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Special Fiduciary of the United Effort Plan Trust

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

IN THE MATTER OF THE UNITED EFFORT  
PLAN TRUST, (Dated November 9, 1942,  
Amended April 10, 1946, and Amended and  
Restated on November 3, 1998); and its,  
TRUSTEES, including known trustees TRUMAN  
BARLOW, WARREN JEFFS, LEROY JEFFS,  
WINSTON BLACKMORE, JAMES ZITTING and  
WILLIAM E. JESSOP a/k/a WILLIAM E.  
TIMPSON and DOE TRUSTEES 1 THROUGH  
IX.

**REPORT OF THE SPECIAL  
FIDUCIARY, DATED  
MAY 2, 2008**

Civil No. 053900848

Judge Denise P. Lindberg

Bruce R. Wisan, as the Court-appointed Special Fiduciary ("Fiduciary") of the United  
Effort Plan Trust ("UEP" or "Trust"), hereby submits this Report to the Court as follows:

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**LIST OF EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
1	Statement of Claim in the BESS Lawsuit
2	Errata Notice to Court Regarding Twin City's Motion to Set Aside The Default Judgment, dated February 15, 2008
3	Response to Defendant Twin City Water Authority's Errata Notice, dated March 7, 2008
4	Affidavit of Bruce R. Wisan, Dated March 7, 2008
5	Affidavit of Ron Whitehead, Dated March 5, 2008
6	Letter, dated April 17, 2008, to R. Blake Hamilton
7	Ex Parte Motion for Substitute Service, dated April 3, 2008
8	Memorandum in Support of Ex Parte Motion for Substitute Service, dated April 3, 2008
9	Affidavit of Isaac Wyler, dated March 28, 2008
10	Complaint, filed in Case No. CN2008-403 in the Superior Court of Mohave County, Arizona.
11	Complaint, filed in Case No. 080500593, in the Fifth District Court of Washington County, Utah
12	Answer, filed by the Trust in Case No. 080500593
13	Notice to Occupants of UEP Trust Land, dated April 1, 2008
14	Form Occupancy Agreement
15	Letter, dated April 9, 2008, to Marshall Barlow and all occupants of 925 W. Utah Avenue, Hildale, UT 84784
16	Letter, dated February 5, 2008, from Jeffrey L. Shields (with enclosure)
17	Notice to Quit, dated April 11, 2008
18	Letter, dated April 24, 2008, to Parley Stubbs
19	Letter, dated April 24, 2008, to Lewis Nielson

Exhibit	Description
20	Letter, dated January 31, 2008, to the Arizona Department of Real Estate
21	Letter, dated February 6, 2008, to Jake Barlow
22	Letter, dated February 1, 2008, to Warren Jeffs
23	Letter, dated February 7, 2008, from Bret W. Rawson
24	Letter, dated March 13, 2008, to R. Blake Hamilton
25	Letter, dated March 21, 2008, from R. Blake Hamilton
26	Letter, dated March 27, 2008, from R. Blake Hamilton
27	Letter, dated April 18, 2008, from R. Blake Hamilton
28	Attorney Profile of Samuel S. Allen
29	Subpoena Requiring Production of Documents or Evidence, dated April 16, 2008
30	Notice of Request for Production of Documents
31	Notice, to Loren Black and all occupants of 165 N. Pioneer Street, Colorado City, Arizona
32	Letter, dated April 11, 2008, to the Hildale/Colorado City Police Department
33	Lease Agreement, dated April 14, 2008, with Shane Stubbs and David Stubbs
34	Lease Agreement with Escalante Farms, LLC
35	Letter, dated January 30, 2008, to Kent Swindlehurst, Swindlehurst Insurance
36	Letter, dated February 8, 2008, from Jeremy J. Schroeder
37	Complaint, in Case No. 080500225, dated March 14, 2008
38	Letter, dated March 10, 2008, to Sterling Harker
39	Petition for Summary Nullification of Wrongful Lien . . . , dated March 27, 2008
40	Memorandum in Support of Petition for Summary Nullification of Wrongful Lien . . . , dated March 27, 2008
41	Affidavit of Bruce R. Wisan , dated March 27, 2008

Exhibit	Description
42	Memorandum in Opposition to Petition for Summary Nullification of Wrongful Lien, dated April 3, 2008
43	Affidavit of Sterling J. Harker, dated April 3, 2008
44	Reply Memorandum in Support of Petition for Summary Nullification of Wrongful Lien . . ., dated April 14, 2008
45	Motion for Release of Notice of Lis Pendens . . ., dated April 4, 2008
46	Memorandum in Support of Motion for Release of Notice of Lis Pendens . . ., dated April 4, 2008
47	Memorandum in Opposition to Motion for Release of Notice of Lis Pendens . . ., dated April 15, 2008
48	Reply Memorandum in Support of Motion for Release of Notice of Lis Pendens . . ., dated April 28, 2008
49	Account Summary Statement, January 1, 2008 through May 2, 2008

## **I. BACKGROUND**

1. On May 27, 2005, the Court in the above-captioned civil action entered an Order appointing Bruce Wisan (the “Fiduciary”) to serve as the Special Fiduciary of the United Effort Plan Trust. The Fiduciary’s appointment was confirmed in subsequent Orders of the Court dated May 31, 2005; June 6, 2005; June 16, 2005; June 22, 2005; and October 25, 2006.

2. The Fiduciary has previously filed ten reports with the Court on the following dates: August 2, 2005; November 4, 2005; February 28, 2006; May 31, 2006; August 31, 2006; December 6, 2006; March 14, 2007; June 6, 2007; September 17, 2007; and January 23, 2008.

3. The Fiduciary hereby submits the present REPORT OF THE SPECIAL FIDUCIARY, DATED MAY 2, 2008 (the “Eleventh Report”) to update and supplement the Fiduciary’s prior reports and to keep the Court informed of the work of the Fiduciary and of the important issues affecting the Trust. In so doing, the Fiduciary hereby incorporates by reference all prior reports into this Eleventh Report.

## **II. LITIGATION INVOLVING THE TRUST**

### **A. Defending the Trust in the “MJ Lawsuit”**

4. The Fiduciary continues to defend the Trust against the claims asserted in the so-called “MJ Lawsuit”. As the Court is aware, the MJ Lawsuit was filed by a plaintiff who originally identified herself only as “M.J”, but later revealed that her name is Elissa Wall (“Wall”).

5. Having been transferred from the Fifth District Court of Iron County, Utah, the MJ Lawsuit is now assigned as Civil No. 070916524 in the Third District Court of Salt Lake

County, Utah. With this Court's recusal as to the Trust's Motion to Transfer Civil Action, the MJ Lawsuit remains assigned to the Honorable Judge Sandra N. Peuler.

6. On February 12, 2008, Judge Peuler granted Wall's Rule 56(f) Motion -- allowing Wall 120 days to conduct discovery and providing that the Trust's Motion for Summary Judgment will be set for oral argument after briefing is completed.

7. Since that time, Wall has conducted the deposition of one witness, Carolyn Jessop (who is a member of the Court's Advisory Board). Wall has indicated that she intends to conduct additional depositions in May, 2008.

**B. Fiduciary's Lawsuit Against the Bountiful Elementary-Secondary School Society**

8. The Fiduciary's lawsuit against the Bountiful Elementary-Secondary School Society and its directors in the Supreme Court of British Columbia, Canada, Case No. S062628 (the "BESS Lawsuit") remains pending.

9. On February 21, 2008, the Fiduciary filed its Statement of Claim in the BESS Lawsuit (a copy of which is attached hereto as Exhibit "1").

10. Thereafter, counsel for the Defendants in the BESS Lawsuit communicated with the Fiduciary's legal counsel and indicated that the Defendants intend to file a response to the Fiduciary's Claim.

11. Nevertheless, to date, the Defendants in the BESS Lawsuit have not filed any response to the Fiduciary's Statement of Claim, and the deadline for filing such response has expired.

12. The Fiduciary is working with his Canadian legal counsel to determine the appropriate course of action to take in pursuing the Trust's claims in the BESS Lawsuit.

**C. Fiduciary's Mandamus Lawsuit**

13. The Fiduciary's mandamus lawsuit, Case No. 07050010S in the Fifth District Court of Washington County, Utah (the "Mandamus Lawsuit"), remains pending.

14. Since the filing of the Tenth Report, the Fiduciary has obtained the approval of the Washington County Recorder with respect to all 14 subdivision plats to be recorded in Washington County, in accordance with the Stipulation for Entry of Judgment previously entered between the Fiduciary and Washington County.

15. Since the filing of the Tenth Report, the Fiduciary has continued to defend against Twin City Water Authority's ("TCWA") Motion seeking to set aside the default certificate entered in this case. The parties submitted additional briefing regarding this Motion in February and March. (*See* Errata Notice to Court Regarding Twin City's Motion to Set Aside The Default Judgment, dated February 15, 2008 (attached hereto as Exhibit "2"); Response to Defendant Twin City Water Authority's Errata Notice, dated March 7, 2008 (attached hereto as Exhibit "3"); Affidavit of Bruce R. Wisan, Dated March 7, 2008 (attached hereto as Exhibit "4"); and Affidavit of Ron Whitehead, Dated March 5, 2008 (attached hereto as Exhibit "5")).

16. On March 13, 2008, the Court held a hearing on TCWA's Motion. At that time, the Court vacated the prematurely-entered Default Judgment and took under the advisement the Motion seeking to vacate the Default Certificate entered against TCWA. The Court scheduled a

continued hearing on TCWA's Motion to be held on May 6, 2008. The Court subsequently rescheduled the hearing for May 13, 2008.

17. At the March 13 hearing, the Court strongly encouraged the parties to work together to resolve any concerns regarding the proposed subdivision plats while the matter was under advisement. Accordingly, the parties have worked together in an effort to resolve the matter.

18. On April 21, 2008, the Fiduciary, the Fiduciary's legal counsel, and Bush & Gudgell (the Fiduciary's surveying firm ) met in St. George, Utah, with representatives of TCWA and Hildale City for the purpose of attempting to resolve TCWA's concerns regarding the 14 subdivision plats. (*See* correspondence attached hereto as Exhibit "6"). At the meeting, TCWA provided the Fiduciary with a list of proposed conditions for obtaining TCWA approval for the plats. The Fiduciary finds some of the conditions to be acceptable, while others are unacceptable. The Fiduciary intends to continue to work with TCWA in an effort to resolve this issue by agreement.

19. The Fiduciary hopes that this matter can be resolved without the need for additional protracted litigation between the parties. Nevertheless, the Fiduciary remains committed to legally subdividing of the Trust's property, and is willing to continue the litigation if necessary.

**D. Litigation against the Colorado City Improvement Association in Utah**

20. The Fiduciary's lawsuit against Colorado City Improvement Association, an Arizona corporation, and Colorado City Improvement Association, a Utah corporation,

(collectively "CCIA") remains pending as Case No. 070503037 in the Fifth District Court of Washington County, Utah (the "CCIA Utah Lawsuit"). In such lawsuit, the Fiduciary is seeking to clear up possible clouds to title on the Trust's property in Washington County, Utah, arising from alleged leasehold interests of CCIA.

21. The Fiduciary was not successful in serving a summons upon CCIA's registered agent William Shapley, who is believed to be avoiding service of process. Accordingly, the Fiduciary has filed an Ex Parte Motion For Substitute Service, together with a Memorandum and Affidavit in support thereof, seeking Court authority to allow substitute service upon CCIA. (Copies of the Ex Parte Motion, Memorandum, and Affidavit are attached hereto as Exhibits "7", "8", and "9" respectively).

22. On April 11, 2008, the Court entered an Order granting the Ex Parte Motion and authorizing substitute service upon CCIA. Accordingly, the Fiduciary intends to complete service of process upon CCIA and pursue his efforts to quiet title to the Trust's property in Washington County, Utah.

**E. Litigation against the Colorado City Improvement Association in Arizona**

23. Since the filing of the Tenth Report, the Fiduciary has commenced litigation against CCIA seeking to clear up possible clouds to title on the Trust's property in Mohave County, Arizona, arising from alleged leases involving CCIA (the "CCIA Arizona Lawsuit"). (A copy of the Fiduciary's Complaint in the CCIA Arizona Lawsuit is attached hereto as Exhibit "10").

24. The CCIA Arizona Lawsuit is pending as Case No. CN2008-403 in the Superior Court of Mohave County, Arizona.

25. The CCIA Arizona Lawsuit is very similar to the CCIA Utah Lawsuit. In each lawsuit, the Fiduciary is seeking to quiet title to the Trust's property located within the county in which the lawsuit is pending.

26. As discussed above, the Fiduciary has not been successful in locating CCIA's registered agent. Accordingly, the Fiduciary is also seeking alternative service of process upon CCIA in the CCIA Arizona Lawsuit.

**F. Litigation With Commercial Service of Perry, Inc.**

27. As previously reported, Commercial Service of Perry, Inc. ("CSPI") has previously made a claim to Trust property based upon a security interest in a modular home which was originally granted to the Bank of Ephraim prior to the time that the modular home was affixed to UEP land.

28. On February 25, 2008, CSPI filed a Complaint against the Trust, as Case No. 080500593 in the Fifth District Court of Washington County, Utah. (A copy of which is attached hereto as Exhibit "11").

29. From the information presently available to the Fiduciary, the Fiduciary believes that the Trust may have valid defenses against the CSPI's claims. Accordingly, the Fiduciary has filed his Answer to the Complaint and is preparing to defend the interests of the Trust. (A copy of the Answer is attached hereto as Exhibit "12").

