  
20031110000745340 Pg 1/8 35.00  
Shelby Cnty Judge of Probate, AL  
11/10/2003 11:13:00 FILED/CERTIFIED**SECOND AMENDMENT TO SUBORDINATION AND LIEN PRIORITY AGREEMENT****STATE OF ALABAMA )  
SHELBY COUNTY )**

This Second Amendment to Subordination and Lien Priority Agreement (the Second Amendment) is made this 7 day of NOV, 2003 by and between Union State Bank (Bank), Creed Development, LLC (Creed) and Randall H. Goggans and wife, Holly H. Goggans (herein collectively Goggans).

Whereas, the parties heretofore executed a Subordination and Lien Priority Agreement which is recorded in Instrument 20030627000405930, Probate Office of Shelby County, Alabama (the SLPA); and

Whereas, the parties have heretofore modified the SLPA by the execution of the First Amendment to Subordination and Lien Priority Agreement (the First Amendment) which is recorded in Instrument 20031029000720730, Probate Office of Shelby County, Alabama. Collectively herein the SLPA and the First Amendment are referred to as the Agreement; and

Whereas, since the First Amendment, it has been determined that Exhibits A and B attached to the First Amendment are incorrect as a result of the passage of time (the First Amendment Exhibits A and B were estimated for October 15, 2003), the failure to include amounts which would effect such Exhibits, the realization that additional costs would be necessary to complete the Development, the fact that cash would be necessary prior to the closing of the sale of the Lots over and above the amounts contained in the Development Mortgage and the Development Loan and accordingly, the Development Mortgage and the Development Loan must be increased to \$331,279.00 plus title and recording costs in order to provide cash to Richards and Sons in the amount of \$36,148.50, the road seal bond in the amount of \$26,904.00 and an initial draw for the costs of installation of water lines in the amount of \$17,128.00 and Bank is willing to advance such sums (a total of \$80,180.50) upon condition of updated title insurance and appropriate lien subordinations from those entitled to lien the Property for work and labor done; and

Whereas, the parties are desirous of further amending the Agreement, hence this Second Amendment to Subordination and Lien Priority Agreement.

Now, therefore, in consideration of the premises, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. All capitalized terms contained in this Second Amendment shall have the same meaning as set out in the Agreement.
2. The Development Mortgage and Development Loan are to be increased to \$331,279.00 plus title and recording costs, not to exceed \$500.00 and are to be evidenced by a Modification of Mortgage recorded with the Office of the Judge of Probate of Shelby County, Alabama and a replacement or additional note. The Development Costs are hereby increased to \$526,311.15.

c:\goggans\mountaincrest\2ndamendment

James Burford

The Balance is hereby decreased to \$196,669.00.

3. Paragraph 2 of the First Amendment is hereby deleted in its entirety and the following substituted in its place: "The Creed Second is hereby expressly declared subordinate to the Development Mortgage and Development Loan as hereby modified together with the Balance as amended by this Second Amendment provided, however, that the foregoing subordination is expressly limited to the total amount not to exceed \$526,311.15."

4. Paragraph 3 of the First Amendment is hereby deleted in its entirety and in its place substituted the following: "Third to the Balance in an amount not to exceed \$196,669.00."

5. Attached hereto and incorporated by reference herein as Exhibit A is a document entitled Mountain Crest Estates Development which is the payment schedule for the Development upon which this Second Amendment is based. Also attached hereto and incorporated by reference herein is Exhibit B which indicates the balance to complete Mountain Crest Estates Development as of December 1, 2003 and is the basis for this Second Amendment.

6. Notwithstanding anything to the contrary contained herein or in the Agreement, it is expressly understood that Creed will only release the Lots from the Creed Second upon receipt of an amount of money not less than \$449,672.07. \$449,672.07 is a minimum payment required to release the Lots from the Creed Second. The foregoing shall not modify Paragraph 3 (d) of the SLPA which requires all of the remaining sales proceeds from the sales of the Lots to be applied to the Creed Second after first paying the USB First, the Development Mortgage as modified by this Second Amendment and the Balance as adjusted by this Second Amendment. The subordination of the Creed Second under the Second Amendment and the Agreement is hereby agreed to be limited to an aggregate amount of the USB First and the Development Cost so that Creed will receive \$449,672.07 at the closing of the Lot sales (Mountain Crest Estates).

7. In all other respects and unless expressly amended by this Second Amendment, the provisions of the Agreement shall remain in full force and effect.

Done the date and year first above written.

Union State Bank

By: \_\_\_\_\_  
Rex V. Alexander

Its: President

Creed Development, LLC

By:   
W. Larry Clayton

Its: Manager

The Balance is hereby decreased to \$196,669.00.

3. Paragraph 2 of the First Amendment is hereby deleted in its entirety and the following substituted in its place: "The Creed Second is hereby expressly declared subordinate to the Development Mortgage and Development Loan as hereby modified together with the Balance as amended by this Second Amendment provided, however, that the foregoing subordination is expressly limited to the total amount not to exceed \$526,311.15."

4. Paragraph 3 of the First Amendment is hereby deleted in its entirety and in its place substituted the following: "Third to the Balance in an amount not to exceed \$196,669.00 ."

5. Attached hereto and incorporated by reference herein as Exhibit A is a document entitled Mountain Crest Estates Development which is the payment schedule for the Development upon which this Second Amendment is based. Also attached hereto and incorporated by reference herein is Exhibit B which indicates the balance to complete Mountain Crest Estates Development as of December 1, 2003 and is the basis for this Second Amendment.

6. Notwithstanding anything to the contrary contained herein or in the Agreement, it is expressly understood that Creed will only release the Lots from the Creed Second upon receipt of an amount of money not less than \$449,672.07. \$449,672.07 is a minimum payment required to release the Lots from the Creed Second. The foregoing shall not modify Paragraph 3 (d) of the SLPA which requires all of the remaining sales proceeds from the sales of the Lots to be applied to the Creed Second after first paying the USB First, the Development Mortgage as modified by this Second Amendment and the Balance as adjusted by this Second Amendment. The subordination of the Creed Second under the Second Amendment and the Agreement is hereby agreed to be limited to an aggregate amount of the USB First and the Development Cost so that Creed will receive \$449,672.07 at the closing of the Lot sales (Mountain Crest Estates).

7. In all other respects and unless expressly amended by this Second Amendment, the provisions of the Agreement shall remain in full force and effect.

Done the date and year first above written.

Union State Bank

By: 

Rex V. Alexander

Its: President

Creed Development, LLC

By: \_\_\_\_\_

W. Larry Clayton

Its: Manager



Randall H. Goggans

Holly H. Goggans

STATE OF ALABAMA )  
COUNTY )

**CORPORATION ACKNOWLEDGMENT**

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Rex V. Alexander, whose name as President of Union State Bank, a corporation is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2003.

Notary Public

My Commission Exp. \_\_\_\_\_

STATE OF ALABAMA )  
COUNTY )

**LLC ACKNOWLEDGMENT**

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that W. Larry Clayton as Manager of Creed Development, LLC, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, in their capacity as such member, executed the same voluntarily, for and as the act of said limited liability company.

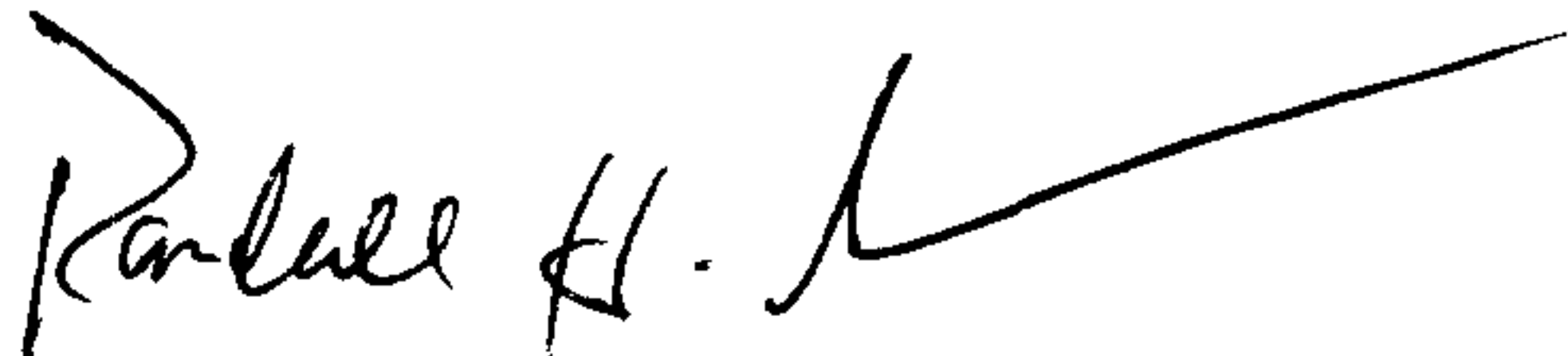
Given under my hand and official seal this 2<sup>nd</sup> day of November, 2003.

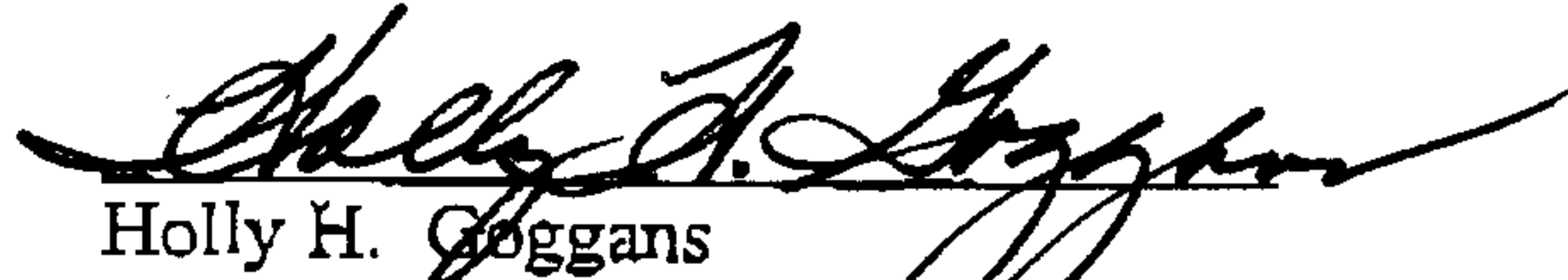
Caralyn C. Lerner  
Notary Public

My Commission Expires: 5-27-07

STATE OF ALABAMA )  
COUNTY )

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that Randall H. Goggans, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

  
Randall H. Goggans

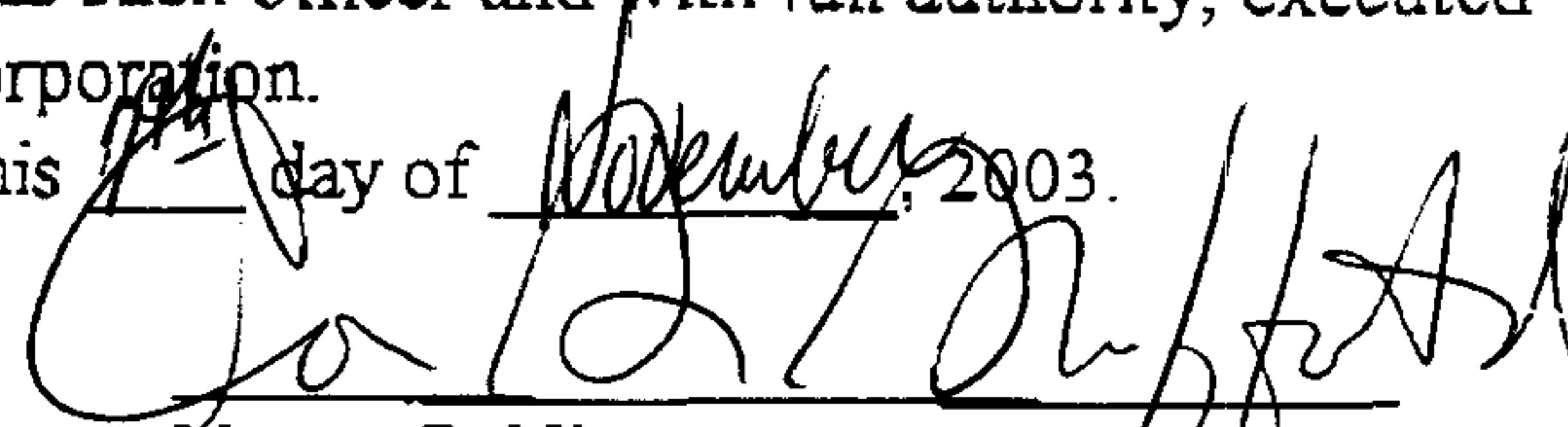
  
Holly H. Goggans

STATE OF ALABAMA )  
Jefferson COUNTY )

**CORPORATION ACKNOWLEDGMENT**

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Rex V. Alexander, whose name as President of Union State Bank, a corporation is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal this 14th day of November, 2003.

  
Notary Public  
My Commission Exp. 2-10-07

STATE OF ALABAMA )  
COUNTY )

**LLC ACKNOWLEDGMENT**

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that W. Larry Clayton as Manager of Creed Development, LLC, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, in their capacity as such member, executed the same voluntarily, for and as the act of said limited liability company.

Given under my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
Jefferson COUNTY )

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that Randall H. Goggans, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 7 day of NOV, 2003.

  
Notary Public

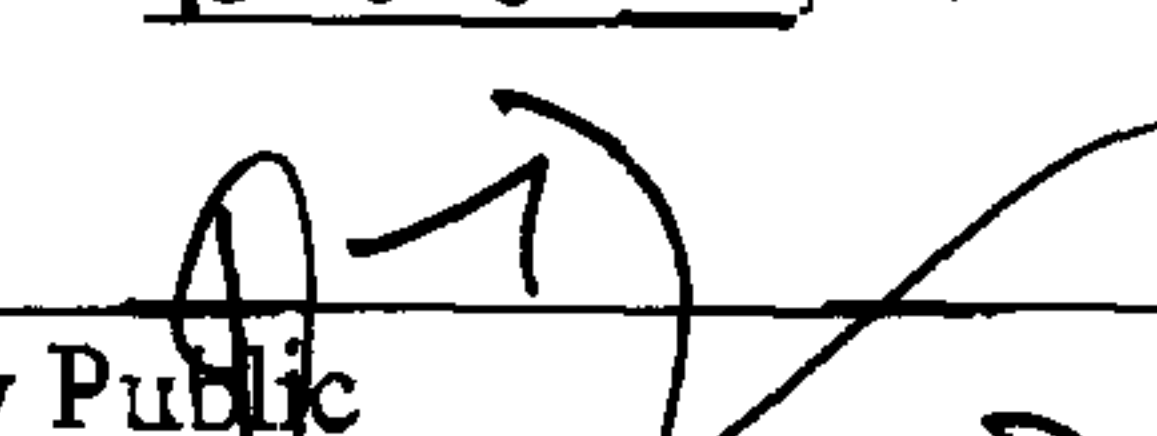
My Commission Exp. 3.1.06

STATE OF ALABAMA )

 COUNTY )

I, the undersigned, a Notary Public for the State of Alabama at Large do hereby certify that Holly H. Goggans , whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 7 day of NOV, 2003.

  
Notary Public

My Commission Exp. 3.1.06

**EXHIBIT B  
TO SECOND AMENDMENT TO SECOND AMENDMENT AND LIEN  
PRIORITY AGREEMENT  
BALANCE TO COMPLETE MOUNTAIN CREST ESTATES DEVELOPMENT  
AS OF DECEMBER 1, 2003**

Richards & Sons	\$203,648.60**
Road Seal Bond	\$ 26,904.00***
Additional Water	\$ 29,255.92****
Union State Construction Interest to December 1, 2003	\$ 4,740.98
Additional Surveying Charges	\$ <u>12,300.00</u>
<b>TOTAL</b>	<b>\$276,849.50*</b>

\* Increase of \$34,349.50 over October 15, 2003 Balance to complete of \$242,500.00 (Exhibit B to the First Amendment was incorrectly computed. The total should have been \$242,813.00).

\*\*\$36,148.00 of this sum is being paid contemporaneously with this Second Amendment.

\*\*\*This sum is provided for contemporaneously with this Second Amendment.

\*\*\*\*\$17,128.00 of this sum is being paid contemporaneously with this Second Amendment.

NOTE: The Total above is reduced by \$80,180.50 from \$276,849.50 as stated above to the new "Balance" of \$196,669.00 as set forth in this Second Amendment.

20031110000745340 Pg 8/8 35.00  
Shelby Cnty Judge of Probate, AL  
11/10/2003 11:13:00 FILED/CERTIFIED

**EXHIBIT A**  
**To Second Amendment to Second Amendment and Lien Priority Agreement**  
**Mountain Crest Estates Development**

**Sales:**

30 estate lots @ \$70,000.00 per lot (Less \$30,000.00 earnest money)	\$ 2,070,000.00
Sale to Dr. Morris \$295,000.00 (less 25,000.00	270,000.00
— Earnest money)	
	2,340,000.00
Less Commission	<u>63,000.00</u>
	\$ 2,277,000.00
Less Closing Costs	<u>-8,000.00</u>
Total value of development	\$ 2,269,000.00
Total value of development	\$ 2,269,000.00
Less development cost	<u>526,311.15*</u>
Adjusted development value	\$ 1,783,214.00
Less USB First	<u>1,293,016.57(12-1-03)</u>
<b>Net Profit</b>	\$ 449,672.07
Payoff of Creed Second	620,912.07 (12-1-03)
Balance on Creed Second	\$ 171,239.79

\*Amounts reflected on Exhibit B plus \$249,461.65 (advanced on construction loan)  
=\$526,311.15