

2008

LD III, LLC, a Utah limited liability company v.
BBRD, L.C., a Utah limited liability company;
Richard W. Davis, an individual; Tim Herrera, an
individual; Mountain West Title Company; and
BBRD, Inc., an alter ego of Richard W. Davis : Brief
of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

LD III, LLC, a Utah limited liability
company,

Plaintiff-Appellant,

vs.

BBRD, L.C., a Utah limited liability
company; RICHARD W. DAVIS, an
individual; TIM HERRERA, an
individual; MOUNTAIN WEST TITLE
COMPANY; and BBRD, INC., an alter
ego of Richard W. Davis,

Defendants-Appellees.

APPELLEES' BRIEF

Case No. 20080839 CA

**APPEAL FROM FINAL ORDER OF THE FOURTH DISTRICT COURT
UTAH COUNTY
THE HONORABLE FRED D. HOWARD**

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LIST OF ALL PARTIES IN THE DISTRICT COURT

The parties to the case in the District Court are set forth in the caption on the cover page.

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STATEMENT OF JURISDICTION

Defendants-appellees supplement the statement of jurisdiction in plaintiff-appellant LD III, LLC's ("LDIII") Opening Brief, as follows:

The Order Granting Defendants' Motion to Enforce Settlement Agreement and Strike Trial Dates entered on October 9, 2008 [Record on Appeal ("R.") 450-53, Addendum ("Add.") E hereto] is a final appealable Order. Subsequent to that Order, defendants sought to hold LDIII and its owners and managers in contempt of court for LDIII's refusal to comply with the Order. (R. 454, *et. seq.*) The contempt proceedings ultimately were continued, pending the outcome of this appeal. (R. 687-689)

The contempt proceedings did not deprive the October 9, 2008 Order of finality. Instead, to the extent they were criminal contempt proceedings, they were separate proceedings that ultimately would result in a separate, final appealable Order. *See, Von Hake v. Thomas*, 759 P.2d 1162, 1167 (Utah 1988). To the extent they were civil contempt proceedings, they were proceedings to enforce the October 9, 2008 Order, analogous to supplemental proceedings to enforce a final money judgment, and again did not deprive that Order of finality. *Id.* at n. 3.¹

LDIII filed its notice of appeal on September 29, 2008 (R. 430-32), before the October 9, 2008 Order was entered, but after the district court announced its decision on

¹ To the extent defendants took a contrary position in the district court, they did so without the benefit of further research done for purposes of this appeal.

September 23, 2008. (R. 416, Add. D hereto) Therefore the notice of appeal was timely under *Utah R. App. P. 4(c)*.

STATEMENT OF ISSUES, PRESERVATION OF ISSUES AND STANDARD OF REVIEW

1. Whether the district court erred in finding that the parties reached agreement on the terms of a settlement, which permitted defendant Richard W. Davis (“Davis”) to require plaintiff LDIII to transfer portions of the subject real property and appurtenant water rights/shares, directly to Davis’ designees. This issue was preserved in the district court. (R. 255-69) This is an issue of fact, subject to the clearly erroneous standard of review. *See, In re Estate of Flake*, 2003 UT 17, ¶¶ 27, 28, 71 P.3d 589, *rehearing den.*, 2003 Utah LEXIS 68 (Utah June 17, 2003) (ultimate legal conclusion of whether oral settlement agreement was reached depended on subsidiary issues of fact, including consideration of all surrounding circumstances, and trial court’s findings thereon were subject to clearly erroneous standard of review). In order to show that a finding of fact is clearly erroneous, the appellant must marshal all of the evidence in the record supporting the finding, and then demonstrate that the evidence is legally insufficient to support that finding, viewing the evidence in the light most favorable to the lower court. *See, Wilson Supply, Inc. v. Fradan Manufacturing Corp.*, 2002 UT 94, ¶¶ 21, 22, 54 P.3d 1177. Also, “[t]he decision of a trial court to summarily enforce a settlement agreement will not be reversed on appeal unless it is shown that there was an

abuse of discretion.” *Mascaro v. Davis*, 741 P.2d 938, 942-43, n. 11 (Utah 1987) (citations omitted).

2. Whether the implied covenant of good faith and fair dealing in the settlement agreement required LDIII to close the transaction, after Davis resolved LDIII’s only objection to the form of the closing documents, by agreeing to take title in his own name. This issue was preserved in the district court. (R. 406-08) A lower court decision may be affirmed on any ground argued to it. *See, Low v. City of Monticello*, 2002 UT 90, ¶ 34, 54 P.3d 1153.

3. Whether LDIII’s appeal is frivolous, and if so, whether this Court should award defendants damages against LDIII and/or its counsel, consisting of defendants’ reasonable attorney fees incurred on appeal. This issue could not have been raised in the district court, and there is no standard of review.

DETERMINATIVE STATUTES AND RULES

Utah R. App. P. 33 provides as follows:

Rule 33. Damages for delay or frivolous appeal; recovery of attorney’s fees.

(a) *Damages for delay or frivolous appeal.* Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party’s attorney.

(b) *Definitions.* For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based

on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

(c) *Procedures.*

(c)(1) The court may award damages upon request of any party or upon its own motion. A party may request damages under this rule only as part of the appellee's motion for summary disposition under Rule 10, as part of the appellee's brief, or as part of a party's response to a motion or other paper.

(c)(2) If the award of damages is upon the motion of the court, the court shall issue to the party or the party's attorney or both an order to show cause why such damages should not be awarded. The order to show cause shall set forth the allegations which form the basis of the damages and permit at least ten days in which to respond unless otherwise ordered for good cause shown. The order to show cause may be part of the notice of oral argument.

(c)(3) If requested by a party against whom damages may be awarded, the court shall grant a hearing.

STATEMENT OF THE CASE

Nature of the Case

Originally, this action involved the parties' disputes over their respective rights under an August 29, 2007 Real Estate Purchase Contract (the "REPC" or the "Contract"). Later, the case evolved into a dispute over whether the parties had agreed to settle the case, on terms essentially the same as those in the REPC. The latter dispute is the subject of this appeal.

Course of Proceedings and Disposition Below

Plaintiff LDIII's Complaint alleged that the REPC expired by its terms, that a notice of interest defendants recorded against the real property that was the subject of the REPC was a wrongful lien under *Utah Code Ann.* §§ 38-9-1, *et .seq.*, and asserted a petition to nullify the alleged wrongful lien, and several other causes of action against defendants based on those allegations. (R. 3-14) Defendants' Answer and Counterclaim alleged that the REPC remained in effect, as amended by the parties, denied that the notice of interest was a wrongful lien, and asserted claims against LDIII for reformation of the REPC, declaratory relief, quiet title, specific performance and damages. (R. 18-44)

LDIII's petition to nullify wrongful lien was heard on February 22, 2008. The district court did not expressly rule on the petition, and instead set the case for trial on the liability issues. (R. 111)

Discovery proceeded, and shortly before the scheduled trial, defendants filed a motion to enforce settlement agreement and strike trial dates, a supporting memorandum, and three affidavits. (R. 255-342) LDIII filed a memorandum opposing the motion (R. 345-62), but no opposing affidavits, and defendants filed a reply memorandum. (R. 417-23) The motion was heard on September 17, 2008, and the court struck the trial date, requested supplemental briefing on the enforceability of the settlement agreement, and scheduled a telephone conference for September 23, 2008. (R. 365, 393) The parties filed their supplemental briefs. (R. 366-395; 396-415)

In the September 23, 2008 telephone conference, the court granted defendants' motion to enforce the settlement agreement, and ordered LDIII to close the real estate transaction. (R. 416, Add. D hereto) LDIII filed its notice of appeal on September 29, 2008. (R. 430-432) On October 9, 2008, the court entered its written Order Granting Defendants' Motion to Enforce Settlement Agreement and Strike Trial Dates.² (R. 450-53, Add. E hereto)

The court found as follows:

. . . Defendant Richard W. Davis ("Davis") made no change to the settlement agreement with plaintiff LD III, LLC ("LDIII"), material or otherwise. The settlement agreement is and always was that LDIII would convey the subject parcels of real property and water rights to Davis or his designee. However, Davis has agreed to take title in his own name because the issue is not a material one.

The court then ordered LDIII to close the real estate transaction. (Add. E hereto, R. 452, emphasis added) The above-quoted language is almost identical to that in the minute entry for the September 23 telephone conference:

The court finds that Davis has made no change to the Settlement Agreement, material or otherwise.

The Agreement is, and always has been, that the transfers could be made to Davis' designees. Because the issue is not a material one, Davis has agreed to take title in his own name.

(Add. D hereto, R. 416, emphasis added)

² As indicated above, thereafter, defendants sought to hold LDIII and its owner and managers in contempt of court for LDIII's refusal to close the real estate transaction in accordance with the October 9, 2008 Order. (R. 454, *et.seq.*) The contempt proceedings were continued, pending the outcome of this appeal. (R. 687-89)

STATEMENT OF FACTS

On July 9, 2008, Michael N. Zundel, lead counsel for defendants, and James A. Boevers, co-counsel for defendants, participated in a telephone conference with Denver C. Snuffer, Jr., lead counsel for LDIII. [Affidavit of Michael N. Zundel (“Zundel Aff.”), ¶ 6 (R. 287) (Add. A hereto); Affidavit of James A. Boevers (“Boevers Aff.”), ¶ 3 (R. 305) (Add. B hereto)] During this telephone conference, Mr. Zundel and Mr. Snuffer agreed, on behalf of their respective clients, to settle the district court action by completing the sale of the real property and water rights at issue, from plaintiff to defendant Davis, “or his designee,” on the same terms as originally agreed to by the parties, as evidenced by the REPC, with credit for \$300,000 previously paid to LDIII, but without the accrual of interest or attorney fees. [Zundel Aff., ¶ 7 (R. 286, emphasis added) (Add. A hereto); Boevers Aff. ¶ 4 (R. 305, emphasis added) and Ex. A thereto (R. 297-301) (Add. B hereto)]

The \$300,000 credit to Davis or his designee was based on LDIII’s sale, pursuant to the REPC, of a portion of the real property and appurtenant water rights/stock at issue directly to Charles Warner, one of Davis’ designees, prior to the filing of the district court action. [Affidavit of Charles Warner (R. 60-64); Affidavit of Tim Herrera (“Herrera Aff.”), ¶ 10 and Ex. C thereto (R. 104, 90-92)]

During the above July 9, 2008 telephone conference, Mr. Snuffer and Mr. Zundel both stated that they had spoken with their respective clients, who had agreed to settle the

case on the above basis.³ Mr. Zundel and Mr. Snuffer further agreed during this telephone conversation that the settlement documentation would consist of the documentation necessary to close the real estate transaction in accordance with the REPC, along with a stipulation and order dismissing this action with prejudice, each party to bear its own attorney fees and costs. [Zundel Aff. ¶ 8 (R. 286) (Add. A hereto); Boevers Aff., ¶ 5 (R. 305) (Add. B hereto)]⁴

On July 11, 2008, Mr. Boevers sent Mr. Snuffer an e-mail confirming the above terms of the settlement, and asking Mr. Snuffer to work with Mr. Boevers' and Mr. Zundel's partner, Richard A. Thornton, who would be primarily responsible for representing Mr. Davis in closing the real estate transaction. [Boevers Aff. ¶ 6 and Ex. B thereto (R. 304, 295) (Add. B hereto)]. Among other things, Mr. Boevers' e-mail confirmed that pursuant to the settlement agreement, the real property and water rights would be sold to Davis "or his designee." (Add. B hereto, R. 295, emphasis added)

³ In ¶¶ 8 and 9 on p. 6 of LDIII's opening brief, LDIII alleges that Mr. Zundel only made a settlement offer during the July 9 telephone conference, that Mr. Snuffer stated he could not respond until after he had conferred with LDIII, and that Mr. Snuffer responded to the offer several days later by stating that LDIII was willing to consider it. These allegations (in LDIII's statement of facts) are false, directly contradicted by the Zundel and Boevers affidavits, and not supported by any evidence in the record.

⁴ The factual allegation in ¶ 10 on p. 6 of LDIII's opening brief that "... both parties knew that a settlement would have to be in writing to be enforceable. . ." is also false and made without citation to the record. In ¶¶ 10-13 on pp. 6-7 of its opening brief, LDIII further alleges as a fact that the parties agreed that in addition to the closing documents and stipulation and order of dismissal, there would be a separate settlement agreement containing terms upon which the parties had not yet agreed. Again, that allegation is false, contradicted by the Zundel and Boevers affidavits, and not supported by any evidence in the record.

On July 18, 2008, Mr. Thornton sent Mr. Snuffer an e-mail, discussing the transfer of certain water rights and other matters regarding the closing of the real estate transaction pursuant to the settlement agreement. [Affidavit of Richard H. Thornton (“Thornton Aff.”), ¶ 5 (R. 341) and Ex. A thereto (R. 332-37) (Add. C hereto)] On July 28, 2008, Mr. Thornton sent an e-mail to Mr. Snuffer attaching drafts of the closing documents, and discussing other matters regarding the closing. [Thornton Aff. ¶ 6 (R. 340-41) and Ex. B thereto (R. 309-330) (Add. C hereto)]. Mr. Thornton’s July 28, 2008 e-mail to Mr. Snuffer states in part:

Attached for your review are drafts of the . . . closing documents for the sale of [sic] LDIII property to Richard Davis. Mr. Davis desires to have the different parcels conveyed to affiliated companies and designees as shown in the deed.

. . .

Please review these documents . . . and get back to me as soon as possible with your comments.

(Add. C hereto, R. 330, emphasis added)⁵

Mr. Thornton never received responses from Mr. Snuffer to either Mr. Thornton’s July 18, or 28, 2008 e-mails. [Thornton Aff., ¶ 6 (R. 340) (Add. C hereto)] Later, Mr.

⁵ Addendum 3 to LDIII’s Opening Brief omits the first two pages of the hard copy of Mr. Thornton’s July 28 e-mail containing the quoted language. Also, in ¶¶ 14, 16, and 18 on pp. 7-9 of LDIII’s opening brief, LDIII alleges as a fact, that Davis’ purpose in structuring the transaction in this fashion was to evade income taxes. Again, however, LDIII cites to no evidence (as opposed to argument) supporting this defamatory allegation. Davis admits that his business plan was to find buyers for the various parcels of the real property who were willing to pay enough for those parcels that Davis would receive one of the parcels as his profit on the transaction. That does not equate to tax evasion.

Thornton discovered an error in the legal description in one of the deeds, and prepared a corrected deed. [Thornton Aff. ¶ 7 (R. 340) and Ex. C thereto (R. 307) (Add. C hereto)]

On July 29, 2008, Mr. Zundel sent an e-mail to Mr. Snuffer, confirming that Mr. Thornton had sent Mr. Snuffer drafts of the closing documents the preceding day, and inquiring about the timing of his response and the status of remaining discovery. Mr. Zundel wanted to preserve September 17-19, 2008 trial dates, and the ability to complete remaining discovery by mid-August, 2008, so that in the event LDIII breached the settlement agreement, defendants could elect to enforce the agreement, or to rescind it and proceed with trial. [Zundel Aff., ¶ 10 (R. 285-86) and Ex. A thereto (R. 280) (Add. A hereto)]

On July 30, 2008, Mr. Snuffer sent an e-mail to Mr. Zundel, responding to Mr. Zundel's e-mail of the previous day. In his July 30 e-mail, Mr. Snuffer states, among other things: “. . . [W]e also have a settlement which will make it unnecessary to waste time on discovery I believe. I cannot imagine a problem will occur which we cannot resolve in papering the settlement of this case.” (Emphasis added) Mr. Snuffer's July 30 e-mail also indicated he would get back to Mr. Zundel later that week regarding the closing documents. [Zundel Aff., ¶ 11 (R. 285) and Ex. B thereto (R. 278) (Add. A hereto)]

Also on July 30, 2008, Mr. Boevers sent a letter to Daniel B. Garriott, co-counsel of record for plaintiff in this action, confirming a telephone conversation Mr. Boevers had with Mr. Garriott, in which Mr. Garriott agreed to an extension of time for

defendants' responses to certain discovery requests, pending completion of the settlement. [Boevers Aff., ¶ 7 (R. 304) and Ex. C thereto (R. 289) (Add. B hereto)]

Mr. Snuffer and Mr. Zundel exchanged e-mails on July 31, 2008. Mr. Snuffer's e-mail indicated that Ms. Mower wanted another attorney, Bart Bailey, to review the closing documents, but that Mr. Bailey's father had died the preceding day, so that Mr. Snuffer would not be able to get back to Mr. Zundel on the closing documents until the end of the following week. Mr. Snuffer further stated: "However, I still retain the view that further discovery is unnecessary." [Zundel Aff., ¶ 12 (R. 285) and Ex. C thereto (R. 276) (Add. A hereto)] On August 8 and 18, 2008, Mr. Zundel sent e-mails to Mr. Snuffer inquiring about the status of the settlement, remaining discovery and the trial dates. [Zundel Aff., ¶ 13 (R. 284) and Ex. D and E thereto (R. 272, 274) (Add. A hereto)]

After Mr. Zundel's July 31, 2008 exchange of e-mails with Mr. Snuffer, Mr. Zundel received no communication from him or anyone else in Mr. Snuffer's office, until August 20, 2008. Mr. Garriott and Mr. Zundel exchanged e-mails on August 20, 2008. Mr. Garriott's August 20 e-mail states: "Denver is out of town until tomorrow and has asked me to inform you that the terms of the proposed settlement of this matter are not acceptable to our client," and that Mr. Snuffer would call Mr. Zundel the following day regarding completion of discovery. Mr. Zundel's responding August 20 e-mail states: "Our deal was that the original contract terms would apply. We have demanded nothing in addition. We have a deal." Mr. Zundel's e-mail also indicated that defendants would

file a motion to enforce the settlement agreement, and he inquired about what terms were not acceptable to plaintiff. [Zundel Aff., ¶ 14 (R. 284) and Ex. F thereto (R. 270) (Add. A hereto)]

Mr. Zundel did not receive a response to the inquiry in his August 20 e-mail. [Zundel Aff., ¶ 15 (R. 284) (Add. A hereto)]⁶ Thus, defendants did not learn what the so called unacceptable terms of the settlement agreement were, until September 10, 2008 when LDIII filed its memorandum in opposition to defendants' motion to enforce settlement agreement. LDIII's memorandum disclosed to defendants for the first time that LDIII's only objection was that the draft closing documents Mr. Thornton e-mailed to Mr. Snuffer on July 28, 2008 proposed transferring portions of the subject real property and water rights from LDIII to certain designees of Mr. Davis. (R. 345-64)⁷

These designees, Stephen and Jennifer Sandstrom (as to one parcel), SWLRD, LLC, a/k/a SWRD, LLC, PBRD, LLC, the RW Davis Family Protection Trust, and BBRD, LC (R. 323-327) are all affiliates of Mr. Davis, except for the Sandstroms. (R. 374-81; R. 693, pp. 15, 29) Prior to the filing of this action, Davis had arranged to

⁶ In its memorandum opposing defendants' motion to enforce the settlement agreement in the district court, LDIII admitted or did not dispute virtually all of the foregoing facts. (R. 358-62)

⁷ The charts in n. 5 and 6 on p. 8 of LDIII's opening brief, purporting to compare the REPC [(Ex. A to Boevers Aff., R. 297-301) (Add. B hereto)] with the drafts of the closing documents Mr. Thornton e-mailed to Mr. Snuffer on July 28 are misleading at best. For example, the REPC does not specify the amount of acreage to be purchased. The REPC also does not specify the number of shares of water stock to be purchased and instead refers to the sale of "All Pertinent [sic] Water Stock and 2 Wells Approx. 33 Acre FT." In addition, LDIII's purported comparison does not take into account the Warner transaction discussed above.

have a parcel of the subject real property (and appurtenant water rights) transferred directly from LDIII to the Sandstroms. (R. 396)

LDIII may not have known that the transferees were the Sandstroms. However, prior to the lawsuit, LDIII (1) was aware that Davis had another designee (like Mr. Warner) lined up (the Sandstroms), (2) was informed that this designee's purchase money was escrowed at the title company, and (3) was willing to sell another portion of the subject real property to that designee, and to take that designee's purchase money, and credit Mr. Davis with that payment under the REPC, just as LDIII did with Mr. Warner, so long as this occurred in a timely fashion. [Deposition of David Ray Simpson, pp. 132-35 (R. 399-403);⁸ Hererra Aff., ¶ 11 (R. 104); Davis Affidavit ¶¶ 13-16 (R. 73-74); Defendants' Initial Disclosures, ¶ A.9. (R. 396)]

Nevertheless, on September 12, 2008, Mr. Thornton and Mr. Zundel sent an e-mail to Mr. Snuffer confirming that Davis would take title to the subject real property either in his name, or in the name of BBRD (R. 417), as called for by the REPC. (Add. B hereto, R. 301) At the hearing on defendants' motion to enforce the settlement agreement, counsel for Davis tendered revised closing documents reflecting the transferee as Davis only. (R. 693, pp. 14, 21) In addition, Davis had funds sufficient to close the transaction, which were in escrow at defendant Mountain West Title Company, and he was prepared to close immediately. (R. 693, p. 6)

⁸ LDIII has contended that Mr. Simpson lacked authority to act on its behalf. However, at all relevant times prior to the lawsuit he was one of LDIII's managers. [Simpson Affidavit (filed by LDIII), ¶ 2 (R. 17)]

SUMMARY OF ARGUMENT

The district court found that the parties reached agreement on a settlement, the terms of which allowed Davis to require LDIII to transfer portions of the subject real property, and appurtenant water rights/shares, directly to Davis' designees. The evidence in support of those findings is undisputed, and LDIII has made no attempt to marshal that evidence.

The settlement agreement is evidenced by e-mail exchanges between counsel for LDIII and counsel for defendants, who each had the requisite settlement authority. The terms of the settlement are further evidenced by the written REPC, upon which the settlement was partially based. Thus, contrary to LDIII's arguments, there is no statute of frauds issue here, either because the agreement was not required to be memorialized in a writing signed by the parties, or because it was adequately documented as set forth above.

The parties, through their respective counsel, further agreed that the only additional documentation of the settlement would be the documentation necessary to close the real estate transaction in accordance with the REPC, and a stipulation and order of dismissal. Counsel for defendants prepared proposed closing documents and e-mailed them to counsel for LDIII. This e-mail highlighted that Davis was proposing transfers directly from LDIII to his designees.

This proposal was consistent with the settlement agreement, and was neither a counter offer nor a material change to the settlement agreement. Transfers by LDIII

directly to Davis' designees were also consistent with the parties' pre-lawsuit course of conduct under the REPC. In addition, the REPC had no anti-assignment provision.

After receiving the proposed closing documents, LDIII's counsel confirmed that the parties had reached a settlement agreement. Three weeks later, LDIII's counsel reneged and contended, without explanation, that there was no settlement agreement. Counsel for defendants' request for an explanation was ignored.

LDIII's response to defendants' motion to enforce the settlement agreement finally disclosed that, notwithstanding LDIII's obligation under the settlement agreement to transfer directly to Davis' designees, LDIII was objecting to such transfers, alleging they were an attempt by Davis to commit tax fraud. There is no evidence in the record to support that defamatory allegation.

Nevertheless, Davis resolved LDIII's only objection to the form of the closing documents, by agreeing to accept the transfers of the subject real property and appurtenant water to him, rather than his designees, tendered the closing funds and was ready willing and able to close. However, LDIII still refused to close, in violation of the implied covenant of good faith and fair dealing.

Thus, this Court should affirm the district court order enforcing the settlement agreement. In addition, pursuant to *Utah R. App. P. 33*, this Court should determine that LDIII's appeal is frivolous, because there is no factual basis for it. LDIII fails to marshal the evidence in support of the district court findings of fact, and misrepresents the facts that are in the record. Defendants should be awarded their damages for the frivolous

appeal, against LDIII and/or its counsel, consisting of defendants' reasonable attorney fees incurred on this appeal.

ARGUMENT

I. THE DISTRICT COURT PROPERLY FOUND THAT THE PARTIES REACHED AGREEMENT ON A SETTLEMENT WHICH ALLOWED DAVIS TO REQUIRE TRANSFERS DIRECTLY TO DAVIS' DESIGNEES, AND LDIII FAILED TO MARSHAL THE EVIDENCE IN SUPPORT OF THOSE FINDINGS

Settlement Agreements may be summarily enforced upon motion, without an evidentiary hearing. *See, Goodmansen v. Liberty Vending Systems, Inc.*, 866 P.2d 581, 584, n. 2 (Utah App. 1993); *L&A Drywall, Inc., v. Whitmore Construction Co., Inc.*, 608 P.2d 626, 629 (Utah 1980). Contrary to LDIII's statute of fraud argument, a settlement agreement is enforceable even if it is not signed by the parties to the agreement. *Goodmansen, supra*, 866 P.2d at 584-86 (enforcing settlement agreement created by exchange of correspondence between counsel).⁹

If one party to a settlement agreement breaches the agreement, the other party may elect either to rescind the agreement and pursue the underlying action, or enforce the agreement. *L&A Drywall, supra*, 608 P.2d at 629. Here, Davis elected to enforce the settlement agreement with LDIII. [Ex. F to Zundel Aff. (R. 270) (Add. A hereto)]

⁹ Even if the statute of frauds applicable to real estate transactions applied here, it was satisfied by the e-mails between counsel for the parties, and the REPC incorporated into the settlement agreement. *See, Sacramento Baseball Club, Inc. v. The Great Northern Baseball Co.*, 748 P.2d 1058, 1060 (Utah 1987) "If the parties intended to create one contract, the number of documents that memorialize the agreement is irrelevant." (citation omitted)

A. The Evidence Regarding the Settlement Agreement

It is undisputed in the record that on July 9, 2008 LDIII and defendants, through their respective counsel of record, agreed “. . . to settle this action by completing the sale of the real property and water rights at issue, from plaintiff [LDIII] to defendant Richard W. Davis, or his designee, on the same terms as originally agreed to by the parties, as evidenced by their Real Estate Purchase Contract signed on August 29, 2007, with credit for the \$300,000 paid to LDIII, but without the accrual of interest or attorney fees.” [Zundel Aff., ¶¶ 6-7 (R. 286-87, emphasis added) (Add. A hereto); Boevers Aff., ¶¶ 3-4 (R. 305, emphasis added) (Add. B hereto)]

LDIII and defendants had informed Mr. Snuffer and Mr. Zundel, respectively, that they agreed to settle the case on this basis. Mr. Snuffer and Mr. Zundel further agreed on July 9 that documentation of the settlement would consist only of the closing documents necessary to complete the real estate transaction, and a stipulation and order to dismiss the action with prejudice. [Zundel Aff., ¶ 8 (R. 286) (Add. A hereto); Boevers Aff., ¶ 5 (R. 305) (Add. B hereto)]

Mr. Boevers’ July 11, 2008 e-mail to Mr. Snuffer confirmed that pursuant to the settlement agreement, the real property and water rights would be sold to Davis “or his designee.” [Ex. B to Boevers Aff. (R. 295, emphasis added) (Add. B hereto)] Contrary to LDIII’s arguments, the closing documents Mr. Thornton e-mailed to Mr. Snuffer on July 28, 2008 were not a counteroffer or material change to the settlement agreement, but

were merely “drafts,” reflecting that Mr. Davis “desires to have the different parcels conveyed to . . . designees” in accordance with the settlement agreement. Mr. Thornton’s July 28 e-mail further requested Mr. Snuffer to “review” the documents and provide Mr. Thornton with his “comments.” [Ex. B to Thornton Aff. (R. 330) (Add. C hereto)] After receiving the closing documents about which LDIII complains, Mr. Snuffer’s July 30, 2008 e-mail stated: “We also have a settlement . . . I cannot imagine a problem will occur which we cannot resolve in papering the settlement of this case.” [Ex. B to Zundel Aff. (R. 278) (Add. A hereto)] The foregoing e-mails between the authorized agents of Davis and LDIII, respectively, created a binding settlement agreement under *Goodmansen, supra*.

LDIII submitted no affidavits or other evidence to controvert the Zundel, Boevers, and Thornton affidavits, and instead admitted or did not dispute virtually all of the foregoing facts. (R. 358-62) Thus, the district court properly made the following findings of fact: “Defendant Richard W. Davis (“Davis”) made no change to the settlement agreement with plaintiff LD III, LLC (“LDIII”), material or otherwise. The settlement agreement is and always was that LDIII would convey the subject parcels of real property and water rights to Davis or his designee.” [(Add. E hereto, R. 452, emphasis added); *See also*, R. 416 (Add. D hereto)]

In its opening brief here, LDIII argues that the settlement agreement was that LDIII would convey the real property and water rights only to Davis, not to his designees. However, LDIII ignores the undisputed evidence, and the district court’s

findings of fact, that the settlement agreement required LDIII to convey the real property and water rights either to Davis or his designees, at Davis' option. Thus, LDIII makes no attempt to marshal the evidence in support of the district court's findings, and the district court should be affirmed for that reason alone. *See, Wilson Supply, supra*, 2002 UT 94 at ¶ 26, 54 P.3d 1177.

B. The Evidence Regarding the REPC

LDIII previously interpreted the REPC (incorporated into the settlement agreement) as permitting transfers from LDIII directly to Davis' designees, rather than to Davis. Prior to filing this action, LDIII sold one of the parcels of the subject real property and appurtenant water rights directly to Mr. Warner, one of Davis' designees. (R. 60-64, 104, 90-92) Pursuant to the settlement agreement, the \$300,000 Warner paid LDIII was credited against Davis' \$1,500,000 purchase price under the REPC (Add. A hereto, R. 286; Add. B hereto, R. 305), leaving \$1,200,000 to be paid. Under the REPC, LDIII was also willing to sell other parcels of the real property and appurtenant water rights directly to other Davis designees such as the Sandstroms, so long as those transfers occurred in a timely fashion. (R. 399-403, 104, 73-74, 396) Thus, transfers directly to Davis' designees are not a counteroffer or material change to the REPC, as incorporated into the settlement agreement.

Further evidence that transfers directly to Davis' designees are not a counteroffer or material change to the REPC or the settlement agreement is that the REPC does not contain a provision prohibiting assignments. (Add. B hereto, R. 297-301) If LDIII were

genuinely concerned about not being required to transfer directly to designees of Davis, as opposed to Davis himself, it would have added a non-assignment provision to the REPC (which it did not do). Absent such a provision, it is presumed that a contract is assignable. *See, Winegar v. Froerer Corp.*, 813 P.2d 104, 107 (Utah 1991) (“Generally, all beneficial rights under an executory contract are assignable.”); *Martynes and Assoc. No. 1 v. Devonshire Square Apartments*, 680 P.2d 246, 249 (Colo. App. 1984) (enforcing assignment of trust deed, where “[t]here was no provision which prohibited assignment . . .”).

The only reason LDIII gives for contending that proposed transfers to Davis’ designees, rather than to Davis, are a material change to the REPC and the settlement agreement is the allegation that Davis was attempting to commit tax evasion. However, this defamatory allegation is baseless, and LDIII cites to no evidence in the record (as opposed to argument based upon unfounded supposition) that supports this allegation. As Davis proffered at the hearing on the motion to enforce the settlement agreement, all of Davis’ designees in the closing documents e-mailed to Mr. Snuffer on July 28, except for the Sandstroms, are owned by Davis. (R. 693, pp. 15, 29; R. 374-81)

II. BECAUSE DAVIS RESOLVED LDIII'S ONLY OBJECTION TO THE FORM OF THE CLOSING DOCUMENTS, THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING REQUIRED LDIII TO CLOSE THE TRANSACTION

Contrary to LDIII's arguments, and despite the fact that Davis had the contractual right to do so, he never insisted that the transfers be to his designees. Mr. Thornton's July 28, 2008 e-mail to Mr. Snuffer simply states:

Attached for your review are drafts of the . . . closing documents for the sale of [sic] LD III property to Richard Davis. Mr. Davis desires to have the different parcels conveyed to affiliated companies and designees as shown in the deeds.

. . .
Please review these documents . . . and get back to me as soon as possible with your comments.

[Ex. B to Thornton Aff. (R. 330, emphasis added) (Add. C hereto)] Mr. Snuffer never responded to Mr. Thornton's July 28, 2008 e-mail, and LDIII never objected to the transfers to Davis' designees, which were expressly permitted by the settlement agreement, until serving its memorandum in opposition to Davis' motion to enforce the settlement agreement on September 10, 2008. (R. 345-64)

Thus, the present dispute does not involve a counteroffer or material change to the settlement agreement (there were none), and instead involves LDIII's breach of the implied covenant of good faith and fair dealing contained in that agreement, whereby LDIII "impliedly promised not to 'intentionally or purposefully do anything which . . . [would] destroy or injure . . . [Davis'] right to receive the fruits of the contract,'" and to act ' . . . consistent with the agreed upon common purpose and . . . [Davis'] justified

expectations. . . .” See, *Keith Jorgensen’s, Inc. v. Ogden City Mall Co.*, 2001 UT App 128, ¶ 22, 26 P.3d 872 (citations omitted). The implied covenant of good faith and fair dealing required LDIII to review the draft closing documents Mr. Thornton e-mailed to Mr. Snuffer on July 28, and give Mr. Thornton its comments (including any objections to the contemplated transfers to Davis’ designees), as Mr. Thornton requested.

LDIII failed to do so. Instead, out of the blue, Mr. Garriott (Mr. Snuffer’s associate) sent Mr. Zundel an e-mail on August 20, 2008 stating that “. . . the terms of the proposed settlement . . . are not acceptable to our client,” without further explanation. [Ex. F to Zundel Aff. (R. 270) (Add. A hereto)] Mr. Zundel (accurately) responded by e-mail that same day: “Our deal was that the REPC terms would apply. We have demanded nothing in addition. We have a deal.” (*Id.*) While Mr. Zundel’s August 20 e-mail further indicated that Davis would file a motion to enforce the settlement agreement, Mr. Zundel also inquired about what terms were not acceptable to LDIII. (*Id.*) He received no response. (Zundel Aff., ¶ 15, R. 284, Add. A hereto)

Thus, as indicated above, Davis had no idea why LDIII was refusing to close in accordance with the REPC, until LDIII served its memorandum in opposition to Davis’ motion to enforce the settlement agreement on September 10, 2008. (R. 345-64) Davis’ counsel did not receive LDIII’s memorandum in opposition until September 12, 2008, immediately contacted Davis, and sent Mr. Snuffer an e-mail that same day agreeing (even though Davis was not contractually obligated to do so) to fully resolve LDIII’s only objection by taking title in his own name or that of BBRD, the other buyer listed in the

REPC. (R. 417)¹⁰ Then, at the hearing on defendants' motion to enforce the settlement agreement, Davis tendered revised closing documents that reflected the transferee as Davis only. (R. 693, pp. 14, 21) In addition, he had tendered funds into escrow sufficient to close the transaction, and he was ready to close immediately. (R. 693, p. 6)¹¹

Thus, Davis made no counteroffer or change to the settlement agreement, material or otherwise. The agreement is, and always has been, that the transfers could be made to Davis' designees, as the district court found. (Add. E hereto, R. 452) However, because the issue is not a material one, Davis agreed to take title in his own name, as the district court also found. (*Id.*)

The fact that LDIII refused to accept resolution of its only concern about the form of the closing documents, simply illustrates the absence of good faith and fair dealing on its part. LDIII has settlor's remorse, and is doing nothing more than creating a pretextual reason for not closing on the settlement agreement to which it agreed.

¹⁰ The REPC erroneously refers to BBRD, L.C. as BBRD, Inc., an entity that does not exist.

¹¹ Contrary to LDIII's arguments, the only material term upon which the parties had not yet reached express agreement was a deadline for closing. However, where an otherwise enforceable contract is silent as to time for performance, the law recognizes an implied agreement that performance will occur within a reasonable time under the circumstances. *See, Coulter & Smith, Ltd. v. Russell*, 966 P.2d 852, 858 (Utah 1998). As indicated, Davis was ready, willing and able to perform immediately and communicated this to LDIII.

III. LDIII'S APPEAL IS FRIVOLOUS, AND DEFENDANTS SHOULD BE AWARDED THEIR REASONABLE ATTORNEY FEES INCURRED ON APPEAL

Under *Utah R. App. P.* 33(b), a frivolous appeal includes “one that is not grounded in fact.” *See also, Hunt v. Hurst*, 785 P.2d 414, 416-417 (Utah 1990) (ruling appeal was frivolous where there was no factual basis for it). A showing of bad faith is not necessary to a determination that an appeal is frivolous. *O'Brien v. Rush*, 744 P.2d 306, 209-10 (Utah App. 1987).

Here, there is simply no factual basis in the record for LDIII's appeal. As shown above, the only evidence in the record pertaining to the settlement is the Zundel Aff., Boevers Aff. and Thornton Aff. (Add. A through C hereto) In the district court, LDIII either admitted or did not dispute the facts in those affidavits. (R. 358-62)

The Zundel and Boevers Affidavits establish that the settlement agreement is and always was that the transfers would be either to Davis or his designees. Yet, LDIII continues to argue on this appeal that the agreement only required a transfer to Davis.

In order to make this argument, LDIII's brief misrepresents the record. As shown in n. 3 above, on p. 8, LDIII misrepresents the record concerning the settlement negotiations between LDIII's counsel, and defendants' counsel. As shown in n. 4 above, on p. 8, LDIII's brief further misrepresents the record as to the parties' agreement on how the settlement agreement would be memorialized. As shown in n. 5 above on p. 9, LDIII alleges as a fact, without any basis in the record, that Davis was attempting to commit tax evasion. LDIII's brief also misrepresents the record in its comparison of the REPC with

the closing documents Mr. Thornton e-mailed to Mr. Snuffer, as shown in n. 7 above, on p. 12.

Recognizing that it has no factual basis for its appeal, LDIII makes no attempt to marshal the evidence in support of the district court's findings (or even acknowledge that the district court made any findings) that the parties agreed to a settlement, that the terms of the settlement agreement allowed Davis to require transfers directly to Davis' designees, and that Davis nevertheless waived this requirement (thereby resolving LDIII's only objection to Davis' proposed closing documents). Because there is no factual basis for LDIII's appeal, pursuant to Rule 33(a) defendants request this Court to award them damages for the frivolous appeal, against LDIII and/or its counsel, consisting of defendants' reasonable attorney fees incurred on this appeal.

CONCLUSION

This Court should affirm the district court's order enforcing the settlement agreement, and based on LDIII's frivolous appeal, award defendants their reasonable attorney fees incurred on this appeal, against LDIII and/or its counsel, in an amount to be determined by the district court on remand.

DATED this 7th day of May, 2009.

PRINCE, YEATES & GELDZAHLER
A Professional Corporation

By: /s/ James A. Boevers
Michael N. Zundel
James A. Boevers
Attorneys for Defendants-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of May, 2009, I caused to be served the foregoing **APPELLEES' BRIEF** by causing two true and correct copies thereof to be mailed via first class U.S. mail, postage prepaid, addressed to the following:

Denver C. Snuffer, Jr.
Steven R. Paul
Daniel B. Garriott
Nelson, Snuffer, Dahle & Poulsen, P.C.
10885 South State Street
Sandy, Utah 84070

Attorneys for Plaintiff-Appellants

/s/ James A. Boevers

G \Jab\Davis, Richard\LD III\Appeal\Appellees' Brief.doc

Tab A

Michael N. Zundel (3755) mnz@princeyeates.com
James A. Boevers (0371) jab@princeyeates.com
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
(801) 524-1000

Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

LD III, LLC, a Utah limited liability
company,

Plaintiff,

vs.

BBRD, L.C., a Utah limited liability
company; RICHARD W. DAVIS, an
individual; TIM HERRERA, an individual;
MOUNTAIN WEST TITLE COMPANY;
and BBRD, INC, an alter ego of Defendant
Richard W. Davis,

Defendants.

**AFFIDAVIT OF MICHAEL N.
ZUNDEL IN SUPPORT OF
DEFENDANTS' MOTION TO
ENFORCE SETTLEMENT
AGREEMENT AND STRIKE TRIAL
DATES**

Civil No. 080400318

Judge: Howard

I, Michael N. Zundel, being duly sworn upon my oath, state as follows:

1. I am over 18 years of age, have personal knowledge of the facts set forth
below unless otherwise indicated, and am competent in all respects to give the following
testimony in this action.

2. I am lead counsel of record for defendants in this action, which has been scheduled for trial on September 17 through 19, 2008.

3. On June 30, 2008, I attended a hearing in this action regarding pending discovery motions filed by plaintiff and defendants. Denver C. Snuffer, Jr., lead counsel of record for plaintiff in this action, also attended this hearing. After the court ruled on the pending motions, Mr. Snuffer and I exchanged available dates for depositions to be held in July and the first half of August, 2008.

4. We subsequently scheduled the July 8, 2008 deposition of M.W. Brown Engineering and its employees, who did survey work on the real property at issue, and the August 13, 2008 deposition of Bart Bailey, an attorney for Leslie Dee Ann Mower, the owner of plaintiff LDIII, LLC.

5. Mr. Snuffer and I also agreed that Ms. Mower would be deposed on one of the mutually available dates prior to August 13, 2008, and I also intended to schedule the deposition of Blaine Evans, a potential buyer/lessee of the real property at issue from plaintiff, on one of those mutually available dates.

6. On July 9, 2008, I participated in a telephone conference with Mr. Snuffer, and James A. Boevers, co-counsel of record for defendants in this action. The telephone conference occurred in my office on my speaker phone.

7. During this telephone conference, Mr. Snuffer and I agreed, on behalf of our respective clients, to settle this action by completing the sale of the real property and water rights at issue, from plaintiff to defendant Richard W. Davis, or his designee, on the same terms as originally agreed to by the parties, as evidenced by their Real Estate Purchase Contract signed on August 29, 2007, with credit for the \$300,000 paid to LD III, but without the accrual of interest or attorney fees.

8. During this telephone conference, Mr. Snuffer and I both stated that we had spoken with our respective clients, who had agreed to settle this case on the above basis. Mr. Snuffer and I further agreed during this telephone conference that the settlement documentation would consist of the documents necessary to close the real estate transaction in accordance with the August 29, 2007 contract, along with a stipulation and order dismissing this action with prejudice, each party to bear its own attorney fees and costs.

9. I requested one of my partners, Richard H. Thornton, to prepare the documents necessary to close the real estate transaction, and he e-mailed drafts of those documents to Mr. Snuffer on July 28, 2008.

10. Attached hereto as Exhibit "A" is a hard copy of a July 29, 2008 e-mail I sent to Mr. Snuffer, confirming that Mr. Thornton had sent him drafts of the closing documents the preceding day, and inquiring about the timing of his response and the

status of remaining discovery. I wanted to preserve the September 17-19, 2008 trial dates, and the ability to complete remaining discovery by mid-August, 2008, so that in the event plaintiff breached the settlement agreement, defendants could elect either to enforce the agreement, or to rescind it and proceed with trial.

11. Attached hereto as Exhibit "B" is a hard copy of a July 30, 2008 e-mail from Mr. Snuffer, responding to my e-mail of the previous day. In his July 30 e-mail, Mr. Snuffer states, among other things: ". . . [W]e also have a settlement which will make it unnecessary to waste time on discovery I believe. I cannot imagine a problem will occur which we cannot resolve in papering the settlement of the case." Mr. Snuffer's July 30 e-mail also indicated he would get back to me later that week regarding the closing documents.

12. Attached hereto as Exhibit "C" is a hard copy of e-mails exchanged between Mr. Snuffer and me on July 31, 2008. Mr. Snuffer's e-mail indicated that Ms. Mower wanted Mr. Bailey to review the closing documents, but that Mr. Bailey's father had died the preceding day, so that Mr. Snuffer would not be able to get back to me on the closing documents until the end of the following week. Mr. Snuffer further stated: "However, I still retain the view that further discovery is unnecessary."

13. Attached hereto as Exhibits “D” and “E” are hard copies of my August 8 and 18, 2008 e-mails to Mr. Snuffer inquiring about the status of the settlement, remaining discovery and the trial dates.

14. After my July 31, 2008 exchange of e-mails with Mr. Snuffer, I received no communication from him or anyone in his office, until August 20, 2008.

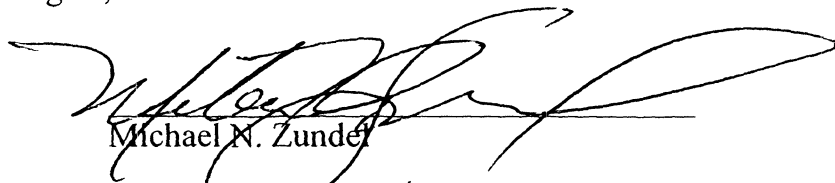
(a) Attached hereto as Exhibit “F” is a hard copy of an August 20, 2008 exchange of e-mails between Daniel B. Garriott, co-counsel of record for plaintiff in this action, and me. Mr. Garriott’s August 20 e-mail states: “Denver is out of town until tomorrow and has asked me to inform you that the terms of the proposed settlement of this matter are not acceptable to our client,” and that Mr. Snuffer would call me the following day regarding completion of discovery.

(b) My responding August 20 e-mail states: “Our deal was that the original contract terms would apply. We have demanded nothing in addition. We have a deal.” My e-mail also indicates that defendants would file a motion to enforce the settlement agreement, and I inquired about what terms were not acceptable to plaintiff

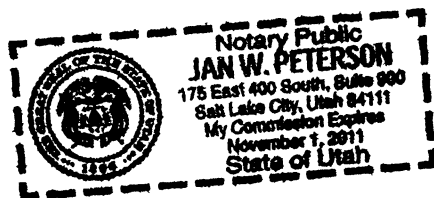
15. I have not received a response to the inquiry in my August 20 e-mail.


16. I relied on Mr. Snuffer’s representations that we had a settlement and that further discovery was unnecessary, in not completing defendants’ discovery. For example, the deposition of Mr. Bailey, which the parties originally agreed would occur on August 13, 2008, did not occur.

DATED this 26th day of August, 2008.


Michael N. Zunder

SUBSCRIBED AND SWORN TO before me this 26th day of August, 2008.

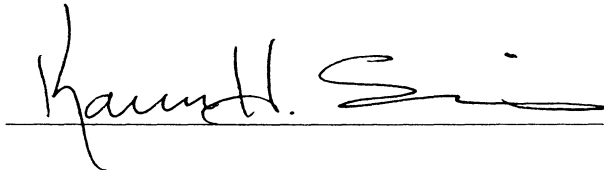



Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2008, I caused to be delivered by hand-delivery, a true and correct copy of the foregoing **AFFIDAVIT OF MICHAEL N. ZUNDEL IN SUPPORT OF DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND STRIKE TRIAL DATES** to the following:

Denver C. Snuffer
Daniel B. Garriott
Nelson Snuffer Dahle & Poulsen
10885 South State Street
Sandy, Utah 84070

A handwritten signature in black ink, appearing to read "Kenneth H. Si", is written over a horizontal line.

G:\ab\Davis, Richard\LD III\Aff of Zundel in support of motion to enforce settlement agreement.wpd

EXHIBIT "A"

Receptionist

From: Michael Zundel
Sent: Tuesday, July 29, 2008 12:52 PM
To: 'dcsnuff@aol.com'
Cc: jab@pyglaw.com
Subject: LDIII v, Davis

Denver

Yesterday we sent you proposed settlement papers. We apologize for the delay in getting them to you after our last settlement discussions approximately two weeks ago.

You may take as long as you need to review them with your client, but I will appreciate getting from you some estimate of time and a confirmation that our settlement is still on track.

AS you know, we still have a trial date looming and discovery outstanding. As it stands, we will owe you answers to written discovery next Monday and we have deposition dates set aside for August 7, 11 and 13.

While you review the papers sent to you yesterday, will you agree to extend the time for our discovery responses for one week? Will you agree to have your client, Dee Mower, deposed on August 11th? We have August 13 set aside for another deposition already.

Michael N. Zundel
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Phone (801) 524-1000
Fax (801) 524-1098
E-mail mnz@princeyeates.com
Web-Site www.princeyeates.com



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EXHIBIT "B"

From: DCSnuff@aol.com [mailto:DCSnuff@aol.com]

Sent: Wednesday, July 30, 2008 3:01 PM

To: Michael Zundel

Subject: Re: LDIII v, Davis

I received the documents and have forwarded them for review and comment from the client. Unfortunately, Dee fell down at her home and was injured. She has a fractured arm and dislocated shoulder, which has rendered her less able to function in all respects. I think that we need to keep an eye on the dates, but we also have a settlement which will make it unnecessary to waste time on discovery I believe. I cannot imagine a problem will occur which we cannot resolve in papering the settlement of the case.

I will try and get you if not the return of the documents, then at least an idea on the timing this week.

Thanks,

-Denver Snuffer

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(<http://www.fanhouse.com/fantasyaffair?ncid=aolspr00050000000020>)

7/30/2008

EXHIBIT "C"

Receptionist

From: Michael Zundel
Sent: Thursday, July 31, 2008 2:31 PM
To: DCSnuff@aol.com
Cc: jab@pyglaw.com; Richard H. Thornton; Andy Davis
Subject: RE: LDIII v, Davis

We are not planning any deposition next week. The schedule you suggest is workable.
My condolences to Bart.

Michael N. Zundel
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Phone (801) 524-1000
Fax (801) 524-1098
E-mail mnz@princeyeates.com
Web-Site www.princeyeates.com



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From: DCSnuff@aol.com [mailto:DCSnuff@aol.com]
Sent: Thursday, July 31, 2008 2:12 PM
To: Michael Zundel
Subject: Re: LDIII v, Davis

I just got an email informing me that Bart Bailey's father passed away yesterday. Dee wants Bart to look over the documents before she gives me final word. Since Bart's schedule is now interrupted by this unfortunate passing, I think it will reasonably be sometime in the latter part of next week before I will be able to get back with you. However, I still retain the view that further discovery is unnecessary.

-Denver

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(<http://www.fanhouse.com/fantasyaffair?ncid=aolspr00050000000020>)

EXHIBIT "D"

Receptionist

From: Michael Zundel
Sent: Friday, August 08, 2008 5:50 PM
To: DCSnuff@aol.com
Cc: jab@pyglaw.com
Subject: Davis v. LDIII

Denver

Please give me a status up date on our settlement. Our deposition of Mr. Bailey is scheduled for August 13. I would like to cancel it and inform the court that we no longer need the trial dates we have.

Michael N. Zundel
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Phone (801) 524-1000
Fax (801) 524-1098
E-mail mnz@princeyeates.com
Web-Site www.princeyeates.com


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EXHIBIT "E"

Receptionist

From: Michael Zundel
Sent: Monday, August 18, 2008 12:06 PM
To: DCSnuff@aol.com
Cc: jab@pyglaw.com; Richard H. Thornton; Andy Davis
Subject: Davis v. LDIII - Settlement Papers

Denver

Time is growing short. Please tell me the status of the settlement papers we sent you some time ago. We have relied on your client's agreement to settle this case and sell this property to Mr. Davis on the original terms. All previously scheduled discovery dates have past. The trial is set to begin September 13. We should bring the fact of settlement to the court's attention next week, preferably by way of a stipulated motion to dismiss the complaint and trial date.

Michael N. Zundel
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Phone (801) 524-1000
Fax (801) 524-1098
E-mail mnz@princeyeates.com
Web-Site www.princeyeates.com



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EXHIBIT "F"

Receptionist

From: Michael Zundel
Sent: Wednesday, August 20, 2008 3:30 PM
To: Dan Garriott
Cc: dcsnuff@aol.com; Andy Davis; jab@pyglaw.com; Richard H. Thornton
Subject: RE: Mower v. LDIII

Dan and Denver,

Our deal was that the original contract terms would apply. We have demanded nothing in addition. We have a deal. We will file a motion to enforce the settlement.

I would be interested to know what terms are not acceptable to your client.

Michael N. Zundel
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
Phone (801) 524-1000
Fax (801) 524-1098
E-mail mnz@princeyeates.com
Web-Site www.princeyeates.com

-----Original Message-----

From: Dan Garriott [mailto:dbgarrriott@msn.com]
Sent: Wednesday, August 20, 2008 12:50 PM
To: Michael Zundel
Cc: dcsnuff@aol.com
Subject: Mower v. LDIII

Dear Mike,

Denver is out of town until tomorrow and has asked me to inform you that the terms of the proposed settlement of this matter are not acceptable to our client. Denver will call you tomorrow, upon his return, to schedule the remaining depositions and to discuss deadlines for your client to respond to the pending discovery requests.

Sincerely,

Daniel B. Garriott
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 S. State St.
Sandy, UT 84070
Phone: (801) 576-1400
Fax: (801) 576-1960
Email: dbgarrriott@msn.com

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Tab B

Michael N. Zundel (3755) mnz@princeyeates.com
James A. Boevers (0371) jab@princeyeates.com
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
(801) 524-1000

im87

Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

LD III, LLC, a Utah limited liability
company,

Plaintiff,

vs.

BBRD, L.C., a Utah limited liability
company; RICHARD W. DAVIS, an
individual; TIM HERRERA, an individual;
MOUNTAIN WEST TITLE COMPANY;
and BBRD, INC, an alter ego of Defendant
Richard W. Davis,

Defendants.

**AFFIDAVIT OF JAMES A.
BOEVERS IN SUPPORT OF
DEFENDANTS' MOTION TO
ENFORCE SETTLEMENT
AGREEMENT AND STRIKE TRIAL
DATES**

Civil No. 080400318

Judge: Howard

I, James A. Boevers, being duly sworn upon my oath, state as follows:

1. I am over 18 years of age, have personal knowledge of the facts set forth below unless otherwise indicated, and am competent in all respects to give the following testimony in this action.

2. I am co-counsel of record for defendants in this action.

3. On July 9, 2008, I participated in a telephone conference with Denver C. Snuffer, Jr., who is lead counsel of record for plaintiff in this action, and Michael N. Zundel, my co-counsel and lead counsel of record for defendants in this action. The telephone conference occurred in Mr. Zundel's office on his speaker phone.


4. During this telephone conference, Mr. Snuffer and Mr. Zundel agreed, on behalf of their respective clients, to settle this action by completing the sale of the real property and water rights at issue from plaintiff to defendants Richard W. Davis, or his designee, on the same terms as originally agreed to by the parties, as evidenced by their Real Estate Purchase Contract signed on August 29, 2007, with credit for the \$300,000 paid to LD III, but without the accrual of interest or attorney fees. A copy of the August 29, 2007 contract is attached hereto as Exhibit "A."

5. During this telephone conference, Mr. Zundel and Mr. Snuffer both stated that they had spoken with their respective clients, who had agreed to settle this case on the above basis. Mr. Snuffer and Mr. Zundel further agreed during this telephone conference that the settlement documentation would consist of the documents necessary to close the real estate transaction in accordance with the August 29, 2007 contract, along with a stipulation and order dismissing this action with prejudice, each party to bear its own attorney fees and costs.

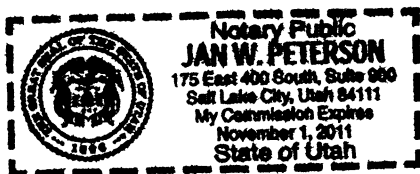
6. Attached hereto as Exhibit "B" is a hard copy of an e-mail I authored and had my secretary, Lisa Keyes, send to Mr. Snuffer on July 11, 2008, confirming the above terms of the settlement, and asking Mr. Snuffer to work with my partner, Richard H. Thornton, who would be primarily responsible for representing Mr. Davis in closing the real estate transaction.

7. Attached hereto as Exhibit "C" is a copy of a July 30, 2008 letter I sent to Daniel B. Garriott, co-counsel of record for plaintiff in this action, confirming a telephone conversation I had with him, in which he agreed to an extension of time for defendants' responses to certain referenced discovery requests, pending completion of the settlement.

DATED this 26th day of August, 2008.


James A. Boevers

SUBSCRIBED AND SWORN TO before me this 26 day of August, 2008.

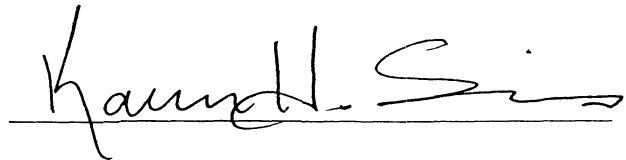



Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2008, I caused to be delivered by hand-delivery, a true and correct copy of the foregoing **AFFIDAVIT OF JAMES A. BOEVERS IN SUPPORT OF DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND STRIKE TRIAL DATES** to the following:

Denver C. Snuffer
Daniel B. Garriott
Nelson Snuffer Dahle & Poulsen
10885 South State Street
Sandy, Utah 84070

A handwritten signature in black ink, appearing to read "Kenneth S. Davis", is written over a horizontal line.

G:\ab\Davis, Richard\LD III\Affidavit of James A. Boevers in support of motion to enforce settlement agreement.wpd

EXHIBIT "A"

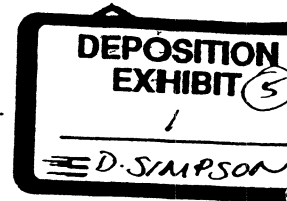


Utah Association
of REALTORS®

REAL ESTATE PURCHASE CONTRACT FOR LAND

This is a legally binding contract. If you desire legal or tax advice, consult your attorney or tax advisor.

EARNEST MONEY RECEIPT



Buyer BBRD, Inc. and of Richard Davis offers to purchase the Property described below and hereby delivers to the Brokerage, as Earnest Money, the amount of \$ 10,000.00 in the form of Personal Check which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.

Received by: [Signature] on 8/29/07 (Date)
(Signature of agent/broker acknowledges receipt of Earnest Money)

Brokerage: LandMark Real Estate Phone Number: 801-489-3211

OFFER TO PURCHASE

1. PROPERTY: See Exhibit A also described as: Tax# 21-82-10, 21-82-12, 21-82-17, 21-82-18, 21-82-19 City of Lake Shore County of Utah State of Utah, ZIP 84660 (the "Property").

1.1 Included Items. (specify) All Pertinent Building and Fences

1.2 Water Rights/Water Shares. The following water rights and/or water shares are included in the Purchase Price.

[] _____ Shares of Stock in the _____ (Name of Water Company)

[X] Other (specify) All Pertinent Water Stock and 2 Wells Approx. 33 Acre FT

2. PURCHASE PRICE The purchase price for the Property is \$1,500,000.00

The purchase price will be paid as follows:

\$ 10,000.00 (a) Earnest Money Deposit. Under certain conditions described in this Contract THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.

\$ _____ (b) New Loan. Buyer agrees to apply for one or more of the following loans:

[] CONVENTIONAL [] OTHER (specify) _____

If the loan is to include any particular terms, then check below and give details:

[] SPECIFIC LOAN TERMS _____

\$ _____ (c) Seller Financing. (see attached Seller Financing Addendum, if applicable)

\$ _____ (d) Other (specify). _____

\$ 1,490,000.00 (e) Balance of Purchase Price in Cash at Settlement.

\$1,500,000.00 PURCHASE PRICE. Total of lines (a) through (e)

3. SETTLEMENT AND CLOSING. Settlement shall take place on the Settlement Deadline referenced in Section 24(c), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (½) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(c), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when all of the following have been completed: (i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (ii) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed within four calendar days of Settlement.

4. POSSESSION. Seller shall deliver physical possession to Buyer within: [X] Upon Closing [] Other (specify) _____

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this contract:
[initials] Seller's Initials [initials] Buyer's Initials

Listing Agent _____, represents ☐ Seller ☐ Buyer ☐ both Buyer and Seller
as a Limited Agent;
Listing Broker for _____, represents ☐ Seller ☐ Buyer ☐ both Buyer and Seller
(Company Name) as a Limited Agent;
Buyer's Agent _____, represents ☐ Seller ☐ Buyer ☐ both Buyer and Seller
as a Limited Agent;
Buyer's Broker for _____, represents ☐ Seller ☐ Buyer ☐ both Buyer and Seller
(Company Name) as a Limited Agent;

6. TITLE INSURANCE. At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Any additional title insurance coverage shall be at Buyer's expense.

7. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance;
- (c) a copy of any leases affecting the Property not expiring prior to Closing;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental problems;
- (e) evidence of any water rights and/or water shares referenced in Section 1.2 above; and
- (f) Other (specify) Seller is a Licensed Broker in the State of Utah

8. BUYER'S RIGHT TO CANCEL BASED ON BUYER'S DUE DILIGENCE. Buyer's obligation to purchase under this Contract (check applicable boxes):

- (a) ☐ IS ☒ IS NOT conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7;
- (b) ☐ IS ☒ IS NOT conditioned upon Buyer's approval of a physical condition inspection of the Property;
- (c) ☒ IS ☒ IS NOT conditioned upon Buyer's approval of a survey of the Property by a licensed surveyor;
- (d) ☐ IS ☒ IS NOT conditioned upon Buyer's approval of applicable federal, state and local governmental laws, ordinances and regulations affecting the Property; and any applicable deed restrictions and/or CC&R's (covenants, conditions and restrictions) affecting the Property;
- (e) ☒ IS ☐ IS NOT conditioned upon the Property appraising for not less than the Purchase Price;
- (f) ☐ IS ☒ IS NOT conditioned upon Buyer's approval of the terms and conditions of any mortgage financing referenced in Section 2 above;
- (g) ☐ IS ☒ IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the Property:
(specify) _____

If any of items 8(a) through 8(g) are checked in the affirmative, then Sections 8.1, 8.2, 8.3 and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as Buyer's "Due Diligence." Unless otherwise provided in this Contract, Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence and with a final pre-closing inspection under Section 11.

8.1 Due Diligence Deadline. No later than the Due Diligence Deadline referenced in Section 24(b) Buyer shall: (a) complete all of Buyer's Due Diligence; and (b) determine if the results of Buyer's Due Diligence are acceptable to Buyer.

8.2 Right to Cancel or Object. If Buyer determines that the results of Buyer's Due Diligence are unacceptable, Buyer may, no later than the Due Diligence Deadline, either: (a) cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.

8.3 Failure to Respond. If by the expiration of the Due Diligence Deadline, Buyer does not: (a) cancel this Contract as provided in Section 8.2; or (b) deliver a written objection to Seller regarding the Buyer's Due Diligence, The Buyer's Due Diligence shall be deemed approved by Buyer; and the contingencies referenced in Sections 8(a) through 8(g), including but not limited to, any financing contingency, shall be deemed waived by Buyer.

8.4 Response by Seller. If Buyer provides written objections to Seller, Buyer and Seller shall have seven calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Except as provided in Section 10.2, Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after expiration of the Response Period; whereupon the Earnest Money Deposit shall be released to Buyer. If this Contract is not canceled by Buyer under this Section 8.4, Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted

Page 2 of 5 pages Seller's Initials [initials] Date 8/24/07 Buyer's Initials [initials] Date 8-28-07

in Section 10.

9. **ADDITIONAL TERMS.** There ☐ ARE ☒ ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: ☐ Addenda No.'s _____ ☐ Seller Financing Addendum ☐ Other (specify) _____

10. SELLER WARRANTIES AND REPRESENTATIONS.

10.1 Condition of Title. Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer also agrees to take the Property subject to existing leases affecting the Property and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

IF ANY PORTION OF THE PROPERTY IS PRESENTLY ASSESSED AS "GREENBELT" (CHECK APPLICABLE BOX):

☐ SELLER ☒ BUYER SHALL BE RESPONSIBLE FOR PAYMENT OF ANY ROLL-BACK TAXES ASSESSED AGAINST THE PROPERTY.

10.2 Condition of Property. Seller warrants that the Property will be in the following condition ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER:

- (a) the Property shall be free of debris and personal property;
- (b) the Property will be in the same general condition as it was on the date of Acceptance

11. FINAL PRE-CLOSING INSPECTION. Before Settlement, Buyer may, upon reasonable notice and at a reasonable time, conduct a final pre-closing inspection of the Property to determine only that the Property is "as represented," meaning that the Property has been repaired/corrected as agreed to in Section 8.4, and is in the condition warranted in Section 10.2. If the Property is not as represented, Seller will, prior to Settlement, repair/correct the Property, and place the Property in the warranted condition or with the consent of Buyer (and Lender if applicable), escrow an amount at Settlement sufficient to provide for the same. The failure to conduct a final pre-closing inspection or to claim that the Property is not as represented, shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the Property as represented.

12. CHANGES DURING TRANSACTION. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer: (a) no changes in any existing leases shall be made; (b) no new leases shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; and (d) no further financial encumbrances affecting the Property shall be made

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

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

15. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after Closing, related to this Contract (check applicable box)

☐ SHALL

☒ MAY AT THE OPTION OF THE PARTIES

first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation.

16. DEFAULT. If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

17. **ATTORNEY FEES AND COSTS.** In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15.

18. **NOTICES.** Except as provided in Section 23, all notices required under this Contract must be: (a) in writing, (b) signed by the party giving notice, and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

19. **ABROGATION.** Except for the provisions of Sections 10.1, 10.2, 15 and 17 and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. **RISK OF LOSS.** All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

21. **TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

22. **FAX TRANSMISSION AND COUNTERPARTS.** Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.

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

24. **CONTRACT DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to this Contract:

(a) Seller Disclosure Deadline _____ (Date)

(b) Due Diligence Deadline _____ (Date)

(c) Settlement Deadline September 28, 2007 (Date)

25. **OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: _____ [] AM [] PM Mountain Time on _____ (Date), this offer shall lapse, and the Brokerage shall return the Earnest Money Deposit to Buyer.

Richard Davis 8-28-07
(Buyer's Signature) (Offer Date) (Buyer's Signature) (Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

BBRD, Inc. and or Richard

Davis

(Buyers' Names) (PLEASE PRINT) _____ (Notice Address) _____ (Zip Code) _____ (Phone) _____

AC PTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ ACCEPTANCE OF OFFER TO PURCHASE: Seller Accepts the foregoing offer on the terms and conditions specified above.

☐ COUNTEROFFER: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. _____

[Signature] 8/29/07 _____ [Signature] Aug 29/07
(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

(Sellers' Names) (PLEASE PRINT) (Notice Address) (Zip Code) (Phone)

☐ REJECTION: Seller rejects the foregoing offer.

(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

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UAR FORM 19

EXHIBIT "B"

Lisa Keyes

From: Lisa Keyes
Sent: Friday, July 11, 2008 11:55 AM
To: 'dcsnuff@aol.com'
Cc: Michael Zundel; Richard H. Thornton
Subject: Richard Davis-LDIII
Attachments: FW: Davis - LD III Closing

Denver:

As Mike Zundel and I discussed with you on Wednesday, the parties to the *LDIII v. Davis, et al.* case have agreed to settle the case by completing the sale of the real property and water rights to Richard or his designee for the 1.2 million remaining owing under the purchase contract. Accordingly, the settlement agreement will consist of the escrow instructions and title company settlement statement for closing the transaction, along with a stipulation and order dismissing the lawsuit with prejudice, each party to bear its own attorney fees and costs.

My partner Rick Thornton will be primarily responsible for representing Richard regarding the closing. Attached is an e-mail from Rick describing steps that need to be taken to complete the closing. Attached to Rick's e-mail are copies of a water right quitclaim deed, and a water right stock certificate. As indicated in Rick's e-mail, LDIII needs to locate the original of the quitclaim deed, so that Ms Mower can sign an acknowledgement of her signature on the document before a notary, and it can be recorded. LDIII also needs to locate the original of the water stock certificate, so it can be endorsed for transfer to Richard or his designee.

Please contact Rick directly (rht@princeyeates.com, or 524-1000) if there are matters you wish to discuss regarding the closing. Please contact me if there are other matters that you wish to discuss regarding the settlement.

Thanks,

Jim (If your reply is by email please reply directly to Jim jab@princeyeates.com)

Sent by,
Lisa Keyes
Secretary to James A. Boevers
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Phone (801) 524-1000
Fax (801) 524-1098
E-mail lisa@princeyeates.com
Web-Site www.princeyeates.com



Sound Thinking. Sound Solutions.

Receptionist

From: Michael Zundel
Sent: Thursday, July 10, 2008 5:24 PM
To: jab@pyglaw.com
Cc: Richard H. Thornton
Subject: FW: Davis - LD III Closing
Attachments: 7976 water stock cert.pdf; 7976 water right QCD.JPG

Jim

Please see Rick's email to me below.

Michael N. Zundel
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111

Phone (801) 524-1000
Fax (801) 524-1098
E-mail mnz@princeyeates.com
Web-Site www.princeyeates.com



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From: Richard H. Thornton
Sent: Thursday, July 10, 2008 5:16 PM
To: Michael Zundel
Subject: Davis - LD III Closing

Hello, Mike,

The original Real Estate Purchase Contract for Land between LD III and Richard Davis (BBRD) includes "All Pertinent Water Stock and 2 Wells Appox. 33 Acre FT" as part of the property being sold. I understand these water rights are made up of the following:

- Water right 51-7183 (A21834), which at Richard's request was already conveyed by LD III to Charles Y. Warner, Trustee on 26 November 2007 (this has a flow of .45 acre feet for stockwatering)
- Water right 51-7283 (a23152), which is based on four shares of water stock in Fort Field-Little Dry Creek Water Users Association apparently still in the name of Mower Properties (this water right is for a well to draw water owned by Fort Field)

In order to complete the closing, the seller will need to include the following:

- The four shares of water stock will need to be located (see the attached 7976 water stock cert for the original certificate—this comes from the records of the Utah Division of Water Rights) and

then endorsed over to buyer's designee at the closing

- The water rights quitclaim deed from Mower Properties to LD III (see the attached 7976 water right QCD—this comes from the records of the Utah Division of Water Rights and might be in the possession of Jim Riley Engineering, who filed the proof of beneficial use in February 2008) will need to be located, an acknowledgment of Leslie Mower's signature for Mower Properties, Inc. will need to be added and the deed will need to be recorded

In the meantime, I will be working on the following closing documents:

- Warranty deed from LD III to buyer
 - This might involve some work with the surveyor in order to verify that we have an accurate legal description
 - Water right 51-7283 could also be included here
- Escrow instructions to Mountain West Title
- Updated settlement statement from Mountain West Title

I will continue working on these matters, but seller's counsel should be asked to locate the water stock certificate and the quitclaim deed in the meantime.

Regards,
Rick

Richard H. Thornton

Attorney at Law

Prince, Yeates & Geldzahler

175 East 400 South, Suite 900

Salt Lake City, Utah 84111-2357

Phone (801) 524-1000

Fax (801) 524-1098

E-mail rht@princeyeates.com

Web-Site www.princeyeates.com



Sound Thinking. Sound Solutions.

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WATER RIGHT QUITCLAIM DEED

Mower Properties, Inc. ("Grantor") hereby quitclaims to LD III, LLC ("Grantee"), for Ten Dollars (\$10.00) and other good and valuable consideration, the following water right and approved change application:

All of Mower Properties, Inc.'s interest in Water Right No. 51-7263 (31.48 acre feet) and approved change application No. a23152, as evidenced upon the records of the Utah State Engineer.

Witness the hand of the Grantor this 9 day of February, 2008.

Mower Properties, Inc.


Leslie D. Mower, President

I, Ernest J. Galvan, personally saw Leslie D. Mower sign the above document.



Ernest J. Galvan - Subscribing Witness

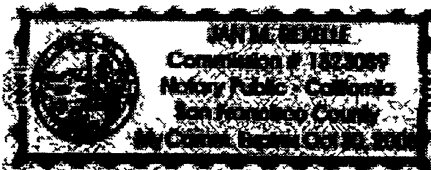
STATE OF CALIFORNIA)

: ss.

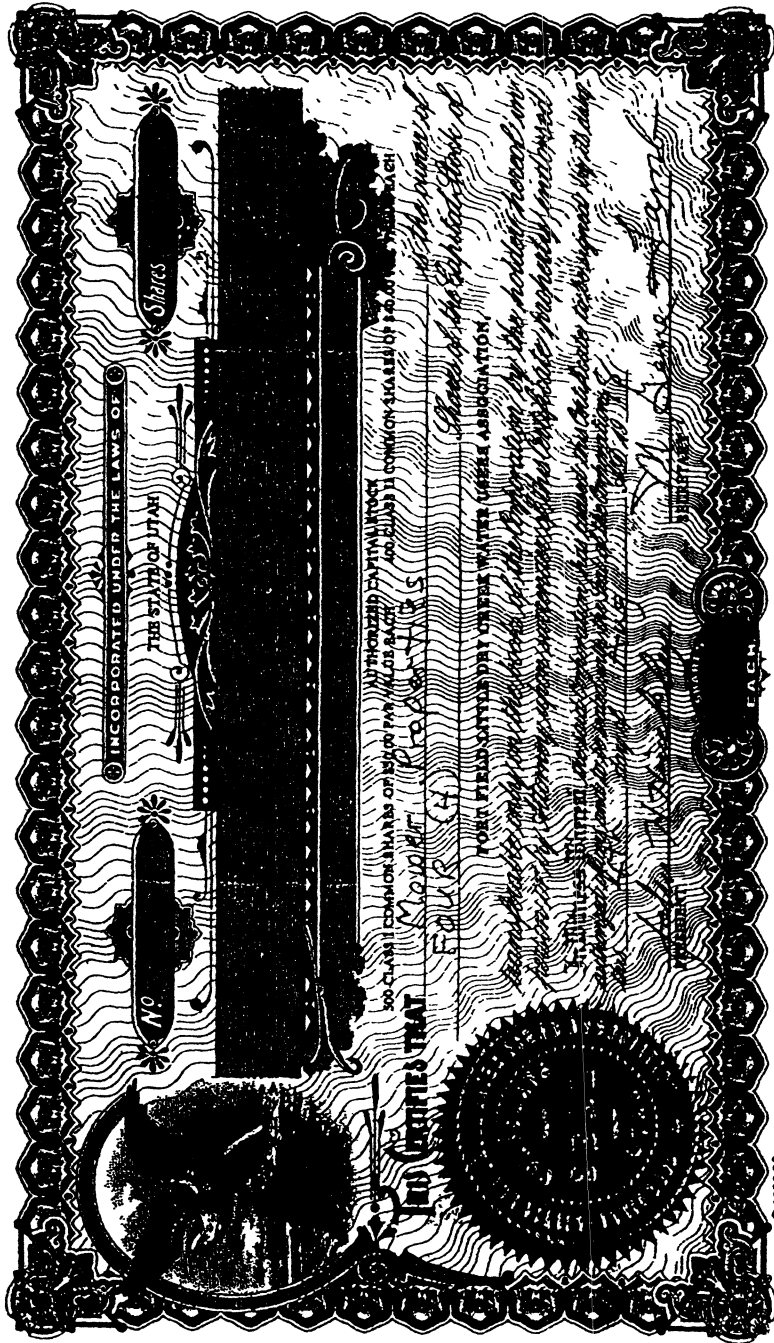
COUNTY OF San Francisco)

On February 11, 2008, before me, the undersigned, a notary public for the state, personally appeared Ernest J. Galvan, personally known to me to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said that he was present and saw Leslie D. Mower, the same person described in and whose name is subscribed to the within and annexed instrument in her authorized capacity as a party thereto, execute or acknowledge executing the same, and that said affiant subscribed his name to the within instrument as a witness at the request of Leslie D. Mower.

WITNESS my hand and official seal.




NOTARY PUBLIC



SCANNED

Exhibit A

EXHIBIT "C"

PRINCE•YEATES

SOUND THINKING SOUND SOLUTIONS

ADAM S. AFFLECK †
WILFORD A. BEESLEY III
JAMES C. BERGSTEDT
JAMES A. BOEVERS
GLENN R. BRONSON †
J. RANDALL CALL †*
JOHN S. CHINDLUND
ANDREW B. CLAWSON *
T. EDWARD CUNDICK
M. DAVID ECKERSLEY
THOMAS J. ERBIN
D. JAY GAMBLE
JON C. HEATON
CHRISTOPHER A. JONES †

WILLIAM G. MARSDEN
JAMES W. McCONKIE III
ROGER J. McCONKIE
SALLY B. McMINNIE †
G. TROY PARKINSON †
JARED N. PARRISH
ALLEN SIMS
ERIN M. STONE
JAMES C. SWINDLER *
JONATHAN T. TICHY *
RICHARD H. THORNTON
ROBERT G. WING
MICHAEL N. ZUNDEL

F. S. PRINCE (1910-1991)
DAVID S. GELDZAHLER (1932-1994)

ROBERT M. YEATES (RETIRED)

† ALSO ADMITTED IN CALIFORNIA
‡ ALSO ADMITTED IN IDAHO
* ALSO ADMITTED IN NEVADA
ALSO ADMITTED IN TEXAS

July 30, 2008

Daniel B. Garriott
NELSON, SNUFFER, DAHLE & POULSEN, P.C.
10885 South State Street
Sandy, Utah 84070

Re: *LD III, LLC v BBRD, LC, et al*

Dear Dan:

This is to confirm your agreement to an extension of time from August 4, 2008 through August 31, 2008, for service of defendants' responses to plaintiff's discovery requests (including the request for admissions), while we complete the settlement.

Sincerely,

PRINCE, YEATES & GELDZAHLER



James A. Boevers

JAB:khs

bec: MNZ

G:\M\Dan vs. Richard\LD III\Garnot ltr 7 30 08 wpd

Tab C

Michael N. Zundel (3755) mnz@princeyeates.com
James A. Boevers (0371) jab@princeyeates.com
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
(801) 524-1000

Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

LD III, LLC, a Utah limited liability
company,

Plaintiff,

vs.

BBRD, L.C., a Utah limited liability
company; RICHARD W. DAVIS, an
individual; TIM HERRERA, an individual;
MOUNTAIN WEST TITLE COMPANY;
and BBRD, INC, an alter ego of Defendant
Richard W. Davis,

Defendants.

**AFFIDAVIT OF RICHARD H.
THORNTON IN SUPPORT OF
DEFENDANTS' MOTION TO
ENFORCE SETTLEMENT
AGREEMENT AND STRIKE TRIAL
DATES**

Civil No. 080400318
Judge: Howard

I, Richard H. Thornton, being duly sworn upon my oath, state as follows:

1. I am over 18 years of age, have personal knowledge of the facts set forth
below unless otherwise indicated, and am competent in all respects to give the following
testimony in this action.

2. I am an attorney licensed to practice law in the State of Utah and am a shareholder in the law firm of Prince Yeates & Geldzahler. One of the firm's clients is defendant Richard W. Davis.

3. I was informed by my partners Michael N. Zundel and James A. Boevers, co-counsel of record for defendant Davis in this action, that the parties had agreed to settle this action on the basis that defendant Davis would complete his purchase from plaintiff of real property and water rights pursuant to a Real Estate Purchase Contract signed by the parties on August 29, 2007, on which defendant Davis owes the remaining amount of \$1, 200,000.

4. Mr. Zundel and Mr. Boevers asked me to prepare the documents necessary to close the real estate transaction pursuant to the August 29, 2007 contract, and I agreed to do so.

5. Attached hereto as Exhibit "A" is a hard copy of a July 18, 2008 e-mail I sent to Denver Snuffer, Jr., lead counsel of record for plaintiff in this action, discussing the transfer of certain water rights and other matters regarding the closing of the real estate transaction, and attaching a copy of Mr. Boevers' July 11, 2008 e-mail to Mr. Snuffer and the attachments to Mr. Boevers' e-mail.

6. Attached hereto as Exhibit "B" is a hard copy of the July 28, 2008 e-mail I sent to Mr. Snuffer, and the attached drafts of the closing documents referred to in the e-

mail. I never received responses from Mr. Snuffer to either my July 18 or 28, 2008 e-mails.

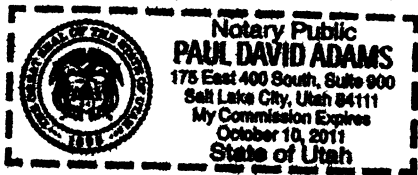
7. After I e-mailed the closing documents to Mr. Snuffer on July 28, 2008, I discovered an error in the legal description in the deed to parcel 4. Attached hereto as Exhibit "C," is the revised deed.

DATED this 26th day of August, 2008.

Richard H. Thornton

Richard H. Thornton

SUBSCRIBED AND SWORN TO before me this 26th day of August, 2008.



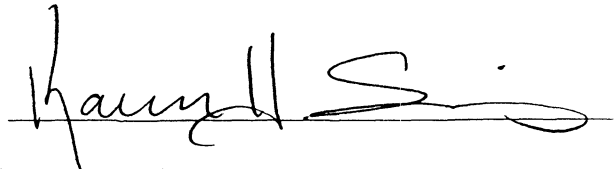
Paul David Adams

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2008, I caused to be delivered by hand-delivery, a true and correct copy of the foregoing **AFFIDAVIT OF RICHARD H. THORNTON IN SUPPORT OF DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND STRIKE TRIAL DATES** to the following:

Denver C. Snuffer
Daniel B. Garriott
Nelson Snuffer Dahle & Poulsen
10885 South State Street
Sandy, Utah 84070

A handwritten signature in black ink, appearing to read "Daniel B. Garriott", written over a horizontal line.

G:\ab\Davis, Richard\LD Aff of RHT in support of motion to enforce settlement agreement.wpd

EXHIBIT "A"

Richard H. Thornton

From: Richard H. Thornton
Sent: Friday, July 18, 2008 4:47 PM
To: 'dcsnuff@aol.com'
Cc: Michael Zundel
Subject: Richard Davis-LDIII
Attachments: FW: Davis - LD III Closing

Dear Mr. Snuffer,

As indicated in the attached e-mail all "pertinent water" for the LD III parcels is to be transferred to the buyer. In addition to the water described in the attached e-mail, I have been made aware that six shares of stock in Lakeside Irrigation Co. (whose water source is commonly referred to as the Huff Dam or the Last Chance Dam) have also been used with the property. Please locate certificates for this water also so that they can be transferred to the buyer at the closing.

I am waiting for some final legal descriptions, at which time I will be able to finalize (and then send to you) proposed closing documents. This will include the requested division of the various water rights.

Feel free to contact me with any questions in the meantime.

Regards,
Rick

Richard H. Thornton
Attorney at Law



Sound Thinking. Sound Solutions.

From: Lisa Keyes
Sent: Friday, July 11, 2008 11:55 AM
To: dcsnuff@aol.com
Cc: Michael Zundel; Richard H. Thornton
Subject: Richard Davis-LDIII

Denver:

As Mike Zundel and I discussed with you on Wednesday, the parties to the *LDIII v. Davis, et al.* case have agreed to settle the case by completing the sale of the real property and water rights to Richard or his designee for the 1.2 million remaining owing under the purchase contract. Accordingly, the settlement agreement will consist of the escrow instructions and title company settlement statement for closing the transaction, along with a stipulation and order dismissing the lawsuit with prejudice, each party to bear its own attorney fees and costs.

My partner Rick Thornton will be primarily responsible for representing Richard regarding the closing. Attached is an e-mail from Rick describing steps that need to be taken to complete the closing. Attached to Rick's e-mail are copies of a water right quitclaim deed, and a water right stock certificate. As indicated in Rick's e-mail, LDIII needs to locate the original of the quitclaim deed, so that Ms. Mower can sign an acknowledgement of her signature on the document before a notary, and it can be recorded. LDIII also needs to locate the original of the water stock certificate, so it can be endorsed for transfer to Richard or his designee.

Please contact Rick directly (rht@princeyeates.com, or 524-1000) if there are matters you wish to discuss regarding the closing. Please contact me if there are other matters that you wish to discuss regarding the settlement.

Thanks,

Jim (If your reply is by email please reply directly to Jim jab@princeyeates.com)

Sent by,

Lisa Keyes

Secretary to James A. Boevers

Prince, Yeates & Geldzahler

175 East 400 South, Suite 900

Salt Lake City, Utah 84111

Phone (801) 524-1000

Fax (801) 524-1098

E-mail lisa@princeyeates.com

Web-Site www.princeyeates.com



Sound Thinking. Sound Solutions.

In order to complete the closing, the seller will need to include the following:

- The four shares of water stock will need to be located (see the attached 7976 water stock cert for the original certificate—this comes from the records of the Utah Division of Water Rights) and then endorsed over to buyer's designee at the closing
- The water rights quitclaim deed from Mower Properties to LD III (see the attached 7976 water right QCD—this comes from the records of the Utah Division of Water Rights and might be in the possession of Jim Riley Engineering, who filed the proof of beneficial use in February 2008) will need to be located, an acknowledgment of Leslie Mower's signature for Mower Properties, Inc. will need to be added and the deed will need to be recorded

In the meantime, I will be working on the following closing documents:

- Warranty deed from LD III to buyer
 - This might involve some work with the surveyor in order to verify that we have an accurate legal description
 - Water right 51-7283 could also be included here
- Escrow instructions to Mountain West Title
- Updated settlement statement from Mountain West Title

I will continue working on these matters, but seller's counsel should be asked to locate the water stock certificate and the quitclaim deed in the meantime.

Regards,
Rick

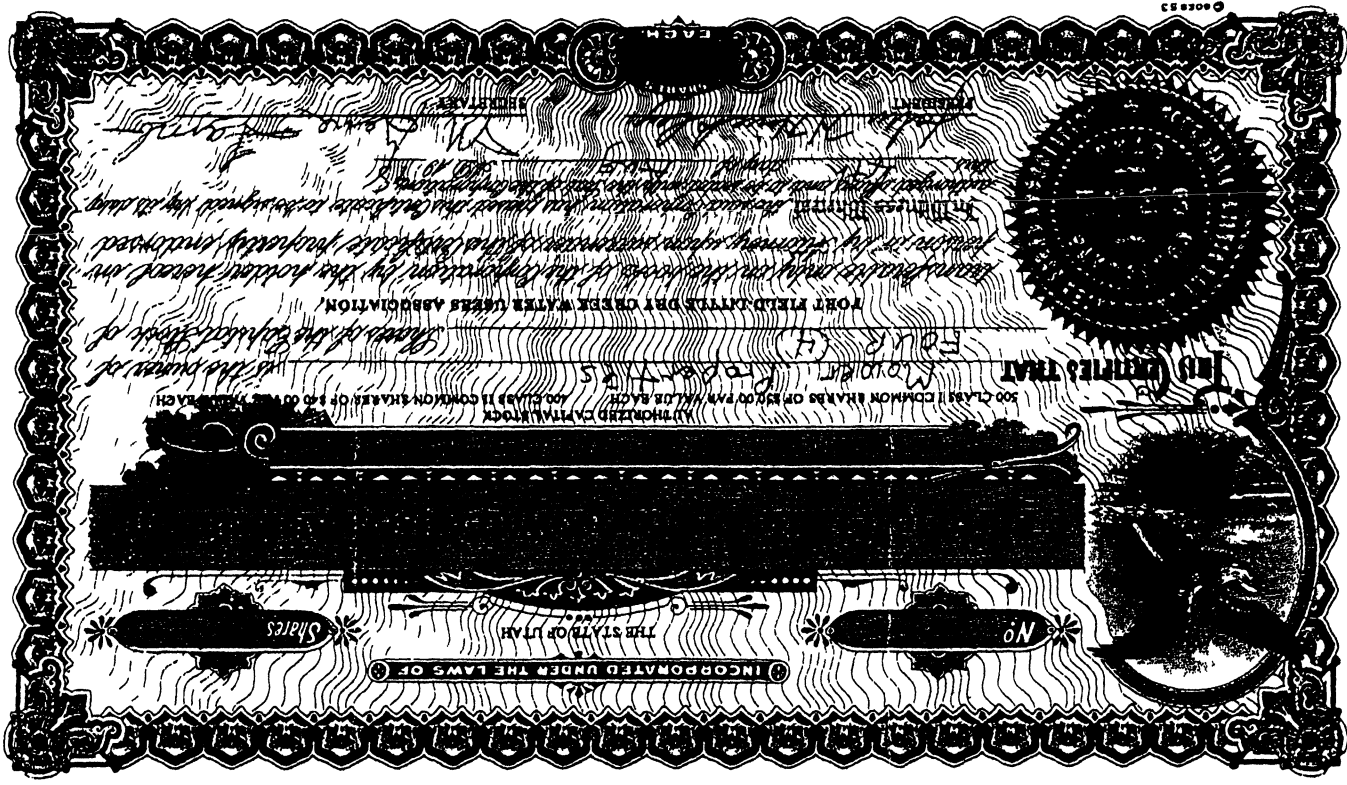
Richard H. Thornton
Attorney at Law
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900
Salt Lake City, Utah 84111-2357

Phone (801) 524-1000
Fax (801) 524-1098
E-mail rht@princeyeates.com
Web-Site www.princeyeates.com



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SCANNED

Exhibit A

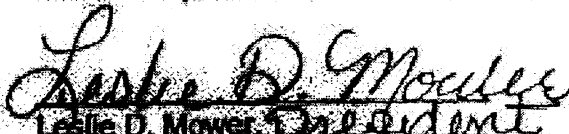
WATER RIGHT QUITCLAIM DEED

Mower Properties, Inc. ("Grantor") hereby quitclaims to LD III, LLC ("Grantee"), for Ten Dollars (\$10.00) and other good and valuable consideration, the following water right and approved change application:

All of Mower Properties, Inc.'s interest in Water Right No. 51-7283 (31.48 ~~acres-feet~~) and approved change application No. ~~a23152~~, as evidenced upon the records of the Utah State Engineer.

Witness the hand of the Grantor this 9 day of February, 2008.

Mower Properties, Inc.


Leslie D. Mower, ~~President~~

I, Ernest J. Galvan, personally saw Leslie D. Mower sign the above document.



Ernest J. Galvan - Subscribing Witness

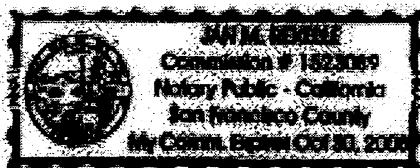
STATE OF CALIFORNIA)

: ss.

COUNTY OF Alameda

On February 11, 2008, before me, the undersigned, a notary public for the state, personally appeared Ernest J. Galvan, personally known to me to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposed and said that he was present and saw Leslie D. Mower, the same person described in and whose name is subscribed to the within and annexed instrument in her authorized capacity as a party thereto, execute or acknowledge executing the same, and that said affiant subscribed his name to the within instrument as a witness at the request of Leslie D. Mower.

WITNESS my hand and official seal.




NOTARY PUBLIC

EXHIBIT "B"

Richard H. Thornton

From: Richard H. Thornton
Sent: Monday, July 28, 2008 9:55 AM
To: 'dcsnuff@aol.com'
Cc: Michael Zundel; Receptionist
Subject: Davis - LD III: Closing Documents
Attachments: 7980 Sandstrom.doc; 7979 parcel 1-001.doc; 7979 parcel 2-001.doc; 7979 parcel 3-001.doc; 7979 parcel 4-001.doc; 7979 parcel 6-001.doc; 7980 Davis entities.doc; 7984.doc; 7983.doc; 7985 22 Jul 2008.pdf; 7978.doc

Dear Mr. Snuffer,

Attached for your review are drafts of the following closing documents for the sale of LD III property to Richard Davis. Mr. Davis desires to have the different parcels conveyed to affiliated companies and designees as shown in the deeds. The stock powers also reflect this by fracturing the water rights among the various deed grantees. Legal descriptions used in the deeds were supplied by MW Brown:

7978	Escrow Instructions
7985 22 Jul 2008	Settlement Statement
7979 parcel 1-001	Warranty Deed for parcel 1
7979 parcel 2-001	Warranty Deed for parcel 1
7979 parcel 3-001	Warranty Deed for parcel 1
7979 parcel 4-001	Warranty Deed for parcel 1
7979 parcel 6-001	Warranty Deed for parcel 1
7983	Stock power for four shares of Fort Field stock
7984	Stock power for six shares of Lake Side stock
7980 Davis entities	Non-foreign certificate for Davis entities
7980 Sandstrom	Non-foreign certificate for parcel 1 designee

Per my prior e-mails, the seller will need to locate the following documents in order to complete the closing:

- Fort Field stock certificate no. 104 for four shares in the name of Mower Properties (an image of this was previously e-mailed to you)
- Lake Side stock certificate for six shares (the name of the current holder will need to be inserted on the Lake Side stock certificate)
- Water right quitclaim deed from Mower Properties to LD III (an image of this was previously e-mailed to you)

Also, a few other matters:

- On 14 July 2008, the records of the Utah Division of Corporations and Commercial Code showed the current managers of LD III as Robert L. Steed and Barry Steed; I have used Robert as the signer on the various deeds.
- Could you please verify whether assessments on the Fort Field and the Lake Side water stock are current?

Please review these documents and matters and get back to me as soon as possible with your comments.

Regards,
Rick

Richard H. Thornton
Attorney at Law
Prince, Yeates & Geldzahler
175 East 400 South, Suite 900

- - 0330

Salt Lake City, Utah 84111-2357

Phone (801) 524-1000

Fax (801) 524-1098

E-mail rht@prnceyeates.com

Web-Site www.prnceyeates.com



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Certification of Non-foreign Status

Section 1445 of the Internal Revenue Code of 1986, as amended (the "*Code*"), provides that a transferee (buyer) of a United States real property interest must withhold tax if the transferor (seller) is a foreign person.

LD III, LLC, a Utah limited liability company (the "*Transferor*") is selling certain real property (the "*Property*") that is located in Utah County, Utah to Stephen Sandstrom and Jennifer Sandstrom, as joint tenants with rights of survivorship (collectively the "*Transferee*"). To inform Transferee that withholding of tax is not required upon Transferor's disposition of the Property (a U.S. real property interest) to Transferee, Transferor hereby certifies the following:

1. Transferor is not a foreign person (including a foreign corporation, foreign partnership, foreign trust or foreign estate) as those terms are defined in the Code and regulations promulgated under the Code.
2. Transferor's tax identification number is _____.
3. Transferor's address is 584 South State Street, Orem, Utah 84058.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalty of perjury, Transferor declares that: (1) Transferor has examined this certificate (the "*Certificate*"); (2) to the best of Transferor's knowledge and belief it is true, correct and complete; and (3) Transferor has the authority to sign this Certificate. Transferor recognizes that Transferee and other persons will rely on the accuracy of the matters set forth in this Certificate.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability
company

By: _____
ROBERT L. STEED
Manager

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

The foregoing instrument was acknowledged before me the ____ day of _____ 2008 by
ROBERT L. STEED, manager of LD III, LLC, a Utah limited liability company.

Notary Public

RECORDED AT THE REQUEST OF,
AND AFTER RECORDING RETURN TO:
Stephen and Jennifer Sandstrom
1775 North Skyline Drive
Orem, UT 84097

Space above for Use of County Recorder

Warranty Deed

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, LD III, LLC, a Utah limited liability company ("*Grantor*") hereby *conveys and warrants* to STEPHEN SANDSTROM and JENNIFER SANDSTROM, husband and wife, as joint tenants with rights of survivorship, whose address is 1775 North Skyline Drive, Orem, Utah 84097, the following real property (the "*Property*") that is located in Utah County, Utah:

Beginning at a point which is North 00°17'46" West along the section line 1329.27 feet and North 89°32'54" East 33.00 feet from the Southwest corner of Section 33, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°32'54" East 841.54 feet; thence South 00°13'47" West 390.00 feet; thence South 89°42'14" West 837.96 feet; thence North 00°17'46" West 387.70 to the point of beginning

[Utah County tax parcel no. 21-82-21 with part of tax parcel no. 21-82-23]
[Identified on a map in Grantor's possession as parcel 1 containing 7.496 acres]

TOGETHER WITH: (1) all improvements located on the Property; (2) all easements, rights of way and other matters benefiting the Property; and (3) two acre feet of Grantor's overall 31.48 acre feet evidenced by Utah Division of Water Rights water right no. 51-7283 and approved change application no. a23152; and

SUBJECT TO real property taxes, assessments, penalties and interest for the year 2008 and thereafter, including taxes and assessments under the Utah Farmland Assessment Act.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability company

By: _____
ROBERT L. STEED
Manager

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____ 2008 by ROBERT L. STEED as a manager of and on behalf of LD III, LLC, a Utah limited liability company.

Notary Public

RECORDED AT THE REQUEST OF,
AND AFTER RECORDING RETURN TO
SWLRD, LLC
1483 East Springdell Drive
Provo, UT 84604

Space above for Use of County Recorder

Warranty Deed

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, LD III, LLC, a Utah limited liability company ("*Grantor*") hereby *conveys and warrants* to SWLRD, LLC, also known as SWRD, LLC, a Utah limited liability company whose address is 1483 East Springdell Drive, Provo, Utah 84604 ("*Grantee*"), the following real property (the "*Property*") that is located in Utah County, Utah:

Beginning at a point which is North 00°17'46" West along the section line 941.66 feet and North 89°42'14" East 33.00 feet from the Southwest corner of Section 33, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°42'14" East 837.96 feet; thence South 00°13'47" West 391.02 feet; thence South 89°42'14" West 834.37 feet; thence North 00°17'46" West 391.00 to the point of beginning

[Utah County tax parcel no. 21-82-24, with parts of tax parcel nos. 21-82-17, -18 and -21 and -23]

[Identified on a map in Grantor's possession as parcel 2 containing 7.506 acres]

TOGETHER WITH: (1) all improvements located on the Property; (2) all easements, rights of way and other matters benefiting the Property; (3) a quitclaim by Grantor to Grantee of all strips and overlaps adjacent to the west boundary of the Property and in which Grantor or its predecessors in interest have any interest; and (4) two acre feet of Grantor's overall 31.48 acre feet evidenced by Utah Division of Water Rights water right no. 51-7283 and approved change application no. a23152; and

SUBJECT TO real property taxes, assessments, penalties and interest for the year 2008 and thereafter, including taxes and assessments under the Utah Farmland Assessment Act.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability company

By. _____
ROBERT L. STEED
Manager

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____ 2008 by ROBERT L. STEED as a manager of and on behalf of LD III, LLC, a Utah limited liability company.

Notary Public

RECORDED AT THE REQUEST OF,
AND AFTER RECORDING RETURN TO:
PBRD, LLC
1483 East Springdell Drive
Provo, UT 84604

Space above for Use of County Recorder

Warranty Deed

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, LD III, LLC, a Utah limited liability company ("*Grantor*") hereby *conveys and warrants* to PBRD, LLC, a Utah limited liability company whose address is 1483 East Springdell Drive, Provo, Utah 84604 ("*Grantee*"), the following real property (the "*Property*") that is located in Utah County, Utah:

Beginning at a point which is North 00°17'46" West along the section line 254.37 feet and East 33.00 feet from the Southwest corner of Section 33, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 00°17'46" West 296.45 thence North 89°42'14" East 834.37 feet; thence South 00°13'47" West 535.40 feet; thence North 89°46'13" West 300.82 feet; thence North 00°41'57" West 206.40 feet; thence North 87°03'51" West 528.03 feet to the point of beginning

[Utah County tax parcel no. 21-82-18, with part of tax parcel no. 21-82-17]
[Identified on a parcel map in Grantor's possession as parcel 3 containing 7.500 acres]

TOGETHER WITH: (1) all improvements located on the Property; (2) all easements, rights of way and other matters benefiting the Property; (3) a quitclaim by Grantor to Grantee of all strips and overlaps adjacent to the westerly and southerly boundaries of the Property and in which Grantor or its predecessors in interest have any interest; and (4) two acre feet of Grantor's overall 31.48 acre feet evidenced by Utah Division of Water Rights water right no. 51-7283 and approved change application no. a23152; and

SUBJECT TO real property taxes, assessments, penalties and interest for the year 2008 and thereafter, including taxes and assessments under the Utah Farmland Assessment Act.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability company

By: _____
ROBERT L. STEED
Manager

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____ 2008 by ROBERT L. STEED as a member of and on behalf of LD III, LLC, a Utah limited liability company.

Notary Public

RECORDED AT THE REQUEST OF,
AFTER RECORDING RETURN TO
Richard W and Beverly B Davis, Trustees
1483 East Springdell Drive
Provo, UT 84604

Space above for Use of County Recorder

Warranty Deed

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, LD III, LLC, a Utah limited liability company ("*Grantor*") hereby *conveys and warrants* to RICHARD W. DAVIS and BEVERLY B. DAVIS, as trustees of The R. W. Davis Family Protection Trust dated the 4th day of December 2000, whose address is 1483 East Springdell Drive, Provo, Utah 84604, the following real property (the "*Property*") that is located in Utah County, Utah:

Beginning at a point which is North 00°17'46" West along the section line 916.61 feet and East 870.70 feet from the Southwest corner of Section 33, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°46'13" East 509.98 feet; thence South 00°13'47" West 896.87 feet; thence North 89°46'13" West 509.98 feet; thence North 00°13'47" East 896.87 feet to the point of beginning

[Utah County tax parcel no. 21-82-17, with part of tax parcel and 21-82-24]
[Identified on a map in Grantor's possession as parcel 4 containing 10.500 acres]

TOGETHER WITH: (1) all improvements located on the Property; (2) all easements, rights of way and other matters benefiting the Property; and (3) two acre feet of Grantor's overall 31.48 acre feet evidenced by Utah Division of Water Rights water right no. 51-7283 and approved change application no. a23152; and

SUBJECT TO real property taxes, assessments, penalties and interest for the year 2008 and thereafter, including taxes and assessments under the Utah Farmland Assessment Act.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability company

By: _____
ROBERT L. STEED
Manager

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____ 2008 by ROBERT L. STEED as a member of and on behalf of LD III, LLC, a Utah limited liability company.

Notary Public

RECORDED AT THE REQUEST OF,
AND AFTER RECORDING RETURN TO:
BBRD, L.C.
1483 East Springdell Drive
Provo, UT 84604

Space above for Use of County Recorder

Warranty and Quitclaim Deed

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, LD III, LLC, a Utah limited liability company ("*Grantor*") hereby *conveys and warrants* to BBRD, L.C. a Utah limited liability company whose address is 1483 East Springdell Drive, Provo, Utah 84604 ("*Grantee*"), the following real property (the "*Property*") that is located in Utah County, Utah:

"Parcel 6" (referred to herein as the "Property")

Beginning at a point which is North 00°17'46" West along the section line 1329.27 feet, North 89°32'54" East 33.00 feet and North 89°32'54" East 841.54 feet from the Southwest corner of Section 33, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°32'54" East 451.94 feet; thence North 00°08'37" West 823.80 feet; thence South 89°32'05" East 723.97 feet; thence North 00°09'52" West 7.89 feet; thence North 88°13'26" East 162.29 feet; thence South 01°03'05" East 579.80 feet; thence South 01°43'16" East 324.51 feet; South 01°59'11" East 252.68 feet; thence South 02°21'58" East 1000.74 feet; thence North 89°46'13" West 391.79 feet; thence North 00°13'47" East 896.87 feet; thence North 89°46'13" West 1019.96 feet; thence North 00°13'47" East 419.55 feet to the point of beginning

[Utah County tax parcel nos. 21-82-23 and 25]

[Identified on a parcel map in Grantor's possession as parcel 6 containing 37.808 acres]

TOGETHER WITH: (1) all improvements located on the Property; (2) all easements, rights of way and other matters benefiting the Property; and (3) 21.93 acre feet of Grantor's overall 31.48 acre feet evidenced by Utah Division of Water Rights water right no. 51-7283 and approved change application no. a23152; and

SUBJECT TO real property taxes, assessments, penalties and interest for the year 2008 and thereafter, including taxes and assessments under the Utah Farmland Assessment Act.

Further, Grantor hereby quitclaims to Grantee the following real property located in Utah County, Utah:

Strips surrounding Property

All strips and overlaps in which Grantor or its predecessors in interest have any interest and that are adjacent to and that lie either: (1) to the north of the Property (as to parcels owned now or previously by: (a) Guido Buffo and (b) Richard W. and Beverly B. Davis); (2) to the east of the Property; (3) to the most southerly boundary of the Property that adjoins a county road; and (4) to the westerly boundary of the Property that adjoins property now owned by Richard W. Davis and Beverly B. Davis

Strips north of "Parcel 1"

All strips and overlaps that are adjacent to and that lie to the north of the following described parcel of real property and in which Grantor or its predecessors in interest have any interest (the following described parcel is located in Utah County, Utah and is shown as parcel 1 on a map in Grantor's possession):

Beginning at a point which is North 00°17'46" West along the section line 1329.27 feet and North 89°32'54" East 33.00 feet from the Southwest corner of Section 33, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°32'54" East 841.54 feet; thence South 00°13'47" West 390.00 feet; thence South 89°42'14" West 837.96 feet; thence North 00°17'46" West 387.70 to the point of beginning.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability company

By: _____
ROBERT L. STEED
Manager

STATE OF UTAH)
 :ss
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____ 2008 by ROBERT L. STEED as a manager of and on behalf of LD III, LLC, a Utah limited liability company.

Notary Public

G:\Rh\LD\7979 lot 6-001 doc

Certification of Non-foreign Status

Section 1445 of the Internal Revenue Code of 1986, as amended (the "*Code*"), provides that a transferee (buyer) of a United States real property interest must withhold tax if the transferor (seller) is a foreign person.

LD III, LLC, a Utah limited liability company (the "*Transferor*") is selling certain parcels of real property (the "*Property*") that is located in Utah County, Utah variously to (1) SWLRD, LLC a/k/a SWRD, LLC; (2) PBRD, LLC; (3) Richard W. Davis and Beverly B. Davis, trustees; and (3) BBRD, L.C. (collectively the "*Transferee*"). To inform Transferee that withholding of tax is not required upon Transferor's disposition of the Property (a U.S. real property interest) to Transferee, Transferor hereby certifies the following:

1. Transferor is not a foreign person (including a foreign corporation, foreign partnership, foreign trust or foreign estate) as those terms are defined in the Code and regulations promulgated under the Code.

2. Transferor's tax identification number is _____.

3. Transferor's address is 584 South State Street, Orem, Utah 84058.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalty of perjury, Transferor declares that: (1) Transferor has examined this certificate (the "*Certificate*"); (2) to the best of Transferor's knowledge and belief it is true, correct and complete; and (3) Transferor has the authority to sign this Certificate. Transferor recognizes that Transferee and other persons will rely on the accuracy of the matters set forth in this Certificate.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability
company

By: _____
ROBERT L. STEED
Manager

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

The foregoing instrument was acknowledged before me the ____ day of _____ 2008 by
ROBERT L. STEED, manager of LD III, LLC, a Utah limited liability company.

Notary Public

Irrevocable Stock Power

FOR VALUE RECEIVED, _____ (“Assignor”) hereby:

1. Sells, assigns and transfers to the assignees (the “Assignees”) indicated in the following table, six shares of stock in LAKE SIDE IRRIGATION CO., a Utah non-profit corporation (the “Corporation”) that is represented by certificate no. ___, which shares shall be allocated among Assignees as indicated in the following table (parcel numbers shown in the following tables are for Assignees’ internal reference only):

<i>Name of Assignee</i>	<i>Address of Assignee</i>	<i>Number of Shares</i>
PBRD, LLC	1483 East Springdell Drive Provo, Utah 84604 [parcel 3]	One share
SWLRD, LLC, a/k/a SWRD, LLC	1483 East Springdell Drive Provo, Utah 84604 [parcel 2]	Four shares
Stephen Sandstrom and Jennifer Sandstrom, as joint tenants with rights of survivorship	1775 North Skyline Drive Orem, Utah 84097 [parcel 1]	One share

and

2. Irrevocably constitutes and appoints the secretary of the Corporation, as attorney, to transfer the shares on the books of the Corporation, with full power of substitution to carry out the transfer.

DATED THE ___ day of _____ 2008.

Assignor:

MOWER PROPERTIES

By: _____
LESLIE D. MOWER
President

WITNESSED IN THE PRESENCE OF:

Irrevocable Stock Power

FOR VALUE RECEIVED, MOWER PROPERTIES ("Assignor") hereby:

1. Sells, assigns and transfers to the assignees (the "Assignees") indicated in the following table, four shares of stock in FORT FIELD-LITTLE DRY CREEK WATER USERS ASSOCIATION, a Utah non-profit corporation (the "Corporation") that is represented by certificate no. 102, which shares shall be allocated among Assignees as indicated in the following table (parcel numbers shown in the following tables are for Assignees' internal reference only):

<i>Name of Assignee</i>	<i>Address of Assignee</i>	<i>Number of Shares</i>
BBRD, L.C.	1483 East Springdell Drive Provo, Utah 84604 [parcel 6]	2.8 shares
Charles Y. Warner, Trustee of the Charles Y. Warner Family Trust, Dated August 27, 1990	926 West 600 South Orem, Utah 84058 [parcel 5]	.20 share
Richard W. Davis and Beverly B. Davis, as trustees of The R.W. Davis Family Protection Trust dated the 4 th day of December 2000	1483 East Springdell Drive Provo, Utah 84604 [parcel 4]	.25 share
PBRD, LLC	1483 East Springdell Drive Provo, Utah 84604 [parcel 3]	.25 share
SWLRD, LLC, a/k/a SWRD, LLC	1483 East Springdell Drive Provo, Utah 84604 [parcel 2]	.25 share
Stephen Sandstrom and Jennifer Sandstrom, as joint tenants with rights of survivorship	1775 North Skyline Drive Orem, Utah 84097 [parcel 1]	.25 share

(for Grantor's reference, the four shares of stock represented by certificate no. 102 are the subject of Utah Division of Water Rights water right no. 51-7283 and approved change application no. a23152); and

2. Irrevocably constitutes and appoints the secretary of the Corporation, as attorney, to transfer the shares on the books of the Corporation, with full power of substitution to carry out the transfer.

DATED THE ____ day of _____ 2008.

Assignor:

MOWER PROPERTIES

By: _____
LESLIE D. MOWER
President

WITNESSED IN THE PRESENCE OF:

A. U.S. Department of Housing and Urban Development Settlement Statement		B. Type of Loan	
		1 <input type="checkbox"/> FHA	2 <input type="checkbox"/> FMHA
		4 <input type="checkbox"/> VA	5 <input type="checkbox"/> Conv Ins
		3 <input type="checkbox"/> Conv Unins	
6. File Number M-43274		7. Loan Number	
		8. Mortgage Ins Case No	
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked ("POC") were paid outside the closing. They are shown here for information purposes and are not included in the totals.			
D. Name of Borrower: BBRD, Inc Richard Davis			
E. Name of Seller: LD III, L LC			
F. Name of Lender:			
G. Property Location: of Section 33, Township 7, Range 2, Utah County, Utah, of Section 33, Township 7, Range 2, Utah County, Utah, of Section 33, Township 7, Range 2, Utah County, Utah, of Section 33, Township 7, Range 2, Utah County, Utah, of Section 33, Township 7, Range 2, Utah County, Utah			
H. Settlement Agent: Mountain West Title (801) 225-2857 Place of Settlement: 961 South Orem Blvd, Orem, UT 84058		TIN 87-0454341	
I. Settlement Date: 7/23/2008		Proration Date: 7/25/2008	
Summary of Borrower's Transaction		Summary of Seller's Transaction	
100. Gross amount due from borrower.		400. Gross amount due to seller:	
101. Contract sales price	1,200,000 00	401. Contract sales price	1,200,000 00
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	1,011 18	403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance:		Adjustments for items paid by seller in advance:	
106. City/town taxes		406. City/town taxes	
107. County taxes		407. County taxes	
108. Assessments		408. Assessments	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross amount due from borrower:	1,201,011 18	420. Gross amount due to seller:	1,200,000 00
200. Amounts paid by or in behalf of the borrower:		500. Reduction in amount due to seller:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	4,280 00
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206. Funds from Holiday Bank Loan	900,000 00	506.	
207. Additional Deposit	223,270 21	507.	
208.		508.	
209.		509.	
Adjustments for items supplied by seller:		Adjustments for items supplied by seller:	
210. City/town taxes		510. City/town taxes	
211. County taxes 1/1/2008 to 7/25/2008	134 11	511. County taxes 1/1/2008 to 7/25/2008	134 11
212. Assessments		512. Assessments	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219. **Tax proration estimated on previous year taxes**		519. **Tax proration estimated on previous year taxes**	
220. Total paid by/for borrower:	1,123,404 32	520. Total reduction in amount due seller:	4,414 11
300. Cash at settlement from (to) borrower:		600. Cash at settlement from (to) seller:	
301. Gross amount due from borrower (line 120)	1,201,011 18	601. Gross amount due to seller (line 420)	1,200,000 00
302. Less amount paid by/for borrower (line 220)	1,123,404 32	602. Less total reduction in amount due seller (line 520)	4,414 11
303. CASH (X) FROM () TO BORROWER	77,606 86	603. CASH () FROM (X) TO SELLER	1,195,585 89

Settlement Charges		Paid From	
		Borrower's	
		Funds at	
		Settlement	
		Paid From	
		Seller's	
		Funds at	
		Settlement	
700	Total sales/broker commission		
	Division of commission (line 700) as follows		
701	\$		
702	\$		
703	Commission paid at settlement		
704			
705			
800 Items payable in connection with loan			
801	Loan origination fee		
802	Loan discount		
803	Appraisal fee		
804	Credit report		
805	Lender's inspection fee		
806	Mortgage insurance application fee		
807	Assumption fee		
808	Underwriting Fee		
809	Flood Certification Fee		
810	Tax Service Fee		
811	Document Prep Fee		
812			
813			
814	Yield Spread Premium		
900 Items required by lender or local laws			
901	Interest from		
902	Mortgage insurance premium for		
903	Hazard insurance premium for		
904			
905	VA Funding Fee		
1000 Reserves deposited with lender			
1001	Hazard insurance		
1002	Mortgage insurance		
1003	City property taxes		
1004	County property taxes		
1005	Annual assessments (maint)		
1006			
1007			
1008			
1009	Aggregate Adjustment		
1100 Title Charges			
1101	Settlement or closing fee to Mountain West Title	350 00	350 00
1102	Abstract or title search		
1103	Title examination		
1104	Title insurance binder		
1105	Document preparation to Mountain West Title	100 00	100 00
1106	Notary fees		
1107	Attorney's fees to		
	includes above items no		
1108	Title insurance to Mountain West Title		3 795 00
	includes above items no		
1109	Lender's coverage		
1110	Owner's coverage \$1,200 000 00 \$3 795 00		
1111	100, 116 8 1 Endorsements		
1112	Payoff Processing Fee		
1113	Courier Service		
1114	Recording Servicing Fee to Mountain West Title	30 00	10 00
1115	Wire Fee to Mountain West Title	25 00	25 00
1116	Property Survey by MW Brown En to MW Brown Engineering, Inc.	506 18	
1200 Government recording and tax charges			
1201	Recording fees		
1202	City/county tax/stamps		
1203	State tax/stamps		
1204	Electronic Recording Fee		
1205			
1206			
1300 Additional settlement charges			
1301	Survey		
1302	Pest inspection		
1303			
1304			
1305			
1400	Total settlement charges (entered on lines 103 section J and 502 section K)	1 011 18	4 280 00

CERTIFICATION: I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of HUD-1 Settlement Statement.

BBRD, Inc.

LD III, L.L.C.

Richard Davis

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

Mountain West Title

Date

SELLER'S AND/OR PURCHASER'S STATEMENT Seller's and Purchaser's signature hereon acknowledges his/her approval of tax prorations and signifies their understanding that prorations were based on taxes for the preceding year, or estimates for the current year, and in the event of any change for the current year, all necessary adjustments must be made between Seller and Purchaser; likewise any default in delinquent taxes will be reimbursed to Title Company by the Seller.

Title Company, in its capacity as Escrow Agent, is and has been authorized to deposit all funds it receives in this transaction in any financial institution, whether affiliated or not. Such financial institution may provide Title Company computer accounting and audit services directly or through a separate entity which, if affiliated with Title Company, may charge the financial institution reasonable and proper compensation therefore and retain any profits therefrom. Any escrow fees paid by any party involved in this transaction shall only be for checkwriting and input to the computers, but not for aforesaid accounting and audit services. Title Company shall not be liable for any interest or other charges on the earnest money and shall be under no duty to invest or reinvest funds held by it at any time. Sellers and Purchasers hereby acknowledge and consent to the deposit of the escrow money in financial institutions with which Title Company has or may have other banking relationships and further consent to the retention by Title Company and/or its affiliates of any and all benefits (including advantageous interest rates on loans) Title Company and/or its affiliates may receive from such financial institutions by reason of their maintenance of said escrow accounts.

The parties have read the above sentences, recognize that the recitations herein are material, agree to same, and recognize Title Company is relying on the same.

Purchasers/Borrowers

Sellers

BBRD, Inc.

LD III, L.L.C.

Richard Davis

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18: U.S. Code Section 1001 and Section 1010.

PRINCE, YEATES & GELDZAHLER

A PROFESSIONAL CORPORATION
LAWYERS

CITY CENTER I, SUITE 900
175 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 524-1000
FAX (801) 524-1098

E-MAIL: rht@princeyeates.com

F S PRINCE (1910-1991)
DAVID S GELDZAHLER (1932-1994)

ROBERT M YEATES (RETIRED)

ADAM S AFFLECK¹
WILFORD A BEESLEY III
JAMES C BERGSTEDT
JAMES A BOEVERS¹
GLENN R BRONSON¹
J RANDALL CALL^{2,3}
JOHN S CHINDLUND
ANDREW B CLAWSON³
T EDWARD CUNDICK⁴
M DAVID ECKERSLEY
THOMAS J ERBIN
D JAY GAMBLE
JON C HEATON
CHRISTOPHER A JONES¹

WILLIAM G MARSDEN
JAMES W McCONKIE III
ROGER J McCONKIE
SALLY B McMINIMEE¹
G TROY PARKINSON¹
ALLEN SIMS
ERIN M STONE
JAMES C SWINDLER³
JONATHAN T TICHY³
RICHARD H THORNTON
RYAN R WEST³
MICHAEL N ZUNDEL

ALSO ADMITTED IN
CALIFORNIA
IDAHO
NEVADA
TEXAS

2008

ESCROW INSTRUCTIONS

Via e-mail: timh@mountainwesttitle.com

Mountain West Title Company
961 South Orem Boulevard
Orem, Utah, 84058

Attention: Tim Herrera

Re: Commitment for Title Insurance No. M-43274 (the "*Title Commitment*") Dated 16 August 2007, Issued by Stewart Title Guaranty Company Through its Authorized Agent Mountain West Title Company ("*Title Company*") and Covering the Property Described in Item 5 of Schedule A of the Title Commitment (the "*Property*").

Dear Mr. Herrera:

We represent Richard W. Davis ("*Davis*") and related parties in connection with the settlement of litigation with LD III, LLC ("*Seller*") and the attendant sale of the Property by Seller to various designees of Davis. This letter will constitute your escrow instructions from Davis to close the settlement of the litigation and sale of the property to designees of Davis.

Deposit of Documents

Attached to this letter is a documents checklist (the "*Documents Checklist*"), the terms of which are incorporated in this letter by reference. The documents (the "*Documents*") that are described in the Documents Checklist have been deposited with you. Some of the Documents are defined in the Documents Checklist.

Closing

IF on or before _____ 2008 (or an extended date of which we advise you in writing; the "*Closing Date*") each of the following conditions precedent (the "*Conditions*") is satisfied (or is waived in writing by the party benefited by the Condition):

1.1 You have received funds from Davis in the amount set forth in the Settlement Statement (this Condition benefits Seller);

1.2 You have received originals of each of the Documents, which have been executed and acknowledged as called for in the Documents Checklist, and you may process those Documents as indicated in the Documents Checklist (this Condition benefits each party to whom a Document is to be delivered as set forth in the Documents Checklist);

1.3 Stewart Title Guaranty Company is irrevocably committed to, and can unconditionally, issue and deliver to the grantees shown in the Warranty Deeds for parcels 2, 3, 4 and 6 a standard coverage ALTA owner's policy of title insurance (the "*Title Policy*") that: (a) is in the face amount of \$976,729.79; (b) insures each such grantee as the owner of fee simple title to the parcel of the Property shown in the Warranty Deed; and (c) is subject only to: (i) special exception nos. 1 through 6 inclusive, 7 (modified to refer to taxes for the year 2007 only) and 8 through 10 inclusive of schedule B—section 2 of the Title Commitment and (ii) any financing or other documents arising from activities of Davis (this Condition benefits Davis);

1.4 Stewart Title Guaranty Company is irrevocably committed to, and can unconditionally, issue and deliver to the grantee shown in the Warranty Deed for parcel 1 of the Property, a standard coverage ALTA owner's policy of title insurance (the "*Title Policy*") that: (a) is in the face amount of \$223,270.21; (b) insures such grantee as the owner of fee simple title to parcel 1 of the Property; and (c) is subject only to special exception nos. 1 through 6 inclusive, 7 (modified to refer to taxes for the year 2007 only) and 8 through 10 inclusive of schedule B—section 2 of the Title Commitment (this Condition benefits Davis);

1.5 You have verified with Fort Field and Lakeside the amount of any unpaid water assessments related to the water stock described in the stock powers shown in the Documents Checklist and have prorated those assessments between Seller and Davis on the Settlement Statement;

1.6 You have not received any escrow instructions that conflict with these instructions (this Condition benefits Davis and Seller); and

1.7 You are in a position to disburse sales proceeds in the manner reflected on the Settlement Statement (this Condition benefits Davis and Seller);

THEN immediately upon the satisfaction of (or waiver in writing by the party benefited by) each of the Conditions, you are hereby authorized and directed to take the following actions in the following order:

2.1 Date any undated Documents as of the date of recording. Record in the office of the Utah County, Utah Recorder (or other recording office, if so indicated in the Documents Checklist), and/or give effect to, the Documents described in the Documents Checklist, and deliver Documents, or copies thereof, as indicated in the Documents Checklist (we request that this delivery occur within two weeks of the Closing Date).

2.2 Advise us by e-mail or telephone that the Deed and other loan documents have been recorded.

2.3 Disburse the proceeds from the sale in accordance with these instructions and the Settlement Statement.

General Matters

If by the close of business on the Closing Date the Conditions have not been satisfied (or waived in writing by each party benefited by the Condition), then you are hereby instructed to contact us immediately for further instructions. If we do not give you contrary written instructions, then return the Documents and any funds that you are holding under this escrow to the parties who delivered the same to you.

Please acknowledge acceptance of your appointment as escrow agent and your agreement to be bound by these instructions by executing the original and one copy of this letter and then distributing them as set forth in the Documents Checklist. **Recordation of the Documents and/or disbursement of funds that are described in the Settlement Statement constitute your acceptance of these instructions even without your execution and delivery of these instructions as requested. Any departure from these instructions requires our prior written consent.** Facsimile transmissions of signed counterparts of this letter shall be effective as the delivery of originals.

Very truly yours,

PRINCE, YEATES & GELDZAHLER

/s/

Richard H. Thornton
Legal Counsel for Richard Davis and his affiliates

Mountain West Title Company

_____ 2008

Page 4

AGREED TO:

NELSON, SNUFFER DAHLE & POULSEN

Denver C. Snuffer

Legal Counsel for LD III, LLC

MOUNTAIN WEST TITLE COMPANY hereby: (1) acknowledges receipt of the foregoing escrow instructions; (2) agrees to accept, hold and deliver the Documents and to disburse payments in accordance with the instructions; and (3) agrees otherwise to comply with the instructions.

DATED the ____ day of _____ 2008.

MOUNTAIN WEST TITLE COMPANY

By: _____

Printed Name: _____

Its: _____

G:\RHTND\7978 DOC

*Sale of Utah County Property
by LD III, LLC
to Richard Davis Designees
(_____ 2008)*

Documents Checklist

(1) Description of Documents	(2) Deposited with Escrow Agent by:	(3) Other Action Necessary:	(4) After Closing, Deliver to:
Stipulation for Dismissal with Prejudice and Order of Dismissal with Prejudice (each in final form; two originals; signed by Nelson, Snuffer, Dahle & Poulsen, P.C. as legal counsel for Davis and Prince Yeates & Geldzahler as legal counsel for Davis)	Davis	File with Fourth Judicial District Court (as directed by counsel for Davis)	One original to each of Seller and Davis
Water Right Quitclaim Deed dated 9 February 2008, signed by Mower Properties, Inc. and conveying water right #51-7283 to Seller (original; must contain original signature of Seller and original acknowledgment of Seller's signature)	Seller	Record #1	Original to Seller; copy with recording information to Davis
* Warranty Deed signed and acknowledged by Seller conveying proposed parcel 1 of the Property to Stephen and Jennifer Sandstrom (in final form; one original)	Seller	Record #2	Original to Sandstrom, copies with recording information to Seller and Davis
* Warranty Deed signed and acknowledged by Seller conveying proposed parcel 2 of the Property to SWLRD, LLC, a/k/a SWRD, LLC (in final form; one original)	Seller	Record #3	Original to Davis, copy with recording information to Seller
* Warranty Deed signed and acknowledged by Seller conveying proposed parcel 3 of the Property to PBRD, LLC (in final form; one original)	Seller	Record #4	Original to Davis, copy with recording information to Seller
* Warranty Deed signed and acknowledged by Seller conveying proposed parcel 4 of the Property to Davis and Beverly B. Davis as trustees (in final form; one original)	Seller	Record #5	Original to Davis, copy with recording information to Seller
* Warranty Deed and Quitclaim Deed signed and acknowledged by Seller conveying proposed parcel 6 of the Property to BBRD, L.C. (in final form; one original)	Seller	Record #6	Original to Davis, copy with recording information to Seller

Financing documents required by Holladay Bank, lender to Davis, which may encumber proposed parcels 2, 3, 4 and 6, but which may not encumber proposed parcel 1 (in final form; one original)	Davis	Record #7	Original to Holladay Bank, copy with recording information to Davis
Water Right Quitclaim Deed signed and acknowledged by Seller quitclaiming 1.55 acre feet of water right 51-7283 to Charles Y. Warner, trustee (in final form; one original)	Seller	Record #8	Original to grantee named in deed; copies with recording information to Seller and Davis
Reapplication for greenbelt tax status for each proposed parcel shown in the Warranty Deeds, signed by the grantee shown in the Warranty Deed (Title Company should prepare these); alternatively, the grantee shown in the Warranty Deed must pay greenbelt rollback taxes	Grantee shown in each Warranty Deed	File with Utah County, Utah assessor	Copies to Davis
Certification of Non-foreign Status signed and acknowledged by Seller for the benefit of Sandstrom (insert federal employer identification number for Seller; in final form; one original)	Seller	N/A	Original to Sandstrom, copies to Seller and Davis
Certification of Non-foreign Status signed and acknowledged by Seller for the benefit of SWLRD, PBRD, Davis trustees and BBRD (insert federal employer identification number for Seller; in final form; one original)	Seller	N/A	Original to Davis, copy to Seller
Original stock certificate (" <i>Fort Field Stock Certificate</i> ") representing four shares of stock in Fort Field-Little Dry Creek Water Users Association (" <i>Fort Field</i> ")	Seller	Deliver to Fort Field with (1) instructions to issue new shares to assignees and (2) any unpaid water assessment shown on Settlement Statement	Original to Davis, copy to Seller
Irrevocable Stock Power signed by holder of Fort Field Stock Certificate and assigning shares to grantees under Warranty Deeds and to Warner as trustee (in final form; one original)	Seller		Original to Davis, copy to Seller
Original stock certificate (" <i>Lake Side Stock Certificate</i> ") representing six shares of stock in Lake Side Irrigation Co. (" <i>Lake Side</i> ")	Seller	Deliver to Lake Side with (1) instructions to issue new shares to	Original to Davis, copy to Seller
Irrevocable Stock Power signed by holder of Lake Side Stock Certificate and assigning shares to grantees under Warranty Deeds for	Seller		Original to Davis, copy to Seller

proposed parcels 1, 2 and 3 (in final form; one original)		assignees and (2) unpaid water assessment shown on Settlement Statement	
Escrow Instructions signed by legal counsel for Davis and acknowledged by (1) legal counsel for Seller and (2) Title Company	Seller	N/A	One original to each of Seller's legal counsel, Davis's legal counsel and Title Company
Settlement Statement (" <i>Settlement Statement</i> ") signed by Seller, Davis and Title Company	Seller Davis	N/A	Original or copy to Title Company; copies to Seller and Davis

Notes:

- References to the "final form" of documents means the form attached to the _____ 2008 e-mail to you from Seller's legal counsel, labeled "sign"
- Documents marked with an asterisk are the "*Warranty Deeds*" that are referred to in these escrow instructions
- Copies of all documents that are to be delivered to Davis should be sent to Davis's counsel: Richard H. Thornton, Prince, Yeates & Geldzahler, 175 East 400 South, Suite 900, Salt Lake City, UT 84111-2357

EXHIBIT "C"

RECORDED AT THE REQUEST OF,
AFTER RECORDING RETURN TO:
Richard W. and Beverly B. Davis, Trustees
1483 East Springdell Drive
Provo, UT 84604

Space above for Use of County Recorder

Warranty Deed

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, LD III, LLC, a Utah limited liability company ("*Grantor*") hereby *conveys and warrants* to RICHARD W. DAVIS and BEVERLY B. DAVIS, as trustees of The R.W. Davis Family Protection Trust dated the 4th day of December 2000, whose address is 1483 East Springdell Drive, Provo, Utah 84604, the following real property (the "*Property*") that is located in Utah County, Utah:

Beginning at a point which is North 00°17'46" West along the section line 916.61 feet and East 870.70 feet from the Southwest corner of Section 33, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°46'13" East 509.98 feet; thence South 00°13'47" West 896.87 feet; thence North 89°46'13" West 509.98 feet; thence North 00°13'47" East 896.87 feet to the point of beginning

[Utah County tax parcel no. 21-82-17, with part of tax parcel and 21-82-24]
[Identified on a map in Grantor's possession as parcel 4 containing 10.500 acres]

TOGETHER WITH: (1) all improvements located on the Property; (2) all easements, rights of way and other matters benefiting the Property; and (3) two acre feet of Grantor's overall 31.48 acre feet evidenced by Utah Division of Water Rights water right no. 51-7283 and approved change application no. a23152; and

SUBJECT TO real property taxes, assessments, penalties and interest for the year 2008 and thereafter, including taxes and assessments under the Utah Farmland Assessment Act.

DATED the ____ day of _____ 2008.

LD III, LLC, a Utah limited liability company

By: _____
ROBERT L. STEED
Manager

STATE OF UTAH)
 :SS
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____ 2008 by ROBERT L. STEED as a member of and on behalf of LD III, LLC, a Utah limited liability company.

Notary Public

Tab D

FILED
Fourth Judicial District Court
of Utah County, State of Utah
9/23/08 SC Deputy

4TH DISTRICT COURT - PROVO
UTAH COUNTY, STATE OF UTAH

LD III LLC,	:	MINUTES
Plaintiff,	:	TELEPHONE CONFERENCE
	:	
	:	
vs.	:	Case No: 080400318 WG
	:	
BBRD LC Et al,	:	Judge: FRED D HOWARD
Defendant.	:	Date: September 23, 2008

Clerk: sherylc
TELEPHONE CONFERENCE

PRESENT

Plaintiff's Attorney(s): DANIEL B GARRIOTT
Defendant's Attorney(s): JAMES A BOEVERS
Tape Count: 11:00-11:10

HEARING

COUNT: 11:00

There is no record of this hearing other than this minute entry.
Counsel appear by telephone, status of case briefs are discussed.
Counsel submit without arguments.

The court finds that Davis has made no change to the Settlement Agreement, material or otherwise.

The Agreement is, and always has been, that the transfers could be made to Davis' designees. Because the issue is not a material one, Davis has agreed to take title in his own name.

The Order should be changed to reflect that the court has also considered the parties' supplemental memoranda and the deadline for completing LD III's closing obligations should be changed to September 30, 2008.

The court enforces the Settlement Agreement. Mr. Boevers is to prepare the Order.

Tab E

Michael N. Zundel (3755) mnz@princeyeates.com
James A. Boevers (0371) jab@princeyeates.com
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
(801) 524-1000

Attorneys for Defendants

FILED
Fourth Judicial District Court
of Utah County, State of Utah

10/9/08 Max Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

LD III, LLC, a Utah limited liability
company,

Plaintiff,

vs.

BBRD, L.C., a Utah limited liability
company; RICHARD W. DAVIS, an
individual; TIM HERRERA, an individual;
MOUNTAIN WEST TITLE COMPANY;
and BBRD, INC, an alter ego of Defendant
Richard W. Davis,

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION TO ENFORCE
SETTLEMENT AGREEMENT AND
STRIKE TRIAL DATES**

Civil No. 080400318

Judge: Howard

The Court having considered Defendants' Motion to Enforce Settlement Agreement and Strike Trial Dates, the supporting memorandum and the supporting affidavits of Michael N. Zundel, James A. Boevers and Richard H. Thornton, the Opposition to defendants' motion filed by plaintiff, the reply memorandum filed by

defendants, having heard the arguments of counsel for plaintiff (Denver C. Snuffer) and defendants (Mr. Zundel) on September 17, 2008, having considered the supplemental memoranda filed by the parties as directed by the Court, and having issued its ruling by telephone conference call on September 23, 2008, in which David B. Garriott appeared on behalf of plaintiff, and James A. Boevers appeared on behalf of defendants, and good cause appearing,

It is hereby Ordered:

1. Defendants' motion is granted. Defendant Richard W. Davis ("Davis") made no change to the settlement agreement with plaintiff LD III, LLC ("LD III"), material or otherwise. The settlement agreement is and always was that LD III would convey the subject parcels of real property and water rights to Davis or his designee. However, Davis has agreed to take title in his own name because the issue is not a material one.
2. LD III shall close the real estate transaction with Davis by September 30, 2008 in accordance with the closing documents attached as Exhibits B and C to Mr. Thornton's affidavit, with the exception that the transferee shall be Davis, and by such date plaintiff shall sign and deliver the closing documents that call for plaintiff's signature, and deliver the other closing documents, all as shown by such documents. If

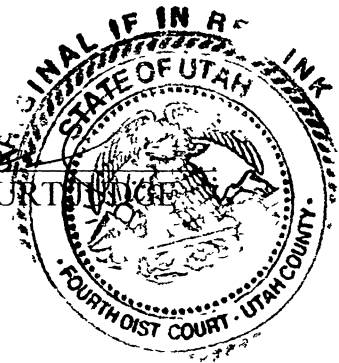
LD III does not close the real estate transaction by September 30, 2008, the Court shall quiet title to the subject real property and water rights in Davis.

3. The September 17 through 19, 2008 trial dates are hereby stricken.

DATED this 8 day of ~~September~~^{Oct}, 2008.

BY THE COURT:


FOURTH DISTRICT COURT JUDGE



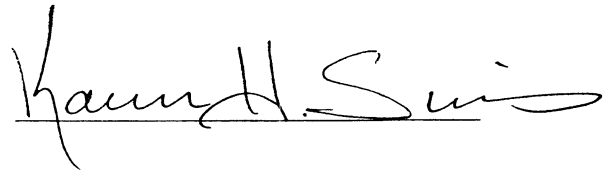
APPROVED AS TO FORM:

Denver C. Snuffer
Daniel B. Garriott
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 2008, I caused to be delivered by e-mail and by hand-delivery a true and correct copy of the foregoing **ORDER GRANTING DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT AND STRIKE TRIAL DATES** to the following:

Denver C. Snuffer
Daniel B. Garriott dbgarriott@msn.com
Nelson Snuffer Dahle & Poulsen
10885 South State Street
Sandy, Utah 84070

A handwritten signature in black ink, appearing to read "Kenneth H. Smith", written over a horizontal line.

G:\ab\Davis, Richard\LD III\Order re Mot to Enforce 9 16 08 wpd