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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

L.J. GIBSON, et al.,

Plaintiffs,

v.

CREDIT SUISSE AG, a Swiss corporation, et al.,

Defendants.

Case No. 1:10-cv-00001-EJL-REB

**Expert Witness Disclosure of
D. Michael Mason, MAI**

COME NOW the Plaintiffs and designate as one of its experts to testify on appraisal and related matters, D. Michael Mason, MAI, whose background and testimony is attached hereto in his Declaration marked Appendix A and made a part hereof as though fully set forth herein.

- 1) Mr. Mason's Professional Profile is attached to his Declaration as Appendix A
- 2) Attached hereto as Appendix B is a listing of cases during the previous four years

in which I have testified as an expert at trial or by deposition.

Expert Witness Disclosure of D. Michael Mason, MAI - 1

3) Attached hereto as Appendix C is a list of all publications authored by me in the previous ten years.

4) My hourly rate of compensation to be paid for study and testimony in this case is \$ 400 for study and \$ 400 for testimony.

DATED this 3RD day of May, 2011.

D. Michael Mason
D. Michael Mason

STATE OF California)
County of Los Angeles) ss.

On this 3 day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared D. MICHAEL MASON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



G. E. Arellano
Notary Public for California
Residing at Po Box 895, S. Pasadena CA 91031
My commission expires 10/1/14

Respectfully submitted this 3 day of May, 2011.

/s/ Michael J. Flynn
Michael J. Flynn

/s/ Philip H. Stillman
Philip H. Stillman

/s/ James C. Sabalos
James C. Sabalos

/s/ John Flood
John Flood

/s/ Chris Flood
Chris Flood

/s/ Robert C. Huntley
Robert C. Huntley

/s/ Christopher Conant
Christopher Conant
Attorneys for Plaintiffs and members of proposed Plaintiff Class

/s/ Benjamin A. Schwartzman
Benjamin A. Schwartzman

CERTIFICATE OF SERVICE

I hereby certify that on the ___ day of _____, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system which sent a Notice of Electronic Filing to the following persons:

Randall A. Peterman
David J. Lender
Thomas R. Guy
Richard C. Boardman
Donald L. Morrow
Barry G. Sher

David W. Dummer
Jason I. Lichter
James L. Martin
Rebecca H. Benavides
Panteha Abdollahi

/s/ Robert C. Huntley
Robert C. Huntley

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L.J. GIBSON, et al.,

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Defendants.

Case No. 1:10-cv-00001-EJL-REB

**Declaration of D. Michael Mason,
MAI**

I, D. MICHAEL MASON, MAI, SRA, being first duly sworn, deposes and says:

"I have personal knowledge of the facts stated herein. If called to testify in these proceedings or in any others relevant to this topic, I would testify under oath and do testify herein under oath to each and all of the matters set forth below. Further, I would more fully set forth my experience, training and background for purposes of this Court's gate-keeping responsibilities in connection with the admission of testimony from an expert.

I am currently the Managing Director of Grubb & Ellis Landauer Valuation Advisory Services, LLC's offices in Los Angeles, California.

My "Professional "Profile" is attached hereto as Appendix A. I have been engaged in appraisal valuation and consultation since the early 1980's. I have also instructed and trained appraisers since 1985. I am an MAI Designated Member of the Appraisal Institute. I am an SRA Designated Member of the Appraisal Institute. I have participated in, and been engaged to perform, appraisals in many jurisdictions prior to and after the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and the standards of the Uniform Standards of Professional Appraisal Practice ("USPAP") promulgated by the Appraisal Standards Board (hereinafter referred to as the "ASB") of The Appraisal Foundation. I have also become trained regarding, and am knowledgeable of, the guidelines promulgated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision with respect to appraisals and standards. I have participated in the writing of textbooks on appraisal standards published by the Appraisal Institute. I have prepared papers on the subject of appraisal and appraisal standards and taught courses to appraisers, including students obtaining training and education at USC and UCLA. My training, experience and education have enabled me to become knowledgeable of the applicability, and requirements, of FIRREA and USPAP.

I was asked to evaluate four appraisals performed by Cushman & Wakefield: (1) an appraisal dated October 26, 2004 (date of value: August 10, 2004) related to Lake Las Vegas in Nevada; (2) an appraisal dated August 11, 2005 (date of value: July 1, 2005) related to the

Yellowstone Club in Montana; (3) an appraisal dated April 17, 2006 (date of value: March 31, 2006) related to the Tamarack Resort in Idaho; and (4) an appraisal dated April 17, 2006 (date of value: April 11, 2006) related to West End Resort on Grand Bahama Island. All of the appraisals are included in a single .pdf file that has been burned onto the DVD that I attach to this declaration. The single file is called CW_0000000001-582.pdf, it contains 582 pages and it appears to be approximately 235.13 MB of data. The four appraisals are found at the following locations in the .pdf file:

- Pages 1 - 180: Lake Las Vegas Appraisal;
- Pages 181 - 298: Yellowstone Club Appraisal;
- Pages 299 - 498: Tamarack Resort Appraisal; and
- Pages 499 - 582: West End Resort Appraisal.

I was asked to determine whether each of the appraisals should have been FIRREA or USPAP compliant and to state other professional opinions I have about them. The opinions I state in this declaration are formulated and stated within a reasonable degree of certainty and are based upon my education, training and experience.

I. CLIENTS IN THE APPRAISALS¹

Lake Las Vegas

The listed client in the 2004 Lake Las Vegas appraisal was Credit Suisse First Boston in Los Angeles, California. According to its December 31, 2004, year-end Form 10-K filed with the United States Securities and Exchange Commission, Credit Suisse First Boston (USA), Inc. was a Delaware corporation with offices in New York, New York. The 10-K recites that Credit Suisse First Boston's "activities (were) subject to significant bank regulatory restrictions [...] imposed pursuant to [...] regulations and interpretations of [The Board of Governors of the Federal Reserve System]." (See Exhibit 1, page 9). The 10-K goes on to explain how it was regulated by, among other laws, regulations, and rules, the Gramm-Leach-Bliley Act of 1999 (GLBA) and "related Board [The Board of Governors of the Federal Reserve System] regulations". (Exh. 1, p. 10).

Yellowstone Club

The listed client in the 2005 Yellowstone Club appraisal was Credit Suisse First Boston, LLC at the same address in Los Angeles, California as the earlier Lake Las Vegas appraisal.

¹ Standards Rule 1-2(a) required the appraiser to identify the client. "Standards Rules" within this declaration are a reference to the relevant edition of USPAP, the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of The Appraisal Foundation.

According to the December 31, 2005, 10-K of Credit Suisse (USA), Inc., Credit Suisse First Boston, LLC became Credit Suisse Securities (USA) LLC, the “principal subsidiary”. (Exhibit 2, p. 1). The 10-K recites that Credit Suisse Securities (USA) LLC (formerly Credit Suisse First Boston, LLC) was “subject to significant bank regulatory restrictions” including the GLBA and “regulations and interpretations of the Board and other applicable regulators.” (Exh. 2, p. 9).

Tamarack Resort

The listed client in the April 2006 Yellowstone Club appraisal was Credit Suisse Securities (USA) LLC at the same address in Los Angeles. According to a June 30, 2006, Form 13F notice filed with the United States Securities and Exchange Commission, Credit Suisse Securities (USA) LLC’s address is Eleven Madison Avenue, New York, New York 10010. It was formerly named “Credit Suisse First Boston, LLC”. (Exhibit 3).

West End Resort

The listed client in the April 2006 West End appraisal was also Credit Suisse Securities (USA) LLC, but it was directed to its Eleven Madison Avenue address in New York, New York.

II. INTENDED USE OF THE APPRAISALS²

Lake Las Vegas

The transmittal letter that enclosed the Lake Las Vegas appraisal stated that its function was “to provide information for internal decision making purposes and/or for potential financing”. The appraisal at page 2 stated that it was “intended to assist in internal decision making purposes regarding potential financing.” It then stated that its “function” was “for use by client, or parties designated by the client for internal evaluation of the property, in connection with potential financing.”

Yellowstone Club

The transmittal letter that enclosed the Yellowstone Club appraisal stated that its function was “to provide information for internal decision making purposes and/or for potential financing.” It also stated that the report was prepared for Credit Suisse First Boston “and other parties, which could have an ownership interest in the property.” The appraisal states at page 2 that “[t]he intended use of the appraisal by Credit Suisse First Boston, LLC, is for internal purposes and financing purposes.”

² Standards Rule 1-2(b) required the appraiser to identify the intended use of the appraisal’s opinions and conclusions. This identification is based on communication with the client at the time of the assignment per the definition of Intended Use in USPAP.

Tamarack Resort

The transmittal letter that enclosed the Tamarack appraisal contained the following paragraph:

“The function of the report is for financing. In addition to Credit Suisse Securities (USA) LLC, the report may be relied upon by any qualified institutional buyer pursuant to Rule 144A or any accredited investor pursuant to Regulation D under the Securities Act of 1933 or other lender in determining whether to purchase all or a participating interest in loans secured by the property to be arranged, syndicated and sold by, among others, Credit Suisse Securities (USA) LLC, or other securities backed or secured by such property or any other financing for the development for the project. The report may also be relied upon by any Rating Agency rating any such loans or securities or other financing.”

This statement is repeated at page 3 of the appraisal report.

West End Resort

The transmittal letter with the West End appraisal stated that “[t]he appraisal will be used by Credit Suisse in connection with potential financing of the property.” At page 2, the appraisal stated that its intended use was “to provide an opinion of the total net value of the fee simple interest in the property for the exclusive use of Credit Suisse Securities (USA), LLC in evaluating potential financing.”

III. APPLICABILITY OF FIRREA TO APPRAISALS

Each of the appraisals state facts that would cause a reasonable and prudent lender or appraiser to conclude that the client and intended users were, and included, federally-regulated lenders under Title XI of FIRREA. In addition, each appraisal was submitted for the express purpose of use in real estate-related financial transactions. Based on these facts, which are found on the face of each appraisal, the restrictions of FIRREA and USPAP applied to each appraiser, appraisal and lender in any transactions related to these appraisals.

Attached as Exhibits 4, 5, 6, and 7 are what appear to be loan agreements entered into by the following parties:

Exhibit 4: May 4, 2005 Amended and Restated Credit Agreement (Lake Las

Exhibit 5: September 30, 2005 Yellowstone Club Loan Agreement;

Exhibit 6: May 19, 2006 Credit Agreement (Tamarack); and,

Exhibit 7: June 8, 2006 First Lien Credit Agreement (West End).

The terms of the agreements verify the applicability of FIRREA to the appraisals and the transactions. Each contained a substantively identical assignment provision that allowed any lender to assign all or a portion of its rights and obligations under the loan agreements to (among others):

- Another Lender;
- An affiliate of a Lender (which, under the definitions, would include U.S.-based Credit Suisse entities);
- A commercial bank with a combined capital of at least \$250,000,000;
- A Savings & Loan Association or savings bank with more than \$250,000,000; or,
- A finance company, insurance or financial institution engaged in making commercial loans with the same monetary restrictions.

The only persons or entities excluded from receiving an assignment of any lender's rights under the loans were borrowers or any of their affiliates.

The actual lender in the Lake Las Vegas loan agreement was Credit Suisse First Boston. The other loan agreements included a Credit Suisse Cayman Islands entity as a lender; however, that entity was defined to mean "Credit Suisse", which was defined to include U.S.-based Credit Suisse entities, including Credit Suisse Securities (USA) LLC.

Finally, each of the credit agreements stated that the definition of appraised value in each of the credit agreements was "the 'Total Net Value' (as defined in the Initial Appraisal) of the Real Property Collateral as determined by the Appraiser in a Qualified Appraisal Update." This confirms that the appraisals were, in fact, used for financing in real estate-related transactions.

IV. EVALUATION OF LAKE LAS VEGAS APPRAISAL

1. The Lake Las Vegas appraisal performed by Cushman & Wakefield was misleading, was subject to USPAP and FIRREA regulations, and violated USPAP and FIRREA.
2. The appraisal stated in the letter of transmittal that it was not compliant with FIRREA.

Since the appraisal was supposed to be FIRREA compliant, by law, an explanation in the appraisal as to why it does not have to be compliant with FIRREA was, at a minimum, required. No explanation was given; therefore, the appraisal was misleading under USPAP guidelines. This was misleading to any user of the appraisal, including “parties designated by the client.”

3. The appraisal estimated Total Net Value (TNV) and supposedly not market value. The appraisal’s intended use was for parties designated by the client (Appraisal Report, page 2). The appraisal report was required to contain sufficient information to enable the intended users to understand the report properly (SR2-1(b)). Any of these designees would reasonably conclude that the appraisal report provided a “market value” estimate and not a completely different concept defined as Total Net Value for the following reasons:

- a. The appraisal was prepared in conformity with the Uniform Standards of Professional Appraisal Practice and Code of Ethics of the Appraisal Institute (Letter of Transmittal [“LofT”], page 1);
- b. Market value was referred to in the Letter of Transmittal, page 2, 6th paragraph. This paragraph stated that market value was dependent on four factors and the value of the subject property was also affected by these four factors;
- c. An estimate of exposure time was summarized in the Summary of Salient Facts, page II. It was discussed on pages 4 through 7. Exposure time was only required for market value estimates per USPAP, (SR1-2(C) – comment);
- d. Five extraordinary assumptions were provided in the appraisal report. Assumption number 1, Summary of Salient Facts, page II, stated “The appraisal reflects the assumption that the property is free of any development requirements, easements, lawsuits, unproduced agreements, etc. that would restrict, modify, or delay development or sale of the property to a appropriately qualified entity.” There is no known entity that has ever paid “Total Net Value” for a property;
- e. A definition for Market Value was provided on page 2. The value estimate was of Total Net Value which has been qualified to not be market value. (LofT, page 2);
- f. A definition for “Market Value As Is” was provided on page 3. No estimate of this type was ever presented in the appraisal report. This value conclusion is directly linked to FIRREA;
- g. The definition for Aggregate of Retail Values (ARV) came from the

Dictionary of Real Estate Appraisal published by the Appraisal Institute (Appraisal Report, page 4);

- h. The Definition of Highest and Best Use was taken from the Dictionary of Real Estate Appraisal published by the Appraisal Institute (Appraisal Report, page 58);
- i. The definition of TNV included the words “market value” within the definition. (Appraisal Report, page 3);
- j. A Highest and Best Use Analysis was provided on pages 58 and 59 of the Appraisal Report. According to the 13th Edition of the Appraisal of Real Estate, page 277, first paragraph, Highest and Best Use Analysis is an important step in the estimate of market value;
- k. A Highest and Best Use Analysis was provided on pages 58 and 59 of the Appraisal Report. According to USPAP, SR1-3 and 1-3(b), “When the value opinion to be developed is market value ... an appraiser must develop an opinion of the highest and best use of the real estate;
- l. A Highest and Best Use Analysis was provided on pages 58 and 59 of the Appraisal Report. Highest and Best Use requires an analysis of the financial feasibility of a project, which includes an analysis of a market rate of return. (The Appraisal of Real Estate, page 284);
- m. Page 59 stated that “... the most likely buyer, as if vacant, would be an investor (land speculation) or a developer.” An investor or developer would not purchase the property without developer’s profit;
- n. Pages 61 and 62 of the Appraisal Report presented a summary of the process for a Subdivision Development analysis. All costs, including profit and a discount rate, are outlined. The 4th Edition of the Dictionary of Real Estate Appraisal defines Subdivision Development Method as “A method of estimating land value when subdivision and development are the highest and best use of the parcel of land being appraised. When all direct and indirect costs and entrepreneurial incentive are deducted from an estimate of the anticipated gross sales price of the finished lots, the resultant net sales proceeds are then discounted to present value at a market-derived rate over the development and absorption period to indicate the value of the raw land.” Page 62 stated, “The discounted cash flow analysis was utilized and provided primary support for our value conclusion.”;

- o. Pages 63 to 68 of the Appraisal Report presented a Sales Comparison Approach – Bulk Land. Basic premises of Total Net Value assumed there was no profit, the condition of the property was assumed to have all infrastructure constructed and there was no discounting for any of the sales. No adjustment was made to the prices of the comparable sales to reflect these conditions;
- p. Page 76 of the Appraisal Report, second paragraph, stated that within the discounted cash flow analysis the appraiser accounted for required profit and the time value of money;
- q. USPAP required the appraiser to analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from valuing the whole solely by adding together the individual values of the various estates or component parts. (SR1-4(e)). The appraiser stated that he violated this standard on page 76, third paragraph, first sentence;
- r. The aggregate retail value sales presented on pages 76 through 82 did not have any analysis of the profit, condition or discounting which is inherent in each of the sales; and
- s. Page 83 of the appraisal report discussed entrepreneurial profit and discount rate derivation, but these were not included in the value conclusion.

4. Other Issues in the Appraisal Report which question the credibility and integrity of the appraiser's opinions and conclusions, and lead to the opinion that it was misleading, can be summarized as follows:

- a. The analysis stated it was a complete appraisal, meaning there were no departures from the Uniform Standards of Professional Appraisal Practice (USPAP). Therefore, all of the Standards which are applicable must be adhered to. They were not;
- b. The definition of Total Net Value stated in one place that all of the bulk lots were completed (in terms of backbone and infrastructure). In another place it stated it included an allowance for infrastructure development. This appears contradictory, or at best very confusing;
- c. Pages 2 and 3 of the LofT discussed Continuity of Ownership. As part of this concept the appraisal stated "The theoretical mutual goal is to optimize the use of the land in light of all financial ... requirements."

Profit and accounting for all costs optimizes financial requirements;

- d. The report is stated to comply with USPAP but it does not. (LofT, page 1);
- e. Extraordinary Assumption 3 assumed the owner/buyers would follow all necessary steps to finalize the land use plan of the property. However, Total Net Value assumed all of the bulk lots are complete;
- f. There are five special assumptions listed within the appraisal report. These are considered to be extraordinary assumptions. According to USPAP these must be clear, accurate and conspicuous (SR2-1(c) and 2-2(a)(viii)). In addition there must be a statement that “Their use may have affected the assignment results.” This statement is not in the appraisal;
- g. There are five special assumptions listed within the appraisal report, page II. These are considered to be extraordinary assumptions. According to USPAP these must be required to properly develop credible opinions and conclusions; and the appraiser is to have a reasonable basis for the extraordinary assumption (SR 1-2(g) – comment). These extraordinary assumptions were not required and there is no reasonable basis for the extraordinary assumptions;
- h. The appraiser stated on page 2 of the appraisal report that, “The most recent acquisition of a portion of the subject closed escrow in March 2004 with the purchase of Phase II from the Bureau of Land Management (BLM).” USPAP required an analysis of all sales of the subject property within the three years prior to the date of value. (SR1-5(b)). There was no analysis of the sale of this portion of the property. Phase II contained 508.81-net acres. The price paid for this portion of the subject property would have been directly pertinent to the analysis of the Bulk Land Value presented on pages 63 to 68;
- i. On page 4, in the Scope (Extent) of the Appraisal the appraiser stated that “The valuation process involved utilizing market-derived and supported techniques and procedures ...”. No market support or precedent was provided for the Total Net Value estimate provided. This term cannot be found in any appraisal literature or textbook. No other appraiser was located who had ever performed a total net value analysis;
- j. The Site description was presented on pages 54 through 57. USPAP required the appraiser to state the use of the real estate existing as of the date of the appraisal and the use of the real estate reflected in the appraisal. (SR2-2(b)(x)). These conditions of the subject property were

not clear in the appraisal report. Is the use reflected in the appraisal report mass graded pads (super pads) or is it fully finished lots ready to receive the building improvements? This is not clear in the appraisal;

- k. The appraiser stated on page 62 of the appraisal report "The discounted cash flow analysis was utilized and provided primary support for our value conclusion." The appraiser did not discount any cash flows;
- l. The Subdivision Development method outlined on pages 62 and 63 is the correct methodology, and would be a recognized method or technique. The appraiser did not follow this methodology;
- m. Three sales are presented on page 35 of the appraisal report, were stated as being recent and key. These were not used in the analysis on pages 76 through 82. SR 1-4(a);
- n. Page 66 of the appraisal stated that, "Typically, smaller lots sell for a premium as compared to larger sites." An adjustment was made for size based on this principle. Page 68 states the value conclusion from the bulk land value analysis is \$375,000 to \$400,000. The three sales presented on page 35 all contain 10-acres, compared to 2,855.40-acres in the subject property, and sold for \$305,000 to \$330,000 per acre. One of these sale properties is located in Lake Las Vegas. This makes the value conclusion from this approach very questionable;
- o. The subject property contained 2,855.40-acres and was entitled to be developed with 7,270-lots. This is an overall density of 2.55-lots per acre. The value conclusion for the subject property is \$385,235 per acre. Besides the three sales on page 35 of the appraisal, Data Nos. 2, 7, 10 and 11 on page 77, which are all finished lot sales, sold for the following prices:

Data No.	Size Acres	Density Lots/Acre	Price Per Acre
11	37.43	0.80	\$142,319
7	37.43	1.34	\$210,393
10	58.40	3.9	\$428,082
2	3.46	4.9	\$315,153

As finished lots, a substantial adjustment should have been made down for the condition of these sale properties compared to the subject property. With a density of 2.55-units per acre, and a size 50-times larger than the biggest of these four sales, a substantial downward adjustment should be

made to all of the sales;

- p. Total Net Value was defined on page 2 of the appraisal report. USPAP, through SR2-2(a)(v), required that a source be cited for the definition. Frequently Asked Question 132 from USPAP, page F-61 and F-62, provides examples of sources for the definition. Examples include “a regulatory agency, a legal jurisdiction, an engagement letter, or a textbook.” There is never a source provided for the definition of Total Net Value;
- q. Page 75 of the Appraisal Report stated, “Based on the analysis contained herein, and after discussing the subject property with individuals knowledgeable of the submarket, based on the definition of Total Net Value we not have utilized a discount rate.” The names of the individuals interviewed who stated it was appropriate to not utilize a discount rate should have been provided so the credibility of the assumptions and analysis could have been properly assessed;
- r. Page 75 stated, “The purpose of the golf courses is for use as an amenity of the residential development and utilized to attract buyers of the subject lots.” The analysis of this attraction or amenity is never quantified;
- s. Page 76 stated: “These factors are then summarized on an Excel spreadsheet discounted cash flow analysis over the estimated absorption period. Within this analysis we account for the selling expenses, holding costs due to the property taxes, golf course net revenues general administrative costs, required profit, and the time value of money. The detailed steps required to complete this analysis are presented on the following pages.” The pages that follow, and the Excel spreadsheet, do not have holding costs due to the property taxes nor golf course net revenues;
- t. Page 76 stated, “The list of the developer's anticipated asking prices for the subject's individual residential lots is included in the table on an accompanying page.” I did not find this accompanying page in the appraisal;
- u. Page 82 stated, “The developer had a retail pricing conclusion of \$1,261,903,000, as of the current date of value.” The basis for this statement was not found in the appraisal report;
- v. A growth rate was included for the revenues and expenses, however no discount was applied to the net figures. This appears to be a contradiction.

(Appraisal Report, page 83);

- w. USPAP required that “An extraordinary assumption or hypothetical condition must be disclosed in conjunction with statements of each opinion or conclusion that was affected.” This was not done in the appraisal report and should have been done on page 68, 75, 82, 84 and 86;
- x. The Certification on page 90 indicated that William J. Acton, MAI and Daniel J. Sydor provided significant professional assistance. SR2-2(b)(vii)-Comment required that “When any portion of the work involves significant real property appraisal assistance, the appraiser must summarize the extent of that assistance.” This was not done in the appraisal report;

5. As a result of these deficiencies, the Lake Las Vegas “appraisal” report did not comply with USPAP. It should have been completed under the FIRREA regulations and include an “as is” value estimate of the market value of the property, but it did not. The appraiser biased the results to a greater number than can be reasonably supported. Because the author of the document was an appraiser, because the purpose and intended use was for a loan, because the client was a lender, and intended users could be parties designated by the client, it is my professional opinion based upon a reasonable degree of certainty, and based on my education, training and experience, that the appraiser (and possibly the client) intended to mislead a reader into thinking that the concluded figure actually represented an amount which would serve as a reasonable basis for a loan, or would be an amount that the property would trade for at some level. I can think of no legitimate reason for reporting Total Net Value to anyone.

6. The basic nature of value is stated in the opening two sentences of Chapter 2 of the 13th edition of the Appraisal of Real Estate published by the Appraisal Institute. It states:

“The economic concept of value is not inherent in the commodity, good, or service to which it is ascribed. Rather, it is created in the minds of the individuals who make up the market.”

In order for value to have any meaning, it must have the context of a market. Page 21 of this same text defines market as “... the interaction of individuals who exchange real property rights for other assets such as money.” There was no individual, or groups of individuals, who would have exchange \$1.1-Billion for the real property rights evaluated in the appraisal report. Therefore, the document reviewed does not even qualify as an appraisal and is, at best, a sham and likely a premeditated commission of a scheme and crime to defraud.

V. EVALUATION OF YELLOWSTONE CLUB APPRAISAL

- 1. The Yellowstone Club appraisal performed by Cushman & Wakefield was also

misleading, was subject to USPAP and FIRREA regulations, and violated USPAP and FIRREA.

2. The appraisal stated in the letter of transmittal that it was not compliant with FIRREA. Like the Lake Las Vegas appraisal, since the appraisal was supposed to be FIRREA compliant, by law, an explanation in the appraisal as to why it does not have to be compliant with FIRREA was, at a minimum, required. No explanation was given; therefore, the appraisal was misleading under USPAP guidelines. This violation was especially egregious since the appraisal's transmittal letter stated that it was prepared not only for Credit Suisse, but for "other parties which could have an ownership interest in the property."

3. The appraisal estimated TNV and not "market value". The appraisal is intended to be used by "other parties which could have an ownership interest in the property." (LofT, page 1). The appraisal report must contain sufficient information to enable the intended users to understand the report properly (SR2-1(b)). Any of these owners would conclude that the appraisal report provides a "market value" estimate and not a completely different concept defined as Total Net Value for the following reasons:

- a. The appraisal was prepared in conformity with the "Uniform Standards of Professional Appraisal Practice and Code of Ethics of Appraisal Institute" (LofT, pages 1 and 2);
- b. The definition for Aggregate of Retail Values (ARV) comes from the "Dictionary of Real Estate Appraisal" published by the Appraisal Institute (Appraisal Report, page 3);
- c. Definitions for "Discounting" and "Discount Rate" were included in the Appraisal Report, page 3, even though the appraiser stated that these were not considered;
- d. The Definition for "Entrepreneurial Incentive" (Profit) at page 4 of the appraisal is changed in only one respect -- the term "market value" is changed to "Total Net Value";
- e. The Definition of "Highest and Best Use" is taken from the Dictionary of Real Estate Appraisal published by the Appraisal Institute (Appraisal Report, pages 4 and 60);
- f. The definition of TNV includes the words "market value" within the definition (Appraisal Report, page 3);
- g. A "Highest and Best Use Analysis" is provided on pages 60 and 61 of the Appraisal Report for Yellowstone Club. According to the "13th Addition of the Appraisal of Real Estate, page 227, first paragraph,

“Highest and Best Use Analysis” is an important step in the estimate of market value;

- h. A Highest and Best Use Analysis is provided on pages 60 and 61 of the Yellowstone Club Appraisal Report. According to USPAP, SR1-3 and 1-3(b), “When the value opinion to be developed is market value ... an appraiser must develop an opinion of the highest and best use of the real estate.”;
 - i. A Highest and Best Use Analysis is provided on pages 60 and 61 of the Appraisal Report. “Highest and Best Use” requires an analysis of a market rate of return. (See “The Appraisal of Real Estate”, page 284);
 - j. Page 61 of the subject Yellowstone Club Appraisal Report states that: “A logical buyer of the entire project would be another residential resort developer.” A residential resort buyer would not purchase without a profit incentive;
 - k. Page 62 of the Yellowstone Club Appraisal Report states that the Total Net Value (TNV) is based on the “Subdivision Development Method.” The “4th Edition of the Dictionary of Real Estate Appraisal” defines “Subdivision Development Method” as: “A method of estimating land value when subdivision and development are the highest and best use of the parcel of land being appraised. When all direct and indirect costs and entrepreneurial incentive are deducted from an estimate of the anticipated gross sales price of the finished lots, the resultant net sales proceeds are then discounted to present value at a market derived rate over the development and absorption period to indicate the value of the raw land”;
 - l. Page 63 of the same Yellowstone Club Appraisal Report, third paragraph, states that as part of the first step a market value estimate is made of the individual parcels; and,
 - m. Page 70 of the same Yellowstone Club Appraisal Report, third paragraph, states that the appraiser is applying a “DCF Analysis”.
4. Other issues in the Yellowstone Club Appraisal Report which question the credibility of the appraiser’s opinions and conclusions can be summarized, as follows:
- a. The analysis is stated to be a complete appraisal, meaning there are no departures from the “Uniform Standards of Professional Appraisal Practice’ (USPAP) and is also labeled as a self-contained appraisal report (LofT, page 1). A reader of a self-contained appraisal report “should

- expect to find all significant data reported in comprehensive detail.” (Advisory Opinion line 39, the Appraisal Foundation). There is significant data missing from this “appraisal report” including justification for the expenses in the valuation analysis;
- b. The appraisal excludes 102 lots “for various reasons.” (Appraisal Report, LofT, page 1). In a self-contained report, those reasons must be enumerated and they were not;
 - c. The report is stated to comply with USPAP but it does not;
 - d. In the LofT, page 2, it states that the present value of the unsold non-realty memberships is \$304,000.000. However, this would require discounting which the appraiser did not do;
 - e. There are six (6) special assumptions listed within the Appraisal Report. These are considered to be extraordinary assumptions. According to USPAP these must be clear, accurate and conspicuous. (See SR2-1 (c)) and 2-2(a)(viii)). In addition, there must be a statement that: “Their use may have affected the assignment results.” This required statement is not in the Yellowstone Club Appraisal Report;
 - f. The appraiser states at page 2 of the appraisal report that: “We investigated a wide array of mountain resort land sales..” No sales of mountain resorts were presented in the appraisal;
 - g. In the appraisal process, the appraiser states that: “the valuation process involved utilizing market-derived and supported techniques and procedures...”. No market support or precedent was provided for the “Total Net Value” estimate provided. This term cannot be found in any appraisal literature or textbook;
 - h. The appraiser for the Yellowstone Club states: “We developed a total net value indication using the ‘Subdivision Analysis Method’ (Appraiser Report, page 3). The “13th Edition of the Appraisal of Real Estate” sets out the “Subdivision Development Analysis”. This approach is also known as a “discounted cash flow analysis”. An integral part of the analysis is the selection of and application of a discount rate. The appraiser did not perform any discounting in the analysis;
 - i. The definition of “Total Net Value” from page 3 of the Appraisal Report includes the term “market value”. There is no definition of “market value” included in the appraisal. Since the appraiser estimated the

“market value” of the individual parcels on pages 64 through 68 of the Appraisal Report, USPAP requires a definition of market value be included. None was, and USPAP SR2-2(a)(v) was not complied with;

- j. “Total Net Value” is defined at page 3 of the Appraisal Report. USPAP, through SR2-2(a)(v), requires that a source be cited for the definition. Frequently Asked Question 132 from USPAP, page F-61 and F-62 provides examples of sources for the definition. Examples include “a regulatory agency, a legal jurisdiction, an engagement letter, or a textbook.” There is never a source provided for the definition of “Total Net Value”;
- k. A map showing the relative location of each of the seven planned residential areas or neighborhoods was not provided;
- l. Page 40 of the Appraisal Report states: “the analysis of the competitive communities here is to provide market support for the Lot Pricing analysis and absorption for the subject lots...”. It is noted, however, that no comparative analysis was made comparing the lots in the five competing projects to those of the subject property. This is another requirement of USPAP, SR 1-6(a) that was not complied with by the appraiser for Cushman & Wakefield;
- m. The entire analysis for the gross revenues was based solely on prices achieved within the subject property development. No credible check on these values was presented by an actual comparison to other competitive projects;
- n. There was no support for the percentages used in the allocations for valuing the condominium and improved properties that are part of the subject property. These units (lots) represent 53% of the subject property lots per the chart presented on page 30 of the appraiser’ report. (274 divided by 513);
- o. Pages 24 through 32 include the entire subject property description. It appears to be a summary presentation of the information instead of a self-contained description;
- p. Page 63 of the Appraisal Report, third paragraph, states: “The market value estimate of the parcels is predicated upon the analysis of prices paid in actual market transactions.” “Market Value” and those actual market transactions, include a consideration of developer profit and entrepreneurial incentive. The appraiser states that these were excluded

from the analysis but no adjustment was found in the appraisal to exclude this from the estimated values;

- q. A growth rate is included for the revenues and expenses, however, no discount is applied to the net figures. This appears to be a contradiction;
- r. The appraiser generally relied upon the developer's costs and expense projections. (See Appraisal Report, page 73, last paragraph). A copy of the pro-forma was included in the Addenda. However, there were significant differences and omissions from the analysis without comment. These differences and omissions, without comment or explanation, include:
 - i. The information from the developer is not legible in places and this would not qualify as the comprehensive detail required for a self-contained report;
 - ii. The income information presented on pages 64 through 68 is not supported by the developer's pro-formas. As an example, the appraiser states on page 67 of the appraisal that there is only one Andesite Ridge - South existing lot remaining and that is priced at \$1.55 million. The developer's pro-forma shows that there are \$39.3 million of sales of lots to individuals anticipated in the 4th quarter 2005 in the Andesite Ridge - Area;
 - iii. The total income from lot sales on the developer's pro-forma is shown as \$1,310.7-million. In the Appraisal Report at page 68, the developer's figure is reported to be \$1,096.95-million. There is no explanation for the discrepancy;
 - iv. The developer has revenue from sale of home sites to developers (plural). It appears these are for the improved product, which the appraiser estimated based on a percentage allocation applied to the finished home product price. No explanation was provided as to what the meaning of this was from the developer's pro-forma;
 - v. One of the pro-forma sheets has a charge for golf course maintenance of \$1,250,000 in 2005. This is not included or commented on in the appraisal;

- vi. One of the pro-forma line items is the ski area construction for \$450,000 in 2007 but this cost is excluded from the appraiser's analysis without comment;
- vii. The Nordic program expense is excluded from the appraiser's analysis without comment in an amount of \$206,900;
- viii. The summary on page 75 includes costs for the entire year of 2005 when the date of value is July 2005. It is not clear from the developer's pro-forma if this is appropriate;
- ix. Page 75 of the appraisal, sixth paragraph, discusses the Town of Big Springs facility. There is no explanation as to what this pertains to;
- x. Page 75 of the appraisal, seventh paragraph, discusses a comparable Montana ski resort to justify the infrastructure cost. The resort was not identified and this would not qualify as comprehensive detail required for a self-contained appraisal report;
- xi. The Community/Club infrastructure cost conclusion of \$72,250,000 (at page 75 of the Appraisal Report) is not presented in any manner that a reader can understand how it was derived;
- xii. The Neighborhood development cost conclusion is reportedly based on a budgeted amount of \$15.23 million (at page 76 of the Appraisal Report). This figure was not found in the developer's pro-forma;
- xiii. The developer's pro-forma shows costs of sales/closing costs of \$74.6-million and gross revenues of \$756.5-million. The cost is 9.9% of gross revenue (\$74.6 divided by \$756.5). The appraiser states that total costs for this category range from 4.0 to 8.5 percent. This is an obviously incorrect statement; and,
- xiv. The developer's pro-forma does not include any costs for real property taxes. The appraiser should have questioned this omission and obtained an explanation of the oversight in his appraisal report.

5. At page 80 of the Appraisal Report, there is a discussion of exposure period/marketing time. The discussion stated that there is no exposure period. However, for the retail lot values, a market value conclusion was reached and reported, and, as such, an exposure period opinion must be formed. (SR1-2(C)-comment). It was not.

6. After carefully reviewing the Yellowstone Club Appraisal Report by Cushman & Wakefield, it is my professional opinion that the appraisal was required to comply with and conform to USPAP and should have been completed under the FIRREA regulations and include an "as is" value estimate of the market value of the property. In view of the fact that the author of the document is an appraiser, because the purpose and intended use was for a loan, because the client was and is a lender, and the intended users could be anyone which could have an ownership interest in the property or acquire an ownership interest in the property or any of its parcels in the development, this Appraisal Report was subject to both USPAP and FIRREA regulations. For the reasons stated above, the Appraisal Report violated USPAP and FIRREA. More disturbing is that it appears the appraiser was attempting to mislead the reader or anyone who might learn of the appraisal or its conclusions into thinking the concluded figure actually represents an amount which would serve as a reasonable basis for a loan, or would be an amount that the property would trade for at some level.

7. I can think of no legitimate reason for reporting Total Net Value to anyone. There was no individual, or groups of individuals, who would have exchanged \$1.165-Billion for the real property rights evaluated in the appraisal report. Therefore, the document reviewed does not even qualify as an appraisal and is, at best, a sham and likely a premeditated commission of a scheme and crime to defraud.

VI. EVALUATION OF TAMARACK RESORT APPRAISAL

1. The appraisal performed by Cushman & Wakefield on the remaining inventory at the Tamarack Resort was required to be compliant with FIRREA. The appraiser and the appraisal, however, violated federal law and guidelines by failing to comply with FIRREA and the regulations and guidelines in effect governing FIRREA. The appraiser and appraisal also violated USPAP, as set forth below, and were misleading.

2. The appraisal stated in the letter of transmittal that it was not compliant with FIRREA. Since the appraisal was supposed to be FIRREA compliant, by law, an explanation in the appraisal as to why it does not have to be compliant with FIRREA was, at a minimum, required. No explanation was given; therefore, the appraisal was misleading under USPAP guidelines. This was misleading to any user of the appraisal, including "a qualified institutional buyer or an accredited investor." (Loft, page 1.)

3. The appraisal estimated Total Net Value (TNV) and supposedly not market value. The appraisal was intended to be used by "any qualified institutional buyer, or accredited buyer, or

rating agency.” (LofT, page 1). The appraisal report must contain sufficient information to enable the intended users to understand the report properly (SR2-1(b)). Any of these entities would conclude that the appraisal report provided a “market value” estimate and not a completely different concept defined as Total Net Value for the following reasons:

- a. The appraisal was prepared in conformity with the Uniform Standards of Professional Appraisal Practice and Code of Ethics of the Appraisal Institute (LofT page 2);
- b. The definition for Aggregate of Retail Values (ARV) on page 4 of the Appraisal Report came from the Dictionary of Real Estate Appraisal published by the Appraisal Institute (Appraisal Report, page 3);
- c. Definitions for Discounting and Discount Rate were included in the Appraisal Report, page 3, even though the appraiser stated that these were not considered;
- d. The Definition for Entrepreneurial Incentive (Profit) on page 4 of the appraisal was changed in only one respect, the term market value is changed to Total Net Value;
- e. The Definition of Highest and Best Use was taken from the Dictionary of Real Estate Appraisal published by the Appraisal Institute. (Appraisal Report, page 66);
- f. The definition of TNV included the words “market value” within the definition. (Appraisal Report, LofT, page 2);
- g. The definition of TNV was inconsistent within the definition as it stated that “all of the bulk lots were complete (in terms of backbone and infrastructure)” and later said, “it reflects deductions for infrastructure development”. (LofT, page 2);
- h. The definition of TNV excluded a deduction for developer’s profit, but the value conclusion included developer’s profit. (LofT, page 2);
- i. Extraordinary Assumption 3 includes the term maximize profitability. (LofT, page 3);
- j. Extraordinary Assumption 4 stated that the total net value of some of the components included developer’s profit (LofT, page 3);
- k. Page 3 of the Appraisal Report stated, “The purpose of this appraisal is to

estimate the market value and total net value of the fee simple estate of the subject property.”;

- l. A Highest and Best Use Analysis was provided on pages 66 and 67 of the Appraisal Report. According to the 13th Edition of the Appraisal of Real Estate, page 277, first paragraph, Highest and Best Use Analysis is an important step in the estimate of market value;
- m. A Highest and Best Use Analysis was provided on pages 66 and 67 of the Appraisal Report. According to USPAP, SR1-3 and 1-3(b), “When the value opinion to be developed is market value ... an appraiser must develop an opinion of the highest and best use of the real estate.”;
- n. A Highest and Best Use Analysis was provided on pages 66 and 67 of the Appraisal Report. Highest and Best Use required an analysis of the financial feasibility of a project, which included an analysis of a market rate of return. (The Appraisal of Real Estate, page 284);
- o. Page 68 of the Appraisal Report used the label of Subdivision Development Method and this same heading appears from page 69 through 92. The 4th Edition of the Dictionary of Real Estate Appraisal defines “Subdivision Development Method” as: “A method of estimating land value when subdivision and development are the highest and best use of the parcel of land being appraised. When all direct and indirect costs and entrepreneurial incentive are deducted from an estimate of the anticipated gross sales price of the finished lots, the resultant net sales proceeds are then discounted to present value at a market-derived rate over the development and absorption period to indicate the value of the raw land.”;
- p. Page 69 of the Appraisal Report, second paragraph, stated that as part of the first step a market value estimate was made of the individual parcels;
- q. Page 69 of the Appraisal Report, sixth paragraph stated that for a market value analysis a discounted cash flow analysis should be applied. The appraiser estimated the market value of the individual units, but did not apply a discounted cash flow analysis for these estimates; and,
- r. USPAP required the appraiser to analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from valuing the whole solely by adding together the individual values of the various estates or component parts. (SR1-4).

4. Other Issues in the Appraisal Report which question the credibility of the appraiser's opinions and conclusions can be summarized as follows:

- a. The analysis was stated to be a complete appraisal, meaning there were no departures from the Uniform Standards of Professional Appraisal Practice (USPAP) and is also labeled as a self-contained appraisal report (LofT, page 1). A reader of a self contained appraisal report "should expect to find all significant data reported in comprehensive detail." (Advisory Opinion 11, line 39). There was significant data missing from this appraisal report including justification for the expenses in the valuation analysis, etc.;
- b. The appraisal stated on page 2 of the LofT that the appraiser investigated and analyzed market data concerning properties of the subject property type. No sales of properties similar to the subject property type were presented or analyzed in the appraisal;
- c. The report was stated to comply with USPAP but it did not. (LofT, page 2);
- d. The LofT, page 2, stated that \$248,000,000 is allocated to Developer's Profit. The definition of TNV excludes developer's profit. Therefore, this is at best confusing and at worst is a significant error of commission (SR 1-1(b));
- e. There are nine extraordinary assumptions listed within the appraisal report. According to USPAP these must be clear, accurate and conspicuous (SR2-1(c) and 2-2(a)(viii)). In addition there must be a statement that "Their use may have affected the assignment results." This statement was not in the appraisal;
- f. Extraordinary Assumption 2 is actually a hypothetical condition since it assumed that final plat approvals were granted for the remaining lots and sub-neighborhoods, and this was not the case;
- g. Extraordinary Assumption 8 discussed the fact that assumptions do not materialize and that unanticipated events occur. This assumption argued for discounting the cash flows since this is considered risk, and discounting accounts for risk, among other things;
- h. USPAP required that extraordinary assumptions be required to properly develop credible opinions and conclusions and the appraiser has a reasonable basis for the extraordinary assumption. The appraiser neither

- made the case that the extraordinary assumptions were required or that there was a reasonable basis for them. (SR 1-2(g);
- i. USPAP required that if a hypothetical condition was used that it must be clearly required for legal purposes, for purposes of reasonable analysis or for purposes of comparison. The hypothetical condition in the appraisal did not meet these tests. (SR1-2(h);
 - j. In the scope of the appraisal section the appraiser stated, "The valuation process involved utilizing market-derived and supported techniques and procedures ...". No market support or precedent was provided for the total net value estimate provided. This term cannot be found in any appraisal literature or textbook. No other appraiser was located who had ever performed a total net value analysis;
 - k. Labeling the valuation analysis as a "Subdivision Analysis" was misleading. (Appraisal Report, pages 69 through 92). The 13th Edition of the Appraisal of Real Estate at pages 370 to 376 presents the Subdivision Development Analysis. This approach is also known as a discounted cash flow analysis. An integral part of the analysis is the selection of and application of a discount rate. The appraiser did not perform any discounting in the analysis;
 - l. The definition of Total Net Value, from page 3 of the appraisal report, included the term market value. There is no definition of market value included in the appraisal. Since the appraiser estimated the "market value" of the individual parcels on pages 64 through 68 of the appraisal report, USPAP required a definition of market value be included. SR2-2(a)(v);
 - m. Total Net Value was defined on page 3 of the appraisal report. USPAP, through SR SR2-2(a)(v), required that a source be cited for the definition. Frequently Asked Question 132 from USPAP, page F-61 and F-62, provides examples of sources for the definition. Examples include "a regulatory agency, a legal jurisdiction, an engagement letter, or a textbook." There is never a source provided for the definition of Total Net Value;
 - n. Total Net Value is defined on page 3 of the appraisal. The definition included the assumption that "all of the bulk lots were complete ... and available for sale to merchant builders, as of the date of the appraisal." This is a hypothetical condition and the report contained no reference to any hypothetical conditions. This was a violation of SR 1-2(h) and SR 2-

1(c) and SR 2-2(a)(viii);

- o. Page 69, seventh paragraph of the appraisal report stated, "We refer the reader to the Residential Market Analysis section, where competitive developments were analyzed. This analysis supports and supplements the reasoning and analysis behind our lot and unit price conclusions ...". However, no comparative analysis was made comparing the lots in the seven competing projects to those of the subject property. This was a requirement of USPAP, SR 1-6(a);
- p. The entire analysis for the gross revenues was based solely on prices achieved within the subject property development. No credible check on these values was presented by an actual comparison to other competitive projects;
- q. Page 68, second paragraph stated, "There is good market data to estimate revenues, costs and expenses." No market data was presented in the appraisal report;
- r. Page 63 of the appraisal report, third paragraph, stated: "The market value estimate of the parcels is predicated upon the analysis of prices paid in actual market transactions." Market value, and those actual market transactions, included a consideration of developer profit and entrepreneurial incentive. The appraiser stated these were excluded from the analysis but no adjustment was found in the appraisal to exclude this from the estimated values;
- s. Page 69 outlined a methodology for valuing the subject property. The process, which is in keeping with the definition of Total Net Value, is not a recognized method or technique necessary to produce a credible appraisal. This was a violation of SR 1-1(a);
- t. A growth rate was included for the revenues only, not the expenses, however no discount was applied to the net figures. This appears to be a contradiction;
- u. The appraiser relied upon the developer's cost projections (Appraisal Report, page 88, fourth paragraph). The appraiser stated, "We have infrastructure costs from other developments from other master-planned resort communities in the western region, and the subject's budgeted infrastructure costs were compared to these." As a self-contained appraisal report this information must be included in the report;

- v. The unit construction costs on page 88 did not track with the information presented on page 83;
- w. The chart on page 83 showed revenues that do not track internally with the information presented in this chart. The revenues shown in this chart cannot be replicated based on the information in the appraisal report;
- x. A copy of the pro-forma was included in the Addenda, Exhibit F. However, there were significant differences from the analysis without comment. These include:
 - i. The information from the developer pro-forma and page 91 the Total Net Value summary showed the following:

Item	Pro-Forma	Appraisal
Cabin/Condominium construction costs	\$701,600,000	\$673,358,165
SFR/MFR/General Infrastructure	\$42,300,000	\$47,437,000
Cost of Sale/Closing Costs/Overhead	\$138,900,000	\$118,960,405

There was no explanation for the variance.

- ii. Page 91 of the Appraisal Report showed the summary of the Total Net Value. The income from "Whitewater" 2.1 and 2.2 was not supported from other analysis in the appraisal. This would not qualify as the comprehensive detail required for a self-contained appraisal report.
- y. A discussion of exposure period/marketing time was presented on page 93. The discussion stated that there was no exposure period. However, for the retail lot values a market value conclusion was reached and reported, and as such an exposure period opinion must be formed. (SR1-2(C) – comment).

5. The discussion of exposure period/marketing time included the statement, "No exposure period or marketing time is appropriate for Total Net Value, since the property would not transact at this price." The basic nature of value is stated in the opening two sentences of

Chapter 2 of the 13th Edition of the Appraisal of Real Estate published by the Appraisal Institute: “The economic concept of value is not inherent in the commodity, good, or service to which it is ascribed. Rather, it is created in the minds of the individuals who make up the market.” In order for value to have any meaning, it must have the context of a market. Page 21 of this same text defines market as “... the interaction of individuals who exchange real property rights for other assets such as money.” The appraiser who performed and prepared the Tamarack Appraisal Report admitted that there is no individual, or groups of individuals, who would exchange \$824-Million for the real property rights evaluated in the appraisal report. (Appraisal Report, page 93, Exposure Period/Marketing Time, first sentence). Therefore, the document reviewed did not even qualify as an appraisal in and apart from violating FIRREA and USPAP as described above, and, again, is, at best, a sham and likely a premeditated commission of a scheme and crime to defraud.

6. As a result of these deficiencies and other issues, the Tamarack “appraisal” report also did not comply with USPAP. It also should have been completed under the FIRREA regulations and included an “as is” value estimate of the market value of the property. It did neither. As in the prior analyzed appraisals, the appraiser biased the results to a greater number than can be reasonably supported.

7. Because the author of the Tamarack document was an appraiser, because the purpose and intended use was for a loan, because the client was a lender, and intended users could be any qualified institutional buyer pursuant to Rule 144A or any accredited investor pursuant to Regulation D under the Securities Act of 1933 or other federally or non-federally regulated lender, it is my professional opinion based upon a reasonable degree of certainty, and based on my education, training and experience, that the appraiser (and possibly the client) intended to mislead a reader into thinking that the concluded figure actually represented an amount which would serve as a reasonable basis for a loan, or would be an amount that the property would trade for at some level. I can think of no known legitimate reason for reporting Total Net Value to anyone.

VII. EVALUATION OF WEST END RESORT APPRAISAL

1. The appraisal performed by Cushman & Wakefield on the proposed 6,254-Unit PUD on 1,950-acres in the Grand Bahama Island Counties, Bahamas was required to be compliant with FIRREA. The appraiser and the appraisal, however, violated federal law and guidelines by failing to comply with FIRREA and the regulations and guidelines in effect governing FIRREA. The appraiser and appraisal violated USPAP, as set forth below, and the appraisal was misleading.

2. The appraisal was addressed to Credit Suisse Securities (USA) LLC and its stated function was for potential financing of the property. The report stated it was prepared in accordance with the institution’s guidelines, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and the Uniform Standards of Professional

Appraisal Practice (USPAP). This was a false statement because FIRREA required five items:

- One. Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP);
- Two. Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;
- Three. Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms and tract developments with unsold units;
- Four. Be based upon the definition of market value as set forth in the regulation; and,
- Five. Be performed by State licensed or certified appraisers in accordance with requirements set forth in the regulation.

My review indicates compliance with item Five only. The appraisal provided an estimate of Total Net Value (TNV) and not market value as defined in the regulation and did not provide an "as is" market value as required under item Three. Guidelines for item Three include the following statement: "For proposed developments that involve the sale of individual houses, units, or lots, the appraiser must analyze and report appropriate deductions and discounts for holding costs, marketing costs and entrepreneurial profit." The appraisal prepared by Cushman & Wakefield specifically excluded entrepreneurial profit.

3. USPAP Statement 10 lists several items that are not allowed in FIRREA compliant appraisals; among them are:

- a. Failure to indicate the "as is" value of the property as of the date of the report and how the "as is" value differed from the value conclusion under a hypothetical condition. (USPAP, page 115, line 3941);
- b. Reported the sum of the retail values for a tract development project (5 units or more in a single development) as representing market value of the whole property (USPAP, page 117, line 4038); and
- c. Provided an undiscounted value conclusion to an institution when the institution was financing the development of -- and not the end purchase of -- the individuals units; and, failing to report appropriate deductions and discounts for a tract development appraisal. (USPAP, page 118, line 4079).

4. The appraisal estimated Total Net Value (TNV) and supposedly not market value. The

appraisal was intended to be used by Credit Suisse Securities (USA) LLC. The appraiser obviously thought such entity was a federally regulated lender and that this was a federally related transaction because the appraiser stated the appraisal complied with FIRREA. The distinction between TNV and market value was blurred because of numerous errors and misrepresentations in the appraisal. Some of these were:

- a. The appraisal was prepared in conformity with the Uniform Standards of Professional Appraisal Practice and Code of Ethics of the Appraisal Institute (Certification, page 51);
- b. The appraiser stated that the value conclusion was market value (Loft, page 4, second paragraph);
- c. The definitions presented on pages 3 and 4 of the Appraisal Report were presented as being from published by the Appraisal Institute, including a definition for fair market value;
- d. The Definition of Highest and Best Use was taken from the Dictionary of Real Estate Appraisal published by the Appraisal Institute (Appraisal Report, page 37);
- e. The definition of TNV included the words "market value" within the definition. (Appraisal Report, page 3);
- f. The definition of TNV was inconsistent within the definition because it stated that "all of the bulk lots were complete (in terms of backbone and infrastructure)" and later said, "it reflects deductions for infrastructure development". (Appraisal Report, page 3);
- g. The definition of TNV excluded a deduction for developer's profit, but the value conclusion included a deduction for developer's profit. (Appraisal Report, page 29, third paragraph and page 42);
- h. The highest and best use conclusion included profitability in the concept of profitable demand. (Appraisal Report, page 37);
- i. The highest and best use conclusion included a consideration of the highest present worth when the appraiser did not discount the value (Appraisal Report, page 37);
- j. A Highest and Best Use Analysis was provided on pages 37, 38 and 39 of the Appraisal Report. The appraisal report stated that, "In appraisal practice, the concept of highest and best use represents the premise upon which value is based." According to the 13th Edition of the Appraisal of

Real Estate, page 277, first paragraph, Highest and Best Use Analysis is an important step in the estimate of market value.

- k. A Highest and Best Use Analysis was provided on pages 37, 38 and 39 of the Appraisal Report. According to USPAP, SR1-3 and 1-3(b), "When the value opinion to be developed is market value ... an appraiser must develop an opinion of the highest and best use of the real estate;
- l. A Highest and Best Use Analysis was provided on pages 37, 38 and 39 of the Appraisal Report. Highest and Best Use required an analysis of the financial feasibility of a project, which included an analysis of a market rate of return. (The Appraisal of Real Estate, page 284);
- m. A Highest and Best Use Analysis was provided on pages 37, 38 and 39 of the Appraisal Report. On page 37 of the Appraisal Report it stated, "The following conditions must be considered in concluding highest and best use. The use must be 'legal.' The use must be 'probable' and not 'speculative,' or 'there must be a profitable demand for such use ...'". The definition of TNV specifically excluded profit;
- n. At page 40, the appraiser outlined the steps in the valuation approaches. This section used words such as "the following four methods may be used to determine the market value of land ..." and "Net sales proceeds are then discounted to a present worth of land value.";
- o. On page 42 of the Appraisal Report, in the development of value for the condominium units, Developer's Profit was deducted when the definition of TNV states it will not be deducted;
- p. Page 48 of the Appraisal Report, limiting condition 12, stated, "If the Report is submitted to a lender or investor with the prior approval of C&W, such party should consider this Report as only one factor together with its independent investment considerations and underwriting criteria, in its overall investment decision. Such lender or investor is specifically cautioned to understand all Extraordinary Assumptions and Hypothetical Conditions and the Assumptions and Limiting Conditions." The Appraisal Report was written in such a way that would confuse a potential reader as to whether profit was included and that TNV had a relationship to a known value; and,
- q. USPAP required the appraiser to analyze the effect on value, if any, of the assemblage of the various estates or component parts of a property and refrain from valuing the whole solely by adding together the individual

values of the various estates or component parts. (SR1-4).

5. Other Issues in the Appraisal Report which question the credibility of the appraiser's opinions and conclusions can be summarized as follows:

- a. The analysis was stated to be a complete appraisal, meaning there were no departures from the Uniform Standards of Professional Appraisal Practice (USPAP) and it was also labeled as a self-contained appraisal report (LofT, page 1). A reader of a self contained appraisal report "should expect to find all significant data reported in comprehensive detail." (Advisory Opinion 11, line 39). There was significant data missing from this appraisal report including justification for the expenses in the valuation analysis, sales upon which the retail value conclusions are based, the comparison of sales to the subject property, etc.;
- b. The appraisal stated on page 2 of the Appraisal report that the appraiser collected, checked and analyzed "competitive market data ... required in the appraisal process." However, sales of properties similar to the subject property type is competitive market data and it was never presented or analyzed in the appraisal;
- c. The report said it complied with USPAP but it did not. (LofT, page 2);
- d. Six extraordinary assumptions were listed within the appraisal report. According to USPAP, these must be clear, accurate and conspicuous (SR2-1(c) and 2-2(a)(viii)). In addition there must be a statement that "Their use may have affected the assignment results." This statement was not in the appraisal;
- e. Extraordinary Assumption 4 dealt with completion of the improvements. Because the costs were not discounted they were presumed to occur all at once, and on the date of value. Since this was not the case, this was a hypothetical condition. (LofT, page 1);
- f. Extraordinary Assumption 5 dealt with an 8.0 percent fee in the preferred builder agreement. Since this agreement existed, but was excluded from consideration in the analysis, this was a hypothetical condition. (LofT, page 2);
- g. Extraordinary Assumption 2 discussed the fact that assumptions do not materialize and that unanticipated events occur. This assumption argued for discounting the cash flows since this is considered risk, and discounting accounts for risk, among other things. (LofT, page 1);

- h. USPAP required that extraordinary assumptions must be required to properly develop credible opinions and conclusions and the appraiser had a reasonable basis for the extraordinary assumption. The appraiser neither made the case that the extraordinary assumptions were required or that there was a reasonable basis for them. As an example, Extraordinary Assumption 1 stated that the appraisers attempted to confirm the data supplied by the developer. The information was conflicting and these conflicts were not enumerated in the appraisal report. (SR 1-2(g));
- i. USPAP required that if a hypothetical condition was used it must be clearly required for legal purposes, purposes of reasonable analysis or for purposes of comparison. The hypothetical condition in the appraisal did not meet these tests. (SR1-2(h));
- j. In the scope of the appraisal section the appraiser stated that, "The valuation process involved utilizing market-derived and supported techniques and procedures ...". No market support or precedent was provided for the total net value estimate provided. This term cannot be found in any appraisal literature or textbook. No other appraiser was located who had ever performed a total net value analysis;
- k. Total Net Value is defined on page 3 of the appraisal report. USPAP, through SR SR2-2(a)(v), required that a source be cited for the definition. Frequently Asked Question 132 from USPAP, page F-61 and F-62, provides examples of sources for the definition. Examples include "a regulatory agency, a legal jurisdiction, an engagement letter, or a textbook." There was never a source provided for the definition of Total Net Value. No market support or precedent was provided for the total net value estimate provided. This term cannot be found in any appraisal literature or textbook. No other appraiser was located who had ever performed a total net value analysis;
- l. Total Net Value was defined on page 3 of the appraisal. The definition included the assumption that "all of the bulk lots were complete ... and available for sale to merchant builders, as of the date of the appraisal." This was a hypothetical condition and the report contained no reference to any hypothetical conditions. This was a violation of SR 1-2(h) and SR 2-1(c) and SR 2-2(a)(viii);
- m. Page 3 of the LofT stated that, "the value conclusion represents a market price achievable within a one-year exposure prior to the date of value." Statement 6 of USPAP required that there be a basis for the opinion, and

that it be based on statistical information about days on market, information gathered through sales verification, and interviews with market participants. As this was a self-contained report, this information should have been presented, but it was not. (USPAP, page 93, line 3219);

- n. Pages 41 and 42 indicated that a sales comparison approach was used and that an analysis of prices was made (page 41, first paragraph). No comparative analysis was presented in the appraisal report as outlined in this paragraph. This would not qualify as the level of detail required in a self-contained report. In addition, since no comparative analysis was made comparing the sales of other lots to those of the subject project, the report violated USPAP, SR 1-6(a);
- o. The entire analysis for the gross revenues was based solely on prices achieved within the subject property development. No credible check on these values was presented by an actual comparison to other competitive projects;
- p. Page 42 used only the developer's projected prices for the finished condominiums. The appraisal report provided comparables which were not used and which call into question the \$1,000,000 average condominium price conclusion. Page 22, project number 5 adjacent to the subject property had condominiums selling for \$350,000 to \$425,000. Page 26, the Bimini Bay Resort and Casino had condominiums selling for \$260,000 to \$772,800 per unit. Page 27, the appraiser interviewed sales representatives in the Grand Isle Villas but did not report sales prices;
- q. Page 41, first paragraph of the Appraisal Report, stated the appraisers analyzed prices buyers have recently paid for similar lots in the market. Market value, and those actual market transactions, included a consideration of developer profit and entrepreneurial incentive. The appraiser stated these were excluded from the analysis but no adjustment was found in the appraisal to exclude this from the estimated values;
- r. Page 42 stated the "as is" value estimate was approximately \$100,000 per unit. With many costs being excluded (taxes, insurance, etc.), and without a consideration of the time value of money, this cannot be an "as is" value estimate;
- s. Page 40 outlined a methodology for valuing the subject property. The process, which was in keeping with the definition of Total Net Value, was not a recognized method or technique necessary to produce a credible appraisal. This was a violation of SR 1-1(a);

- t. Page 33 presented the subject property as under development. USPAP required the appraiser to present the use of the property as of the date of value and as valued (SR 2-2(a)(x)). The detail necessary to qualify this appraisal report as a self-contained appraisal was not presented for the condition of the property as of the date of value;
- u. Pages 33, 35 and Addenda, Exhibit B showed conflicting information regarding costs of development. This was never reconciled. As a self-contained appraisal report this information must be included in the report;
- v. Page 30 stated that the developer projected a development over the next six years. Page 33 stated it was five years. The Addenda, Exhibit B showed less than 5 years in one section and 10 years in another. A self-contained appraisal report with detailed presentation would discuss and reconcile these differences;
- w. Page 36, the property taxes section, stated, "Estimating future taxes is beyond the scope of this analysis." The definition of TNV indicated a deduction was made for carrying costs. Taxes are a carrying cost, so the analysis did not estimate TNV as defined;
- x. Page 41 stated that a sales comparison approach was applied but there were no sales compared to the subject property. This was a violation of SR 1-4 (a);
- y. Page 42, first line stated that there were additional premiums for larger lots with superior views in future phases. The Addendum, Exhibit B did not increase the estimated prices for the lots;
- z. Page 43 indicated that the estimated market pricing for the lots and condominiums were within current market parameters, but no market parameters were presented in the appraisal report;
- aa. The number of units was presented as either 1,858 or 1,836 throughout the appraisal report. No explanation for the difference was noted;
- bb. The development costs presented on page 44 excluded the entrance, loan origination, property taxes and interest reserve. The definition of TNV did not allow for these exclusions;
- cc. An allowance for subsidies and finance charges was included in the development costs without any explanation as to what these included. (Appraisal Report, page 44). For a self-contained appraisal report, this should have been explained;

dd. Real estate taxes were discussed as an expense on page 44 but were not included in the analysis; and,

ee. There was no reconciliation between the development costs presented on page 33, 35 and in the Addenda, Exhibit B.

6. I direct the reader to my earlier references to the 13th Edition of the Appraisal of Real Estate's discussion of the nature of value and markets. In regards to the West End Resort appraisal, there are no known individuals, or groups of individuals, who would exchange \$623-Million for the real property rights evaluated in the appraisal report. Therefore, the document reviewed does not even qualify as an appraisal, and, like the three appraisals discussed earlier, is, at best, a sham and likely a premeditated commission of a scheme and crime to defraud.

7. As a result of these deficiencies and other issues the West End appraisal report does not comply with USPAP, does not comply with FIRREA regulations and the appraiser appears to be biasing the results to a greater number than can be reasonably supported. Because the author of the document is an appraiser, because the purpose and intended use is for a loan, and because the client is a lender that would fall under the jurisdiction of federal regulatory agencies, it appears the appraiser is attempting to mislead a reader into thinking that the concluded figure actually represents an amount that would serve as a reasonable basis for a loan, or would be an amount that the property would trade for at some level.

8. I can think of no known legitimate reason for reporting Total Net Value to anyone. In addition, it appears the appraiser and lender have conspired together to create the definition of Total Net Value because the appraiser states on page 40, second to the last paragraph, that, "For purposes of this analysis and at the request of the client, we have provided a total net value analysis."

VIII. CONCLUSION

In my opinion, when the four appraisal reports are taken together they demonstrate a pattern of deceit with a much broader intent than simply a single appraisal report, as shown by the following:

1. Each of the appraisals violated all three sections of Standard Rule 1-1 which required use of recognized methods and techniques, not committing a substantial error of omission or commission, and not preparing an appraisal in a careless or negligent manner.
2. Standard Rule 1-2 was violated because the appraisers did not communicate with the client about other intended users, formed an exposure time opinion when this is only called for in market value estimates, and did not properly use extraordinary assumptions and hypothetical conditions.

3. Standard Rule 1-3 was violated because the appraiser prepared a highest and best use analysis but reportedly did not conclude on market value.
4. Standard Rule 1-4 was violated because the sales comparison approach was not properly applied and retail values were simply added up without consideration of any discount or premium.
5. Standard Rule 1-5 was violated because prior sales and current listings were not analyzed in the appraisal.
6. Standard Rule 1-6 was violated because there was no reconciliation of the indications from the data within an approach.
7. Standard Rule 2 was violated because the appraisal reports are misleading.

These violations rise to the level of an ethics violation under USPAP, which states that an appraiser must not communicate assignment results in a misleading manner. FIRREA appraisal regulations specifically address this issue: "This standard is designed to avoid having appraisals prepared using unrealistic assumptions and inappropriate methods."

Since R41-b was adopted by the Federal Banking Regulatory Agencies in the early 1980s, the Federal Government, in order to protect the public and foster public trust in the banking industry and in the appraisal profession, has regulated appraisal activity so as to specifically exclude the type of analysis which these appraisals provided. These appraisals violated numerous legal standards and ethical principles that the appraisal industry has attempted to adhere to. Considering the monetary figures, and the sophistication of the lenders and appraisal firm involved in these real estate transactions, these appraisals appear to have been part of a broader, pre-meditated scheme.

I've said repeatedly in this declaration that I can think of no legitimate reason for reporting Total Net Value to anyone. In my opinion, the procurement and use of these appraisals was designed to artificially inflate values so as to defraud developers, and others who had, and would, purchase lots or homes or otherwise invest in the resorts. Such parties would not be expected to be aware of the apparent violations of federal and state laws, standards, regulations and guidelines described above. In my view, it appears these appraisals were part of a much broader premeditated scheme and crime to defraud the developers and everyone else that owned, held, or acquired an interest in the developments.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and based on my personal knowledge, and that this declaration was executed on this 28th day of March, 2011, at Los Angeles, California.”

A handwritten signature in black ink, appearing to read "D. Michael Mason". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

D. Michael Mason, MAI

Professional Profile



D. Michael Mason, MAI, SRA
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CAREER SUMMARY

Mr. Mason began his full-time appraisal career working in the family appraisal business, Mason, Mason & Mason. Within three years he had achieved the SRA Designation from the Appraisal Institute and the following year was awarded the MAI designation. While at his Father's firm he specialized in litigation support and expert witness services. In August 1985 Mr. Mason associated with Rolland R. Stephens, MAI and completed appraisals on major income properties throughout Southern California. Projects included every regional mall in Los Angeles and Orange Counties, high-rise office buildings, industrial business parks and apartment communities. Mr. Mason has been a qualified instructor for the Appraisal Institute continuously since 1985 teaching basic and advanced appraisal courses. He participated in writing the textbooks, the Appraisal of Real Estate and Appraising Residential Properties published by the Appraisal Institute. Mr. Mason has written several seminars and courses for the Appraisal Institute. He has also taught appraisal courses in the undergraduate program at the University of Southern California and in the UCLA Extension program.

RESPONSIBILITIES

- Managing Director, Landauer Valuation & Advisory Services, Los Angeles
- Director, Litigation Support, Integra Realty Resources – Metro LA
- Managing Director, First American Commercial Real Estate Services, Inc., Los Angeles
- Owner, D. Michael Mason & Associates
- Partner, Stephens-Mason Associates

SPECIALTIES

- Litigation Support for condemnation, easement valuation, conservation easements, real estate fraud, etc.
- Expert Testimony in State Superior Court and Federal Bankruptcy Court
- Appraiser Standard of Care, USPAP Certified Instructor

EXPERIENCE

- June 1980 to August 1985 – Appraiser with Mason, Mason & Mason
- August 1985 to January 2000 – Partner with Rolland Stephens, MAI in the firm Stephens-Mason Associates
- January 2000 to August 2004 – Owner, D. Michael Mason & Associates
- August 2004 to August 2008 - Managing Director, First American Commercial Real Estate Services, Inc.
- August 2008 to July 2010 – Director of Litigation Support, Integra Realty Resources, Metro LA
- July 2010 to present – Managing Director, Landauer Valuation & Advisory Services, LLC, Los Angeles

EDUCATION

- Bachelor of Science Degree, California State University, Los Angeles, 1980

PROFESSIONAL AFFILIATIONS

- MAI Designated Member of the Appraisal Institute
- SRA Designated Member of the Appraisal Institute
- Member, International Right-of-Way Association
- Certified General Real Estate Appraiser, California, License No. AG001673