 \$3,378.34

350.2
 2085.6
 261.2
 173.69
 978.68

\$9,021.41
 \$9,021.41
 \$9,021.41

1719

Exhibit “J”

DEC. 5, 2005
DEC-11-2000

1:42PM

SUN OPTICS SALES INC.

FAX NO.

.4348510

NO. 520

P. 5/30

Centennial Pointe Property Owners Association Inc.
Meeting December 11, 2000

The meeting was called to order by Donald Sanborn at 11am

Attending:
Bruce Raile
Donald Sanborn

Absent:
Paul Bezdjian
Myriam Onyearbor

The following actions were taken by those attending:

Amendment No. 1 to Bylaws of the Centennial Pointe Property Owners Association, Inc amending the following:

1. Art II to refer to the most current CC&R's
2. Art 3.6 to give Lot 3 two votes to account for the fact that it is a double lot.
3. Section 5.2 dealing with voting procedures.

The Amendment was Certified by the current Secretary – Donald Sanborn.

The following were elected to serve as Trustee of the Association:

Bruce Raile
Paul Bezdjian
Myriam Onyearbor

The new Registered Agent will be:

Bruce Raile
1785 South 4490 West
Salt Lake City, UT 84104

The following officers were elected as:

President	Bruce Raile
Vice President	Paul Bezdjian
Secretary	Myriam Onyearbor
Treasurer	Laura Raile

Bruce Raile agreed to obtain bids for landscape, snow removal and parking lot sweeping from Eagle Gate Landscaping, the company that Paul Bezdjian currently uses and others as he may deem necessary.

It was agreed that The Association will take the responsibility of insuring the property for casualty and liability. Bruce will review the existing policy.

It was further agreed that each owner shall insure their property for Liability coverage with a minimum of \$1 million per occurrence and \$2 million aggregate. The Association should be listed as Additional Named Insured with Certificates mailed to the Registered Agent.

DEC. 5, 2005,
DEV-11-2000

1:42PM

SUN OPTICS SALESE INC.

FAX NO. 6 348010

NO.520

P.6/30

Don agreed to prepare an Operating Expense Budget for 2001 for the continuing liabilities of the Association. It was agreed that The Treasurer will then bill each owner their prorated monthly share of the budged expenses. It was agreed that the continuing liabilities of the Association shall be the following:

- Landscape maintenance

- Snow removal

- Maintenance of the Common Elements

- Water/Sewer service for all buildings

- Electrical service for the house meter

- Property casualty and liability insurance for all buildings.

It was further agreed that the President and Treasurer are authorized to open a checking account in the name of the Association and to obtain a Federal Tax ID number.

Donald Sanborn submitted his resignations from the current Trustees and for himself as President, Secretary and Treasurer, his resignation was accepted.

Bruce will have his attorney prepare necessary amendments for the Articles of Incorporation and By Laws to reflect the above actions.

Don agreed to prepare and distribute meeting minutes to all Trustees.

The meeting ended at 12:30pm

Exhibit “K”

FR: Bruce and Laura Raile
 TO: Members of Centennial Points Property Owner's Association, Inc.
 Ms. Myriam Onyearbor Fax: 487-9005
 Mr. Paul Bezdijan Fax: 974-0160
 Date: October 17, 2001
 Subject: Meeting of Centennial Points, at Sun Optics, October 29,2001 4:30 pm

Page:1

Agenda

1. Reconfirm contact name and numbers.
2. Payment due for Common area expenses to date: 25% due from Myriam Onyearbor, 50% due from Paul Bezdijan
3. Obtain direction for checking account and collection and payment of expenses
4. Submit at least one bid for landscaping and snow removal for Association common areas for approval.
5. Other items- review and update by Miriam as the Secretary is appreciated.
 Please forward any other agenda items by fax within 2 days.

Below listed are names and phone numbers for all members. Please update for the records.

Miriam Onyearbor
 Units A&C
 Company name doing business at location:
 1755 South 4490 West SLC,UT 84104
 T: 801-487-9008
 F: 801-487-9005
 Emergency contact:
 Home phone: 274-6030

Paul Bezdijan
 Units A,C,E,G
 Company name doing business at location:
 1730/32/34/36/38 South 4475 West
 Business address: 2852 South 2700 West
 West Valley, UT 84119
 T: 801-974-5678
 F: 801-974-0160
 Emergency contact
 Home: 942-2881
 Cell: 652-6754

Bruce and Laura Raile
 Units: E and G
 Sun Optics/ Insight Eyeworks
 1785 South 4490 West
 Salt Lake City, Utah 84104
 T: 801-824-0440
 F: 801-824-0441
 Emergency contact: Peak Alarm
 488-7231

Centennial Points Property Owners Assoc., Inc.
 Expenses paid to date (October 16,2001) by Bruce Raile.

	West SLC Corp #1	East SLC Corp #2	House Meter Utah Power	Snow removal Landscapes	Thru 5/02 Insurance
Previous					
Dec-00	\$ 53.58	\$ 55.53			\$ 121.00
Jan1,01	\$ 61.05	\$ 59.36	\$ 81.57		
Feb	\$ 58.01	\$ 55.53	\$ 69.27		
Marc	\$ 58.01	\$ 55.53	\$ 68.17		
Apr	\$ 58.60	\$ 55.53	\$ 80.61		
May	\$ 145.64	\$ 186.18	\$ 105.05	\$ 328.25	\$ 750.00
June	\$ 197.62	\$ 227.88	\$ 106.53	\$ 435.00	
July	\$ 364.88	\$ 284.09	\$ 86.41	\$ 435.00	\$ 86.00
Aug	\$ 420.03	\$ 320.72	\$ 98.58	\$ 435.00	
Sept	\$ 318.25	\$ 273.94	\$ 111.86		
Oct			\$ 105.48		
Nov					
Dec					
	\$ 1,735.67	\$ 1,574.29	\$ 881.43	\$ 1,631.25	\$ 957.00

The meeting was called to order with all members in attendance. The following actions were taken and approved.

ACTION:

1. Updated contact numbers and addresses.
2. Payments due to Laura Raile for: Miriam 50% of SLC Corp #1; 25% House Meter; 50% landscape; 25% Insurance.
 Paul due: 100% of SLC Corp #2; 50% of House meter and Insurance.
 Laura will send monthly bills to members for reimbursement in the future.
3. Copies of the Insurance coverage were handed out and any further comments can be submitted.
4. Miriam will obtain information on a Landscape and snow removal bid. Laura will distribute bid information by fax to the members for a decision.

Acknowledged:

 Bruce Raile 10/17/2001

 Laura Raile 10/17/2001

 Miriam Onyes 10/17/2001

 Paul Bezdijan 10/17/2001

Exhibit “L”

TO: Centennial Pkwy Party Owners Association Members
 FR: Laura Ralle
 Date: November 20, 2001
 SUBJ: Payments Due for Services as described below- November 20, 2001
 Make checks payable to Bruce Ralle. Thank you.

SLCCorp Dec-Sept 976.74
 House meter Dec-Oct 278.58
 Landscape Dec-Aug 1250.62
 Insurance May-May 239.25
 Total Due 2745.19

	West SLC Corp #1	B Raile Paid	Miriam DUE		East SLC Corp #2	Paul		House Meter Utah Power	B Raile Paid	Miriam	Paul
Previous											
Dec-00	\$ 53.58	*			\$ 55.53	Cl#441					Cl# 41
Jan1,01	\$ 61.05	*			\$ 59.36	11/8/2001		\$ 81.57	*		*
Feb	\$ 58.01	*			\$ 65.53	*		\$ 69.27	*		*
Marc	\$ 58.01	*			\$ 55.53	*		\$ 68.17	*		*
Apr	\$ 58.60	*			\$ 55.53	*		\$ 60.51	*		*
May	\$ 145.64	*			\$ 186.18	*		\$ 105.05	*		*
June	\$ 197.62	*			\$ 227.88	*		\$ 106.53	*		*
July	\$ 364.88	*			\$ 284.09	*		\$ 86.41	*		*
Aug	\$ 420.03	*			\$ 320.72	*		\$ 96.58	*		*
Sept	\$ 318.25	\$ 867.84	\$ 867.84	Due	\$ 273.94	1574.29 Pd		\$ 111.86	*	Due	*
Oct	\$ 217.79	\$ 108.90	\$ 108.90	Due	\$ 212.68	212.68 DUE		\$ 105.48	*	\$ 222.86	\$ 445.72
								\$ 127.87	\$ 278.58	\$ 55.72	\$ 111.43
	\$ 1,953.46	\$ 976.74	\$ 976.74	Due	\$ 1,786.97	\$ 212.68		\$ 1,019.30	\$ 278.58	\$ 278.58	\$ 111.43

	Snow removal Landscape	B Raile Paid	Miriam	Paul		Thru 5/02 Insurance	Bruce	Miriam	Paul
Previous									
Dec-00						\$ 121.00			
Jan1,01									
Feb									
Marc									
Apr									
May	\$ 326.25	*				\$ 750.00			
June	\$ 435.00	*							
July	\$ 435.00	*				\$ 86.00			
Aug	\$ 435.00	*							
Sept	\$ 435.00	*							
Oct	\$ 435.00	\$ 1,250.62	\$ 815.63	Pd own					
Nov			\$ 217.50						
Dec			\$ 217.50						
	\$ 2,501.25	\$ 1,250.62	\$ 1,250.63	Own		\$ 967.00	239.25	239.25	239.25

5221
 DEC. 5. 2005 1:48PM SUN OPTICS SALES

NO. 520 P. 20/30

Exhibit “M”

To: Dave Castleton
From: Bruce Raile
2 Pages

Computer & Equipment Warehouse
P.O Box 521297
Salt Lake City, Utah. 84152. USA
801-487-9006 fax 801-487-9005

ATTN: DAVE CASTLETON

Memorandum

0522/02

Bruce/ Laura Raile
Cc: Paul
Members of the Centennial Point Association
Salt lake Utah 84104

Sir/ Madam,

I wish to thank all of you for the effort you have made so far in keeping the association going. I have explained, to some of you, the constraints that I face which make it impossible for me to participate fully in these affairs, burdened as I already am.

This memorandum is merely a formal request that, starting June 1, all the maintenance done on my premises will be henceforth handled by me. Any further work done on my premises, without my express written approval, will henceforth, not be paid for by me. I also suggest that we find ways of separating our electrical and water bills so that we all take care of their own bills. This request is based on my personal disposition and availability.

I am quite firm on these decisions and will not be pressured into doing things otherwise. Thanks for your understanding. I would also add that I can accept temporary parking in any of the areas within my legal boundary but would very much appreciate it if the persons parking would also clean up after they are done, no stray tissues etc. Mechanical repair work on my premises will not be allowed. Permanent parking will also not be allowed, and I might be compelled to tow away such vehicles.

Sincerely yours,
Myriam Onyeabor

Warehouse, ship to only: 1755 South 4490 West. Bldg A-D Salt Lake City, Utah. 84104

Exhibit “N”

TO: MIRIAM
FROM: BRUCE & LAURE
4 PAGES

Memorandum

To: Bruce and Laura Raile
From: Dave Castleton
Date: June 11, 2002
Subject: Centennial Pointe Property Owners Association, Inc.

I hope this helps
explain our situation.
Please check with your
own attorney to
verify we have
to work together.

Thank you for sending me a copy of Myriam Onyeabor's letter concerning Centennial Pointe Property Owners Association (the "Association"). It appears that she has not been advised concerning the nature of the ownership interest she has and the effect of the recorded documents establishing various covenants, conditions and restrictions with respect to her property. The purpose of this memo is to explain how the Association works and how it relates to the interest of the owners in their respective parcels, what it would take to change the current structure, and to offer suggestions about future management and operation.

A. CURRENT STRUCTURE

1. The owners of Lots 1-7 of Amended Portion of Lot 5, Phase V, Centennial Industrial Park (the "Property"), have taken title subject to certain covenants, conditions and restrictions, as set forth in the Restated Declaration of Covenants, Conditions and Restrictions of Amended Portion of Lot 5, Phase V, Centennial Industrial Park recorded August 24, 2000 (the "Declaration"). Because Lots 1 - 7 have different owners and because the Lots share access, driveways, landscaping, utility lines and other common areas, the Declaration was established to provide a means to control and manage such common areas for the mutual benefit of all owners. Owners cannot opt out of the provisions of the Declaration without the consent of all owners and any other party having an interest in the Property.
2. The Declaration defines the Common Elements to be the portion of the Property other than the Buildings. Section 17.2 allows all of the Owners to use the Common Elements subject to rules and regulations adopted from time to time by the Association. The Association has the exclusive responsibility to manage, control, maintain and repair the Common Elements and all improvements thereon.
3. The Association may handle the day to day management by its governing board or individual Trustees, or it may hire a

manager to perform the management duties. The costs of the management and the services provided are to be paid through assessments to the owners.

4. The Declaration contemplates that the Association will make annual assessments against all of the Lots to pay for the estimated expenses growing out of or connected with the maintenance and operation of the Common Elements, including a fee for management services.
5. Regular Assessments are to be made prior to the end of a calendar year for the next calendar year. Assessments are payable in monthly installments and any late payments are to bear interest at the higher of 18% or 5% above the prime rate or equivalent thereof. The Association may also place liens upon a lot if the lot owner fails to pay all assessments. The owner is also personally liable for any annual or special assessment.
6. Special Assessments may also be levied by the Association for the purpose of capital improvements.
7. Failure of an owner to comply with the Declaration or the rules and regulations adopted from time to time by the Association may result in fines being imposed on the owner.

B. ASSOCIATION

8. The Bylaws and certain provisions in the Declaration govern the operation of the Association.
9. The Members of the Association are the Lot owners. The Members elect a governing Board of Trustees consisting of three individuals. The Board has all the powers and duties set forth in the Declaration, including the power to hire a manager and to adopt rules and regulations concerning the Property. The Board also determines the assessments, however, the Board may not have an increase of more than 25% in any one year without the consent of owners holding 67% of the ownership interests.
10. The Board of Trustees elects officers to handle the day to day operations of the Association.

C. BREAK-UP OF ASSOCIATION

11. Changing the way the Property is maintained and operated is not an easy task. Because the Property was developed as a planned unit development with common elements, all the recorded documents and plats reflect that type of

arrangement. Therefore, you must have the unanimous consent of all parties who have an interest in the Property, including all the lenders, agree to any other proposal.

12. The Property is currently platted as a planned development because the Lots cannot stand on their own. In order to be separate and distinct parcels the lots would have to be redrawn so that each building is on a separate parcel. This may be close to impossible because the buildings could not meet set back and other requirements imposed by law.
13. Separation of the lots would also require a new plat be made and all necessary plat approvals obtained. Such a process would be expensive and time consuming. As stated above, it is unlikely that the Property could be split in a way that would be approved. I am sure that is the reason it was designed as a planned development in the first place.
14. If all the parties having an interest in the Property agreed, you could change the terms of the Declaration. However, because all parties need access over certain driveways owned by the Association, you would still need common areas or cross easement agreements to insure access. The parking stalls are currently controlled by the Association. This allows flexibility in meeting the needs of all owners.
15. Maintenance of the entire Property would not be solved by having everyone simply take care of the property adjacent to their Lot. What if they do not maintain it? One Lot owner's negligence may affect the look or safety of the entire Property. What remedies would you instigate that would be better than the ones already established in the Declaration?
16. You may experience great difficulty among the lenders to change the terms of the Declaration at this stage. It may be difficult to come up with an arrangement that would give you the flexibility you want, and still protecting their security.

E. SUGGESTIONS

17. We spent a considerable amount of time back at the time you purchased your Lots to make the Declaration a workable document. It is designed to provide a method of maintenance and operation of the entire Property that is in the best interest of all owners. It is true that you give up some of the flexibility that you would have if you were the owner of your own separate parcel, however, each of the parties knew

when they acquired their lots that they were simply a piece of a planned development.

18. Whoever handles the management of the Association, arranging for the maintenance, collecting assessments, paying bills, etc., should be compensated. If the owners do not want to pay Laura for such work, then the Board can pick another person or entity to manage the Property. The management fee should be included in the annual assessment and should be agreed upon by the Board of Trustees in advance.
19. All owners should be prepared to meet their obligations under the Declaration. If they don't, the Declaration has adequate remedies, including penalties and interest and the right to lien the property. I recommend that you follow the Declaration in all aspects so all parties are treated the same.
20. There is no reason you should be fronting the funds to pay expenses. That is what assessments are for. It is a good idea for the Association to have a reserve so it can handle emergencies or delinquent owners. The individual owners cannot determine what to pay. The amount and timing is determined by the Board of Trustees. It is in everyone's best interest to cooperate to keep the costs down and keep the management efficient.
21. There is a chance that utilities could be separately metered, however, it is my understanding that most of that has been done except for common area utilities. If that is not the case you could check with the appropriate utility to see what it would cost to establish a separate meter or even if it is possible.

Please let me know if you have any further questions concerning the Association. I believe it can work to benefit all the owners if the terms of the Declaration and Bylaws are followed.

Exhibit “1”

Jeffrey L. Silvestrini (Bar No. 2959)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813

Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited
liability company, and CENTENNIAL
POINTE PROPERTY OWNERS
ASSOCIATION (Registered on November
29, 2004), a Utah Nonprofit Corporation,

Plaintiffs,

v.

MYRIAM ONYEABOR,

Defendant.

**AFFIDAVIT OF EDWARD T.
VASQUEZ**

Civil No. 040918762

Judge Randall Skanchy

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

Edward T. Vasquez, being first duly sworn and upon oath, deposes and states as follows:

1. I am an associate with the law firm of Cohn Rappaport & Segal, P.C., and I am co-counsel for Plaintiffs and Third-Party Defendants Bruce Raile and Jennifer Clark in the above-captioned matter.

2. I have been a member in good standing of the Utah State Bar since September, 1999.

3. I am familiar with the practice of commercial and real property litigation in Salt Lake County, Utah and I am familiar with the range of hourly rates charged by attorneys practicing in Salt Lake County, Utah in civil litigation matters.

4. Plaintiffs in the above-entitled matter initiated the present litigation seeking to collect from Myriam Onyeabor her past due Centennial Pointe Owners Association (the "Association") assessments, as well as late fees and fines imposed upon her for her refusal to pay those assessments.

5. Plaintiffs also brought the present suit seeking a judicial determination that Centennial Pointe's restrictive covenants burden Ms. Onyeabor's property.

6. Jeffrey L. Silvestrini, a shareholder with Cohn Rappaport & Segal, is Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's lead counsel.

7. Mr. Silvestrini has been a member in good standing of the Utah State Bar since 1979.

8. Mr. Silvestrini practices in the area of commercial and real property litigation.

9. Mr. Silvestrini's hourly billing rate in 2004 through April 2006 was \$220.00 per hour. In May 2006, Mr. Silvestrini's hourly rate increased to \$240.00 per hour.

10. My hourly billing rate is \$155.00 per hour.

11. Plaintiffs initiated the present litigation in September 2004. Since that time, Ms. Onyeabor has represented herself and has enlisted the assistance of three separate attorneys. Both Ms. Onyeabor and two of those attorneys have filed pleadings in the present matter. Ms. Onyeabor is currently representing herself.

12. At the onset of this litigation, Plaintiffs moved for a preliminary injunction against Ms. Onyeabor. Judge Henroid conducted an evidentiary hearing on Plaintiffs' Motion and granted Plaintiffs' Motion. Since that time, Plaintiffs have successfully opposed two motions to dismiss, opposed Ms. Onyeabor's *pro se* motion for protective order, filed a motion to compel, which was granted, conducted three depositions, drafted discovery, responded to counterclaims and third-party claims filed by one of Ms. Onyeabor's attorneys and later amended by Ms. Onyeabor's subsequent attorney, engaged in extensive settlement negotiations with Ms. Onyeabor, individually, and with two of the attorneys retained by her, and prepared Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's Motion for Partial Summary Judgment.

13. To date, our firm has billed the Association \$77,738.00 in attorney fees and costs. In light of the work done and the factual circumstances surrounding this matter, e.g. Ms. Onyeabor's ever changing legal representation, that sum is reasonable.

14. On June 22, 2005, the Salt Lake County Recorder's Office recorded a Notice of Lien for Nonpayment of Common and Association Expenses for both Ms. Onyeabor's Lots 1 and

2, Entry No. 9412031. *See* Notice of Lien for Nonpayment of Common and Association, appended hereto as **Exhibit 1**.

15. On April 7, 2006, I caused to be served upon Ms. Onyeabor “Plaintiffs and Third-Party Defendants’ Bruce M. Raile’s and Jennifer Clark’s First Request for Production of Documents to Myriam Onyeabor.” *See* Certificate of Service appended hereto as **Exhibit 2**.

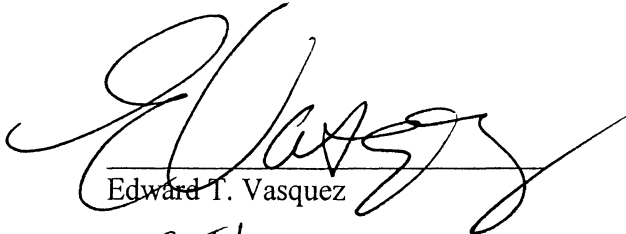
16. In that document, I made the following document request:

REQUEST NO. 1: Produce all documents in any way related to your purchase of Lot 1 and Lot 2 in the Centennial Pointe Industrial Park (“Onyeabor Property”), including, but not limited to title commitments, title insurance policies, and all documents that you received from the closings on your purchase of both Lot 1 and Lot 2.

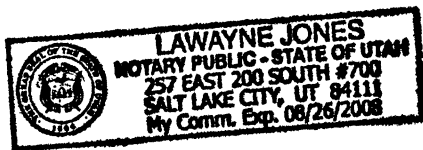
17. In response to the aforementioned request, I received documents from Ms. Onyeabor’s counsel related to Ms. Onyeabor’s purchase of Lot 2 in the Centennial Pointe development.

18. Included among the documents that I received from Ms. Onyeabor’s counsel were a title insurance policy for Lot 2 from Stewart Title Company, appended hereto as **Exhibit 3**, and a copy of an America First Credit Union Cashier’s Check stating “Landmark Title Re: Miriam Ne Onyeabor, appended hereto as **Exhibit 4**.

DATED this 30th day of October, 2006.


Edward T. Vasquez

SUBSCRIBED AND SWORN to before me this 30th day of October, 2006.




NOTARY PUBLIC

Jeffrey L. Silvestrini (Bar No. 2959)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813

Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited	:	
liability company, and CENTENNIAL	:	
POINTE PROPERTY OWNERS	:	AFFIDAVIT OF JENNIFER CLARK
ASSOCIATION (Registered on November	:	
29, 2004), a Utah Nonprofit Corporation,	:	
	:	Civil No. 040918762
Plaintiffs,	:	
	:	Judge Randall Skanchy
v.	:	
	:	
MYRIAM ONYEABOR,	:	
	:	
Defendant.	:	
	:	

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

Jennifer Clark, being first duly sworn and upon oath, deposes and states as follows:

1. I am over 18 years of age and am competent to testify in a court of law.
2. I have personal knowledge of the facts set forth herein.

3. I am an employee of Sun Optics, which is located in the Centennial Pointe industrial development ("Centennial Pointe").

4. I am not, nor have I been, an employee of LEBR Associates, LLC.

5. In December 2002, I began assisting the Centennial Pointe Owner's Association ("Association") with maintaining its financial books and assisting with its accounts payable and the Association's assessments to the Centennial Pointe owners for the common expenses the Association incurred in managing the Centennial Pointe development and maintaining and repairing Centennial Pointe's common areas.

6. I also assisted the Association with providing Centennial Pointe owners, including, but not limited to, Myriam Onyeabor, with documents, e.g., copies of utility bills, landscaping and snow removal invoices, and insurance statements, showing the assessments each owner owed to the Association for Centennial Pointe's common expenses.

7. In June 2004, the Association began preparing individual statements for each owner showing their *pro rata* share of the landscaping and snow removal costs for Centennial Pointe's common areas, electricity costs for lighting the common areas, liability insurance for the common areas, administrative costs to operate the Association, water and sewer costs, and costs for repairing and maintaining Centennial Pointe's common areas.

8. In June 2004, the Association sent Ms. Onyeabor one of the aforementioned statements showing the amount she owed to the Association for her ratable share of Centennial Pointe's common expenses.

9. Thereafter, Ms. Onyeabor was sent an assessment statement from the Association

in November 2004, February 2005, April 2005, and May 2005.

10. In June 2004, I was elected by the Association to serve as its secretary and continue in that position today.

11. My duties as secretary include: maintaining the meeting minutes for Association meetings, maintaining the Association's financial books, maintaining the Association's accounts payable, generating and mailing Association assessment statements to Centennial Pointe owners.

12. I have either sent or caused to be sent statements from the Association to Ms. Onyeabor in August 2005, September 2005, October 2005, November 2005, January 2006, March 2006, June 2006, and September 2006.

13. Some of these statements have been returned to the Association unopened stamped with "Left Notice," "Return to Sender," "Unclaimed," and "Refused." *See Exhibit 1*, appended hereto.

14. My review of the Association's financial records show that Ms. Onyeabor has not paid her Association assessments since October 2002.

15. My review of the Association's financial records shows that Ms. Onyeabor owes the Association \$82,463.16 in past due assessments, late fees and fines. *See Exhibit 2*, appended hereto.

16. My review of the Association's financial records shows that the Association has been billed \$83,038.50 in attorney fees for the above-entitled action against Ms. Onyeabor. *See id.*

17. In or about early 2003, Ms. Onyeabor placed a note on my car threatening to have

my car towed if I parked near the entrance to her building.

18. Upon reviewing the note and suspecting that it was left on my car by Ms. Onyeabor, I went to the entrance of Ms. Onyeabor's business.

19. The door to her business was locked, so I knocked on the door.

20. Ms. Onyeabor opened the door and while standing on the sidewalk outside of her business, I asked her if she left the note on my car.

21. Ms. Onyeabor told me that she had left the note.

22. I did not enter Ms. Onyeabor's building.

23. I told Ms. Onyeabor that the parking lot was a common area.

24. After that, I turned and walked away toward my car.

25. Ms. Onyeabor followed behind me threatening to have my car towed if I continued to park in front of her building.

26. I never called Ms. Onyeabor any derogatory name, nor did I make any type of racial comment toward Ms. Onyeabor.

27. I did not threaten Ms. Onyeabor.

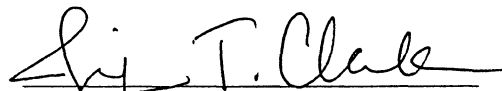
28. Finally, I am familiar with the landscaped common areas on and around Ms. Onyeabor's property.

29. I am also familiar with the condition of these areas when Ms. Onyeabor refused to allow the Association to maintain these areas.

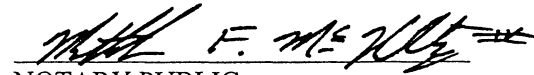
30. On April 21, 2004, I took the photographs appended hereto as **Exhibit 3**, which show the unkept common area around Ms. Onyeabor's property. When these photos were taken,

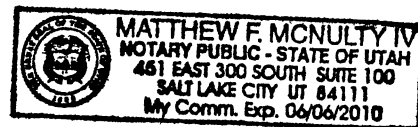
Ms. Onyeabor had refused to allow the Association's maintenance workers to mow and care for the common areas.

DATED this 20th day of October, 2006.


Jennifer Clark

SUBSCRIBED AND SWORN to before me this 20th day of October, 2006.


NOTARY PUBLIC

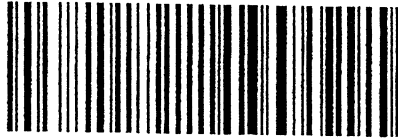


F \EDDIE\Clark MSJ Aff wpd

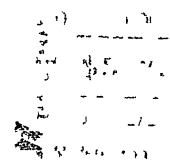
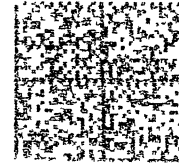
Exhibit “1”

Centennial Pointe Property Owners Assn.
ATTN: Jennifer Clark
1785 South 4490 West
Salt Lake City, UT 84104

CERTIFIED MAIL™



7004 2510 0002 4697 8850




RECEIVED
JUN 23 2006

LEFT NOTICE

DATE JUN 23 2006

2nd July 29th

Return Aug 12th

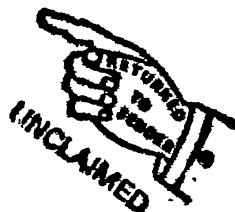
 **UNCLAIMED**

Computer & Equipment Warehouse
ATTN: Myriam Onyeabor
PO Box 521297
Salt Lake City, UT 84152

Centennial Pointe Property Owners Assn.
ATTN: Jennifer Clark
1785 South 4490 West
Salt Lake City, UT 84104



7002 2030 0007 6370 4247



POSTAGE DUE

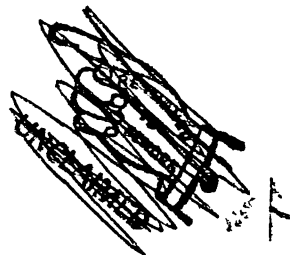


neopost 043J83000783
\$2.270
03/21/2006
Mailed From 84104



neopost 043J83000789
\$2.330
04/17/2006
Mailed From 84104

RECEIVED
MAY 0 6 2006



LEFT NOTICE
DATE APR 1 2006
2nd 4-24
Return 5-4

Computer & Equipment Warehouse
ATTN: Myriam Onyeabor
PO Box 521297
Salt Lake City, UT 84152

LEFT
DATE MAY 2
2nd 3-4
Return 4-7

9421

12

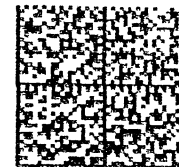


Centennial Pointe Property Owners Assn.
ATTN: Jennifer Clark
1785 South 4490 West
Salt Lake City, UT 84104

CERTIFIED MAIL™



7002 2030 0007 6370 4285



neopost 043 J6300073
\$4.88
11/18/2005
Mailed From 84104

 **REFUSED**

LEFT NOTICE
DATE NOV 22 2005
2nd
Return

Computer & Equipment Warehouse
ATTN: Myriam Onyeabor
PO Box 521297
Salt Lake City, UT 84152

ter Clark
490 West
y, UT 84104

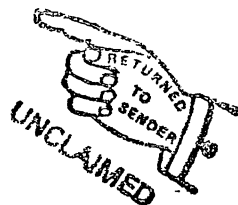


7002 2030 0007 6370 4308



neopos 04300000703
\$3.130
10/26/2005
Mailed From 84104
US POSTAGE

1740



POSTAGE DUE 1.75

Computer & Equipment Warehouse
ATTN: Myriam Onyeabor
PO Box 521297
Salt Lake City, UT 84152

LEFT NOTICE

DATE OCT 27 2005
2nd 11-5
Return 11-12

Exhibit “2”

Computer & Equipment Warehouse

Breakdown of Balance Owed

Legal Fees for Litigation:

Cohne, Rappaport & Segal	\$	77,738.00
Blackburn & Stoll	\$	5,300.50
		<hr/>
<i>Total Litigation Fees:</i>		<i>\$ 83,038.50</i>

Legal Fees for Association Business:

Cohne, Rappaport & Segal	\$	665.95
Blackburn & Stoll	\$	1,014.00
		<hr/>
<i>Total Association Business Fees:</i>		<i>\$ 1,679.95</i>
 <i>GRAND TOTAL LEGAL FEES:</i>		 <i><u>\$ 84,718.45</u></i>

Common Expenses	\$	14,580.86
Fines and Assessments	\$	57,600.00
Finance Charges	\$	8,602.35
		<hr/>
<i>Total Other Charges:</i>		<i><u>\$ 80,783.21</u></i>
 <i>GRAND TOTAL DUE:</i>		 <i><u>\$ 165,501.66</u></i>

Centennial Pointe Property Owners Association

1785 South 4490 West

Salt Lake City, UT 84104

Statement

Date

10/17/2006

To:

Computer & Equipment Warehouse
Myriam Onyeabor
PO Box 521297
Salt Lake City, UT 84152

Amount Due

Amount Enc.

\$165,501.66

				Amount Due	Amount Enc.	
				\$165,501.66		
Date	Transaction			Amount	Balance	
06/10/2004	INV #3. Due 06/10/2004. Orig. Amount \$2,348.26. Common Expenses			2,348.26	2,348.26	
11/02/2004	INV #2. Due 11/02/2004. Orig. Amount \$2,014.70. Common Expenses			2,014.70	4,362.96	
02/22/2005	INV #10. Due 02/22/2005. Orig. Amount \$633.63. Common Expenses			633.63	4,996.59	
04/01/2005	INV #FC 1. Due 04/01/2005. Orig. Amount \$502.52. Finance Charge			502.52	5,499.11	
04/04/2005	INV #11. Due 04/04/2005. Orig. Amount \$136.62. Common Expenses			136.62	5,635.73	
05/31/2005	INV #14. Due 05/31/2005. Orig. Amount \$1,069.62. Common Expenses			1,069.62	6,705.35	
05/31/2005	INV #FC 4. Due 05/31/2005. Orig. Amount \$151.68. Finance Charge			151.68	6,857.03	
08/09/2005	INV #19. Due 08/09/2005. Orig. Amount \$948.34. Common Expenses			948.34	7,805.37	
08/09/2005	INV #FC 10. Due 08/09/2005. Orig. Amount \$214.12. Finance Charge			214.12	8,019.49	
08/09/2005	INV #24. Due 08/09/2005. Orig. Amount \$5,700.00. Fines and Assessments			5,700.00	13,719.49	
09/16/2005	INV #25. Due 09/16/2005. Orig. Amount \$1,053.51. Common Expenses			1,053.51	14,773.00	
09/16/2005	INV #FC 12. Due 09/16/2005. Orig. Amount \$215.46. Finance Charge			215.46	14,988.46	
09/16/2005	INV #28. Due 09/16/2005. Orig. Amount \$2,600.00. Fines and Assessments			2,600.00	17,588.46	
10/26/2005	INV #30. Due 10/26/2005. Orig. Amount \$443.63. Common Expenses			443.63	18,032.09	
10/26/2005	INV #31. Due 10/26/2005. Orig. Amount \$3,900.00. Fines and Assessments			3,900.00	21,932.09	
10/26/2005	INV #FC 14. Due 10/26/2005. Orig. Amount \$325.57. Finance Charge			325.57	22,257.66	
11/21/2005	INV #34. Due 11/21/2005. Orig. Amount \$417.46. Common Expenses			417.46	22,675.12	
11/21/2005	INV #FC 15. Due 11/21/2005. Orig. Amount \$226.18. Finance Charge			226.18	22,901.30	
11/21/2005	INV #37. Due 11/21/2005. Orig. Amount \$4,900.00. Fines and Assessments			4,900.00	27,801.30	
01/06/2006	INV #39. Due 01/06/2006. Orig. Amount \$270.68. Common Expenses			270.68	28,071.98	
01/06/2006	INV #FC 19. Due 01/06/2006. Orig. Amount \$490.31. Finance Charge			490.31	28,562.29	
01/06/2006	INV #42. Due 01/06/2006. Orig. Amount \$5,900.00. Fines and Assessments			5,900.00	34,462.29	
03/15/2006	INV #44. Due 03/15/2006. Orig. Amount \$4,364.74. Common Expenses - March 2006 + 2nd Quarter 2006			4,364.74	38,827.03	
03/15/2006	INV #45. Due 03/15/2006. Orig. Amount \$6,900.00. Fines and Assessments			6,900.00	45,727.03	
03/15/2006	INV #FC 22. Due 03/15/2006. Orig. Amount \$1,052.47. Finance Charges			1,052.47	46,779.50	
06/19/2006	INV #50. Due 06/19/2006. Orig. Amount \$2,072.84. 3rd Quarter 2006 Common Expenses			2,072.84	48,852.34	
06/19/2006	INV #FC 26. Due 06/19/2006. Orig. Amount \$2,064.19. Finance Charge			2,064.19	50,916.53	
06/19/2006	INV #51. Due 06/19/2006. Orig. Amount \$7,900.00. Fines and Assessments			7,900.00	58,816.53	
09/12/2006	INV #55. Due 09/12/2006. Orig. Amount \$2,072.84. 4th Quarter 2006 Common Expenses			2,072.84	60,889.37	
09/12/2006	INV #FC 27. Due 09/12/2006. Orig. Amount \$2,245.72. Finance Charge			2,245.72	63,135.09	
CURRENT		1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
93,466.57		0.00	13,218.56	0.00	58,816.53	\$165,501.66

Centennial Pointe Property Owners Association
1785 South 4490 West
Salt Lake City, UT 84104

10/17/2006

Computer & Equipment Warehouse
Myriam Onyeabor
PO Box 521297
Salt Lake City, UT 84152

1252

Centennial Pointe Property Owners Association

1785 South 4490 West
Salt Lake City, UT 84104

Finance Charge

Date	Invoice #
10/17/2006	FC 29

Bill To
Computer & Equipment Warehouse Myriam Onyeabor PO Box 521297 Salt Lake City, UT 84152

Terms

Description	Amount
Finance Charges on Overdue Balance Invoice #3 for 2,348.26 on 06/10/2004 Invoice #2 for 2,014.70 on 11/02/2004 Invoice #10 for 633.63 on 02/22/2005 Invoice #11 for 136.62 on 04/04/2005 Invoice #14 for 1,069.62 on 05/31/2005 Invoice #19 for 948.34 on 08/09/2005 Invoice #24 for 5,700.00 on 08/09/2005 Invoice #25 for 1,053.51 on 09/16/2005 Invoice #28 for 2,600.00 on 09/16/2005 Invoice #30 for 443.63 on 10/26/2005 Invoice #31 for 3,900.00 on 10/26/2005 Invoice #34 for 417.46 on 11/21/2005 Invoice #37 for 4,900.00 on 11/21/2005 Invoice #39 for 270.68 on 01/06/2006 Invoice #42 for 5,900.00 on 01/06/2006 Invoice #44 for 4,364.74 on 03/15/2006 Invoice #45 for 6,900.00 on 03/15/2006 Invoice #50 for 2,072.84 on 06/19/2006 Invoice #51 for 7,900.00 on 06/19/2006 Invoice #55 for 2,072.84 on 09/12/2006 Invoice #56 for 8,900.00 on 09/12/2006	1,114.13
Please note that this invoice is due within 30 days of invoice date. Thank you!	
Total	\$1,114.13
Payments/Credits	\$0.00
Balance Due	\$1,114.13

Centennial Pointe Property Owners Association

1785 South 4490 West
Salt Lake City, UT 84104

Invoice

Date	Invoice #
10/17/2006	57

Bill To
Computer & Equipment Warehouse Myriam Onyeabor PO Box 521297 Salt Lake City, UT 84152

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
1	Legal Fees for Litigation and Association Matters Not Previously Billed	81,452.44	81,452.44
Please make sure your payment arrives by the due date to avoid fees and finance charges. Thank you!		Total	\$81,452.44

1254

Centennial Pointe Property Owners Association

1785 South 4490 West
Salt Lake City, UT 84104

Invoice

Date	Invoice #
10/17/2006	58

Bill To
Computer & Equipment Warehouse Myriam Onyeabor PO Box 521297 Salt Lake City, UT 84152

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
1	Property Management Fees / Fines and Assessments for Past Due Common Expenses	10,900.00	10,900.00
Please note that this invoice is due within 30 days of invoice date. Thank you!		Total	\$10,900.00

255

Computer & Equipment Warehouse

Unpaid Fees Assessments

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
2	11/2/04	11/12/04	\$ 2,014.70	Invoice for common expenses		
				7/1/04 Letter from Ray Beck detailing past due amount	Original Violation of Invoice #2	\$ 50.00
				2/22/05 Statement sent with invoice #10 indicating past due amount	1st Recurrence of Violation of invoice #2	\$ 100.00
				4/4/05 Statement sent with invoice #11 indicating past due amount and finance charges	2nd Recurrence of Violation of invoice #2	\$ 250.00
				6/3/05 Statement sent with invoice #14 indicating past due amount and finance charges	3rd Recurrence of Violation of invoice #2	\$ 500.00
				8/09/05 Statement sent with invoice # 19 indicating past due amount and finance charges	4th Recurrence of Violation of invoice #2	\$ 1,000.00
				09/12/05 Statement sent with Invoice # 25 indicating past due amount and finance charges	5th Recurrence of Violation of Invoice #2	\$ 1,000.00
				10/26/05 Statement sent with Invoice # 30 indicating past due amount and finance charges	6th Recurrence of Violation of Invoice #2	\$ 1,000.00
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	7th Recurrence of Violation of Invoice #2	\$ 1,000.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	8th Recurrence of Violation of Invoice #2	\$ 1,000.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	9th Recurrence of Violation of Invoice #2	\$ 1,000.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	10th Recurrence of Violation of Invoice #2	\$ 1,000.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	11th Recurrence of Violation of Invoice #2	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	12th Recurrence of Violation of Invoice #2	\$ 1,000.00

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
3	6/10/04	6/20/04	\$ 2,348.26	Invoice for common expenses		
				7/1/04 Letter from Ray Beck detailing past due amount	Original Violation of invoice #3	\$ 50.00
				11/2/04 Statement sent with invoice #2 indicating past due amount	1st Recurrence of Violation of invoice #3	\$ 100.00
				2/22/05 Statement sent with invoice #10 indicating past due amount	2nd Recurrence of Violation of invoice #3	\$ 250.00
				4/4/05 Statement sent with invoice #11 indicating past due amount and finance charges	3rd Recurrence of Violation of invoice #3	\$ 500.00
				6/3/05 Statement sent with invoice #14 indicating past due amount and finance charges	4th Recurrence of Violation of invoice #3	\$ 1,000.00
				8/09/05 Statement sent with invoice # 19 indicating past due amount and finance charges	5th Recurrence of Violation of invoice #3	\$ 1,000.00
				09/12/05 Statement sent with Invoice # 25 indicating past due amount and finance charges	5th Recurrence of Violation of Invoice #3	\$ 1,000.00
				10/26/05 Statement sent with Invoice # 30 indicating past due amount and finance charges	6th Recurrence of Violation of Invoice #3	\$ 1,000.00
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	7th Recurrence of Violation of Invoice #3	\$ 1,000.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	8th Recurrence of Violation of Invoice #3	\$ 1,000.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	9th Recurrence of Violation of Invoice #3	\$ 1,000.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	10th Recurrence of Violation of Invoice #3	\$ 1,000.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	11th Recurrence of Violation of Invoice #3	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	12th Recurrence of Violation of Invoice #3	\$ 1,000.00

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
10	2/22/05	3/4/05	\$ 633.63	Invoice for common expenses		
				4/4/05 Statement sent with invoice #11 indicating past due amount and finance charges	Original Violation of invoice #10	\$ 50.00
				6/3/05 Statement sent with invoice #14 indicating past due amount and finance charges	1st Recurrence of Violation of invoice #10	\$ 100.00
				8/09/05 Statement sent with invoice # 19 indicating past due amount and finance charges	2nd Recurrence of Violation of invoice #10	\$ 250.00
				09/12/05 Statement sent with Invoice # 25 indicating past due amount and finance charges	3rd Recurrence of Violation of invoice #10	\$ 500.00
				10/26/05 Statement sent with Invoice # 30 indicating past due amount and finance charges	4th Recurrence of Violation of invoice #10	\$ 1,000.00
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	5th Recurrence of Violation of invoice #10	\$ 1,000.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	6th Recurrence of Violation of invoice #10	\$ 1,000.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	7th Recurrence of Violation of invoice #10	\$ 1,000.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	8th Recurrence of Violation of Invoice #10	\$ 1,000.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	9th Recurrence of Violation of Invoice #10	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	10th Recurrence of Violation of Invoice #10	\$ 1,000.00

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
11	4/4/05	4/14/05	\$ 136.62	Invoice for common expenses		
				6/3/05 Statement sent with invoice #14 indicating past due amount and finance charges	Original Violation of invoice #11	\$ 50.00
				8/09/05 Statement sent with invoice # 19 indicating past due amount and finance charges	1st Recurrence of Violation of invoice #11	\$ 100.00
				09/12/05 Statement sent with Invoice # 25 indicating past due amount and finance charges	2nd Recurrence of Violation of invoice #11	\$ 250.00
				10/24/05 Statement sent with Invoice # 30 indicating past due amount and finance charges	3rd Recurrence of Violation of invoice #11	\$ 500.00
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	4th Recurrence of Violation of invoice #11	\$ 1,000.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	5th Recurrence of Violation of invoice #11	\$ 1,000.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	6th Recurrence of Violation of invoice #11	\$ 1,000.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	7th Recurrence of Violation of Invoice #11	\$ 1,000.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	8th Recurrence of Violation of Invoice #11	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	9th Recurrence of Violation of Invoice #11	\$ 1,000.00

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
14	5/31/05	6/13/05	\$ 1,069.62	Invoice for common expenses		
				8/09/05 Statement sent with invoice # 19 indicating past due amount and finance charges	Original Violation of invoice #14	\$ 50.00
				09/12/05 Statement sent with Invoice # 25 indicating past due amount and finance charges	1st Recurrence of Violation of invoice #14	\$ 100.00
				10/26/05 Statement sent with Invoice # 30 indicating past due amount and finance charges	2nd Recurrence of Violation of invoice #14	\$ 250.00
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	3rd Recurrence of Violation of invoice #14	\$ 500.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	4th Recurrence of Violation of invoice #14	\$ 1,000.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	5th Recurrence of Violation of invoice #14	\$ 1,000.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	6th Recurrence of Violation of Invoice #14	\$ 1,000.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	7th Recurrence of Violation of Invoice #14	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	8th Recurrence of Violation of Invoice #14	\$ 1,000.00

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
19	8/9/05	8/19/05	\$ 948.34	Invoice for common expenses		
				9/12/05 Statement sent with invoice # 25 indicating past due amount and finance charges	Original Violation of invoice #19	\$ 50.00
				10/26/05 Statement sent with invoice # 30 indicating past due amount and finance charges	1st Recurrence of Violation of invoice #19	\$ 100.00
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	2nd Recurrence of Violation of invoice #19	\$ 250.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	3rd Recurrence of Violation of invoice #19	\$ 500.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	4th Recurrence of Violation of invoice #19	\$ 1,000.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	5th Recurrence of Violation of Invoice #19	\$ 1,000.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	6th Recurrence of Violation of Invoice #19	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	7th Recurrence of Violation of Invoice #14	\$ 1,000.00
25	9/16/05	9/26/05	\$ 1,053.51	Invoice for common expenses	Violation of Invoice #14	\$ 1,000.00
				10/26/05 Statement sent with Invoice # 30 indicating past due amount and finance charges	Original Violation of invoice #25	\$ 50.00
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	1st Recurrence of Violation of invoice #25	\$ 100.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	2nd Recurrence of Violation of invoice #25	\$ 250.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	3rd Recurrence of Violation of invoice #25	\$ 500.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	4th Recurrence of Violation of Invoice #25	\$ 1,000.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	5th Recurrence of Violation of Invoice #25	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	6th Recurrence of Violation of Invoice #25	\$ 1,000.00

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
30	10/26/05	10/5/05	\$ 443.63	Invoice for common expenses		
				11/21/05 Statement sent with Invoice #34 indicating past due amount and finance charges	Original Violation of invoice #30	\$ 50.00
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	1st Recurrence of Violation of invoice #30	\$ 100.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	2nd Recurrence of Violation of invoice #30	\$ 250.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	3rd Recurrence of Violation of invoice #30	\$ 500.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	4th Recurrence of Violation of Invoice #30	\$ 1,000.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	5th Recurrence of Violation of Invoice #30	\$ 1,000.00
34	11/21/05	12/1/05	\$ 417.46	Invoice for common expenses		
				01/06/06 Statement sent with Invoice #39 indicating past due amount and finance charges	Original Violation of invoice #34	\$ 50.00
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	1st Recurrence of Violation of invoice #34	\$ 100.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	2nd Recurrence of Violation of invoice #34	\$ 250.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	3rd Recurrence of Violation of invoice #34	\$ 500.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	4th Recurrence of Violation of invoice #34	\$ 1,000.00

Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
39	12/29/05	1/8/06	\$ 270.68	Invoice for common expenses		
				03/15/06 Statement sent with invoice #44 indicating past due amount and finance charges	Original Violation of invoice #39	\$ 50.00
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	1st Recurrence of Violation of invoice #39	\$ 100.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	2nd Recurrence of Violation of invoice #39	\$ 250.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	3rd Recurrence of Violation of invoice #39	\$ 500.00
44	3/15/06	4/14/06	\$ 4,364.74	Invoice for common expenses		
				6/19/06 Statement sent with invoice # 50 indicating a past due amount and finance charges	Original Violation of invoice #44	\$ 50.00
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	1st Recurrence of Violation of invoice #44	\$ 100.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	2nd Recurrence of Violation of invoice #44	\$ 250.00
50	6/19/06	7/19/06	\$ 2,072.84	Invoice for common expenses		
				9/12/06 Statement sent with invoice # 55 indicating a past due amount and finance charges	Original Violation of invoice #50	\$ 50.00
				10/17/2006 Assessments through October 31, 2006 for past due invoices	1st Violation of invoice #50	\$ 100.00
55	9/12/06	10/12/06	\$ 2,072.84	Invoice for common expenses		
				10/17/2006 Assessments through October 31, 2006 for past due invoices	Original Violation of invoice #55	\$ 50.00
57	10/17/06	11/16/06	\$ 81,452.44	Invoice for legal fees not previously billed		

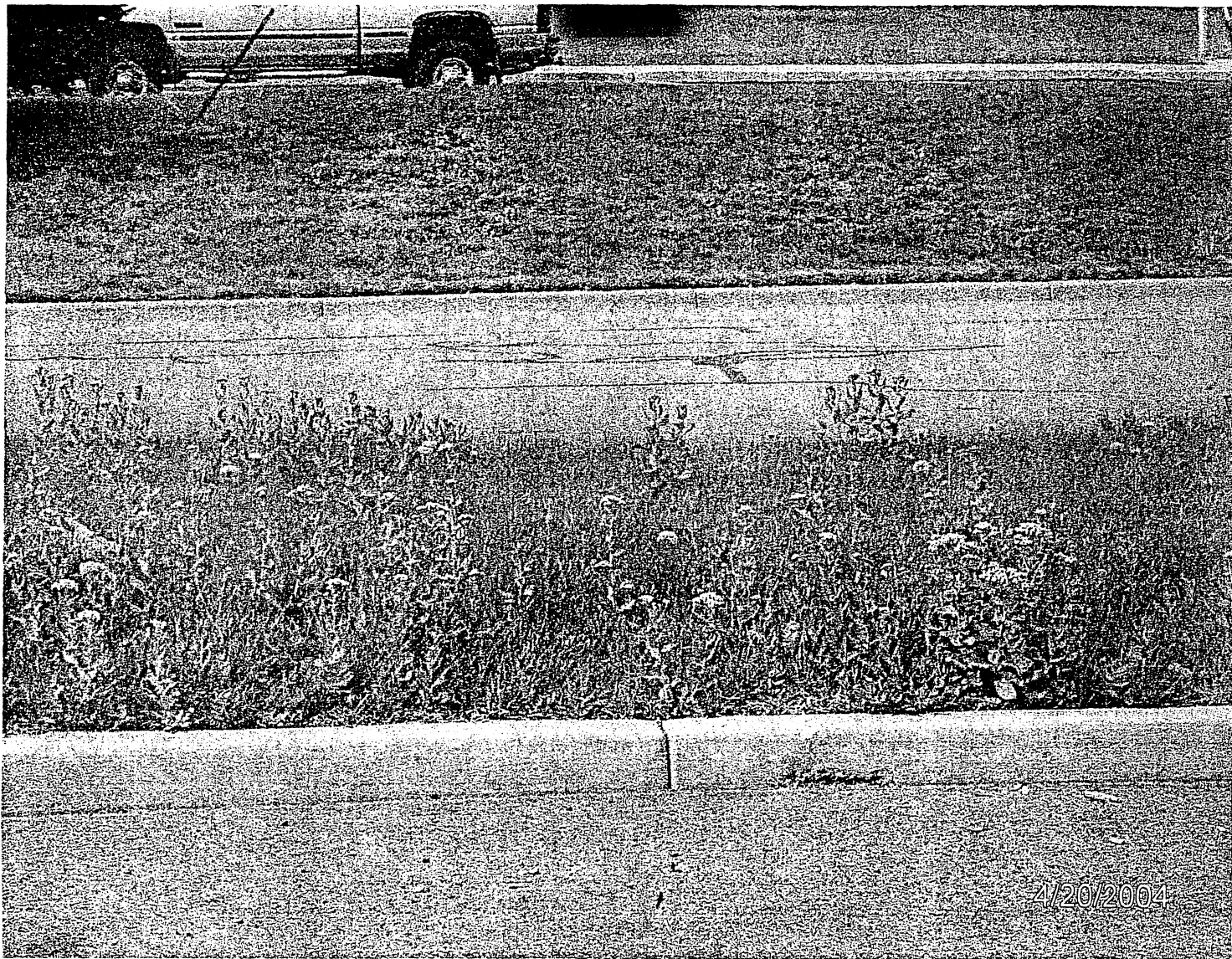
Invoice #	Invoice Date	Invoice Due Date	Invoice Amount	Notice Issued / Comments	Occurrence	Fine Assessed
FC1	4/1/05	4/14/05	\$ 502.52	Finance charge on past due balance. Mailed with invoice # 11 on 4/4/05		
FC4	5/31/05	6/13/05	\$ 151.68	Finance charge on past due balance. Mailed with invoice #14 on 6/3/05		
FC10	8/9/05	8/19/05	\$ 214.12	Finance charge on past due balance. Mailed with invoice #19 on 8/09/05.		
FC12	9/16/05	9/26/05	\$ 215.46	Finance charge on past due balance. Mailed with invoice #25 on 9/16/05.		
FC14	10/26/05	11/5/05	\$ 325.57	Finance charge on past due balance. Mailed with invoice #30 on 10/26/05.		
FC15	11/21/05	12/1/05	\$ 226.18	Finance charge on past due balance. Mailed with invoice #34 on 11/21/05.		
FC19	1/6/06	1/16/06	\$ 490.31	Finance charge on past due balance. Mailed with invoice #39 on 01/06/06.		
FC22	3/15/06	4/14/06	\$ 1,052.47	Finance charge on past due balance. Mailed with invoice #44 on 03/15/06.		
FC26	6/19/06	7/19/06	\$ 2,064.19	Finance charge on past due balance. Mailed with invoice #44 on 03/15/06.		
FC27	9/12/06	10/12/06	\$ 2,245.72	Finance charge on past due balance. Mailed with invoice #44 on 03/15/06.		
FC29	10/17/06	11/16/06	\$ 1,114.13	Finance charge on past due balance through October 31, 2006.		

Total of Assessments for failure to pay common expense invoices and finance charges: \$ 57,600.00

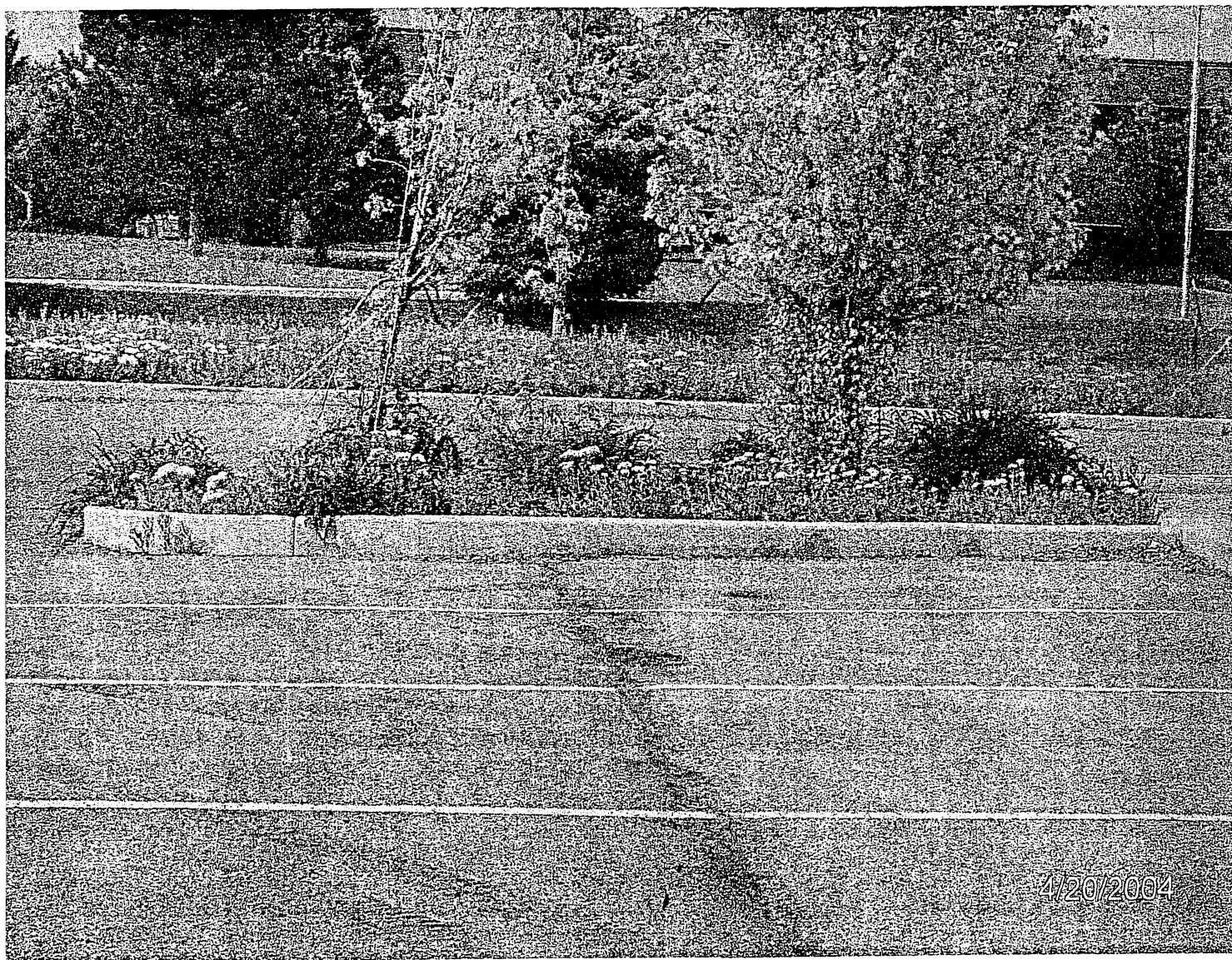
Assessments Previously Billed: \$ 46,700.00

Assessments this Billing: \$ 10,900.00

Exhibit “3”



CP 0007



4/20/2004

CP 0008

1267

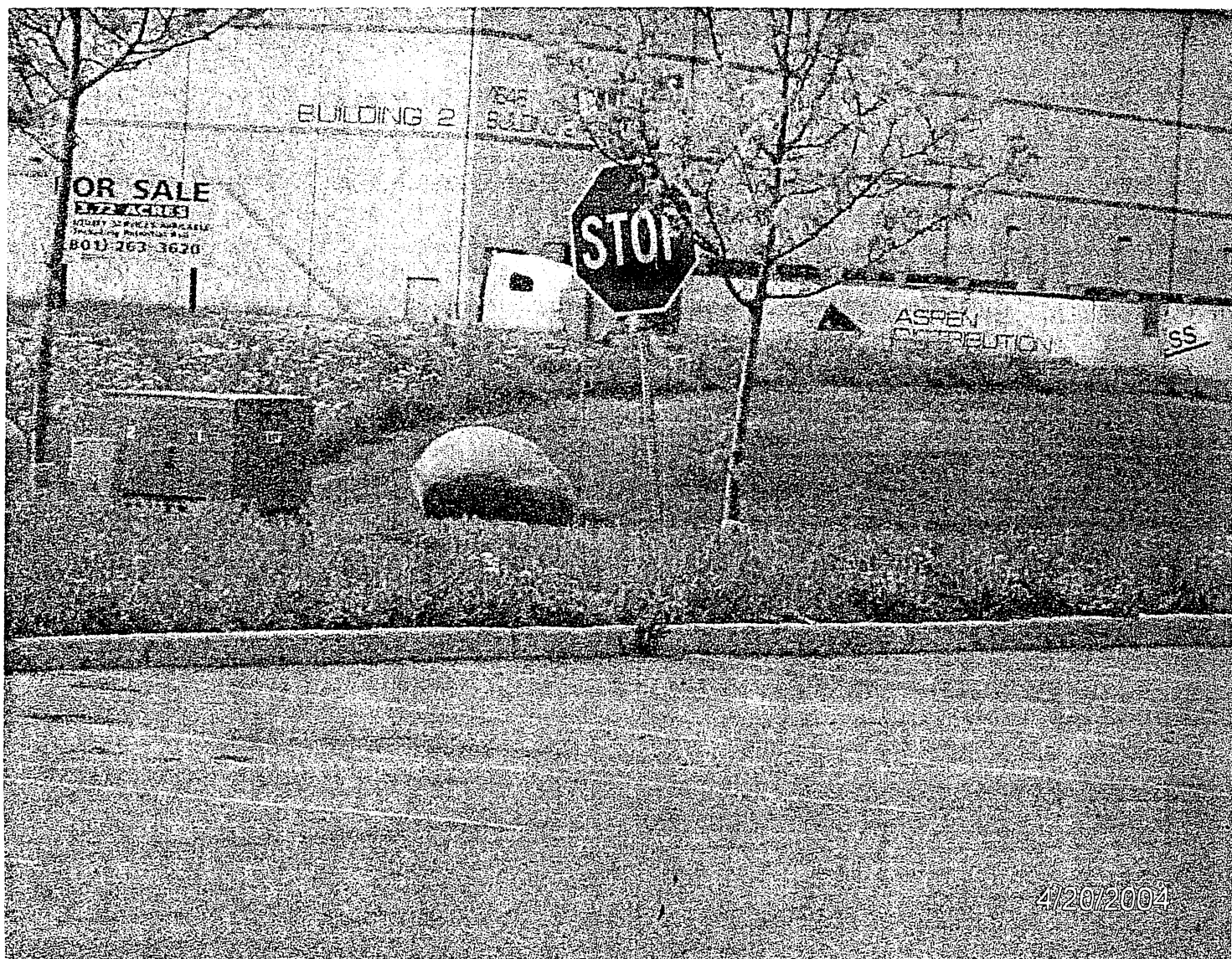


CP 0009



CP 0010

1269

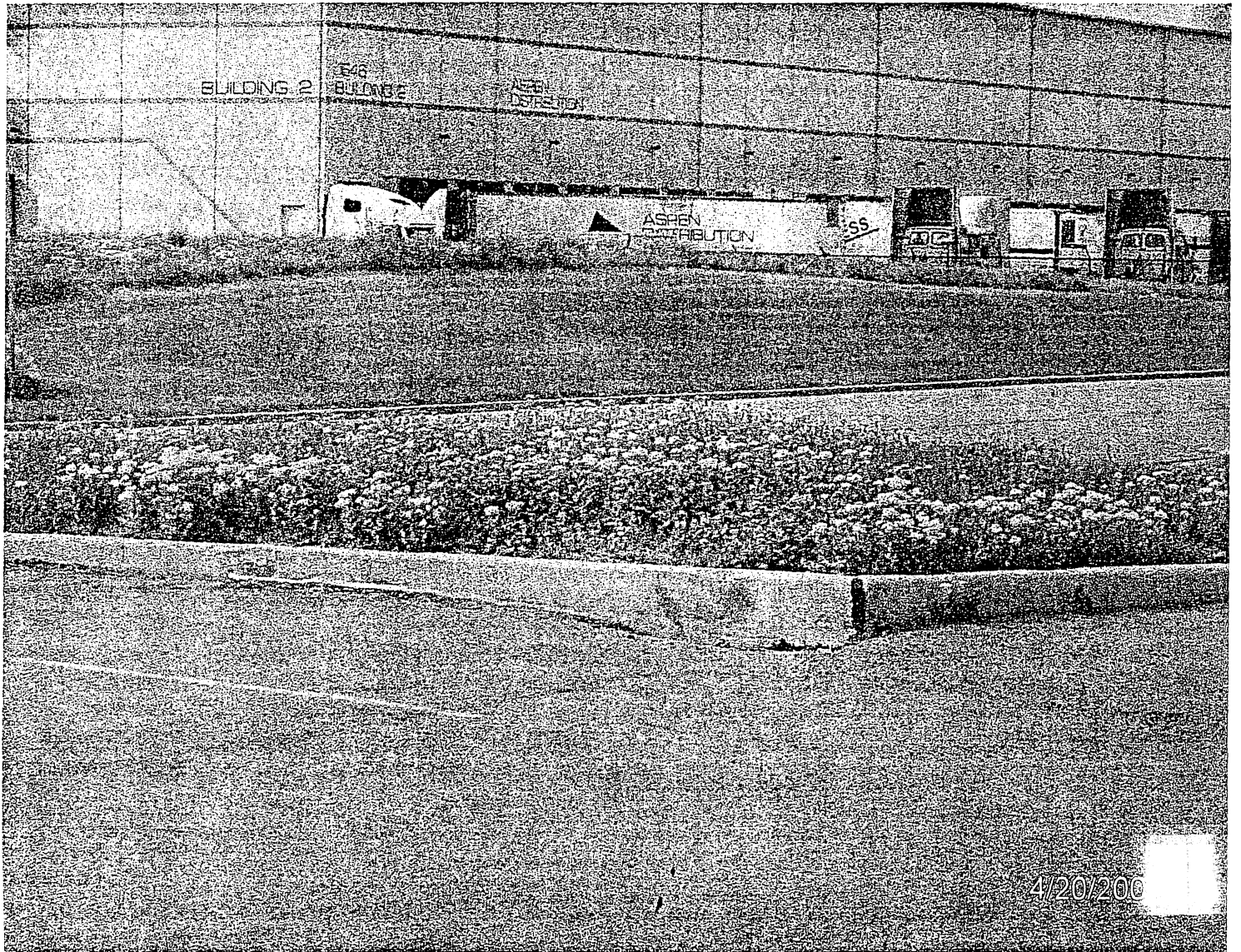


CP 0011



CP 0012

1271



CP 0013

Exhibit “O”

Dat q
CD

Exhibit “Q”

Sun Optics has
been formally
warned not to
park ^{here} next
time, you will
be towed

DO NOT
PK LIST
IN FRONT
OFFICE
THANK
YOU

Tab 3

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Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited	:	
liability company, and CENTENNIAL	:	
POINTE PROPERTY OWNERS	:	MEMORANDUM IN SUPPORT OF
ASSOCIATION (Registered on November	:	PLAINTIFFS' AND THIRD-PARTY
29, 2004), a Utah Nonprofit Corporation,	:	DEFENDANTS' MOTION TO
	:	STRIKE THE AFFIDAVIT OF
Plaintiffs,	:	MYRIAM ONYEABOR
	:	
v.	:	Civil No. 040918762
	:	
MYRIAM ONYEABOR,	:	Judge Robert P. Faust
	:	
Defendant.	:	
	:	

Plaintiffs Centennial Pointe Property Owners Association (the "Association") and LEBR Associates, LLC ("LEBR"), and Third-Party Defendants Bruce Raile ("Raile") and Jennifer Clark ("Clark") (hereinafter all parties collectively "Plaintiffs"), through their counsel, COHNE, RAPPAPORT & SEGAL, P.C., file the following Memorandum in Support of Plaintiffs' and Third-Party Defendants' Motion to Strike the Affidavit of Myriam Onyeabor.

INTRODUCTION

Plaintiffs have moved for partial summary judgment against Ms. Onyeabor, seeking, *inter alia*, an Order from this Court for the following: (1) declaring the Restated Amended CC&Rs at issue in this matter valid and encumbering Ms. Onyeabor's property located in Centennial Pointe; (2) declaring that Ms. Onyeabor is liable to the Association for all past due and owing assessments, late fees and fines in the amount of \$82,463.16, and attorney fees and collection costs in the amount of \$83,038.50; and (3) judicially foreclosing the Association's liens for nonpayment of common expenses recorded against Ms. Onyeabor property.¹

Ms. Onyeabor has attempted to oppose Plaintiffs' Motion with a number of affidavits, including her own, that plainly do not satisfy the requirements of Rule 56(e) or the Utah Rules of Evidence. These affidavits should be stricken in their entirety. Appended hereto as **Exhibit "A,"** is Ms. Onyeabor's Affidavit. A review of this affidavit shows that it is comprised of argumentative statements lacking factual and evidentiary support and foundation, as well as inadmissible hearsay. Ms. Onyeabor's statements are unverifiable and are primarily argument. Accordingly, Plaintiffs request that this Court strike Ms. Onyeabor's Affidavit in its entirety. Alternatively, Plaintiffs request that this Court strike paragraphs 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 39, 40, 41, 42, and 43 of her Affidavit. Plaintiffs also request that they be awarded their attorney fees in bringing the present Motion.

¹Plaintiffs have also sought summary judgment on a number of claims Ms. Onyeabor has brought against Bruce Raile, the Association, and LEBR.

ARGUMENT

MS. ONYEABOR'S AFFIDAVIT DOES NOT SATISFY THE REQUIREMENTS OF RULE 56(e) OF THE UTAH RULES OF CIVIL PROCEDURE, IS NOT ADMISSIBLE EVIDENCE, AND SHOULD BE STRICKEN.

Ms. Onyeabor's Affidavit is vague, conclusory, lacks foundation and contains inadmissible hearsay, and should therefore be stricken. Rule 56(e) of the Utah Rules of Civil Procedure provides that supporting affidavits "shall be made on personal knowledge, [and] shall set forth such facts as would be admissible in evidence." Utah R. Civ. P. 56(e). Rule 602 of the Utah Rules of Evidence provides that a "witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter." *Id.* Further, Rule 802 provides that hearsay is not admissible except as provided by law or by the rules of evidence. *See* Utah R. Evid. 802. Finally, affidavits setting forth facts that are not based on personal knowledge or lack foundation, as well as affidavits that are conclusory or contain hearsay, do not satisfy the requirements of Rule 56(e) and should be stricken. *See Determination of the Right to the Use of All of the Water v. Springville Mun. Corp.*, 1999 UT 39, ¶¶ 26-27, 982 P.2d 65; *see also GNS P'ship v. Fullmer*, 873 P.2d 1157, 1164 (Utah Ct. App. 1994).

The following paragraphs of Ms. Onyeabor's Affidavit should be stricken:

4. The problems between Mr. Raile/LEBR/Sun Optics and I started soon after they moved into Lot 3 and also ended up occupying the areas around my Lots one and two, acting as though my property were their recreational area.

Ms. Onyeabor's statement in paragraph 4 of her Affidavit is vague, conclusory and lacks any foundation. Specifically, Ms. Onyeabor asserts that "Mr. Raile/LEBR/Sun Optics"

“occup[ied] the areas around [her] Lots” and “act[ed] as though [her] property w[as] their recreational area.” Ms. Onyeabor does not provide any facts or information regarding what areas of her property were occupied or what types of alleged acts occurred on her property. Further, Ms. Onyeabor does not provide any specificity or information as to when these alleged acts occurred or who performed these alleged acts. Quite simply, Ms. Onyeabor’s conclusory and vague statement lacks any probative or evidentiary value, does not satisfy the requirements of Rule 56(e), and should be stricken.

5. That I immediately complained about it, in 2001, to the other owner of Lots 4, 5, 6, 7, Mr. Bezdijan, who assured me that due to their number (perhaps 30 workers at the time), they might just be in the process of settling in and to give them time.

Paragraph 5 of Ms. Onyeabor’s Affidavit is conclusory, lacks foundation and contains inadmissible hearsay. Mr. Bezdijan’s purported statements to Ms. Onyeabor are hearsay and should be stricken, because Ms. Onyeabor is offering Mr. Bezdijan’s purported statement for the truth of the matter asserted. Moreover, Ms. Onyeabor does not explain respecting her own hearsay statements what she purportedly said to Mr. Bezdijan, or where or how she purportedly communicated with Mr. Bezdijan. Paragraph 5 should be stricken.

6. By 2001, my workers and I were now having problems with them and asked them to vacate our front doors and they would adamantly state that Sun Optics/Mr. Raile/LEBR or whoever was in charge told them that it was all “community Property.” And they were not to pay attention to me or my workers. They would adamantly refuse to move their vehicles even when we had emergencies.

Paragraph 6 of Ms. Onyeabor’s Affidavit is vague, conclusory, lacks foundation, and contains inadmissible hearsay. In this paragraph, Ms. Onyeabor states what was purportedly said to her workers. Ms. Onyeabor’s recount of what was purportedly said to her workers is

inadmissible hearsay. Further, Ms. Onyeabor's statements in paragraph 6 lack specificity or factual support. Ms. Onyeabor does not identify who she purportedly told to "vacate [her] front doors," nor does she explain the meaning of that vague phrase. Ms. Onyeabor does not explain what "emergencies" occurred at her business, or when those purported "emergencies" occurred. Further, Ms. Onyeabor does not identify who she spoke with regarding moving vehicles, who refused to move their vehicle, or how she surmised that these persons were affiliated with "Raile/Sun Optics/LEBR." Quite simply, Ms. Onyeabor's vague and conclusory statements are unverifiable, contain inadmissible hearsay, do not satisfy the requirements of Rule 56(e) and should be stricken.

7. That I was now having heated arguments with Raile/Sun Optics/LEBR at the meetings as I explained that they were impeding my business, which was a warehouse, by blocking the doors.

Paragraph 7 of Ms. Onyeabor's Affidavit is vague, conclusory, argumentative, and lacks foundation. Ms. Onyeabor does not identify what "meetings" she attended or when she attended them. She did not indicate who attended the "meetings." Further, she does not explain how "Raile/Sun Optics/LEBR" was "impeding" her business, nor does she explain how "Raile/Sun Optics/LEBR" were "blocking her doors." During her deposition and in response to discovery, Ms. Onyeabor testified that she had no records of any carrier, e.g., FedEx or UPS, complaining about access to her business or refusing to deliver to her business. *See Onyeabor Depo. pp. 72-73.* Paragraph 7 of the Affidavit should be stricken.

8. That I remember asking them specifically several times why they did not like the property they bought but went ahead and bought it anyway.

Paragraph 8 of Ms. Onyeabor's Affidavit is vague and lacks foundation. Ms. Onyeabor does not identify who she spoke with, or when these conversations occurred. Ms. Onyeabor's statement lacks any probative value and should be stricken.

10. That I referred Mr. Raile constantly to the plat which is very clear about "LOTS".

Paragraph 10 of Ms. Onyeabor's Affidavit lacks foundation and factual specificity. Ms. Onyeabor does not state when, where, or how her purported communications with Mr. Raile occurred. Further, Ms. Onyeabor fails to offer any explanation as to what she meant by her purported statements to Mr. Raile that the "plat" "is very clear about 'LOTS.'" Ms. Onyeabor's statement lacks probative value, does not satisfy the requirements of Rule 56(e) and should be stricken.

11. That in 2001, Mr. Bezdijan called me on a weekend, stating that I had to see him immediately because it was an emergency. I gave him my home address and said he could come.

12. That Mr. Bezdijan told me that he and Mr. Raile were having arguments because of the "communal maintenance," we had going at that time. He stated: "this man just roars."

13. That I agreed with Mr. Bezdijan that Mr. Raile was controlling, intrusive and was not keeping his numerous workers on their own premises. Mr. Bezdijan complained about boxes flying all over his property with the Sun Optics labels on them. I promised to vote with him.

Paragraphs 11, 12, and 13 of Ms. Onyeabor's Affidavit are comprised of inadmissible hearsay. In those paragraphs, Ms. Onyeabor is recounting statements purportedly made by Mr. Bezdijan. These paragraphs should be stricken.

14. That these grievances were expressed at the emergency meeting that followed. So we finally agreed that everyone do their own maintenance and stay out of everybody else's business and life.

Paragraph 14 of Ms. Onyeabor's Affidavit lacks foundation and contains inadmissible hearsay. Ms. Onyeabor does not state when or where the "emergency meeting" she speaks of occurred, nor does she state who was present and how those individuals voted. Ms. Onyeabor's statement that "we finally agreed" is conclusory and vague and inadmissible hearsay. Paragraph 14 should be stricken.

15. That it was obvious that Mr. Raile was upset about the development. He expressed something to the effect that he wanted all the lawns to look alike but we did not have his kind of money and we told him that. He also said that there had to be "easeways" and flow of traffic.

Paragraph 15 of Ms. Onyeabor's Affidavit lacks foundation and contains inadmissible hearsay and argument. Ms. Onyeabor does not state when, where or how Mr. Raile communicated with her or with any other Centennial Pointe property owners. Further, Ms. Onyeabor's statement that "we did not have his kind of money and we told him that" is inadmissible hearsay and vague—Ms. Onyeabor fails to identify who she is referring to by the term "we." Paragraph 15 should be stricken.

16. His lots had exits unto [sic] the streets and I asked him to make his own arrangements with what he bought rather than attempting to force the rest of us into accommodating his needs.

17. That I felt that he wanted the entire premises designated for him in order to accommodate his colossal trailers. I suggested the trailers come in through his entry and through the back rather than disrupting other people's businesses.

Paragraphs 16 and 17 of Ms. Onyeabor's Affidavit lack foundation, are vague, lack factual support, are argumentative and contain inadmissible hearsay. Ms. Onyeabor fails to state when, where, and how she purportedly made these requests to Mr. Raile. Her statements regarding the other Centennial Pointe owners being "force[d]" or their businesses being

“disrupt[ed] is inadmissible hearsay and completely lacks foundation and factual support.

Paragraphs 16 and 17 should be stricken.

18. That I felt that their needs should not interfere with my property rights and burden me.

Paragraph 18 of Ms. Onyeabor’s Affidavit should be stricken. Ms. Onyeabor’s statement in this paragraph is vague, conclusory, argumentative, and lacks any probative value. Ms. Onyeabor fails to state how her business or property rights were purportedly being interfered with or how. Moreover, Ms. Onyeabor does not state who is purportedly interfering with her business or property rights. As stated in both of Centennial Pointe’s CC&Rs, the parking areas, loading areas and accessways are identified as common areas. *See* April 2000 CC&Rs, Section 1, Restated Amended CC&Rs, Section 1. As such, any property owner, invitee or tenant has the right to utilize these areas, and such usage cannot form the basis for a claim of interference with Ms. Onyeabor’s property or business. Paragraph 18 should be stricken.

20. That the problems between the owners simmered till [sic] it was clear that Mr. Bezdijan was going to sell his property.

Paragraph 20 of Ms. Onyeabor’s Affidavit is conclusory, argumentative and lacks foundation. Ms. Onyeabor does not state what “problems” she is referring to, nor does she provide any foundation for her conclusory statement that Mr. Bezdijan was going to sell his property in Centennial Pointe because these purported “problems” between the owners “simmered.” Paragraph 20 should be stricken.

21. That the LEBR/SunOptics employees were now all over the Onyeabor property engaging in some of the acts that I had referenced in the May 22, 2002 letter. (Exhibit 8). Things like leaving lunch scraps all over the Onyeabor property, and even repairing a car in front of my door.

Paragraph 21 of Ms. Onyeabor's Affidavit lacks foundation, factual support and is conclusory. Ms. Onyeabor fails to state what part of the "Onyeabor property" to which she refers. She also fails to state how she reached the conclusion that the acts complained of in paragraph 21 were done by LEBR's or Sun Optic's employees. Ms. Onyeabor fails to state when these purported acts occurred, how often they occurred and specifically what these purported acts were. "Leaving lunch scraps" or repairing a car is simply vague and conclusory and lacks any probative or evidentiary value. Finally, if any of the acts complained of occurred in Centennial Pointe's parking lot, pursuant to the CC&Rs, those purported acts occurred in a common area and Ms. Onyeabor's statement that this area is part of the Onyeabor property is both factually and legally incorrect. Paragraph 21 should be stricken.

22. Once again, the information that my workers and I got from the workers of Mr. Raile/LEBR was that the establishment of LEBR/Sun Optics asked them to ignore our pleas and park and do as they pleased.

Paragraph 22 of Ms. Onyeabor's Affidavit contains inadmissible hearsay and lacks foundation. Ms. Onyeabor's recount of what her employees were purportedly told is inadmissible hearsay. Further, Ms. Onyeabor fails to provide any foundation or factual support regarding who made these purported statements to her or her employees, when and how these purported statements were made to her or her employees, or how she knew that the individuals purportedly making these statements were LEBR's or Sun Optic's employees. Paragraph 22 should be stricken.

23. That in 2002, legal counsel asked me to write Raile/Sun Optics/LEBR an official letter (exhibit 8), just in case I no longer had the protection that Paul Bezdijan provided me, and Mr. Raile/Sun Optics/LEBR decided to resume the communal maintenance or harassing behavior.

Paragraph 23 of Ms. Onyeabor's Affidavit lacks foundation, is argumentative, vague and contains inadmissible hearsay. Ms. Onyeabor does not identify the name of the "counsel" or whether the "counsel" represented her. Further, Ms. Onyeabor's recount of what she was purportedly told by "legal counsel" is inadmissible hearsay. Ms. Onyeabor's statement about "resuming communal maintenance or harassing behavior" is vague, argumentative and lacks factual specificity and foundation. Finally, Ms. Onyeabor's reference to "protection" provided by Mr. Bezdijan is vague and nonsensical. Paragraph 23 should be stricken.

24. That the letter (exhibit 8), stated officially that if Raile/Sun Optics/LEBR were to maintain any part of my property against my wishes, Raile/Sun Optics/LEBR would have to pay.

Paragraph 24 of Ms. Onyeabor's Affidavit purports to characterize a written document and is conclusory. The document referred to in paragraph 24 speaks for itself. Ms. Onyeabor's conclusory interpretation of the letter lacks any probative value. Paragraph 24 should be stricken.

25. That Mr. Bezdijan later sold the Lots 4,5,6, to Mr. Raile/LEBR, and soon after that purchase, Mr. Raile became my "landlord and master." That Mr. Raile and, sometimes his wife, would come, on numerous occasions, screaming, barking orders and insults at me, and humiliating me on my own property in a manner I had never been humiliated before.

Paragraph 25 of Ms. Onyeabor's Affidavit is argumentative, conclusory, lacks foundation and lacks any probative value. Ms. Onyeabor's statement that Mr. Raile became her "landlord and master" is simply nonsensical. Further, Ms. Onyeabor does not state what Mr. Raile or Mrs. Raile said to her, or when and where on her property these communications occurred. Paragraph 25 should be stricken.

26. That I was not even allowed to do the normal things a property owner, especially property of that price, and caliber could do. I went into my property and came out like a beggar, oftentimes to the giggles and mockery of LEBR/Sun Optics workers who had been told that I was crazy, that the property was actually theirs or “community Property.”

Paragraph 26 of Ms. Onyeabor’s Affidavit is argumentative, lacks foundation and factual specificity, contains inadmissible hearsay and lacks any probative value. Ms. Onyeabor’s statement that she came out of her property like a “beggar” is nonsensical and is not supported by anything in her statement. Ms. Onyeabor’s statement that LEBR/Sun Optics employees had been told she was crazy or that her property was “community [p]roperty” is inadmissible hearsay. Ms. Onyeabor does not state when, where or how she was purportedly “mock[ed]” by LEBR/Sun Optics employees, who these employees were, or how she knew that LEBR/Sun Optics employed these individuals. Paragraph 26 should be stricken.

27. At this point, mental stress was a euphemism for what I really felt. My workers asked me if I really bought the property, so did my children and other family members.

Paragraph 27 of Ms. Onyeabor’s Affidavit is vague, conclusory, lacks foundation, contains inadmissible hearsay, and lacks probative value. Ms. Onyeabor’s statement “mental stress was a euphemism for what I really felt” is vague and quite simply has no probative value. Ms. Onyeabor does not state what, if any, symptoms she experienced or when she purportedly experienced them. Ms. Onyeabor’s statement regarding her family and employees is inadmissible hearsay. Paragraph 27 should be stricken.

28. By 2003 and early 2004, I was so depressed I started to avoid Centennial Pointe. I was not coming to work as often. Lawsuit was easy to talk about but every real estate attorney I spoke to had projected it would cost at least \$40,000 to \$100,000, and a single mother does not get involved in a lawsuit unless the money is in the bank and I had put all my money in the building. So I put it off.

Paragraph 28 of Ms. Onyeabor's Affidavit is argumentative and conclusory, lacks any factual or evidentiary support and foundation and contains inadmissible hearsay. Paragraph 28 should be stricken.

29. That Ms. Clark had jumped into my office with the intent to fight me, and the reason there was no fight was because I kept moving away and avoiding her threatening gestures. That the name-calling was to provoke me even further and see if that would get me to fight.

Paragraph 29 of Ms. Onyeabor's Affidavit is argumentative and lacks foundation. Ms. Onyeabor fails to state when and why any purported altercation occurred between her and Ms. Clark. Indeed, Ms. Onyeabor had threatened to have Ms. Clark's car towed from the Centennial Pointe parking lot. *See* Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment at 21 (*citing* Onyeabor Depo. p. 54). Further, Ms. Onyeabor originally testified that Ms. Clark entered her business and asked Ms. Onyeabor if she placed a note on her car threatening to have it towed. *See id.* at 21 (*citing* Onyeabor Depo. p. 54). In response, Ms. Onyeabor informed Ms. Clark that she left the note on the car. *See id.* (*citing* Onyeabor Depo. p. 53). This is a far cry from Ms. Onyeabor's conclusory and argumentative statement in Paragraph 29 that Ms. Clark "jumped" into her office with the "intent" to fight her. Ms. Onyeabor's statements regarding Ms. Clark's "intent" are inadmissible.

Further, Ms. Onyeabor is not qualified to discuss Ms. Clark's "intent," nor has she proffered any facts or evidence to support her conclusory accusation. Ms. Onyeabor does not state what "threatening gestures" Ms. Clark purportedly made toward her. Nor does Ms. Onyeabor state what names Ms. Clark purportedly called her.

Ms. Onyeabor's statement conflicts with her prior deposition testimony and should be treated as a sham fact. *See e.g. Harnicher v. University of Utah Med. Ctr.*, 962 P.2d 62, 71 (Utah 1998) (discussing sham affidavit, where a party takes a clear position in a deposition that is not modified on cross-examination, he may not thereafter raise an issue of fact by his own affidavit which contradicts his own testimony, unless he can provide an explanation of the discrepancy). When testifying about the incident with Ms. Clark, Ms. Onyeabor never stated that Ms. Clark entered her building with the intent to "fight" her. Paragraph 29 should be stricken.

32. That I found out after the lawsuit that there had been a CC&R change in August 2000 at the request of Mr. Raile of LEBR/SunOptics.

Paragraph 32 of Ms. Onyeabor's Affidavit lacks foundation and is argumentative. Ms. Onyeabor does not state any factual basis or provide any support for her statement that Centennial Pointe's CC&Rs were amended at the request of Mr. Raile. Indeed, the facts of this matter show that LEBR did not even purchase any property in Centennial Pointe until November 2000 and that the CC&Rs were amended in August 2000. *See* Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment at xi (*citing* Exhibit "H," Affidavit of Bruce Raile). Paragraph 32 should be stricken.

33. I hereby affirm my prior affidavit (here attached) with regards to the August CC&R.

Paragraph 33 of Ms. Onyeabor's Affidavit should be stricken because it is a sham fact and has absolutely no probative value. Indeed, Ms. Onyeabor's statement in paragraph 33 reaffirms that she has perjured herself in the prior affidavit she reaffirms. Specifically, in her prior affidavit she states, *inter alia*, that she did not sign the Amended Restated CC&Rs. Ms.

Onyeabor stated during the hearing on Plaintiffs' Motion for a Preliminary Injunction that the signature on the Restated Amended CC&R's belonged to her. *See* Plaintiffs' Memorandum in Support of Motion for Partial Summary Judgment at 7 (*citing* Exhibit P, CD Counter 4:53:30-4:54:00). Further, a licensed Utah notary public has testified that she witnessed Ms. Onyeabor sign the Restated Amended CC&Rs and that she notarized Ms. Onyeabor's signature on the Restated Amended CC&Rs. *See id.* at 8 (*citing* Deposition of Jo Ellen Crockett (Crockett Depo.) pp. 19-20). Paragraph 33 has no probative value, is simply irrelevant and should be stricken.

34. That I still did not want the situation to escalate and offered LEBR/Sun Optics to accept that the Plat of the city is still the same and that it is the binding document as to what we own. I offered that the CC&R of August be changed to reconcile with the Plat Map or just resort back to the April CC&R and accept that the plat map has final say as to what we own. They refused these offers.

Paragraph 34 of Ms. Onyeabor's Affidavit contains inadmissible settlement discussions, is conclusory, argumentative and contains legal conclusions. Ms. Onyeabor's statements regarding her purported efforts at settlement with LEBR/Sun Optics and their purported refusal to accept Ms. Onyeabor's offers are inadmissible pursuant to Rule 408 of the Utah Rules of Evidence. Further, Ms. Onyeabor fails to provide any factual or legal basis for her incorrect conclusion that the "plat map has final say as to what the [parties] own." Ms. Onyeabor's statement is merely argument and does not meet the requirements of Rule 56(e). Paragraph 34 should be stricken.

35. That in December of 2004, I was now in deep depression, I was so ill, my family offered to come in and pay for the mortgage while I recovered. I had to close the company down and let go of my workers.

Paragraph 35 of Ms. Onyeabor's Affidavit lacks foundation, is conclusory, and contains inadmissible hearsay. Ms. Onyeabor's statement regarding her family is inadmissible hearsay. Further, Ms. Onyeabor's statement that she had to close down her business is vague, conclusory and lacks foundation. Ms. Onyeabor does not provide any facts or evidence to show why she had to purportedly close her business or that the closure was in any way related to any acts of Plaintiffs. Similarly, Ms. Onyeabor's statement that she was in "deep depression" or was "so ill" lacks factual or evidentiary support. Indeed, Ms. Onyeabor has testified that she never sought medical or psychological treatment as a result of any of the conduct she alleges that Plaintiffs purportedly engaged in. *See id.* at 23-24 (*citing* Onyeabor Depo. pp. 60, 143-45).

36. That for a woman like me to be crying while talking to men I just knew in a business environment, as well as in the presence of my sons that I raised to be strong like men, indicates that I deteriorated to the lowest point of my life.

Paragraph 36 of Ms. Onyeabor's Affidavit is conclusory and lacks any factual or evidentiary support. Quite simply, Ms. Onyeabor's conclusory statements cannot be corroborated by Plaintiffs, nor can their veracity be determined. Ms. Onyeabor does not identify the persons with whom she purportedly had these crying episodes, or where and when they occurred. Paragraph 36 should be stricken.

39. That my first son for whom this company was started in the first place is now disillusioned about taking it over, afraid, as I am, about the hostility from the Plaintiffs.

Paragraph 39 of Ms. Onyeabor's Affidavit is conclusory, argumentative, lacks factual or evidentiary support, lacks foundation, and contains inadmissible hearsay. Paragraph 39 should be stricken.

40. That every statement I made about my mental condition is backed by the fact that I am qualified in the areas of mental health and disorder and knew what was going on with me.

Paragraph 40 of Ms. Onyeabor's Affidavit is conclusory and lacks foundation. Ms. Onyeabor fails to provide any factual or evidentiary support to show that she qualifies as a mental health expert or is qualified to diagnose and aver to any mental disorder or condition. Ms. Onyeabor's statement is an inadmissible legal conclusion lacking foundation and should be stricken.

41. That when I did recover a little, I wanted to reopen my business but could not get a loan on the property because Mr. Raile/LEBR had liens all over it.

Paragraph 41 of Ms. Onyeabor's Affidavit lacks foundation. Ms. Onyeabor does not state when or from whom she attempted to obtain a loan. She fails to provide any facts or evidence to show why she was denied a loan. Similar to Ms. Onyeabor's other conclusory statements, her statement in paragraph 41 cannot be corroborated by Plaintiffs, nor can the veracity of her statement be determined. Moreover, Ms. Onyeabor's statement that Mr. Raile or LEBR had placed liens on her property is plainly inaccurate. Centennial Pointe Owner's Association placed liens on Ms. Onyeabor's property for failure to pay common expenses. *See* Exhibit F to Plaintiffs' Memorandum in Support of Partial Motion for Summary Judgment. Ms. Onyeabor's statements in paragraph 41 do not satisfy the requirements of Rule 56(e) and should be stricken.

42. That I am forced to do this testimony myself because all the experts charge quite some money, some need to be flown into Utah, and I do not have the funds to pay an expert.

Paragraph 42 of Ms. Onyeabor's Affidavit is simply irrelevant and lacks foundation. Ms. Onyeabor provides no information about which "experts" with whom she may have consulted or

when she purportedly consulted with them. Further, Ms. Onyeabor's conclusory statements cannot be corroborated by Plaintiffs, nor can their veracity be determined. Paragraph 42 should be stricken.

43. That I leave it up to the discretion of the court to either consider this to be my personal statement about what I went through, what decisions I made to overcome the worst part of the mental trauma that I experienced. Or perhaps, the court could view it as an expert opinion from Myriam Onyeabor. The court may also view this as a simple self-report by Myriam Onyeabor and make a determination based on it. (Statement attached to affidavit).

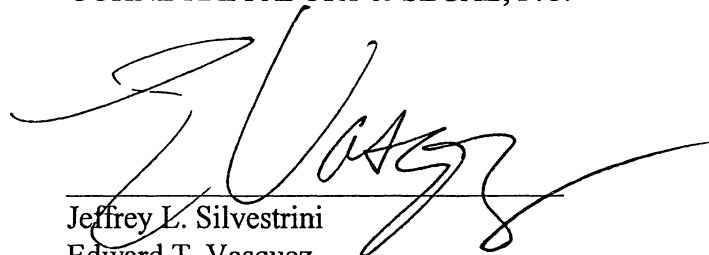
Paragraph 43 of Ms. Onyeabor's Affidavit contains no facts, but is merely argument. Ms. Onyeabor's statements are improper in an affidavit and should not be considered by the Court. As such, paragraph 43 should be stricken.

CONCLUSION

In sum, Ms. Onyeabor's Affidavit is comprised of argumentative statements lacking factual and evidentiary support and foundation, and inadmissible hearsay. Most of Ms. Onyeabor's statements are unverifiable and merely argument. Ms. Onyeabor's statements are not admissible in evidence and do not satisfy the requirements of Rule 56(e) of the Utah Rules of Civil Procedure. Accordingly, Plaintiffs respectfully request that this Court strike Ms. Onyeabor's Affidavit in its entirety. Alternatively, Plaintiffs request that this Court strike paragraphs 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 39, 40, 41, 42, and 43 of her Affidavit. Plaintiffs also request that they be awarded their attorney fees in bringing the present Motion.

DATED this 17th day of January, 2007.

COHNE RAPPAPORT & SEGAL, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Jeffrey L. Silvestrini, is written over a horizontal line.

Jeffrey L. Silvestrini

Edward T. Vasquez

Attorneys for Plaintiffs and Third-Party Defendants

Bruce Raile and Jennifer Clark

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2007, I caused to be mailed a true and correct copy of the foregoing, postage prepaid, to:

Myriam Onyeabor
P.O. Box 521297
Salt Lake City, UT 84152

George A. Hunt
WILLIAMS & HUNT
257 East 200 South, #500
Salt Lake City, UT 84111

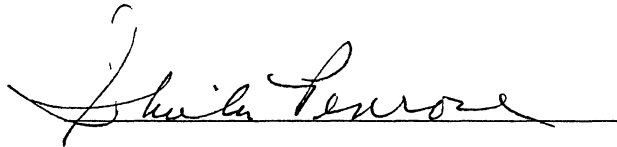
A handwritten signature in cursive script, reading "Shila Penrose", written over a horizontal line.

EXHIBIT 1

MYRIAM N ONYEABOR
P.O 521297
Salt Lake City UT. 84152
801-259-1195
FAX 801-487-9005

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

LEBR ASSOCIATE	:	<u>Affidavit of MYRIAM ONYEABOR</u>
Centennial Pointe Owners Association	:	
	:	Motion in opposition to Plaintiffs, Mr. Raile &
	:	Jennifer Clark's summary judgment
Vs	:	
Myriam Onyeabor	:	COUNTERMOTION
Defendant	:	
		Civil No. 040918762
Vs		
Bruce Raile's and Jennifer Clark		
Mr Sanborn	:	Judge Randal Skanchy

STATE OF UTAH

Myriam Onyeabor, being duly sworn and upon oath and states the following:

- 1) I am over the age of 18, capable and competent to testify in a court of law.
- 2) That I have personal knowledge of the incidents in this case and can testify to them.
- 3) That I am the owner of Lot 1 and Lot 2 of Centennial Pointe Industrial Park, a Salt Lake City Subdivision.
- 4) The problems between Mr. Raile/LEBR/Sun Optics and I started soon after they moved into Lot 3 and also ended up occupying the areas around my Lots one and two, acting as though my property were their recreational area.

- 5) That I immediately complained about it, in 2001, to the other owner of the Lots 4,5,6,7. Mr. Bezdijan, who assured me that due to their number (perhaps 30 workers at the time), they might just be in the process of settling in and to give them time.
- 6) By 2001, my workers and I were now having problems with them and asked them to vacate our front doors and they would adamantly state that Sun Optics/Mr Raile/LEBR or whoever was in charge told them that it was all “community Property.” And they were not to pay attention to me or my workers. They would adamantly refuse to move their vehicles even when we had emergencies.
- 7) That I was now having heated arguments with Raile/Sun optics/LEBR at the meetings as I explained that they were impeding my business, which was a warehouse, by blocking the doors.
- 8) That I remember asking them specifically several times why they did not like the property they bought but went ahead and bought it anyway.
- 9) That I was the first to buy property on Centennial Pointe and got the best because it is a case of “first come, first serve.”
- 10) That I referred Mr. Raile constantly to the plat which is very clear about “LOTS”.
- 11) That in 2001, Mr. Bezdijan called me on a weekend, stating that I had to see him immediately because it was an emergency. I gave him my home address and said he could come.
- 12) That Mr Bezdijan told me that he and Mr. Raile were having arguments because of the “communal maintenance,” we had going at that time. He stated; “this man just roars.”
- 13) That I agreed with Mr. Bezdijan that Mr. Raile was controlling, intrusive and was not keeping his numerous workers on their own premises. Mr. Bezdijan complained about boxes flying all over his property with the Sun Optics labels on them. I promised to vote with him.
- 14) That these grievances were expressed at the emergency meeting that followed. So we finally agreed that everyone do their own maintenance and stay out of everybody else’ business and life.

15) That it was obvious that Mr Raile was upset about the development. He expressed something to the effect that he wanted all the lawns to look alike but we did not have his kind of money and we told him that. He also said that there had to be "easeways" and flow of traffic.

16) His lots had exits unto the streets and I asked him to make his own arrangements with what he bought rather than attempting to force the rest of us into accommodating his needs.

17) That I felt that he wanted the entire premises designed for him in order to accommodate his colossal trailers. I suggested the trailers come in through his entry and through the back rather than disrupting other people's businesses.

18) That I felt that their needs should not interfere with my property rights and burden me.

19) That I had my very own designs and business needs too and that was why I invested that type of money in the property in the first place.

20) That the problems between the owners simmered till it was clear that Mr Bezdijan was going to sell his property.

21) That the LEBR/SunOptics employees were now all over the Onyeabor property engaging in some of the acts that I had referenced in the May 22 2002 letter. (Exhibit 8) Things like leaving lunch scraps all over the Onyeabor property, and even repairing a car right in front of my door.

22) Once again, the information that my workers and I got from the workers of Mr. Raile/LEBR was that the establishment of LEBR/Sun Optics asked them to ignore our pleas and park and do as they pleased.

23) That in 2002, legal counsel asked me to write Raile/Sun optics/LEBR an official letter (exhibit 8), just in case I no longer had the protection that Paul Bezdijan provided me, and Mr. Raile/Sun optics/LEBR decided to resume the communal maintenance or harassing behavior.

24) That the letter (exhibit 8), stated officially that if Raile/Sun optics/LEBR were to maintain any part of my property against my wishes, Raile/Sun optics/LEBR would have to pay.

25) That Mr. Bezdijan later sold the Lots 4. 5. 6 to Mr Raile/LEBR, and soon after that purchase, Mr Raile became my "landlord and master." That Mr. Raile and, sometimes his wife, would come, on numerous occasions, screaming, barking orders and insults at me, and humiliating me on my own property in a manner I had never been humiliated before.

26) That I was not even allowed to do the normal things a property owner, especially property of that price, and caliber could do. I went into my property and came out like a beggar, oftentimes to the giggles and mockery of LEBR/Sun optics workers who had been told that I was crazy, that the property was actually theirs or "community Property."

27) At this point, mental stress was a euphemism for what I really felt. My workers asked me if I really bought the property, so did my children and other family members.

28) By 2003 and early 2004, I was so depressed I started to avoid Centennial Point. I was not coming to work as often. Lawsuit was easy to talk about but every real estate attorney I spoke to had projected it would cost at least \$40,000 to \$100,000, and a single mother does not get involved in a lawsuit unless the money is in the bank and I had put all my money in the building. So I put it off.

29) That Ms Clark had jumped into my office with the intent to fight me, and the reason there was no fight was because I kept moving away and avoiding her threatening gestures. That the name-calling was to provoke me even further and see if that would get me to fight.

30) That on August 13th of 2004, out of desperation I decided to get their attention by threatening to lock the utility room, show them I actually owned it, and Mr. Raile sued me thereafter.

31) That I never locked the utility room.

32) That I found out after the lawsuit that there had been a CC&R change in August 2000 at the request of Mr Raile of LEBR/SunOptics.

33) I hereby affirm my prior affidavit (here attached) with regards to the August CC&R

34) That I still did not want the situation to escalate and offered LEBR/Sun Optics to accept that the Plat of the city is still the same and that it is the binding document as to what we own. I offered

that the CC&R of August be changed to reconcile with the Plat Map or just resort back to the April CC&R and accept that The plat map has final say as to what we own. They refused these offers.

35) That in December of 2004, I was now in deep depression, I was so ill, my family offered to come in and pay for the mortgage while I recovered. I had to close the company down and let go of my workers.

36) That for a woman like me to be crying while talking to men I just knew in a business environment, as well as in the presence of my sons that I raised to be strong like men, indicates that I deteriorated to the lowest point of my life.

37) That my older son was supposed to take over our company after turning eighteen so that I may return to teaching but I don't dare send him over there until there is restraint on Mr. Raile.

38) That I, my children and my workers had done my own maintenance on my two lots until after the first hearing in front of Judge Henriod, when Mr. Raile insisted on doing it and we let him be.

39) That my first son for whom this company was started in the first place is now disillusioned about taking it over, afraid, as I am, about the hostility from the Plaintiffs.

40) That every statement I made about my mental condition is backed by the fact that I am qualified in the areas of mental health and disorder and knew what was going on with me.

41) That when I did recover a little, I wanted to reopen my business but could not get a loan on the property because Mr. Raile/LEBR had liens all over it.

42) That I am forced to do this testimony myself because all the experts charge quite some money, some need to be flown into Utah, and I do not have the funds to pay an expert.

43) That I leave it up to the discretion of the court to either consider this to be my personal statement about what I went through, what decisions I made to overcome the worst part of the mental trauma that I experienced. Or perhaps, the court could view it as an expert opinion from Myriam Onyeabor. The court may also view this as a simple self-report by Myriam Onyeabor and make a determination based on it. (Statement attached to affidavit).

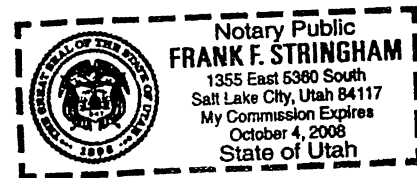
Dated this 13th day of December 2006

Myria Onyeabor

Myriam Onyeabor

Subscribed and sworn to me this 13th Day of December, 2006

Frank F. Stringham



FILED
THIRD JUDICIAL COURT
2005 NOV 21 PM 3:51
SALT LAKE COUNTY
BY _____
DEPUTY CLERK

Myriam Onyeabor
P.O Box 521297
Salt lake City Utah 84152
801-259-1195
801-487-9005 fax

IN THE THIRD JUDICIAL COURT FOR SALT LAKE COUNTY

STATE OF UTAH

CENTENNIAL POINTE PROPERT. : AFFIDAVIT OF Myriam Onyeabor
OWNERS ASSOCIATION; AND LEBR.
ASSOC. LLC. : Case No 040918762

PLAINTIFFS. : Judge Stephen Roth

V. :

MYRIAM ONYEABOR.
Defendant. :

_____ :

MYRIAM ONYEABOR. :

Plaintiff. :

V

Bruce M. Raile and Donald Sanborne.

EXHIBIT
A

STATE OF UTAH:

Myriam Onyeabor, being duly sworn and upon oath deposes and states the following:

- 1) That I am over the age of 18, capable and competent to testify in a court of law.
- 2) That I am the owner of lot one and lot 2 of Centennial Point Industrial Park, Phase V.
- 3) That I am the owner of Computer & Equipment Warehouse in Salt Lake City.

- 4) That I bought lot 1 from Mr. Sanborne in April 2000.
That it was represented to me as a Planned Unit development subdivision, comprising building and all 23, 000 sq feet. That the County Plat confirmed it to be a Planned unit development Subdivision
- 5) That I purchased Lot 2 of Centennial Industrial Park from Mr. Sanborne in September 2000, with an equal understanding that it was a Planned Unit development because nobody had told me otherwise.
- 6) That I made a big deal of the CC&R in the purchase of Lot 1 because I had not seen it then and had to make sure that it corresponded to the Plat and the representations.
- 7) That I did not bother to recheck any CC&R during the purchase of Lot 2 because nobody had told me that the CC&R had changed.
- 8) That they called me up and told me that the papers were ready and I went over and signed the deed.
- 9) That I never heard from Mr. Sanborne or Mr. Travis Healey who represented me, that the CC&R had been changed.
- 10) That had I heard it, I would have filed a lawsuit immediately because a Planned Unit development is

what my business needs to function. I cannot use a Condominium space.

11) That I heard for the first time that the CC&R had changed in fall of 2004 and that I heard it from Mr. Trueblood, an attorney.

12) That I state categorically that I was not party in any way, shape or form to the changing of the CC&R on Centennial Point.

13) I state that I never heard about it, did not participate in it, and did not sign it nor endorsed it in any way.

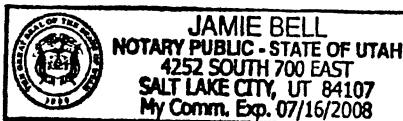
14) The alleged notary is downtown Salt Lake City and I do not do any business in downtown Salt Lake City. I do not bank in downtown Salt Lake City and never have.

Dated this 21st day of November, 2005

Myriam Onyeabor
Myriam Onyeabor

SUBSCRIBED AND SWORN to, before me, this 21st day Of November 2005.


Jamie Bell
NOTARY PUBLIC



Tab 4

Jeffrey L. Silvestrini (Bar No. 2959)
Edward T. Vasquez (Bar No. 8640)
COHNE, RAPPAPORT & SEGAL P.C.
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone (801) 532-2666
Facsimile (801) 355-1813

Attorneys for Plaintiffs and Third-Party
Defendants Bruce Raile and Jennifer Clark

FILED DISTRICT COURT
Third Judicial District
JUN 26 2007
SALT LAKE COUNTY
By  Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah limited
liability company, and CENTENNIAL
POINTE PROPERTY OWNERS
ASSOCIATION (Registered on November
29, 2004), a Utah Nonprofit Corporation,

Plaintiffs,

v.

MYRIAM ONYEABOR,

Defendant.

**SUPPLEMENTAL AFFIDAVIT OF
EDWARD T. VASQUEZ**

Civil No. 040918762

Judge Robert P. Faust

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

Edward T. Vasquez, being first duly sworn and upon oath, deposes and states as follows:

1. I am an attorney duly licensed to practice law in the State of Utah. I have been a member in good standing with the Utah State Bar since September, 1999.

2. I am an attorney with the law firm of Cohn Rappaport & Segal, P.C.
3. I am co-counsel for Plaintiffs and Third-Party Defendants Bruce Raile and Jennifer Clark in the above-captioned matter.
4. I am familiar with the practice of commercial and real property litigation in Salt Lake County, Utah and I am familiar with the range of hourly rates charged by attorneys practicing in Salt Lake County, Utah in civil litigation matters.
5. Throughout the present litigation my hourly billing rate has been \$155.00 per hour.
6. Jeffrey L. Silvestrini, a shareholder with Cohn Rappaport & Segal, is Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's lead counsel.
7. Mr. Silvestrini has been a member in good standing of the Utah State Bar since 1979.
8. Mr. Silvestrini practices in the area of commercial and real property litigation.
9. Mr. Silvestrini's hourly billing rate in 2004 through April 2006 was \$220.00 per hour. In May 2006, Mr. Silvestrini's hourly rate increased to \$240.00 per hour.
10. Both my billing rate and Mr. Silvestrini's billing rate are well within the range of rates charged by attorneys in Salt Lake County with similar skills and experience.
11. The present Affidavit supplements my prior Affidavit appended to Plaintiffs' Motion for Partial Summary Judgment, as Exhibit "F."

12. I have worked on this matter since its inception, and have done a significant portion of the legal research and writing, Motion practice, e.g., the evidentiary hearing on the Association's Motion for Preliminary Injunction, and settlement negotiations.

13. Throughout the course of this litigation Ms. Onyeabor has, alternatively, represented herself and been represented by two different attorneys. Counsel has also been contacted by two other attorneys on behalf of Ms. Onyeabor who were considering representing Ms. Onyeabor, but declined to do so.

14. Ms. Onyeabor's continually changing representation has required counsel to respond to pleadings from one of Ms. Onyeabor's attorneys and then, subsequently respond to an amended pleading from another of Ms. Onyeabor's attorneys.

15. Jeffrey Silvestrini and I have conducted extensive settlement negotiations with both of Ms. Onyeabor's counsel, Greg Stepan and John Richards, as well as with Ms. Onyeabor when she was, as she is now, acting *pro se*.

16. Throughout the course of this litigation, Ms. Onyeabor has raised multiple theories challenging the validity of Centennial Pointe's April 2000 CC&Rs, the Restated Amended CC&Rs, the Association's authority to assess her, and whether those CC&Rs burden her property and whether she should have to pay her proportional share of Centennial Pointe's common expenses. Those theories have often been broad and wide ranging, difficult to characterize and defend against, and have often changed completely. For example, Ms. Onyeabor has raised arguments implicating, *inter alia*, Centennial Pointe's Plat Map, local city and county ordinances, the Utah Condominium Act, and the United States Constitution. Ms.

Onyeabor has alleged that she did not sign the Restated Amended CC&Rs. The Utah notary who notarized Ms. Onyeabor's signature on that document testified that Ms. Onyeabor appeared before her and signed the document. Ms. Onyeabor's allegations required taking the deposition of the notary and extensive research and briefing on the Utah Subscribing Witness Statute. Ms. Onyeabor claimed she had no notice of the Restated Amended CC&Rs. Counsel was required to collect and present facts and evidence to demonstrate that Ms. Onyeabor had both actual and constructive notice of the CC&Rs. Ms. Onyeabor has also argued that her property was taken without consideration. Ms. Onyeabor's argument concerns the common areas, e.g., the parking lot, sidewalks, and landscaped areas on and around her Lots 1 and 2. Ms. Onyeabor has made other sweeping and arcane arguments regarding the validity of Centennial Pointe's CC&Rs, all of which required extensive and laborious research concerning restrictive covenants and their enforceability.

17. Most recently, during the hearing on Plaintiffs' Motion for Partial Summary Judgment, Ms. Onyeabor made for the first time, an argument that a new set of CC&Rs existed. This is indicative of Ms. Onyeabor's ever-changing and multiple theories to which Plaintiffs have been forced to respond.

18. Ms. Onyeabor has filed several arcane, lengthy, and repetitive pleadings and exhibits, which have been difficult to characterize, but have consistently failed to conform to the requirements of the Utah Rules of Civil Procedure or the Utah Rules of Evidence; failed to provide factual or legal support, failed to properly cite to legal authority (which required counsel to spend unnecessary time attempting to locate the authority; for example, in her February 23,

2007, 77-page memorandum, Ms. Onyeabor cites to “Sandy valley assoc V Sky Ranch estates, Nevada 2001,” Onyeabor January 17, 2007 Memorandum at 18, “Alcorn case (1970),” *id* at 33, and Benton V. Simpson case (2003),” *id.*). Ms. Onyeabor’s submissions were often overlength, e.g., Ms. Onyeabor’s February 23, 2007 Memorandum was 77 pages and her initial opposition to Plaintiffs’ Motion for Partial Summary Judgment was 38 pages in length, of which more than half was singled spaced, and often raised new allegations and arguments, which lacked factual or legal support.

19. The nature, broad scope, and length of Ms. Onyeabor’s pleadings and her continually changing theories have required counsel to expend significant time in deciphering her pleadings, researching the complex legal issues raised or vaguely touched upon (which counsel was compelled to respond to), and pouring over documents and gathering facts and evidence to disprove her conclusory allegations and arguments.

20. Counsel has also been required to expend time and effort obtaining copies of Ms. Onyeabor’s pleadings from the Court because these pleadings were not timely mailed to counsel, or not mailed at all, and counsel only learned of those pleadings from reviewing the Utah State Courts’ online docket.

21. The chronology of this matter and the work performed by counsel to enforce the April 2000 CC&Rs and the Restated Amended CC&Rs, defend the Association and defend against Ms. Onyeabor’s claims are as follows:

22. On September 1, 2004, the Centennial Pointe Owners Association (the “Association”) filed suit against Myriam Onyeabor to enforce Centennial Pointe’s Restated

Amended CC&Rs, to collect from Myriam Onyeabor her past due Centennial Pointe assessments, and for injunctive relief to prevent Ms. Onyeabor from denying access to Centennial Pointe's common areas.

23. The Association also filed a Motion for Preliminary Injunction against Ms. Onyeabor to enjoin her from denying access to Centennial Pointe's common areas, including, but not limited to, a common area utility room housing communication equipment, and from interfering with the use of Centennial Pointe's common areas, e.g., the common area parking lot.

24. The Court conducted an evidentiary hearing on the Association's Motion, during which the Association proffered evidence and witness testimony in support of the Motion. The Court granted Plaintiffs' Motion and enjoined Ms. Onyeabor from denying access to Centennial Pointe's common areas.

25. Concomitant with its action against Ms. Onyeabor to enforce the Restated Amended CC&Rs and to collect from Ms. Onyeabor her past due assessments, Plaintiffs were also forced to defend the validity of the Restated Amended CC&Rs and to defend the Association, due to Ms. Onyeabor's counterclaims for declaratory judgment, quiet title, fraud, and intentional infliction of emotional distress, as well as her third-party claims for trespass and assault against Bruce Raile, the Association's president.

26. Plaintiffs' affirmative claims and Ms. Onyeabor's counterclaims for declaratory judgment, quiet title, fraud, and intentional infliction of emotional distress, and her third-party claims for trespass and assault against Bruce Raile, all center around and depend upon the validity of the Restated Amended CC&Rs and whether they are enforceable. These claims are

inextricably intertwined and overlap. *See Brown v. David K. Richards & Co.*, 1999 UT App. 109, ¶ 20, 978 P.2d 470 (*citing First Gen. Servs. v. Perkins*, 918 P.2d 480 (Utah Ct. App. 1996)). The efforts of plaintiffs' counsel in developing facts and evidence to establish the validity of the Restated Amended CC&Rs and Ms. Onyeabor's contractual obligation to pay her past due assessments also led to, and were inextricably intertwined with, facts and evidence to defeat Ms. Onyeabor's counterclaims against LEBR for fraud, trespass, and assault. *See id.* at ¶ 19.

27. Prior to filing Plaintiffs' Motion for Partial Summary Judgment, counsel performed the following: successfully opposed two motions to dismiss, opposed Ms. Onyeabor's *pro se* motion for protective order, filed a motion to compel, which was granted, requiring Ms. Onyeabor to appear for the taking of her deposition, conducted three depositions, drafted discovery, responded to counterclaims and third-party claims filed by one of Ms. Onyeabor's attorneys and later amended by Ms. Onyeabor's subsequent attorney, engaged in extensive negotiations with Ms. Onyeabor, individually, and with two of the attorneys retained by her.

28. On October 30, 2006, Plaintiffs filed their Motion for Partial Summary Judgment, which (1) proffered facts, evidence, argument, and ample legal authority to show, as a matter of law, that the April 2000 CC&Rs and the Restated Amended CC&Rs are valid and encumber Ms. Onyeabor's property; (2) proffered facts, evidence, argument and legal authority to show, as a matter of law, that the Association has the authority to assess Ms. Onyeabor for her *pro rata* share of Centennial Pointe's common expenses, and that Ms. Onyeabor is liable to the Association for her past due assessments, fines and late fees (although these fines and late fees were not awarded by the Court), and (3) proffered facts, evidence, argument and ample legal

authority to show that Ms. Onyeabor's counterclaims for declaratory judgment, quiet title, fraud, trespass (against LEBR), assault (against LEBR) and intentional infliction of emotional distress, and her third-party claims for trespass and assault against Bruce Raile failed as a matter of law.

29. Plaintiffs' Motion contained 17 exhibits, which included, *inter alia*, affidavits, deposition testimony, meeting minutes, assessment statements, calculations for past due assessments, fines and late fees, a data CD of the Preliminary Injunction hearing (necessary to establish portions of Ms. Onyeabor's testimony during the hearing), and correspondence. To address both its affirmative claims and to defend against those claims asserted by Ms. Onyeabor set forth above, Plaintiffs were required to move the Court for leave to file an overlength memorandum, which the Court granted.

30. Prior to the date of the filing of Plaintiffs' Motion for Partial Summary Judgment, the Association had been required to incur the sum of \$83,038.50 in attorney fees to enforce the Restated Amended CC&Rs affecting Myriam Onyeabor's properties.

31. Since that time, the Association has been required to incur significant additional attorney fees and costs responding to several pleadings filed by Ms. Onyeabor.

32. Specifically, Ms. Onyeabor responded to Plaintiffs' Motion for Partial Summary Judgment with a 38-page pleading entitled "Motion in Opposition to Plaintiffs, 'Jennifer Clark & Mr. Raile's Motion for Summary Judgment, Myriam Onyeabor's Countermotion for Summary Judgment, and Myriam Onyeabor's Request for Restraining Order against Mr. Raile." Ms. Onyeabor's pleading contained approximately 13 exhibits, which included affidavits, a handwriting report, several photographs, and other documents.

33. In response thereto, counsel prepared and filed the following: (1) Reply Memorandum in Support of their Motion for Partial Summary Judgment, Opposition to Myriam Onyeabor's Countermotion for Summary Judgment and Request for a Restraining Order Against Bruce Raile; (2) Motion to Strike the Affidavit of Myriam Onyeabor; (3) Motion to Strike the Affidavit of James Walker; (4) Motion to Strike the Affidavit of Chinedum Alexander Udeh; (5) Motion to Strike the Affidavits of Travis Healey and Robert Mills; and (6) Motion to Strike the Handwriting Report of American Document Examiners and Exhibits 15, 16, 17, 18, 19, 20, and 21 to Ms. Onyeabor's Opposition Memorandum.

34. Thereafter, Ms. Onyeabor filed a pleading entitled "Motion and Memorandum in Support of Ms. Onyeabor Request to file an Answer to Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's Answer Memorandum of January 17, 2007, Request to File a Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment of December 13th 2006, and Her Itemized Claims." In that pleading, Ms. Onyeabor asked for leave to file additional pleadings, namely, a reply to Plaintiffs' Reply Memorandum and a supporting memorandum for her countermotion (her original "countermotion" was approximately five single-spaced pages entitled "Countermotion for Summary Judgment" and contained an additional approximately 10 pages of "Allegations and Statements," *see* pleading referenced in ¶ 29, *supra*), argued the validity of Centennial Pointe's CC&Rs, argued the admissibility of the affidavits and other exhibits Plaintiffs moved to strike, asked the Court to rule on her "quiet title" claim, and argued that she needed to file additional pleadings to "refocus this case to the real issues." Onyeabor Pleading at 4.

35. In response to this pleading, counsel prepared and filed an Opposition to Ms. Onyeabor's "Motion and Memorandum in Support of Ms. Onyeabor Request to file an Answer to Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's Answer Memorandum of January 17, 2007, Request to File a Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment of December 13th 2006, and Her Itemized Claims." Plaintiffs also filed a Reply Memorandum in Support of their Motions to Strike, and noticed the Motions to Strike for decision. Thereafter, Ms. Onyeabor filed a "Motion to Deny Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's Request for Decision."

36. On or about February 24, 2007, Ms. Onyeabor filed, without leave of the Court, a 77-page pleading entitled "Answer to Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's Reply Memorandum of January 17, 2007, Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment." In that pleading, Ms. Onyeabor made numerous allegations and arguments concerning the validity of Centennial Pointe's CC&Rs and the authority of the Association, and made numerous arguments regarding the admissibility of the affidavits and other exhibits that she had proffered which Plaintiffs' moved to strike. Ms. Onyeabor also included the affidavit of Paul Bezdijan, and argued her tort claims.

37. In response to this pleading, counsel prepared and filed a Motion to Strike the "Answer to Plaintiffs' and Third-Party Defendants Bruce Raile's and Jennifer Clark's Reply Memorandum of January 17, 2007, Memorandum in Support of Ms. Onyeabor's Countermotion for Summary Judgment," and the Affidavit of Paul Bezdijan. Plaintiffs also prepared and filed

an Opposition to Ms. Onyeabor's Motion to Deny Plaintiffs' Request to Submit their Motions to Strike.

38. The Court conducted a hearing on Plaintiffs' Motion for Partial Summary Judgment and their Motions to Strike. The pleadings and exhibits for the hearing filled nearly two large 3-ring binders, and were approximately 4-½ inches thick.

39. The Court granted Plaintiffs' Motion for Partial Summary Judgment, except the request for fines and late fees, and Plaintiffs' Motions to Strike. The proposed Order is nearly 25 pages in length and contains detailed and extensive findings of facts and conclusions of law respecting the aforementioned Motions; it took significant time to prepare.

40. Presently, Ms. Onyeabor has filed an "Amended Motion Pursuant to Rule 59 to Amend Plaintiffs' and Third-Party Defendants: Bruce Raile's and Jennifer Clark's Claim for Attorney Fees, Motion to Amend for Insurance Fees, Motion to Set Aside the Judgment of May 4, 2007, and Order the Entire Case to Trial."

41. Plaintiffs' counsel has prepared and filed an Opposition to that pleading. Ms. Onyeabor's pleading, as set forth in Plaintiffs' Opposition, is unclear and difficult to characterize, touches upon several complex legal issues regarding, *inter alia*, Rule 54(b) of the Utah Rules of Civil Procedure and issues related to attorney fees. Due to the broad scope and conclusory nature of the pleading, counsel spent significant time deciphering the pleading, researching the issues the pleading may have touched upon, and preparing an opposition.

42. Ms. Onyeabor has informed counsel that she is preparing a reply memorandum in response to Plaintiffs' Opposition.

43. Ms. Onyeabor has also filed a notice of appeal and a request for a continuance to file her docketing statement.

44. As of June 12, 2007, the attorney fees the Association has incurred in pursuing this litigation to enforce Centennial Pointe's CC&Rs, defend the Association, and defend against Ms. Onyeabor's aforementioned claims total \$156,877.98. As explained more fully below, I have reduced that sum by approximately \$20,000.00, to a total sum of attorney fees in the amount of \$136,589.00. In light of the work done and the factual circumstances surrounding this matter as set forth above and is evident from Ms. Onyeabor's pleadings, the sum of \$136,589.00 in attorney fees is reasonable. The costs in this matter total \$6,914.09.

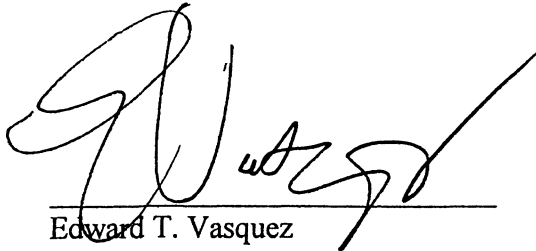
45. I have appended, as Exhibit "A," a copy of the billings for this matter and have provided a summary and break down of the attorneys and support staff that have worked on this matter, as of June 12, 2007.

46. The billing reflects adjustments made at or near the time of each monthly billing for matters we felt should not be billed to the clients, such as time spent by various attorneys in familiarizing themselves with the issues, or time that was otherwise not efficiently used. After reviewing the bill as a whole in preparation of this Affidavit, I further reduced it for the same considerations, where I believed the same were appropriate. The adjustments and reductions reflected by the strike outs and "n/c" notations on the billing amount to approximately \$20,000.00. The descriptions in the report of the work performed have been redacted in part to protect the attorney work product and attorney-client privileges.

47. The hourly rates charged by the attorneys and legal assistants set forth in the billing, including that of the undersigned, are fair and reasonable, given the complexity of this matter and given the skills and experience of each of the attorneys and legal assistants who worked on this matter. The hourly rates are well within the range of rates charged by attorneys and legal assistants in Salt Lake County with similar skills and experience.

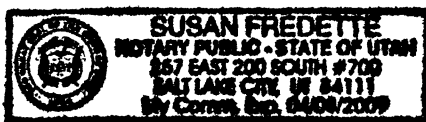
48. In my opinion, given the needs of this case, attorneys fees in the amount of \$136,589.00 and costs in the amount of \$6,914.09, combined totaling \$143,503.09, through the date of this affidavit are fair and reasonable in this matter.

DATED this 15th day of June, 2007.


Edward T. Vasquez

SUBSCRIBED AND SWORN to before me this 15th day of June, 2007.


NOTARY PUBLIC

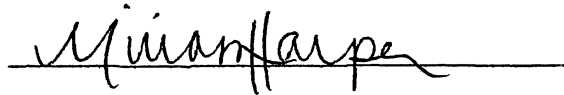


CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2007, I caused to be mailed a true and correct copy of the foregoing, postage prepaid, to:

Myriam Onyeabor
P.O. Box 521297
Salt Lake City, UT 84152

George A. Hunt
WILLIAMS & HUNT
257 East 200 South, #500
Salt Lake City, UT 84111

A handwritten signature in cursive script, appearing to read "Myriam Onyeabor", is written over a horizontal line.

A

COHNE, RAPPAPORT & SEGAL
P.O. BOX 11008
SALT LAKE CITY, UT 84147-0008 532-2666

2/2/04 - 6/11/07

Centennial Pointe Property Owner's Association
RE: Centennial Pointe Property Owner's Association
70306101

Ray M Beck, Attorney

9.8 hours @ \$200.00 per hour	\$1,960.00
9.0 hours @ \$ 220.00 per hour	\$1,980.00

Jeffrey L. Silvestrini, Attorney

61.75 hours @ 220.00 per hour	\$13,585.00
76.95 hours @ \$240.00 per hour	\$18,468.00
38.0 hours @ \$250.00 per hour	\$9,500.00

Edward T. Vasquez, Attorney

.2 hours @ \$0.00 per hour	\$0.00
568.2 hours @ \$155.00 per hours	\$88,071.00

Richard A. Rappaport, Attorney

.25 hours @ \$220 per hour	\$55.00
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Felise Thorpe Moll, Attorney

1.0 hours @ \$170 per hour	\$170.00
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Chris Madison, Clerk

2.3 hours @ \$0.00 per hour	\$0.00
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Miriam M. Harper, Paralegal

3.1 hours @ \$100.00 per hour	\$310.00
14.0 hours @ \$110.00 per hour	\$1,540.00
7.6 hours @ \$125.00 per hour	\$950.00

Total in Fees	\$136,589.00
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Total Costs	\$6,914.09
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Total Fees and Costs	\$143,503.09
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Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
3061	Centennial Pointe Property Owner's Assoc					
306101	Centennial Pointe Property Owner's Assoc					
AC9045	RMB	2/2/04	1.15	230.00	B	Begin work reviewing CCR documents. [REDACTED]
AC9046	RMB	2/3/04	1.10	230.00	B	Continue review of CCR's [REDACTED]
AC9689	RMB	2/5/04	0.20	40.00	B	[REDACTED]. Check County Records for recorded documents.
AD4160	RMB	2/12/04	0.75	150.00	B	Continue review of amended and restated declaration.
AE3418	RMB	2/26/04	1.00	200.00	B	Continue review of Amended CCRs.
AH1912	RMB	4/14/04	0.30	60.00	B	Call to B. Railey [REDACTED]
AJ3454	RMB	5/13/04	0.35	70.00	B	Prepare Notice of Property Owners Meeting.
AK1887	RMB	6/1/04	1.70	340.00	B	Preparation and Attendance at on-site POA meeting.
AL3570	RMB	6/25/04	0.85	170.00	B	Prepare Minutes of annual meeting and demand letters to delinquent owners. Letter to client.
AN3215	RMB	7/26/04	0.25	50.00	B	Finalize and send out second demand letters.
AO3533	RMB	8/11/04	0.10	20.00	B	Call [REDACTED].
AO3552	RMB	8/13/04	0.10	20.00	B	Follow up call [REDACTED]
AO5152	RMB	8/23/04	0.35	70.00	B	[REDACTED]. Conference with associate [REDACTED]
AO5680	ETV	8/30/04	0.60	93.00	B	Review [REDACTED] Complaint.
AO6171	ETV	8/31/04	5.20	806.00	B	Draft Complaint, review [REDACTED], and [REDACTED]
AO8175	RMB	8/31/04	0.40	80.00	B	Review Complaint [REDACTED].
AQ0370	RMB	9/15/04	0.25	50.00	B	Calls and emails [REDACTED]
AQ2727	RMB	9/16/04	0.75	150.00	B	Review correspondence Draft letter [REDACTED]
AQ2732	RMB	9/17/04	0.65	130.00	B	Edit letter [REDACTED] Respond to [REDACTED] Work on Temp Restr. Order.
AQ3250	ETV	9/23/04	3.00	465.00	B	[REDACTED] work on TRO.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
AR3237	RMB	9/27/04	0.70	140.00	B	Calls and emails [REDACTED]
AQ4611	ETV	9/27/04	4.70	728.50	B	Work on on TRO. Review [REDACTED] for Memo. Revise and supplement TRO. Work on Affidavit, Motion, and Order. Meet with RMB and JLS.
AQ9441	ETV	9/28/04	3.80	589.00	B	Revisions to Memorandum for TRO, Order and Affidavit. [REDACTED] [REDACTED] [REDACTED] Meetings with JLS and RMB Finalize Memo, affidavit, and motion for filing
AR3283	RMB	9/28/04	0.55	110.00	B	[REDACTED]. Conference with E.V. [REDACTED]
AQ9647	ETV	10/4/04	1.20	186.00	B	Review pleadings and prep for Preliminary Injunction hearing. Contact Judge Henroid chambers re: hearing on preliminary injunction. Meet with JLS [REDACTED]
AR7512	RMB	10/11/04	0.20	40.00	B	Centennial Point and respond to emails.
AR4328	ETV	10/13/04	0.90	139.50	B	[REDACTED] [REDACTED] Set hearing for Preliminary Injunction. Meet with JLS.
AR7962	RMB	10/14/04	0.40	80.00	B	Calls and work with Eddie V. [REDACTED]
AR4588	ETV	10/14/04	1.40	217.00	B	Meet with RMB. [REDACTED] Review docs for hearing.
AR7969	RMB	10/15/04	0.25	50.00	B	Various matters [REDACTED]
AR7060	MMH	10/15/04	0.20	20.00	B	Number documents and arrange for color copies in preparation for hearing
AR4883	ETV	10/15/04	2.20	341.00	B	Prep for hearing. [REDACTED]
AS1807	ETV	10/17/04	3.00	465.00	B	Prepare for hearing on Preliminary Injunction.
AR7978	RMB	10/18/04	0.10	20.00	B	Call [REDACTED]
AR6458	JLS	10/18/04	2.50	550.00	B	Assist ETV w/ preliminary injunction hearing
AR6447	ETV	10/18/04	9.00	1,395.00	B	Preparation for hearing. Meet with [REDACTED] JLS. Hearing. Review [REDACTED] outline Order
AS1058	ETV	11/1/04	1.80	279.00	B	Review file and notes. Draft Order from hearing on Preliminary Injunction.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
AS6375	ETV	11/9/04	0.50	77.50	B	Review Memo in Support of Motion to Dismiss (Jurisdiction).
AT4401	RMB	11/18/04	0.25	50.00	B	Call [REDACTED]. Begin work [REDACTED].
AT4823	FTM	11/23/04	1.00	170.00	B	Research on CC & Rs
AT4428	RMB	11/24/04	0.50	100.00	B	Review and update Articles of Inc. for POA.
AT9909	ETV	11/24/04	0.90	139.50	B	Work on Opposition to Motion to Dismiss.
AT9910	ETV	11/28/04	1.30	201.50	B	[REDACTED]. [REDACTED]. Work on Opposition/ Motion to Supplement.
AT4751	JLS	11/29/04	0.75	165.00	B	[REDACTED] Opposition to Motion to Dismiss Onybear [REDACTED]
AT9950	ETV	11/29/04	3.00	465.00	B	Work on Opposition and Motion to Substitute parties.
AT5549	JLS	11/30/04	0.50	110.00	B	[REDACTED] Opposition Memo re Motion to Dismiss [REDACTED]
AT4970	ETV	11/30/04	4.50	697.50	B	[REDACTED] [REDACTED] [REDACTED] Review [REDACTED] [REDACTED] Work on Motion to substitute parties.
AU2384	RMB	11/30/04	0.60	120.00	B	[REDACTED]. Conference with [REDACTED]. [REDACTED]
AT5550	JLS	12/1/04	0.75	165.00	B	Review and revise Opposition Memorandum [REDACTED] [REDACTED]
AT5164	ETV	12/1/04	6.20	960.48	B	Supplement and finalize Opposition and Memorandum. [REDACTED]. Add'l legal research [REDACTED] Draft motion.
AT5555	JLS	12/2/04	0.75	165.00	B	Review and revise Opposition Memorandum to Motion to Dismiss/Motion to Substitute/Amend and Amended Complaint
AV1038	ETV	12/20/04	2.20	341.00	B	Review [REDACTED] Onybear Reply memo in support of Motion to Dismiss. Begin working on Reply memo for Motion to Amend.
AV1750	JLS	12/21/04	0.50	110.00	B	Review and revise Reply memo [REDACTED]
AV2215	ETV	12/21/04	2.10	325.50	B	Work on Reply Memo for Motion to Amend.
AW2549	ETV	1/13/05	1.20	186.00	B	Call with G. Stepan [REDACTED] Revise proposed order. Meet with JLS.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
AY7066	ETV	2/11/05	1.90	294.50	B	Preparation for hearing on motion to dismiss and motion to amend. Meeting with JLS [REDACTED]
AY6952	ETV	2/13/05	1.20	186.00	B	Preparation for hearing.
AY2615	RMB	2/14/05	1.75	385.00	B	Preparation and attendance at court hearing. [REDACTED]
AY7067	ETV	2/14/05	5.20	806.00	B	Finalize preparing for hearing. [REDACTED] Meetings with RMB. Attend hearing. [REDACTED] order. Review proposed amended complaint [REDACTED]
AY7222	ETV	2/17/05	1.65	255.75	B	Work on amending complaint. [REDACTED] Work on Order.
AY7429	RAR	2/18/05	0.25	55.00	B	[REDACTED] ETV
AZ2735	ETV	2/24/05	0.50	77.50	B	Telephone conference with G. Stepan [REDACTED]
AZ2736	ETV	2/25/05	0.70	108.50	B	Review [REDACTED] from G. Stepan. Meet with RMB.
B05448	MMH	3/3/05	0.30	30.00	B	Research on the Salt Lake County Recorder's online POLARIS [REDACTED]
AZ3028	ETV	3/3/05	2.60	403.00	B	Research [REDACTED] Meet with RMB. Review [REDACTED] Correspondence [REDACTED] [REDACTED] Correspondence [REDACTED] call [REDACTED] Meet with JLS
AZ3030	JLS	3/3/05	0.50	110.00	B	Disc [REDACTED]
AZ6059	RMB	3/4/05	0.20	44.00	B	Call [REDACTED]
B02002	ETV	3/14/05	2.20	341.00	B	Review [REDACTED] Work on reply. Review CCRs.
B04599	ETV	3/15/05	0.70	108.50	B	Call with Gregg Stepan. Meet with RMB.
B05231	ETV	3/16/05	1.70	263.50	B	Call with Gregg Stepan. [REDACTED] [REDACTED] [REDACTED]
B11722	ETV	3/17/05	1.30	201.50	B	Call with G. Stepan. Review [REDACTED] [REDACTED] Onyeabor allegations. Meet with RMB.
B07082	RMB	3/17/05	1.70	374.00	B	Review [REDACTED]

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
B11730	ETV	3/18/05	1.10	170.50	B	Correspondence to and from [REDACTED] Meet with RMB.
B11759	ETV	3/18/05	0.60	93.00	B	Review various document [REDACTED] [REDACTED]
B07083	RMB	3/18/05	0.20	44.00	B	Email [REDACTED]
B18381	ETV	4/6/05	0.40	62.00	B	Call with G. Steppan.
B18385	ETV	4/7/05	0.45	69.75	B	Review correspondence [REDACTED] Meet with RMB.
B20469	RMB	4/11/05	0.40	88.00	B	Call [REDACTED]
B18400	ETV	4/11/05	0.20	31.00	B	Call to G. Stepan.
B21879	RMB	4/20/05	0.65	143.00	B	Emails and calls [REDACTED] [REDACTED]
B26484	ETV	4/20/05	0.50	77.50	B	Calls with G. Steppan.
B26365	RMB	4/29/05	1.25	275.00	B	Call [REDACTED] with Gary Stepon. Work on Liz Pendens. Call [REDACTED]
B26713	ETV	4/29/05	0.50	77.50	B	File Lis Pendens.
B26866	MMH	4/29/05	0.20	20.00	B	Research on the Salt Lake County Recorder's POLARIS database [REDACTED]
B35136	RMB	5/16/05	1.25	275.00	B	Review invoices [REDACTED]. Research [REDACTED] Call [REDACTED] Call [REDACTED]
B54700	RMB	6/2/05	0.35	77.00	B	Call [REDACTED]
B55386	ETV	6/9/05	0.70	108.50	B	Revision on Amended Complaint. Work on letter [REDACTED]
B61981	ETV	6/21/05	0.70	108.50	B	Review pleadings from G. Steppan.
B61983	ETV	6/21/05	2.30	356.50	B	Con't work on Kalay Motion in Limine.
B61986	ETV	6/22/05	0.35	54.25	B	Draft Notice of Lien. Meet with RMB.
B62149	ETV	6/29/05	0.20	31.00	B	Call from Steppan.
B72060	ETV	7/6/05	0.85	131.75	B	Tc with G. Steppan [REDACTED]. Letter to [REDACTED]
B77412	ETV	7/19/05	0.20	31.00	B	Call to [REDACTED]
377689	ETV	7/26/05	0.50	77.50	B	Call [REDACTED]. Call to G. Steppan.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
B85487	ETV	8/1/05	0.50	77.50	B	Call with G. Stepan [REDACTED]
B85510	ETV	8/8/05	0.30	46.50	B	Meet with RMB.
B90793	RMB	8/8/05	2.50	550.00	B	[REDACTED] meeting [REDACTED] Calls to G. Stepan [REDACTED] [REDACTED] Call [REDACTED]
B85516	ETV	8/9/05	0.40	62.00	B	Meet [REDACTED] Review documents [REDACTED]
B90819	RMB	8/23/05	0.50	110.00	B	Calls to G. Stepan [REDACTED] Call [REDACTED]
B96232	ETV	8/25/05	1.30	201.50	B	Review Amended Complaint. Work on Answer to Counterclaim [REDACTED]
B98078	RMB	8/26/05	2.00	440.00	B	Review notes and draft Annual meeting minutes. Compare with Client's notes. Review CCRs for compliance.
B92087	MMH	8/29/05	1.80	180.00	B	Research on the Salt Lake County Recorder's online POLARIS database [REDACTED] research on the Utah State Courts' online database [REDACTED] [REDACTED]
B92796	MMH	8/30/05	0.40	40.00	B	Continue research [REDACTED] [REDACTED]
B96484	JLS	9/7/05	1.25	275.00	B	Phone call [REDACTED] draft affidavit [REDACTED] [REDACTED]
BA6165	ETV	9/7/05	3.05	472.75	B	Telephone calls and review correspondence [REDACTED] Work on discovery. Work on Scheduling Order. [REDACTED] [REDACTED] Memo in Supp of OSC.
BA6214	ETV	9/8/05	3.10	480.50	B	Meet with RMB [REDACTED] Review correspondence [REDACTED] Review [REDACTED] Work on Scheduling Order. Phone call with Stepan. Correspondence [REDACTED] Work on scheduling order and letter [REDACTED]
B97204	JLS	9/8/05	1.75	385.00	B	Revise Affidavit [REDACTED] and meeting [REDACTED] [REDACTED] call [REDACTED] [REDACTED] meeting with ETV [REDACTED] [REDACTED]
BA6388	ETV	9/9/05	1.20	186.00	B	Work on [REDACTED] letter and scheduling order. Review [REDACTED]

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
BA6176	ETV	9/12/05	1.60	248.00	B	Supplement Scheduling Order and letter [REDACTED] Review and revise Affidavit. [REDACTED] [REDACTED]. Correspondence to Stepan. Phone call with Stepan. Meet with JLS.
BA2412	JLS	9/12/05	0.75	165.00	B	Review e-mail [REDACTED] and letter [REDACTED] and Affidavit [REDACTED]
BA3121	ETV	9/14/05	0.40	62.00	B	Review correspondence and photo from Stepan. Review correspondence [REDACTED]
BA6208	ETV	9/15/05	1.05	162.75	B	Calls to [REDACTED] Phone call [REDACTED] [REDACTED] Correspondence to [REDACTED] Work on Affidavit.
BA3271	MMH	9/15/05	0.20	20.00	B	Telephone conference with Office of the Lt. Governor [REDACTED] [REDACTED]
BB2536	ETV	9/16/05	0.75	116.25	B	Review [REDACTED] from Stepan. Meet with JLS. Correspondence [REDACTED]
BA7199	JLS	9/20/05	0.75	165.00	B	Review e-mail [REDACTED] and respond [REDACTED] review [REDACTED] [REDACTED]
BB8446	ETV	9/20/05	1.00	155.00	B	Phone call to Stepan. Phone calls with Stepan. Call [REDACTED] Meet with JLS
BB8536	ETV	9/22/05	0.80	124.00	B	Calls to [REDACTED] Correspondence [REDACTED] Review documents [REDACTED] [REDACTED]
BA9298	JLS	9/23/05	2.00	440.00	B	Review [REDACTED] and commencing discovery
BB8607	ETV	9/26/05	0.30	46.50	B	Correspondence from [REDACTED] Meet with JLS [REDACTED] [REDACTED]
BB8610	ETV	9/27/05	0.40	62.00	B	Phone call to Stepan. Phone call with Stepan.
BA9572	JLS	9/27/05	1.00	220.00	B	Draft letter to Stepan and Notice of Deposition; [REDACTED] [REDACTED]
BB8622	ETV	9/29/05	0.85	131.75	B	Review correspondence from M. Onyeabor. Meet with JLS. Call to G. Stepan. Phone call with Stepan. Correspondence to [REDACTED] Work on Initial Disclosures. Prepare notice to appear.

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ter	Event	Attorney	Date	Hours	\$ Value	Billable	Description
	BB8634	ETV	9/30/05	1.40	217.00	B	Call to [REDACTED] Phone call with [REDACTED] Review Stepan pleading. Work on initial disclosures Meet with JLS.
	BC5946	ETV	10/3/05	1.15	178.25	B	Phone call with [REDACTED] Work on Initial Disclosures. Review documents [REDACTED] Correspondence to and from [REDACTED]
	BC5958	ETV	10/4/05	1.10	170.50	B	Work on Initial Disclosures. Correspondence to and from [REDACTED]
	BC5966	ETV	10/5/05	2.05	317.75	B	Correspondence to and from [REDACTED] Call to [REDACTED] Review [REDACTED] Supplement Initial disclosures.
	BD2867	ETV	10/17/05	0.20	31.00	B	Correspondence from [REDACTED]
	BC3224	JLS	10/17/05	0.50	110.00	B	Review e-mails from [REDACTED] [REDACTED] review 3rd Party Complaint
	BC3225	JLS	10/18/05	0.50	110.00	B	Review e-mail from [REDACTED] [REDACTED]
	BD2873	ETV	10/18/05	0.80	124.00	B	Meet with JLS regarding [REDACTED] Legal research.
	BD3089	ETV	10/21/05	1.80	279.00	B	Review Jacobsen's Motion to Dismiss Preparation for Onyeabor deposition.
	BC8118	JLS	10/24/05	1.25	275.00	B	Review [REDACTED] posts and call with [REDACTED] [REDACTED]
	BD3098	ETV	10/24/05	1.00	155.00	B	Call to [REDACTED] Meet with JLS. Review documents for Onyeabor deposition.
	BD3126	ETV	10/27/05	0.80	124.00	B	Meet with JLS. Call to [REDACTED] Work on correspondence to Onyeabor.
	BD3138	ETV	10/30/05	0.50	77.50	B	Preparation for Onyeabor deposition
	BD3134	ETV	10/31/05	0.60	93.00	B	Call to [REDACTED] Message from [REDACTED] Work on affidavit.
	BE1569	ETV	11/1/05	1.00	155.00	B	Tc with [REDACTED] Work on Affidavit.
	BE1580	ETV	11/2/05	0.80	124.00	B	Work on affidavit. Call to [REDACTED]
	BE1594	ETV	11/4/05	0.50	77.50	B	Correspondence to G. Hunt [REDACTED]
	BE1636	ETV	11/9/05	0.40	62.00	B	Correspondence to M. Onyeabor.

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
BD7745	JLS	11/10/05	0.75	165.00	B	E-mails [REDACTED] call with G. Hunt [REDACTED] [REDACTED]; e-mails [REDACTED]; draft Notice of Deposition
BE1656	ETV	11/15/05	0.30	46.50	B	Notice of Depo for Onyeabor.
BE0495	JLS	11/16/05	0.25	55.00	B	Review fax from M. Onyeabor; draft response re deposition of M. Onyeabor
BE6833	ETV	11/16/05	0.35	54.25	B	Meet with JLS [REDACTED]
BE4270	JLS	11/29/05	0.50	110.00	B	Review filings from [REDACTED]; review e-mails [REDACTED]
BE5504	JLS	11/30/05	1.00	220.00	B	Review Onyeabor pleadings; organize for deposition; [REDACTED] [REDACTED] prepare for deposition
BE6321	JLS	12/4/05	4.00	880.00	B	Review of documents [REDACTED] preparation for deposition of M. Onyeabor; draft Answers to Third Party Complaint for Bruce and Jennifer
BF7277	ETV	12/5/05	1.10	170.50	B	Review documents for Onyeabor deposition.
BE6325	JLS	12/5/05	2.75	605.00	B	Telephone conference with [REDACTED] [REDACTED]; review reply papers filed by Sanborn; review documents [REDACTED] prepare for deposition; revise 3rd Party Answers [REDACTED] [REDACTED]
BF7280	ETV	12/6/05	1.70	263.50	B	Review documents for Onyeabor deposition.
BE7344	JLS	12/6/05	2.50	550.00	B	Prepare for Onyeabor deposition; review Onyeabor's memo re illness [REDACTED]; call with G. Hunt [REDACTED] [REDACTED]; e-mail and voice mails [REDACTED] [REDACTED]; e-mail and letter to M. Onyeabor re rescheduling deposition
BE6706	MMH	12/6/05	0.20	22.00	B	Arrange for courier [REDACTED] [REDACTED]; phone call with the Recorder's office [REDACTED]
BE9934	JLS	12/9/05	0.50	110.00	B	Call with M. Onyeabor re deposition; draft Amended Notice of Deposition and call to G. Hunt; e-mails [REDACTED]
BF4760	JLS	12/14/05	2.25	495.00	B	Prepare for M. Onyeabor deposition; review fax from Onyeabor; call [REDACTED]; call to G. Hunt and to court reporter; work on Motion to Compel Discovery-draft affidavit [REDACTED]
BF7313	ETV	12/14/05	1.00	155.00	B	Onyeabor deposition preparation. Review pleadings from

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ter	Event	Attorney	Date	Hours	\$ Value	Billable	Description
	BF5471	JLS	12/15/05	2.00	440.00	B	Draft Motion, Memorandum in Support of Motion to Compel Discovery re Onyeabor deposition; research [REDACTED] [REDACTED], e-mails [REDACTED] [REDACTED]
	BG7473	ETV	12/19/05	0 40	62.00	B	Meet with JLS.
	BG7486	ETV	12/20/05	1.30	201.50	B	Work on Motion to Compel.
	BG7570	ETV	12/21/05	0.70	108.50	B	Work on Motion to Compel.
	BF7698	JKP	12/21/05	0 30	37 50	B	Review motion to compel discovery
	BF7503	MMH	12/21/05	0 00	88 00	B	Work on memorandum
	BG7578	ETV	12/22/05	0.70	108.50	B	Finalize motion to compel and exhibits. Correspondence [REDACTED]
	BE7726	MMH	12/22/05	1 20	132.00	B	Proofread Motion and Memo in Support of Plaintiffs' and Third-Party Defendants' Motion to Compel Discovery and for Attorney Fees; compile exhibits and prepare for filing
	BH2306	ETV	1/3/06	5.20	806 00	B	Review [REDACTED] documents. Work on Motion to Amend
	BH2309	ETV	1/4/06	1.10	170.50	B	Work on Motion to Amend.
	BG8173	JLS	1/5/06	0.50	110.00	B	E-mails from and to [REDACTED]
	BH2246	ETV	1/13/06	0.60	93.00	B	Review pleadings Meet with JLS.
	BH2316	ETV	1/15/06	0.70	108.50	B	Work on Reply to Onyeabor Memo.
	BH4146	ETV	1/17/06	5.00	775.00	B	Work on memoranda regarding motion to compel and request for protective order. Legal research and document review.
	BH6179	JLS	1/18/06	0.75	165.00	B	Work on Opposition to Onyeabor Motion for Protective Order
	BH6164	ETV	1/18/06	4.00	620.00	B	Work on memoranda. Meet with JLS.
	BI1754	ETV	1/19/06	1.00	155.00	B	Work on Motion to Amend, Reply and Opposition.
	BH8162	ETV	1/20/06	4.00	620.00	B	Finalize Reply and Opposition. Work on discovery.
	BH7757	JLS	1/23/06	0.75	165.00	B	Review and revise Reply re Motion to Compel Discovery and Opposition to Motion for Protective Order
	BI1764	ETV	1/23/06	1.00	155.00	B	Meet with JLS. Work motion to amend. Document review [REDACTED]

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
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BH7698	MMH	1/23/06	0.20	22.00	B	Proofread Reply Memorandum
BH8978	ETV	1/24/06	4.10	635.50	B	Work on Motion to Amend and amend Complaint. Work on Motion to Amend Scheduling Order.
BH9748	ETV	1/25/06	1.70	263.50	B	Revise and edit Motions and amended complaint. Meet with JLS.
BH9283	MMH	1/25/06	0.30	33.00	B	Proofread Plaintiffs' Motion to Amend and Memorandum in Support thereof
BI2845	ETV	1/26/06	0.50	77.50	B	Review documents from G. Hunt.
BI0519	ETV	1/30/06	0.50	77.50	B	Draft Notice to Submit. Meet with JLS.
BI2313	MMH	2/3/06	0.50	55.00	B	Review hearing CD [REDACTED]
BI2311	JLS	2/3/06	1.25	275.00	B	Emails [REDACTED]; prepare for motion argument on 2-6-06
BI2159	ETV	2/3/06	0.40	62.00	B	Meet with JLS [REDACTED]
BI3224	JLS	2/6/06	1.25	275.00	B	Attend hearing on Sanborn's Motion to Dismiss; draft Notice to Submit for Decision re Onyeabor's Motion for Protective Order
BJ6226	ETV	2/6/06	0.50	77.50	B	Meet with JLS [REDACTED]
BJ0584	JLS	2/9/06	1.50	330.00	B	Emails with M. Onyeabor re discovery, review proposed Order drafted by Sanborn's counsel
BJ0219	ETV	2/10/06	0.40	62.00	B	Meet with JLS.
BJ3660	ETV	2/14/06	0.50	77.50	B	Meet with JLS [REDACTED]
BJ4353	JLS	2/15/06	0.50	110.00	B	Call [REDACTED] review CCRs [REDACTED]
BJ4048	ETV	2/15/06	0.70	108.50	B	Draft Notices to Submit. Meet with JLS.
BJ4913	JLS	2/17/06	1.00	220.00	B	Call [REDACTED]; review minute entry granting motion to compel; draft order compelling discovery
BJ5570	JLS	2/20/06	0.75	165.00	B	Email [REDACTED] call to G. Hunt re dates; email to M. Onyeabor re availability for deposition
BJ7073	JLS	2/22/06	0.50	110.00	B	Exchange email correspondence with M. Onyeabor re scheduling deposition

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ter	Event	Attorney	Date	Hours	\$ Value	Billable	Description
	BJ7546	ETV	2/23/06	0.25	38.75	B	Meet with MMH.
	BJ7520	MMH	2/23/06	1.60	176.00	B	Continue research on the Salt Lake County Recorder's website [REDACTED] draft Requests for Notice of Default & Notice of Sale
	BJ7913	JLS	2/23/06	1.00	220.00	B	Review Requests for Notice re Onyeabor property; [REDACTED] [REDACTED] [REDACTED]
	BJ8465	JLS	2/24/06	0.25	55.00	B	[REDACTED] [REDACTED]
	BJ8286	MMH	2/24/06	0.40	44.00	B	Office conference with JLS [REDACTED] [REDACTED] [REDACTED] [REDACTED] phone call [REDACTED]
	BK1131	JLS	3/3/06	0.25	55.00	B	Call to Onyeabor's new counsel; [REDACTED]
	BK8440	ETV	3/6/06	0.40	62.00	B	Meet with JLS. Review correspondence.
	BK2649	JLS	3/6/06	0.25	55.00	B	Call to Onyeabor new counsel re deposition date [REDACTED] [REDACTED]
	BK1893	ETV	3/7/06	0.90	139.50	B	Telephone call with John Richards, counsel for Onyeabor. Meet with JLS. Work on correspondence to Richards.
	BK2650	JLS	3/8/06	0.75	165.00	B	Calls with Richards and Hunt re deposition dates; call with Richards [REDACTED]; [REDACTED] draft minutes of Board meeting
	BK2978	ETV	3/9/06	0.70	108.50	B	Telephone call with Karissa at J. Richards office. Correspondence to J. Richards. Meet with JLS.
	BK6881	ETV	3/15/06	0.40	62.00	B	Telephone call with Onyeabor counsel.
	BK7931	ETV	3/20/06	0.35	54.25	B	Telephone conference with J. Richards office.
	BL8092	ETV	3/21/06	1.10	170.50	B	Deposition preparation. Meet with JLS.
	BL1857	ETV	3/22/06	4.75	736.25	B	Meet with JLS. Review documents for deposition, deposition preparation
	BL1875	JLS	3/22/06	3.50	770.00	B	Review materials to prepare for deposition of M Onyeabor
	BL8116	ETV	3/23/06	4.80	744.00	B	Meet with JLS. Onyeabor Deposition. [REDACTED]

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
						discovery. Review proposed amended scheduling order from Richards.
BL1877	JLS	3/23/06	6.00	1,320.00	B	Prepare for and take deposition of M. Onyeabor
BL8291	ETV	3/24/06	0.35	54.25	B	Meet with JLS.
BL4312	JLS	3/27/06	1.50	330.00	B	[REDACTED]
BL3605	MMH	3/27/06	0.60	66.00	B	Research on the Salt Lake County Recorder's online database [REDACTED]
BL8680	ETV	3/27/06	0.70	108.50	B	[REDACTED] discovery.
BL5705	JLS	3/31/06	1.00	220.00	B	Review and revise Document Requests and Interrogatories to M. Onyeabor
BL7205	ETV	4/4/06	6.10	945.50	B	Work on discovery. Review documents. Review pleading from J. Richards.
BL7936	ETV	4/5/06	4.60	713.00	B	Work on discovery, [REDACTED] amended counterclaim. Meet with JLS. Review deposition transcript. Call [REDACTED] Telephone conference [REDACTED]
BL7837	JLS	4/5/06	2.00	440.00	B	Review deposition transcript; revise written discovery to M. Onyeabor; [REDACTED]
BL9048	JLS	4/6/06	1.50	330.00	B	Review and revise discovery to M. Onyeabor
BM8318	ETV	4/6/06	1.05	162.75	B	Work on discovery. Review proposed amended counterclaim/counterclaim.
BL9206	ETV	4/7/06	3.10	480.50	B	Meet with JLS [REDACTED] Work on discovery and [REDACTED] SJ.
BL9049	JLS	4/7/06	2.25	495.00	B	Review expert report [REDACTED] call [REDACTED] call to G. Hunt [REDACTED] discuss with ETV [REDACTED]
BL9376	JLS	4/10/06	0.50	110.00	B	[REDACTED]
BM4720	ETV	4/11/06	0.55	85.25	B	Calls [REDACTED] Meet with JLS.

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
BM4702	JLS	4/11/06	0.50	110.00	B	[REDACTED]
BM8686	ETV	4/14/06	0.30	46.50	B	Letter to J. Richards.
BN3669	ETV	4/17/06	1.20	186.00	B	Review counterclaim. Telephone conference [REDACTED] [REDACTED]. Document review.
BM8540	JLS	4/20/06	0.50	120.00	B	Call [REDACTED] [REDACTED]
BM8682	MMH	4/20/06	0.50	55.00	B	Research [REDACTED] [REDACTED] [REDACTED]
BN4442	ETV	4/23/06	0.60	93.00	B	Work on Summary Judgment.
BO5427	ETV	5/1/06	0.60	93.00	B	Review documents. Work on pleadings for J. Crockett deposition Work on correspondence [REDACTED]
BN3830	JLS	5/4/06	0.75	180.00	B	Draft Notice of Annual Meeting for Association [REDACTED] [REDACTED]; discussion with G. Hunt [REDACTED] [REDACTED]
BO5586	ETV	5/8/06	0.70	108.50	B	Telephone conference with Richards law firm. Review documents.
BO0349	JLS	5/9/06	4.25	1,020.00	B	Review of Discovery responses and documents produced by M. Onyeabor; [REDACTED] [REDACTED] [REDACTED]
BO5821	ETV	5/9/06	1.30	201.50	B	Review discovery. Meet with JLS. Work on subpoena.
BO0813	MMH	5/10/06	0.90	99.00	B	Telephone conference with Utah State Tax Commission [REDACTED] [REDACTED] draft Subpoena to same; [REDACTED] [REDACTED] [REDACTED]
BO5885	ETV	5/10/06	0.90	139.50	B	Work on subpoena. Meet with MMH [REDACTED] [REDACTED]. Meet with JLS.
BO5159	JLS	5/18/06	0.50	120.00	B	Review materials [REDACTED] letter to Mahoney's counsel C. Brown
BO5157	JLS	5/19/06	0.50	120.00	B	Call [REDACTED] and email to C. Brown for Mahoney
BP7826	ETV	5/21/06	1.00	155.00	B	Deposition preparation for Farkell.

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
BP7834	ETV	5/22/06	0.60	93.00	B	Farkell depo preparation.
BO7093	JLS	5/23/06	2.00	480.00	B	Review email [REDACTED]; call with C. Brown re annual meeting; letter to Brown re documents; [REDACTED] [REDACTED]
BO9914	JLS	5/24/06	4.75	1,140.00	B	Prepare for and take deposition of Jo Ellen Crockett in Myriam Onyeabor case (2.75 hrs); attend Centennial Pointe annual meeting (2 hrs)
BP8386	ETV	5/24/06	0.50	77.50	B	Meet with JLS [REDACTED]
BP8420	ETV	5/29/06	1.00	155.00	B	Farkel Depo prep.
BO9925	JLS	5/30/06	2.00	480.00	B	Meeting [REDACTED]; prepare for deposition of K. Fackrell [REDACTED]
BP8423	ETV	5/30/06	0.45	69.75	B	Meet with JLS [REDACTED]
BQ0336	ETV	6/1/06	2.60	403.00	B	Farkell depo prep and Depo. Meet with JLS.
BO9926	JLS	6/1/06	3.75	900.00	B	Prepare for and take depositoin of K. Fackrell; review documents produced by Fackrell
BO9780	MMH	6/1/06	0.80	88.00	B	Copy tax returns & files produced by Fackrell at his deposition
BP2249	JLS	6/7/06	1.25	300.00	B	Draft Answer to Amended Counterclaims of M. Onyeabor
BQ0381	ETV	6/8/06	0.45	69.75	B	Meet with JLS [REDACTED]
BP6906	JLS	6/8/06	0.75	180.00	B	Review and revise Answer to Amended Counterclaims of M. Onyeabor
BP7712	JLS	6/9/06	0.25	60.00	B	Review and revise Answer to Amended Counterclaims of Onyeabor
BQ0388	ETV	6/13/06	0.30	46.50	B	Telephone conference [REDACTED] [REDACTED]
BQ0391	ETV	6/14/06	0.20	31.00	B	Telephone conference [REDACTED]
BQ0389	ETV	6/14/06	0.30	46.50	B	Telephone conference [REDACTED]
BQ0390	ETV	6/15/06	0.30	46.50	B	Telephone conference [REDACTED]
BQ0397	ETV	6/16/06	0.70	108.50	B	Telephone conference [REDACTED]
BQ1352	JLS	6/19/06	0.50	120.00	B	Call [REDACTED]

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
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						[REDACTED]
						[REDACTED]
BQ1752	JLS	6/20/06	0.20	48.00	B	Call [REDACTED] [REDACTED] [REDACTED]
BQ6160	JLS	6/28/06	1.00	240.00	B	[REDACTED] review America First documents produced per subpoena
BQ8475	ETV	6/28/06	0.40	62.00	B	Meet with JLS [REDACTED]
BQ8498	ETV	6/30/06	0.70	108.50	B	Review documents.
BR9974	ETV	7/5/06	1.10	170.50	B	Document review.
BS0399	ETV	7/13/06	0.50	77.50	B	Document review.
BR3427	JLS	7/14/06	2.00	480.00	B	Work on motions
BS5982	ETV	7/20/06	0.80	124.00	B	Document pleading review [REDACTED]
BS3019	JLS	7/28/06	0.50	120.00	B	Call [REDACTED] [REDACTED] [REDACTED]
BS5617	ETV	8/3/06	0.50	77.50	B	Work on letter to Court re: Motion to Amend. Telephone call with J. Skanchy clerk re: Motion to Amend.
BS9738	ETV	8/10/06	1.20	186.00	B	Work on Summary Judgment.
BS9942	ETV	8/11/06	6.00	NC 930.00	B	Work on SJ.
BT2702	ETV	8/17/06	0.60	93.00	B	Meet with JLS. Review pleadings.
BT4278	ETV	8/21/06	6.40	992.00	B	Call with Court, review docket, finalize order on Motion to Amend. Meet with JLS. Review pleadings and research, work on MSJ.
BU1239	JLS	8/22/06	0.50	120.00	B	[REDACTED] [REDACTED]
BU7469	ETV	8/22/06	4.00	620.00	B	Work on MSJ.
BU0647	ETV	8/23/06	5.00	775.00	B	Legal research, work on SJ.
BU1573	ETV	8/24/06	6.00	NC 930.00	B	Legal research. [REDACTED] work on SJ.

illed Time Report for BB
From 2/2/04 Thru 6/11/07

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
BU2651	ETV	8/28/06	7.50	1,162.50	B	Legal research [REDACTED] [REDACTED] [REDACTED]. Work on SJ.
BU3181	ETV	8/29/06 <i>EV</i>	8.20	1,271.00	B	Work on SJ.
BU4122	JLS	8/30/06	1.50	360.00	B	Work on MSJ
BU3466	ETV	8/30/06	6.40	992.00	B	Work on SJ. Meet with JLS.
BU4156	ETV	8/31/06	4.20	651.00	B	Work on MSJ. Meet with JLS.
BU5563	ETV	9/5/06	7.00	1,085.00	B	Work on summary judgment. Legal research [REDACTED]
BU5483	JLS	9/5/06	0.25	60.00	B	[REDACTED]
BU5996	ETV	9/6/06	6.10	945.50	B	Continue legal research. Work on SJ.
BQ6896	ETV	9/7/06	6.60	1,023.00	B	Work on MSJ.
BU7378	ETV	9/8/06	0.20 <i>EV</i>	31.00	B	[REDACTED]
BU7364	JLS	9/8/06	1.00	240.00	B	Work on MSJ [REDACTED]
BU7499	ETV	9/8/06	5.20	806.00	B	Additional legal research [REDACTED] [REDACTED] meet with JLS. Supplement and revise MSJ.
BV5449	JLS	9/14/06	2.25 <i>AL</i>	540.00	B	Work on MSJ; email [REDACTED]
BV7151	ETV	9/14/06	2.20	341.00	B	Work on MSJ.
BV7157	ETV	9/15/06	1.00	155.00	B	Work on MSJ.
BV6672	JLS	9/19/06	0.50	120.00	B	Work on MSJ
BV6648	ETV	9/19/06	6.00 <i>AL</i>	930.00	B	Work on MSJ. Legal Research.
BV7023	ETV	9/20/06	7.00	1,085.00	B	Work on MSJ.
BV7422	CSM	9/21/06	2.30	0.00	B	Research [REDACTED]
BV7562	ETV	9/21/06	5.70	883.50	B	Review notice of withdraw. meeting with JLS. notice to appear or appoint. work on Memorandum.
BW4359	ETV	9/22/06	6.40	992.00	B	Work on MSJ.
BW4382	ETV	9/25/06	6.60	1,023.00	B	Work on MSJ. legal research, review documents.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
BW0235	ETV	9/26/06	8.20	1,271.00	B	Meeting with JLS. work on MSJ.
BW0855	JLS	9/27/06	3.00	720.00	B	Work on MSJ. [REDACTED]
BW0738	ETV	9/27/06	3.00	465.00	B	Meeting with JLS [REDACTED] work on revisions, affidavits, review memorandum, additional legal research.
BW4434	ETV	9/29/06	2.00	310.00	B	Work on revisions to memo, additional legal arguments.
BW4437	ETV	9/29/06	1.40	217.00	B	Work on SJ.
BX1969	ETV	10/2/06	6.00	930.00	B	Work on MSJ, additional legal research.
BW3287	ETV	10/3/06	7.30	1,131.50	B	Legal research for supplemental arguments in SJ, continue work on SJ. meeting with JLS.
BW4096	ETV	10/4/06	7.50	1,162.50	B	Continue work on MSJ.
BX2532	ETV	10/9/06	4.70	728.50	B	Work on MSJ.
BX1449	JLS	10/10/06	1.25	300.00	B	Work on MSJ memorandum
BX2535	ETV	10/10/06	2.40	372.00	B	Work on affidavits; review documents; supplement memorandum.
BX2787	ETV	10/11/06	3.40	527.00	B	Meeting with JLS; supplement and revise memorandum; continue work on affidavits.
BX1373	JLS	10/11/06	4.00	960.00	B	Review and revise MSJ memorandum and discussion with ETV.
BX2825	ETV	10/12/06	4.40	682.00	B	Meeting with JLS; additional legal research; finalize draft of MSJ. work on [REDACTED] Affidavit; review [REDACTED] [REDACTED]; correspondence [REDACTED]
BX2354	JLS	10/12/06	2.00	480.00	B	Review and revise MSJ memorandum
BX1913	JLS	10/13/06	2.50	600.00	B	Call [REDACTED]; review and revise MSJ memorandum
BX2832	ETV	10/13/06	1.60	248.00	B	Meeting with JLS; review posts [REDACTED]; review [REDACTED] documents; work on affidavits.
BX2870	ETV	10/15/06	0.50	77.50	B	Work on affidavits.
BX2909	ETV	10/16/06	1.70	263.50	B	Work on affidavits, review documents, work on ex parte motion, prepare exhibits for memorandum.
BX3497	JLS	10/16/06	2.00	480.00	B	Work on MSJ and [REDACTED]
BY6395	ETV	10/17/06	1.20	186.00	B	Correspondence to and from [REDACTED]; revise affidavits and

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
BX4568	JLS	10/19/06	1.50	360.00	B	Review and revise memorandum
BY6582	ETV	10/19/06	3 20	496.00	B	Correspondence to and from [REDACTED]; revision to affidavits; work on [REDACTED] affidavit; work on over-length memorandum; additional argument to memorandum, work on finalizing memorandum.
BY6638	ETV	10/22/06	0.90	139 50	B	Work on affidavit and memorandum
BY6679	ETV	10/23/06	1.00	155.00	B	Correspondence to G. Hunt; work on exhibits for memorandum.
BX7091	ETV	10/24/06 NL	6.20	961.00	B	Work on ex parte memorandum, memorandum, exhibits.
BY6698	ETV	10/25/06	6 60	1,023.00	B	Correspondence to and from [REDACTED]; [REDACTED] continue preparing memoranda and exhibits; review data CD for hearing on Preliminary Injunction; meeting with JLS.
BY6699	ETV	10/26/06 NL	5 00	775 00	B	Continue work on memoranda and exhibits.
BY6706	ETV	10/27/06	4.00	620 00	B	Continue work on memoranda and exhibits, meet with JLS.
BY6763	ETV	10/29/06	1.30	201.50	B	Work on ex parte memorandum, memoranda.
BY2376	ETV	10/30/06	6.60	1,023.00	B	Telephone conference with G. Hunt, review [REDACTED]; finalize memorandum and motion, ex parte motion, memorandum, order, exhibits, prepare and file, correspondence [REDACTED].
BY1935	MMH	10/30/06	2.20	242.00	B	Proofread Memorandum in Support of Motion for Partial Summary Judgment, Affidavit of Edward Vasquez, Motion to File Overlength and Memo in Support; proofread Table of Contents & Table of Authorities
BY3020	JLS	10/30/06	1.00	240 00	B	Review and revise MSJ and ETV affidavit for filing of motion
BY6364	ETV	10/31/06	1.50	232.50	B	Meeting with JLS, phone call from Court and telephone conference with Court re: ex parte order; review docket and file Third Amended Complaint; work on fee affidavit
BZ2528	ETV	11/8/06	0.25	38.75	B	Review status of pending Motion and Amended Complaint.
BZ1428	ETV	11/15/06	0.60	93.00	B	Check status of Onyeabor response. Review documents from US Bank.
BZ2336	ETV	11/21/06	0 60	93.00	B	Meet with JLS; check status of response to Motion; prepare Request to Submit for Decision.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
BZ5448	ETV	11/28/06	3.00	465 00	B	Review status of pending Motion, obtain Onyeabor Pleading from Court, requesting extension; meet with JLS; work on response.
BZ5575	ETV	11/29/06	0.40	62.00	B	Finalize response to Request for Extension.
C06696	ETV	12/11/06	0.40	62.00	B	Meet with JLS [REDACTED]
C07388	ETV	12/12/06	0.60	93.00	B	Correspondence to Onyeabor. Meet with JLS.
C06763	MMH	12/12/06	0.50	55 00	B	Research [REDACTED] [REDACTED] [REDACTED]
C10763	ETV	12/13/06	0.40	62.00	B	Check status of Onyeabor response. Meet with JLS.
C09310	ETV	12/14/06	1.20	186.00	B	Work on request for extension to respond to Onyeabor's pleading. Meet with JLS.
C08325	JLS	12/14/06	0.25	60.00	B	Discuss with ETV [REDACTED] [REDACTED]
C10770	ETV	12/15/06	0.60	93.00	B	Work on extension. Meet with JLS [REDACTED]
C09327	JLS	12/18/06	1.00	240.00	B	Review Onyeabor opposition to our MSJ and per MSJ
C09952	ETV	12/19/06	1.00	155 00	B	Work on response to Onyeabor pleading.
C10448	ETV	12/20/06	2.00	310.00	B	Review Memorandum decision from Court. [REDACTED] [REDACTED]. Calls to Court. Tc w/ Judge Skanchy's clerk. Work on correspondence to Court.
C16277	ETV	12/21/06	1.65	255.75	B	Finalize letter to court re: memorandum decision, work on opposition to Onyeabor pleading; correspondence to Onyeabor.
C14172	JLS	12/28/06	3.00	720.00	B	Work on reply re: MSJ and opposition to Onyeabor's cross motion
C14173	JLS	12/29/06	1.50	360.00	B	Work on Reply re MSJ
C28028	ETV	1/2/07	6.00	930.00	B	Meet with JLS; legal research; review and analyze pleadings; work on memos.
C14887	JLS	1/3/07	2.25	540.00	B	Work on Reply to Onyeabor Opposition to MSJ and Opposition to her Cross Motion
C14861	ETV	1/3/07	4.00	620.00	B	Meet with JLS [REDACTED] legal research; review pleadings and deposition testimony; work on memos.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
C16154	ETV	1/4/07	4.55	705.25	B	Work on Memos.
C28053	ETV	1/5/07	3.20	496.00	B	Work on memos, additional legal research
C22987	JLS	1/5/07	3.75	900.00	B	Work on Reply to MSJ and Opposition to Onyeabor Cross-MSJ and request for restraining order; phone call [REDACTED]
C22207	ETV	1/8/07	7.70	1,193.50	B	Meet with JLS; work on memos.
C22964	JLS	1/8/07	1.75	420.00	B	Work on Reply re: MSJ; [REDACTED] [REDACTED]
C23009	ETV	1/9/07	7.10	1,100.50	B	Work on memos.
C23636	JLS	1/10/07	0.75	180.00	B	Work on MSJ reply papers
C23870	ETV	1/10/07	6.30	976.50	B	Work on memos.
C24378	ETV	1/11/07	6.30	976.50	B	Work on memos.
C24011	MMH	1/11/07	1.40	154.00	B	Proofread and check quotations in Memo in Support of Plaintiffs' Motion to Strike the Affidavit of Myriam Onyeabor; proofread Memo in Support of Motion to Strike Affidavits of Travis Healey and Robert Mills
C24369	JLS	1/11/07	1.00	240.00	B	Review and revise Motion to Strik Affivavit of Onyeabor and Memorandum [REDACTED]
C25516	ETV	1/12/07	6.90	1,069.50	B	Meet with JLS. Legal research. Work on Memos.
C25640	JLS	1/12/07	3.25	780.00	B	Work on reply/opposition to Onyeabor papers re: MSJ
C25684	ETV	1/14/07	4.00	620.00	B	Work on Memos.
C25830	JLS	1/15/07	2.25	540.00	B	Work on reply/Opposition re: MSJ and affidavit [REDACTED] [REDACTED]
C25844	ETV	1/15/07	10.20	1,581.00	B	Meet with JLS. Work on Memos and exhibits.
C26496	JLS	1/16/07	2.25	540.00	B	Work on Reply/ Opposition re Onyeabor papers' draft affidavit [REDACTED]
C26311	ETV	1/16/07	10.10	1,565.50	B	Work on Memoranda and exhibits.
C26346	MMH	1/17/07	2.90	319.00	B	Proofread and edit: Memo in Support of Motion to Strike the Onyeabor Affidavit and Memo in Support of Motion to Strike the Healey and Mills Affidavits; Memo in Support of Motion to Strike Handwriting Report; Reply Memo in Support of Motion for Partial Summary Judgment; Memo in Support of Motion to Strike Walker Affidavit

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
C26500	JLS	1/17/07	3.25	780.00	B	Review and revise memorandum in reply/opposition to Onyeabor papers; revise and supplement Affidavit [REDACTED]; phone calls [REDACTED]
C28119	ETV	1/17/07	8.60	1,333.00	B	Finalize memos and exhibits, and motions. Meet with JLS.
C27861	ETV	1/18/07	0.90	139.50	B	Meet with JLS. Telephone conference with Onyeabor. Review pleadings for Onyeabor document request.
C27866	JLS	1/18/07	0.75	180.00	B	Phone call with M. Onyeabor re: motions and affidavits; [REDACTED]
C27853	ETV	1/19/07	0.60	93.00	B	Meet with JLS. Review affidavits for Onyeabor document requests.
C29397	ETV	1/23/07	0.60	93.00	B	Meet with JLS. Respond to Onyeabor document request.
C30390	JLS	1/24/07	2.25	540.00	B	Work on Reply re Motions to Strike Affidavits and response to M. Onyeabor's memorandum of 1/23/07
C29874	ETV	1/24/07	2.30	356.50	B	Meet with JLS. Review and analyze Onyeabor pleading, work on response.
C30391	JLS	1/25/07	1.75	420.00	B	Work on response to Onyeabor memorandum of 1/23/07; [REDACTED]
C34430	ETV	1/25/07	1.45	224.75	B	Work on response to Onyeabor memo.
C30614	ETV	1/26/07	2.40	372.00	B	Work on response to Onyeabor Memo.
C30328	JLS	1/26/07	2.25	540.00	B	Phone call [REDACTED]; work on response to memorandum
C30704	ETV	1/28/07	0.70	108.50	B	Work on opposition.
C31463	ETV	1/29/07	2.30	356.50	B	Work on opposition, reply memos for motions to strike.
C31908	ETV	1/30/07	5.40	837.00	B	Work on reply memos for motion to strike and other opposition to Onyeabor Memo.
C32319	JLS	1/31/07	0.25	60.00	B	[REDACTED]
C33144	JLS	2/1/07	1.00	240.00	B	Work on opposition to M. Onyeabor papers
C32813	ETV	2/1/07	3.60	558.00	B	Work on opposition memorandum and finalize reply memorandum.
C45793	ETV	2/2/07	2.70	418.50	B	Work on memoranda, additional legal research; meet with JLS.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

ter	Event	Attorney	Date	Hours	\$ Value	Billable	Description
	C34486	ETV	2/6/07	2.10	325.50	B	Work on Memo in Opposition to Jan 23rd Onyeabor Memo and notice to submit for Reply Memorandum. Meet with JLS.
	C45807	ETV	2/7/07	2.05	317.75	B	Work on opposition memorandum; legal research on [REDACTED]
	C39287	ETV	2/8/07	2.00	310.00	B	Work on opposition memo. Meet with JLS.
	C40254	ETV	2/9/07	1.00	155.00	B	Meet with JLS; finalize memorandum and Request to Submit.
	C43110	ETV	2/14/07	0.50	77.50	B	Meet with JLS; review correspondence; correspondence [REDACTED]
	C53318	ETV	2/23/07	1.00	155.00	B	Meet with JLS; review Onyeabor Jan 23rd pleading for Request to Submit; draft and file request to submit all pending motions.
	C53165	ETV	2/28/07	2.40	372.00	B	Review and analyze Onyeabor memorandum and exhibits, work on response.
	C59604	ETV	3/1/07	3.10	480.50	B	Review memo and opposition to request for decision, and work on response; legal research.
	C51545	ETV	3/5/07	1.40	217.00	B	Legal research work on opposition.
	C52681	ETV	3/6/07	2.60	403.00	B	Meet with JLS; legal research; work on response to Onyeabor memoranda.
	C53329	ETV	3/7/07	2.40	372.00	B	Work on opposition; meet with JLS.
	C56456	ETV	3/12/07	0.70	108.50	B	Work on opposition
	C61940	ETV	3/14/07	2.60	403.00	B	Work on opposition memoranda; meet with JLS.
	C58020	JLS	3/15/07	1.00	250.00	B	Phone call with Matt Ball (new counsel for Onyeabor); [REDACTED]
	C61943	ETV	3/15/07	2.30	356.50	B	Work on opposition pleadings, review [REDACTED], additional legal research, research on [REDACTED], meet with JLS.
	C71565	ETV	3/16/07	7.20	1,116.00	B	Meet with JLS [REDACTED] phone call to Court re: hearing; phone call with Court clerk; phone call to new counsel; review docket; legal research; finalize memorandum, prepare exhibits, draft affidavit, prepare motion, draft opposition to Onyeabor request to deny request to submit of pending memorandum.
	C72548	ETV	3/19/07	0.50	77.50	B	Phone call to and from the Court regarding hearing.

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
C72555	ETV	3/21/07	0.40	62.00	B	Phone call to and from Court re: rescheduling hearing.
C62751	JLS	3/22/07	0.50	125.00	B	Phone call [REDACTED], [REDACTED] [REDACTED]
C67740	ETV	3/27/07	0.80	124.00	B	Review research, [REDACTED]
C79532	ETV	4/2/07	0.20	0.00	B	Call to and from M. Anderson, counsel for Sanborn. (nc)
C71411	ETV	4/4/07	0.60	93.00	B	Call to M. Ball. Tc with M. Ball. Correspondence from Ball. Meet w/ JLS. Work on notice to submit for memos.
C75035	ETV	4/11/07	0.30	46.50	B	Finalize request for decision on memos.
C89381	ETV	4/23/07	1.00	155.00	B	Call to M. Ball. Review correspondence from M. Ball. Meet with JLS. Review pleadings for hearing.
C89452	ETV	4/25/07	2.60	403.00	B	Review pleadings and hearing preparation.
C84573	JLS	4/25/07	1.75	437.50	B	Email [REDACTED] review of pleadings re preparation to argue motions on 5-2-07
C85036	ETV	4/26/07	2.20	341.00	B	Hearing preparation.
C85503	ETV	4/27/07	2.50	387.50	B	Meet with JLS. Hearing preparation.
C85856	JLS	4/27/07	1.00	250.00	B	Review pleadings [REDACTED] arrange for courtesy copies to court
C85229	MMH	4/27/07	2.20	275.00	B	Compile and organize exhibits for hearing
C86087	ETV	4/30/07	3.50	542.50	B	Meet with JLS; hearing preparation; phone call with Mark Anderson at Williams & Hunt.
C86499	ETV	5/1/07	5.10	790.50	B	Meet with JLS. Review pleadings, legal research. Hearing preparation
C86169	JLS	5/1/07	6.00	1,500.00	B	Review pleadings and prepare for summary judgment argument
C88264	ETV	5/2/07	4.00	620.00	B	Meet with JLS. Hearing.
C88295	JLS	5/2/07	5.50	1,375.00	B	Prepare for and argue MSJ
C94919	ETV	5/3/07	0.30	46.50	B	Meet with JLS.
C89760	ETV	5/7/07	0.80	124.00	B	Meet with JLS. Review decision re: Motions. [REDACTED] for Order.
C90052	JLS	5/7/07	1.00	250.00	B	Work on findings and conclusions re MSJ

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
C90047	JLS	5/7/07	1.00	250.00	B	Review court's minute entry; work on Findings and Conclusions re MSJ; [REDACTED]
C90585	JLS	5/8/07	3.50	875.00	B	Calls [REDACTED] [REDACTED]; draft findings of fact and conclusions of law
C92444	JLS	5/9/07	1.75	437.50	B	Revise findings and conclusions re MSJ
C92046	MMH	5/11/07	0.30	37.50	B	Proofread and Edit Answers to Defendants' April 11, 2007 Request for Production of Documents
C92451	JLS	5/11/07	1.00	250.00	B	Work on Findings and Conclusions; review [REDACTED] [REDACTED]
C94920	ETV	5/14/07	0.40	62.00	B	Meet with JLS. Review Onyeabor pleading.
C94312	JLS	5/14/07	1.00	250.00	B	Work on Findings; [REDACTED]
C94923	ETV	5/15/07	0.30	46.50	B	Review proposed findings.
CA7235	ETV	5/17/07	0.80	124.00	B	Work on order, review pleadings for work on order.
C94373	JLS	5/17/07	0.50	125.00	B	Review and respond to e-mails [REDACTED] [REDACTED]
CA7236	ETV	5/18/07	2.20	341.00	B	Work on order, findings and conclusions, review pleadings, and opposition to Onyeabor pleading.
C95338	ETV	5/21/07	2.00	310.00	B	Work on Order, findings and conclusions of law.
C94948	JLS	5/21/07	1.25	312.50	B	Review incoming pleadings from M. Onyeabor; work on findings
C96157	ETV	5/22/07	4.20	651.00	B	Work on Order, review pleadings, [REDACTED] for work on order.
C95982	JLS	5/22/07	1.50	375.00	B	Draft [REDACTED] [REDACTED]; work on Findings
C96222	JLS	5/23/07	3.50	875.00	B	Phone call [REDACTED] [REDACTED]
C96875	ETV	5/23/07	3.00	465.00	B	Continue work on Order, findings and conclusions.
C96668	MMH	5/23/07	0.20	25.00	B	Brief meeting with JLS [REDACTED] [REDACTED] [REDACTED]
C96993	JLS	5/24/07	3.75	937.50	B	Revise findings and conclusions; work on supplemental affidavits [REDACTED]

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

Event	Attorney	Date	Hours	\$ Value	Billable	Description
C97542	ETV	5/25/07	3.00	465.00	B	Work on Order.
C98022	ETV	5/29/07	6.20	961.00	B	Telephone conference with M. Onyeabor; correspondence from M. Onyeabor; work on Opposition, legal research for opposition; meet with JLS
C97994	JLS	5/29/07	1.00	250.00	B	Phone call with M. Onyeabor; review copy from court of Motion pursuant to Rule 59 to amend, etc.;
C97997	MMH	5/29/07	2.70	337.50	B	Work
C98325	ETV	5/30/07	4.30	666.50	B	Continue work on Opposition and revisions to Order; meet with JLS
C98315	MMH	5/30/07	2.20	275.00	B	Continue work
C99026	ETV	5/31/07	6.00	930.00	B	Continue work on Opposition and order; legal research.
C99567	JLS	5/31/07	2.25	562.50	B	Attend annual meeting of owners association
C99421	ETV	6/3/07	3.10	480.50	B	Work on opposition memo.
CA0934	ETV	6/4/07	6.10	945.50	B	Telephone conference with M. Onyeabor; correspondence to M. Onyeabor; meet with JLS; work on Opposition Memorandum, legal research and revisions to Order.
CA1161	ETV	6/5/07	7.10	1,100.50	B	Work on Opposition memorandum, order, and legal research.
CA1655	JLS	6/6/07	3.25	812.50	B	Meeting with M. Onyeabor; review revised Findings and Conclusions; review and revise memorandum in opposition to Rule 59 motion for reconsideration
CA2066	JLS	6/7/07	3.50	875.00	B	Draft revision to memorandum in opposition to Rule 59 motion to reconsider; review
CA5717	ETV	6/7/07	7.40	1,147.00	B	Meet with JLS; legal research, finalize and file Opposition memorandum; work on affidavit.
CA6399	ETV	6/8/07	3.10	480.50	B	Meet with JLS. Revisions to Order, work on affidavit.
CA6379	JLS	6/8/07	2.00	500.00	B	Review papers filed by M. Onyeabor; work on findings and conclusions;

Billed Time Report for BB
From 2/2/04 Thru 6/11/07

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Event	Attorney	Date	Hours	\$ Value	Billable	Description
=====						
CA6824	ETV	6/11/07	4.00	620.00	B	Finalize Order and fee Affidavit. Meet with JLS.
Total this matter			911.10	156,877.98		
Total this client			911.10	156,877.98		
Total this report			911.10	156,877.98		

Billed Expense Report for BB
Specified by Lists
From 7/1/04 Thru 6/11/07

Event	Expense	Date	Units	\$ Value	Ref No.	Proj	Description
=====							
306101	Centennial Pointe Property Owner's Assoc						
AL6418	32	7/1/04		9.50			
AL6422	47	7/1/04		2.40			
AO2973	39	8/20/04		70.00	38377		Small Claims
AO7164	32	9/1/04		5.00			Centennial Pointe
AO7749	39	9/1/04		95.00	38414		Filing Fee Centennial Pointe Property Owners Assn
AP6652	52	9/9/04		15.00	38469		Myriam Onyearbor - Small claims affidavit & order
AQ9076	32	9/27/04		2.50			
AQ9097	32	9/28/04		33.00			
AR0275	45	9/28/04		10.00			Bruce Raile
AR0281	45	9/30/04		5.00			Randall Trueblood
AR0960	52	10/7/04		47.00	38524		Myriam Onyearbor - S&C
AR0961	52	10/7/04		47.00	38524		Myriam Onyearbor - MO for Preliminary Injunction
AR4981	32	10/15/04		10.00			
AR5855	32	10/18/04		24.00			
AR9987	52	10/25/04		47.00	38623		Myriam Onyearbor - notice of hearing
AU0136	39	11/24/04		22.00	38718		Articles of Incorporation
AU1307	32	12/1/04		1.25			
AU1173	47	12/2/04		3.85			
AU1330	32	12/2/04		62.00			
AU8678	37	12/15/04		367.95			Westlaw Charges 11/1/04-11/30/04
AU8799	37	12/15/04		122.19			Westlaw Charges 11/1/04-11/30/04
AW3182	37	1/14/05		58.18			WestLaw Charges 12/1/04-12/31/04
AX0466	33	1/20/05		1.75			

illed Expense Report for BB
Specified by Lists
From 7/1/04 Thru 6/11/07

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Event	Expense	Date	Units	\$ Value	Ref No.	Proj	Description
AZ1069	33	2/25/05		1.25			
AZ1126	30	2/25/05		10.00	27695		1/20/05, Audio tape copy, SL Dist Ct
B05707	33	3/16/05		9.25			
B30987	51	5/1/05		15.00	39443		Lis Pendens (ck date 4/29/05)
B30087	45	5/3/05		20.25	39483		4/29/05, to SL Recorder
B53756	47	6/13/05		1.66			
B57129	45	6/22/05		15.00			SL County Recorder
B57701	51	6/22/05		28.00	39650		Notice of Lien
BA2472	32	9/12/05		1.00			
BB0471	30	9/27/05		31.98	39950		Color image blow backs
BB1048	32	9/29/05		3.50			
BB1309	45	9/30/05		5.00			Charles Brown
BC9396	33	10/27/05		1.25	28462		9/14/05, Copy fee, 3rd District Court
BE6628	47	12/5/05		2.58			
BE6651	32	12/5/05		26.00			
BE7662	32	12/6/05		10.00			
BE8161	45	12/6/05		15.00			Salt Lake County Recorder
BF3219	47	12/9/05		1.11			
BF3242	32	12/9/05		3.00			
BF8655	32	12/22/05		23.50			
BH0926	39	1/5/06		0.00	40216		Corporation renewal (n/c)
BH0918	39	1/9/06		0.00	40225		Corp Registration Info change form (n/c)
BI1619	37	1/31/06		3.49			WestLaw Charges 12/1/05-12/31/05 (ETV)
BI4444	30	2/7/06		15.00	40231		Tape of hearing Feb 6, 2006

Billed Expense Report for BB
Specified by Lists
From 7/1/04 Thru 6/11/07

Event	Expense	Date	Units	\$ Value	Ref No	Proj	Description
BJ5813	35	2/16/06		151.00	40283		Transcript of hearing
BJ7801	37	2/23/06		140.19			WestLaw Charges 1/1/06-1/31/06
BJ8660	32	2/24/06		2.00			
BJ8666	45	2/24/06		15.00			SL County Recorder
BJ8690	51	2/24/06		24.00	40405		Recording requests for notice
BK4433	47	3/9/06		1.26			
BL3414	32	3/22/06		126.00			
BL3498	32	3/23/06		24.25			
BL9463	35	4/7/06		785.10	40542		Myriam Onyeabor - orig + (1) certified copy of transcript
BO1289	42	5/1/06		18.00	40609		Witness fee
BO1261	42	5/9/06		18.50	40660		Witness fee
BO7430	32	5/23/06		65.25			
BO7435	32	5/23/06		20.75			
BO7444	45	5/23/06		5.00			Charles R. Brown
BO7708	42	5/24/06		18.50	40676		Witness fee
BO7712	42	5/24/06		18.50	40675		Witness fee - records deposition
BO8934	37	5/26/06		2.85			WestLaw Charges 4/1/06-4/30/06
BP0143	32	6/1/06		322.50			
BP2022	45	6/5/06		8.25	40729		5/23/06, [REDACTED]
BP2027	52	6/5/06		72.00	40721		America First Credit Union - SDT, Not of depo, Ltr Chk
BP2036	35	6/5/06		192.25	40725		Jo Ellen Crockett - Orig + (1) certified copy of transcript
BP2046	52	6/6/06		72.00	40721		Fackell Enterprises Inc. - SDT, Not of Depo, Chk
BP2047	52	6/6/06		15.00	40721		US Bank - SDT, Not of Depo, Ltr Chk
BP7034	37	6/8/06		3.00	1589		5/10/06, Registered principal search

Billed Expense Report for BB
Specified by Lists
From 7/1/04 Thru 6/11/07

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Event	Expense	Date	Units	\$ Value	Ref No.	Proj	Description
BQ5979	37	6/29/06		2.00			5/10/06, (2) Principals Searches
BQ9665	30	7/7/06		332.25	40814		Research/reproduction costs of records re: M. Onyeabor
BW0724	37	9/27/06		142.53			WestLaw Charges 8/1/06-8/31/06
BX5804	37	10/20/06		49.68			WestLaw Charges 9/1/06-9/30/06
BX5903	37	10/20/06		112.26			WestLaw Charges 9/1/06-9/30/06 (ETV)
BX7677	32	10/25/06		147.50			
BY2559	33	10/26/06		186.92	41260		Litigation copies/tabs
BY2501	32	10/30/06		56.75			
BY2503	32	10/30/06		63.25			
BY2510	32	10/30/06		3.00			
BY2521	47	10/30/06		6.15			
BY3393	45	10/31/06		5.00			Kinkos
BZ2729	30	11/16/06		476.50	41328		Account research/production
BZ2749	33	11/21/06		33.21	41325		Color copies
BZ4741	37	11/27/06		11.10			Westlaw Charges 10/1/06-10/31/06 (JLS)
BZ4748	37	11/27/06		117.92			Westlaw Charges 10/1/06-10/31/06 (ETV)
C09390	32	12/18/06		30.00			
C11081	32	12/21/06		1.50			
C27233	47	1/18/07		10.00			
C31941	33	1/25/07		9.75	2322		12/18/06, Copy fee, 3rd Dist. Ct
C33200	47	2/2/07		1.26			
C33222	32	2/2/07		8.00			
C47016	37	2/23/07		237.29			WestLaw Charges 1/1/07-1/31/07
C49901	32	2/28/07		22.50			

Billed Expense Report for BB
Specified by Lists
From 7/1/04 Thru 6/11/07

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Event	Expense	Date	Units	\$ Value	Ref No. Proj	Description	
C54677	45	3/7/07		6.00	41733	2/2/07, to 3rd District Ct re: Lebr Assoc	
C59154	47	3/19/07		2.70			
C64141	37	3/26/07		236.13		WestLaw Charges 2/1/07-2/28/07	
C83957	37	4/23/07		18.59		Westlaw Charges 3/1/07-3/31/07	
C85591	33	4/26/07		524.56	42001	Litigation copies, binders 4" etc	
C86359	32	4/27/07		72.00			
C91348	33	4/27/07		19.25	41953	Onyeabor Opposition	
C94533	33	5/7/07		0.75		Third District Court	
Total this matter				6,914.09			
Total this report				6,914.09			

Tab 5

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEBR ASSOCIATES, LLC, a Utah	:	MINUTE ENTRY
limited liability company, and		
CENTENNIAL POINTE PROPERTY OWNERS	:	CASE NO. 040918762
ASSOCIATION (Registered on		
November 29, 2004), a Utah non-	:	
profit corporation,		
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
MYRIAM ONYEABOR,	:	
	:	
Defendant.		

All pending Motions in this matter came on for hearing on May 2, 2007. After a review of the file and pleadings therein and after hearing argument on this matter, the Court decides, as follows:

1 Plaintiffs' Motion for Partial Summary Judgment and Motion to Strike are granted. Defendant's claims for assault by Mrs. Clark and the nuisance claims are not dismissed.


2 Plaintiffs are further awarded an Order of Judgment and an Order of Sale in this matter.

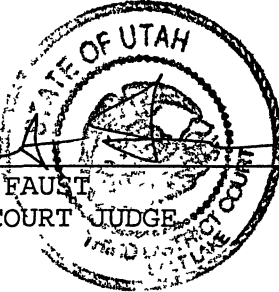
3 Plaintiffs are awarded as damages in the amount of the unpaid common area expenses and interest thereon at 18%, together with attorney's fees.

4 Plaintiffs are not awarded any fines or penalties against Defendant, since these penalties are not damages which have been sustained and suffered by the plaintiffs due to Defendant's breach.

Plaintiffs' counsel is to prepare the appropriate Findings of Fact, Conclusions of Law, and Orders herein.

Dated this 3rd day of May, 2007.


ROBERT P. FAUST
DISTRICT COURT JUDGE



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry and Order, to the following, this 4 day of May, 2007:

Jeffrey L. Silvestrini
Edward T. Vasquez
Attorneys for Plaintiffs
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84147-0008

Myriam Onyeabor
P.O. Box 521297
Salt Lake City, Utah 84152

George A. Hunt
Attorney for Third Party Defendant
257 East 200 South, Suite 500
Salt Lake City, Utah 84111

Pat ~~Ames~~

Tab 6

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

LEBR ASSOCIATES, LLC, a Utah	:	MINUTE ENTRY
limited liability company, and		
CENTENNIAL POINTE PROPERTY OWNERS	:	CASE NO. 040918762
ASSOCIATION (Registered on		
November 29, 2004), a Utah non-	:	
profit corporation,		
	:	
Plaintiffs,		
	:	
VS.		
	:	
MYRIAM ONYEABOR,		
	:	
Defendant.		

The Court has before it the Plaintiffs' proposed Order on Plaintiffs' Motion for Partial Summary Judgment and Motions to Strike and Judgment ("proposed Order"). The proposed Order is accompanied by the Supplemental Affidavit of Edward T. Vasquez, indicating that the Plaintiffs have incurred a total of \$143,503.09 in attorney's fees and costs (attorney's fees account for \$136,589.00 of this figure).


After considering Mr. Vasquez's Supplemental Affidavit, the Court determines that the attorney's fees requested are exorbitant, even compared to the legal work required to respond to the various positions taken by Ms. Onyeabor, who has proceeded on a pro se basis. The Court determines that the amount of fees sought must be reduced by approximately 50% in order to bring them in line with what the Court

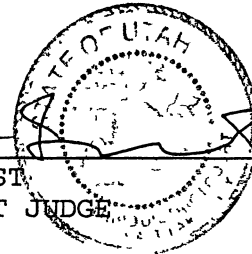
considers to be reasonable and justifiable. Therefore, the Court awards the Plaintiffs \$68,294.50 in attorney's fees.

With respect to costs, the Court has been unable to locate a Memorandum of Costs detailing the \$6,914.09 in costs sought by the Plaintiffs. The Court will need to review a detailed Memorandum concerning such costs before reaching a definitive ruling as to whether the entire amount sought is recoverable.

Accordingly, the Court has entered the proposed Order with the modification to the attorney's fees indicated herein. The line provided for the Court to enter costs remains blank pending the Court's review of the Plaintiffs' Memorandum of Costs.

Dated this 8th day of August, 2007.


ROBERT P. FAUST
DISTRICT COURT JUDGE



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Minute Entry, to the following, this 8 day of August, 2007:

Jeffrey L. Silvestrini
Edward T. Vasquez
Attorneys for Plaintiffs
257 East 200 South, Suite 700
P.O. Box 11008
Salt Lake City, Utah 84147-0008

Myriam Onyeabor
P.O. Box 521297
Salt Lake City, Utah 84152

George A. Hunt
Attorney for Third Party Defendant
257 East 200 South, Suite 500
Salt Lake City, Utah 84111

Pat Jones

Tab 7

Westlaw.

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H

Court of Appeals of Texas, San Antonio.
Wayne BALDWIN, Appellant,

v.

BARBON CORPORATION, Appellee.
No. 04-88-00294-CV.

June 7, 1989.

Rehearing Denied July 10, 1989.

Appeal was taken from judgment of the 79th District Court, Jim Wells County, Harry D. Lewis, J., entered in declaratory judgment action challenging developer's authority to remove residential restrictions on property in subdivision. The Court of Appeals, Butts, J., held that: (1) evidence was sufficient to establish that developer continued to own property subject to subdivision restrictions following auction in which many lots in the subdivision were sold, and (2) developer had authority to remove residential restrictions on portion of property in subdivision pursuant to subdivision restrictions which included express right of alteration or amendment.

Affirmed.

West Headnotes

[1] Covenants 108 ↪ 74

108 Covenants

108II Construction and Operation

108II(D) Covenants Running with the Land

108k72 Release or Discharge from Liability on Real Covenants

108k74 k. Acts or Omissions of Covenantor. Most Cited Cases

Evidence was sufficient to establish that developer continued to own property subject to subdivision restrictions following auction in which many lots in the subdivision were sold, permitting developer to remove restrictions following auction; developer's owner testified that the developer owned several

lots following the auction and that buyers of many of the lots had not fully performed under sales contract at time restrictions were removed.

[2] Covenants 108 ↪ 74

108 Covenants

108II Construction and Operation

108II(D) Covenants Running with the Land

108k72 Release or Discharge from Liability on Real Covenants

108k74 k. Acts or Omissions of Covenantor. Most Cited Cases

Developer had authority to remove residential restrictions on portion of property in subdivision pursuant to subdivision restrictions which included express right of alteration or amendment, as long as developer still owned land within original tract.

[3] Costs 102 ↪ 194.40

102 Costs

102VIII Attorney Fees

102k194.24 Particular Actions or Proceedings

102k194.40 k. Declaratory Judgment.

Most Cited Cases

Denying attorneys' fees to developer that prevailed in declaratory judgment action challenging its authority to remove residential restrictions in subdivision was not abuse of discretion. V.T.C.A., Civil Practice & Remedies Code § 37.009.

*682 Ed Small, Dennis R. Reese, Small, Craig & Werkenthin, Austin, for appellant.

Homer E. Dean, Jr., Roy D. Hunt, Dean & Hunt, Alice, for appellee.

Before BUTTS, BIERY and CARR, JJ.

OPINION

BUTTS, Justice.

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Wayne Baldwin, plaintiff, appeals from a take nothing judgment in favor of the Barbon Corporation, defendant, in a declaratory judgment suit. A 1985 document removed certain covenants from part of a 534 acre tract of land located in Jim Wells County. Baldwin sued to have the document declared invalid. The trial court upheld the document permitting the removal of the covenant restrictions by the 1985 document. The court filed its findings of fact and conclusions of law.

Barbon acquired the 534 acre tract in 1968 and that same year filed "Subdivision Restrictions" apparently to apply to the entire tract. At that time all of the tract was ranch land. In 1969 the surveyed subdivision plats of Barbon Estates I and Barbon Estates II were recorded. These showed that one portion of the Estates consisted of a roadway running parallel to Lake Corpus Christi shore with one tier of lake front lots on one side of the road and "inside lots" on the other. Barbon Estates occupied approximately 59 acres of the tract. Baldwin acquired his lot in Barbon Estates II in January 1978. Some parcels of waterfront property not located within the Barbon Estates had also been sold.

The Barbon Corporation reserved the right to amend the subdivision restrictions. In 1969 there was an amendment which added an additional restriction "covering the property therein described...." Another amended document was filed in 1975, still covering the entire tract. In 1982, still another amendment document was filed, which apparently applied to the entire tract of 534 acres.

The right to amend the restrictions was contained in a provision of the "Subdivision Restrictions." This same reservation was part of each new set of restrictions:

16. The directors of Barbon Corporation reserve the right in their sole discretion to amend or alter these restrictions without the consent of the owners of lots in the Subdivision until such time as all lots in the subdivision are owned by others than Barbon Corporation if it is, in the opinion of

the Directors of Barbon Corporation, for the best interest of all property owners. Where the term "Barbon Corporation" is used herein, it shall mean Barbon Corporation and its successors and assigns.

It was the amending document filed on September 5, 1985, which gave rise to the present lawsuit. The 1985 amendment provided the restrictions did not apply to the entire 534 acre tract, but only to the property located in Barbon Estates I and II, plus the earlier sold waterfront properties outside the Estates.

Baldwin sued Barbon, contending that Barbon lost its right to amend the restrictions in September because it held an absolute auction on August 30, 1985, to dispose of all the property in the 534 acres which remained unsold. He also alleged that the amendment was not in the best interest of the property owners. He asked that the 1985 document be declared void.

The trial court filed many findings of fact and conclusions of law. The pertinent findings are:

9. It was the intention of Barbon Corporation to make the restrictive covenants applicable to the residential lots in Barbon Estates Subdivisions 1 and 2, but *683 through mistake the entire 534 acres was described as the applicable tract.

10. The restrictions were amended by instrument dated January 28, 1969, ... to add paragraph 19 requiring a minimum of 1200 square feet in any dwelling house built on a lot.

* * * * *

12. Barbon Corporation began selling residential lots in the subdivisions shortly after the plats were filed of record.

13. [A new document was filed in November 1975. It was] entitled "Amendment of *Subdivision* Restrictions" which provided in part that "All Lots in said subdivision shall be known, de-

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scribed and used only as *residential* lots and for no other purpose.”

14. The property description attached to the amendment of 1975 contains an erroneous property description, purporting to be the 534 acre tract.

15. It was the intention of the president and authorized officer[s] of Barbon Corporation to restrict only the Barbon Estates Subdivisions 1 and 2 as residential lots and not the upland pasture land, which was at all times and still is being used as [a] cattle ranch.

There was a finding that only the board of directors was the approving authority for any proposed residences to be constructed in the two subdivisions. Further, the trial court found that Joe Hendricks and E.E. Baldwin (shown to be the plaintiff's father) had divided their properties, and Hendricks and his wife became sole owner and officers and directors of Barbon Corporation in 1976); and that the Baldwins owned land only within the Barbon Estates. The court further found that the corporation conveyed other waterfront tracts not within the Estates and expressly declared them to be subject to the residential subdivision restrictions which covered the Estates. The trial court also found that the 1982 amendment (“Amendment to Subdivision Restrictions”) applied to the Estates and the waterfront properties. It found the document applied to “the one family residences built on small residential lots and was not applicable to the upland ranch land, although, through mistake, the description of the entire 534 acres was attached for location purposes only.”

In finding 24 the court found that the remaining 453.508 acres were being used as a cattle ranch and not as a residential subdivision. That “Barbon Corporation ran cattle, horses, ... pigs and other animals on the upland acres and erected barns, corrals, pens, water troughs, and in no way considered the upland ranch of 453.508 acres subject to the residential restrictions.”

Another finding was that the corporation had purchased more ranch land, making a total of 1136.87 acres of upland ranch property. Finding of fact 26 is that all the ranch land was reported to the appraisal district and valued as ranch land for agricultural use. Taxes were assessed based on this use from 1982 thereafter.

In finding 28 the court found that five lots in the residential subdivision were not sold at the August 30, 1985, auction but were retained by Barbon. In addition, the sale of a ranch tract “fell through,” and was later sold. A similar finding was that Barbon still owned a small amount of land in the Estates including an access tract (road).

The court further found it was the title company which raised the question about the application of the restrictions. Because of the title company's concern, the September 1985 amendment was recorded. The court found that the “vast majority” of those who owned the ranch tracts and those who purchased at the auction expressly ratified the September 1985 amendment. It was found that Barbon created the Barbon Ranch Subdivision on September 6, 1985, which excluded the residential waterfront lots.

The trial court found that Barbon Corporation still owned property in the “lakeside subdivision” and the ranch land at the time of the amendment. It found that Barbon Corporation, “acting through its sole owner, Joe Hendricks, had the authority to file the original and amended restrictions.” It found that the 1982 and 1985 restrictions *684 were intended to apply only to the residential lots on the lakeside. The court found that the sales brochure which was distributed clearly distinguished between the residential lots and the ranch acreage for sale, making it plain that the acreage could be utilized as ranch land.

The conclusions of law were that the covenants were designed for two small compact residential lakeside subdivisions; that the document should be reformed, if needed, to reflect the true intent of the

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subdivider; that estoppel prevented plaintiff from claiming that the covenants apply only to the ranch tracts because Baldwin and "his associates" did not object to the land being used as a ranch from 1968 until trial; that plaintiff ratified and consented to the modification of the restrictive covenants and construction of ranch facilities, thereby waiving his objections; that plaintiff is estopped to claim the 1985 amending document is a violation of the restrictive covenants; and that the 1985 amendment is not void. Lastly, the court denied attorney fees to either party.

Appellant's eighteen points of error may be grouped as follows: (1) (Points 1-6) There was no evidence or insufficient evidence to support the trial court's findings and conclusions that the original 1968 restrictions and the 1969, 1975 and 1982 restrictions were intended to and could apply only to the platted Barbon Estates lots or small lakefront lots and not to the entire 534 acres, and that Barbon was entitled to reformation of the recorded restrictions; (2) (Points 7-9) The trial court erred in finding that defendant had authority to file the 1985 amended restrictions because the amendment completely removed all restrictions and was therefore not an authorized amendment, and because a preponderance of the evidence showed that the amendment was not in "the best interest of all property owners"; (3) (Points 10-14) The trial court erred in finding that on September 5, 1985, the defendant owned property within the 534 acre tract and was therefore authorized to record the amendment, because there was no evidence or insufficient evidence to support that finding; (4) (Points 15-18) The trial court erred in finding that Baldwin had waived and abandoned any applicable restrictions as to all but the platted Barbon Estates lots, and was estopped from invoking the restrictions. In addition, Barbon brings one cross-point of error: that the trial court erred in failing to award it attorney fees because appellee prevailed in the declaratory judgment action.

RETENTION OF OWNERSHIP & AUTHORITY TO AMEND

[1] In points of error ten through fourteen appellant contests the trial court's finding that Barbon was authorized to amend the restrictions on the 534 acre tract because Barbon still owned property within that tract. The power of Barbon to change the restrictions was governed by paragraph 16 in the 1982 document reserving that right.

Appellant complains of the court failing to find that after the auction of August 30, 1985, all of the property in the 534 acre tract was "owned by others than Barbon Corporation" within the meaning of paragraph 16 as set out above. The court found that Barbon had retained lots and therefore "owned" property in the tract. The evidence supports that finding. If Barbon owned property in the tract, it had authority under paragraph 16 to amend or alter the restrictions on September 5, 1985.

There was testimony that on August 30, 1985, much of the 534 acres still owned by Barbon was auctioned off, with the exception of a designated public accessway to the lake and a connecting road that reached each portion of the 534 acres. The sales contracts for the tracts sold at the August 30 auction called for the sales to close on or before September 30, 1985.

However, Hendricks, who stated he "owned Barbon Corporation," testified that at the time he executed the 1985 amendment and through the date of trial the Barbon Corporation still owned several lots in Barbon Estates I. Also, buyers at auction of several lots had not fully performed under sales contracts by September 5, 1985, the date of the amendment. Appellant*685 suggests in his brief that Hendricks' testimony means that five lots were owned by Hendricks personally, but not by Barbon Corporation, and therefore Barbon could not claim authority to amend on the basis of those five lots. However, the evidence does not sufficiently establish this distinction in order for appellant to show that the court's finding in this regard constitutes error. It was for the judge, as trier of fact, to weigh and interpret the testimony.

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Appellant further argues that although many of the purchases of lots at the 1985 auction had not been closed, equitable title passed from Barbon, so that Barbon did not “own” property within the meaning of paragraph 16. Appellant points to cases where it is established that advantage inures to, and loss is borne by, the equitable interest owner. Appellant also argues by analogy that in an eminent domain context, the equitable interest owner is considered the real owner. These holdings, however, arise in different contexts than the one at hand, and in any case Barbon is correct in pointing out that appellant did not establish at trial the existence of equitable title to all auctioned lots as of September 6, 1985 in others than Barbon. See *Trans-World Bonded Warehouses & Storage, Inc. v. Garza*, 570 S.W.2d 2, 5 (Tex.Civ.App.-San Antonio 1978, writ ref’d n.r.e.); see also *French v. Diamond Hill-Jarvis Civic League*, 724 S.W.2d 921, 923 (Tex.App.-Fort Worth 1987, writ ref’d n.r.e.).

Appellant also takes issue with the finding of the trial court that purchasers at the 1985 auction effectively ratified the 1985 amendments. We agree that this was not necessarily a meaningful finding with regard to Baldwin’s claims. However, neither the finding of Barbon’s continued ownership of tract lots on September 5, 1986, nor the judgment itself, need rest upon the ratification finding. Appellant’s points ten through fourteen are overruled.

[2] In points seven through nine appellant contends that the trial court erred because of its finding that Barbon had authority to file the 1985 amended restriction. The argument in these points is that (a) an amendment could not completely remove all restrictions from a portion of the restricted acreage and (b) under the terms of the then-existing 1982 restrictions (see paragraph 16, quoted above), the amendment made in 1985 was not “in the best interest of all property owners.”

There is no question that from 1968 until 1985 Barbon had authority to amend or alter restrictions and it did so several times between 1969 and 1982. Hendricks testified that the 1985 amendments did

not change any restrictions from the 1982 document as applied to the “Subdivision” land (i.e. meaning the Barbon Estates). He said the only effect of the 1985 document was to completely remove any restrictions from portions of the 534 acre tract (the ranch land).

Essentially, appellant argues that “amend or alter” cannot mean delete or remove, or at least that it cannot mean the removal of all the restrictions on a portion of land. However, there is no authority cited to indicate that Barbon could not retain the power to remove restrictions.

Appellant argues the following standard from *Hanchett v. East Sunnyside Civic League*, 696 S.W.2d 613, 615 (Tex.App.-Houston [14th Dist.] 1985, no writ) is applicable here:

In order for a subsequent instrument to amend the original restrictive covenants governing a subdivision, three conditions must be met. First, the instrument creating the original restrictions must establish both the right to amend such restrictions and the method of amendment. *Couch v. Southern Methodist University*, 10 S.W.2d 973, 974 (Tex.Comm’n App.1928, judgment adopted); *Loving v. Clem*, 30 S.W.2d 590 (Tex.Civ.App.-Dallas 1930, writ ref’d). [footnote omitted] Second, the right to amend such restrictions implies only those changes contemplating a correction, improvement, or reformation of the agreement rather than a complete destruction of it. *Couch v. Southern Methodist University*, 10 S.W.2d at 974. Third, the amendment to the restrictions may not be illegal or against public policy. *686 *Harrison v. Air Park Estates Zoning Committee*, 533 S.W.2d 108, 111 (Tex.Civ.App.-Dallas 1976, no writ).

Paragraph 16 established the right of Barbon to amend or alter and the method of so doing. There is nothing in the record to indicate illegality or conflict with public interest in the 1985 amendments. Furthermore, since paragraph 16 gave Barbon the authority to amend or alter restrictions, removing

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restrictions on some portions would not be destroying the agreement within the meaning of *Couch, supra*. *Couch* indicated that even where amendments completely destroyed restrictions, if the power to do so was recorded in the deed, the agreement was not to be considered destroyed. 10 S.W.2d at 974. See *Bryant v. Lake Highlands Development Co. of Texas, Inc.*, 618 S.W.2d 921, 923 (Tex.Civ.App.-Fort Worth 1981, no writ).

Neither are we convinced by appellant's contention that Barbon had no authority to remove restrictions on a portion of the tract because doing so was not in the best interest of all the property owners within the meaning of paragraph 16. The operative language here is "... if it is, in the opinion of the Directors of Barbon Corporation, for the best interest of all property owners." Appellant argues that the trier of fact was required to find that Barbon exercised bad faith in forming its opinion, so as to entitle the appellant to declaratory judgment. There is nothing in the evidence to show bad faith. We offer no opinion whether proof of "bad faith" could overcome the authorizing language in paragraph 16. Points of error seven through nine are overruled.

Because we agree with the trial court in its findings that Barbon was authorized to make the 1985 amendments and that document is valid, it is unnecessary to reach the question of intent as to the scope of acreage to be covered by the restrictions in years before 1985. Neither is it necessary to determine whether Baldwin could be considered to have waived restrictions if they applied to the entire 534 acres before September 5, 1985. For the same reasons we do not address the estoppel argument (Points fifteen through eighteen). The same is true of points of error one through six. These last points are either not necessary to reach or already answered in previous discussion.

Plaintiff-grantee purchased his property subject to the Subdivision Restrictions which clearly included an express right of alteration or amendment. The effect of the 1985 amendment was to limit the residential restrictions to the two estates and waterfront

properties. Compare *Bryant v. Lake Highlands Development Company*, 618 S.W.2d at 923. Thus, when the owner-grantor subdivided approximately 60 acres and applied the residential restrictions to those lots, and, further, also purportedly applied the same restrictions to the remaining land in the tract, but retained the express right to alter or amend the restrictions, the owner-grantor could amend the restrictions to limit their application so long as the owner-grantor still owned land within the original tract. The evidence supports the finding that Barbon still owned land within the tract. We hold the trial court did not err in declaring the 1985 amendatory document valid.

[3] In its cross-point of error Barbon Corporation contends that it should have been awarded attorney fees as the prevailing party in the declaratory judgment action brought by Baldwin. Appellee requested attorney fees under TEX.CIV.PRAC. & REM.CODE ANN. § 37.009. That statute permits the granting or denial of attorney fees at the sound discretion of the trial court; the trial court's judgment will not be reversed on appeal absent a clear showing of abuse of discretion. See *Oake v. Collin County*, 692 S.W.2d 454, 455 (Tex.1985). No such showing has been made by appellee in this case. The cross-point is overruled.

The judgment is affirmed.

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END OF DOCUMENT

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(d) hold a public hearing on the proposed ordinance before making its final recommendation to the legislative body.

(2) The municipal legislative body may adopt or reject the ordinance either as proposed by the planning commission or after making any revision the legislative body considers appropriate.

Laws 2005, c. 254, § 51, eff. May 2, 2005.

Historical and Statutory Notes

Prior Laws:

Laws 1991, c. 235, § 42

Laws 1992, c. 23, § 21.

C 1953, § 10-9-802.

Library References

Zoning and Planning ⇨ 134

Westlaw Key Number Search 414k134

C J S Zoning and Land Planning §§ 12 to 16.

Notes of Decisions

Notice and hearing 1

1. Notice and hearing

City planning and zoning commission failed to comply with statutory requirements of public hearing prior to adoption of impact fee ordinance where advance notice of purpose of meeting was

not provided to public, ordinance in issue had not yet been drafted, and public did not have opportunity to express their views; it was not sufficient that ordinance was adopted at regularly scheduled city council meeting U.C.A.1953, 10-9-1 to 10-9-30. Call v. City of West Jordan, 1986, 727 P.2d 180. Zoning And Planning ⇨ 134.1; Zoning And Planning ⇨ 135

§ 10-9a-603. Plat required when land is subdivided—Approval of plat—Owner acknowledgment, surveyor certification, and underground utility facilities owner approval of plat—Recording plat

(1) Unless exempt under Section 10-9a-605 or excluded from the definition of subdivision under Subsection 10-9a-103(44), whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

(a) a name or designation of the subdivision that is distinct from any plat already recorded in the county recorder's office;

(b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

(d) every existing right-of-way and easement grant of record for underground facilities, as defined in Section 54-8a-2, and for other utility facilities.

(2)(a) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's ordinances and this part and has been approved by the culinary water authority and the sanitary sewer authority, the municipality shall approve the plat.

(b) Municipalities are encouraged to receive a recommendation from the fire authority before approving a plat.

(3) The municipality may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4)(a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgment of conveyances of real estate and shall obtain the signature of each individual designated by the municipality.

(b) The surveyor making the plat shall certify that the surveyor:

- (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act,
- (ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements, and
- (iii) has placed monuments as represented on the plat
- (c)(i) As applicable, the owner or operator of the underground and utility facilities shall approve the
 - (A) boundary, course, dimensions, and intended use of the right-of-way and easement grants of record,
 - (B) location of existing underground and utility facilities, and
 - (C) conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision
- (ii) The approval of an owner or operator under Subsection (4)(c)(i)
 - (A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location, and
 - (B) does not affect a right that the owner or operator has under
 - (I) Title 54, Chapter 8a, Damage to Underground Utility Facilities,
 - (II) a recorded easement or right-of-way,
 - (III) the law applicable to prescriptive rights, or
 - (IV) any other provision of law
- (5)(a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, *within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated*
- (b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable

Laws 2005, c 254, § 52, eff May 2, 2005, Laws 2006, c 163, § 2, eff May 1, 2006, Laws 2006, c 240, § 5, eff May 1, 2006, Laws 2006, c 257, § 6, eff May 1, 2006, Laws 2007, c 160, § 1, eff April 30, 2007, Laws 2007, c 188, § 2, eff April 30, 2007, Laws 2008, c 326, § 3, eff May 5, 2008

Historical and Statutory Notes

Composite section by the Office of Legislative Research and General Counsel of Laws 2006, c 163, § 2, Laws 2006, c 240, § 5, and Laws 2006, c 257, § 6	Laws 1995, c 180, § 4
	Laws 1995, c 181, § 1
	Laws 1997, c 151, § 2
Composite section by the Office of Legislative Research and General Counsel of Laws 2007, c 160, § 1 and Laws 2007, c 188 § 2	Laws 1998, c 13, § 9
	Laws 2000, c 209, § 3
	Laws 2001, c 241, § 1
Prior Laws	Laws 2003, c 211, § 5
Laws 1991, c 235, § 44	C 1953, § 10-9-804

Cross References

County recorder, generally, see § 17-21-1 et seq

Library References

Zoning and Planning C382.1
Westlaw Key Number Search 414k382.1
CJS Zoning and Land Planning § 197

Notes of Decisions

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1. Council-mayor form of government

Approval of subdivision plats by mayor of city which has adopted council mayor form of govern