

AMERICAN SAFETY INSURANCE HOLDINGS LTD  
Form 10-Q  
November 06, 2003

**SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON D.C. 20549**

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**FORM 10-Q**

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2003

Commission File Number 1-14795

**AMERICAN SAFETY INSURANCE HOLDINGS, LTD.**

(Exact name of Registrant as specified in its charter)

Bermuda  
(State or other  
jurisdiction  
of incorporation)

44 Church Street  
P.O. Box HM2064  
Hamilton HM HX, Bermuda  
(Address, zip code of principal executive offices)

(441) 296-8560  
(Registrant's telephone number, including area code)

Indicate by check mark whether Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate number of shares outstanding of Registrant's common stock, \$.01 par value, on October 31, 2003 was 4,749,266.

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**AMERICAN SAFETY INSURANCE HOLDINGS, LTD.**

**FORM 10-Q**

**TABLE OF CONTENTS**

PART I - FINANCIAL INFORMATION	
Item 1. Financial Statements	1
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	19

Page  
-----

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Item 3. Quantitative and Qualitative Disclosures About Market Risks. 28  
 Item 4. Controls and Procedures 28

PART II - OTHER INFORMATION 29

Item 1. Legal Proceedings 29  
 Item 2. Changes in Securities and Use of Proceeds. 30  
 Item 3. Defaults Upon Senior Securities. 31  
 Item 4. Submission of Matters to a Vote of Security Holders. 31  
 Item 5. Other Information. 31  
 Item 6. Exhibits and Reports on Form 8-K. 31

**PART I - FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**American Safety Insurance Holdings, Ltd. and Subsidiaries  
 Consolidated Balance Sheets**

	December 31, <u>2002</u>	Sep
<u>Assets</u>		
Investments:		
Fixed maturity securities available for sale, at fair value	\$ 85,850,658	\$ 14
Common stock	-	
Investment in real estate	41,050,921	4
Short-term investments	<u>18,565,871</u>	
Total investments	145,467,450	20
Cash and cash equivalents	22,158,730	3
Restricted cash	7,516,845	
Accrued investment income	1,751,417	
Notes receivable	6,324,716	
Premiums receivable	19,218,941	2
Ceded unearned premium	22,612,159	2
Reinsurance recoverable	117,547,623	11
Funds on deposit	485,956	
Income tax recoverable	345,882	
Deferred income taxes	7,405,586	1
Deferred policy acquisition costs	7,683,458	
Property, plant and equipment	2,117,096	
Prepaid items	1,920,054	
Intangible assets	1,466,629	
Other assets	<u>1,059,796</u>	
Total assets	\$ 365,082,338	\$44
	=====	==

Liabilities and Shareholders' Equity

Liabilities:		
Unpaid losses and loss adjustment expenses	\$ 160,628,579	\$ 19
Unearned premiums	69,805,945	8
Reinsurance on paid losses and loss adjustment expenses	4,290,250	
Ceded premiums payable	8,141,181	1
Due to affiliate	1,284,097	
Escrow deposits	14,808,528	1

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Accounts payable and accrued expenses	13,458,995	1
Income tax payable	-	
Dividend payable	570,113	
Loan payable	22,182,273	1
Trust preferred payable	-	1
Funds held	4,570,428	
Collateral held	1,315,686	
Deferred revenue	<u>1,574,414</u>	
 Total liabilities	 <u>302,630,489</u>	 <u>37</u>
Shareholders' equity:		
Preferred stock, \$0.01 par value; authorized 5,000,000 shares; no shares issued and outstanding	-	
Common stock, \$0.01 par value; authorized 15,000,000 shares; issued and outstanding at December 31, 2002, 6,352,077 and September 30, 2003, 6,361,455 shares	63,520	
Additional paid-in capital	35,601,246	3
Retained earnings	33,629,557	4
Accumulated other comprehensive income, net	2,884,989	
Treasury stock, 1,612,189 shares at December 31, 2002, and September 30, 2003, at cost	<u>(9,727,463)</u>	<u>(</u>
Total shareholders' equity	<u>62,451,849</u>	<u>6</u>
Total liabilities and shareholders' equity	\$ 365,082,338	\$44
	=====	==

See accompanying notes to consolidated financial statements (unaudited).

-2-

**American Safety Insurance Holdings, Ltd. and Subsidiaries**  
**Consolidated Statements of Earnings**  
**(Unaudited)**

	Three Months Ended		Si
	September 30,		
	<u>2002</u>	<u>2003</u>	<u>2002</u>
Revenues:			
Direct Earned	\$ 29,903,241	\$ 37,696,988	\$ 87,702,11
Assumed premiums earned:			
Affiliate	3,766,283	5,446,506	10,307,75
Nonaffiliates	<u>1,861,367</u>	<u>2,093,393</u>	<u>4,744,97</u>
Total assumed earned premium	<u>5,627,650</u>	<u>7,539,899</u>	<u>15,052,73</u>
Ceded premiums earned:			
Affiliate	869,927	1,182,535	2,397,36
Nonaffiliates	<u>16,809,954</u>	<u>18,174,670</u>	<u>54,058,89</u>
Total ceded earned premium	<u>17,679,881</u>	<u>19,357,205</u>	<u>56,456,26</u>
Net premiums earned	<u>17,851,010</u>	<u>25,879,682</u>	<u>46,298,58</u>
Net investment income	973,320	1,308,856	2,848,19
Management fees from related party	246,563	313,346	739,74
Net realized gains (losses)	(56,183)	35	(521,88
Real estate income	10,723,526	16,280,674	44,659,18
Other income	<u>64,548</u>	<u>83,346</u>	<u>255,69</u>
Total revenues	<u>29,802,784</u>	<u>43,865,939</u>	<u>94,279,52</u>

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Expenses:			
Losses and loss adjustment expenses	10,648,265	15,723,008	28,178,777
Acquisition expenses	3,139,299	4,923,888	7,823,888
Payroll and related expenses	2,300,400	2,339,400	6,604,500
Real estate expenses	9,626,848	14,400,544	38,781,322
Other expenses	1,723,424	2,638,106	4,418,677
Expense due to rescission	<u>1,152,876</u>	<u>45,112</u>	<u>1,506,466</u>
Total expenses	<u>28,591,112</u>	<u>40,070,058</u>	<u>87,313,633</u>
Earnings before income taxes	1,211,672	3,795,881	6,965,899
Income taxes	<u>178,143</u>	<u>833,831</u>	<u>2,033,433</u>
Net earnings	\$ 1,033,529	\$ 2,962,050	\$ 4,932,456
=====			
Net earnings per share:			
Basic	\$ <u>0.22</u>	\$ <u>0.62</u>	\$ <u>1.0</u>
Diluted	\$ <u>0.21</u>	\$ <u>0.58</u>	\$ <u>1.0</u>
Average number of shares outstanding			
Basic	4,746,695	4,749,266	4,731,822
=====			
Diluted	4,864,450	5,099,421	4,876,650
=====			

See accompanying notes to consolidated financial statements (unaudited).

-3-

**American Safety Insurance Holdings, Ltd. and Subsidiaries**  
**Consolidated Statements of Cash Flow**  
**(Unaudited)**

	Nine Months <u>September</u>
	<u>2002</u>
Cash flow from operating activities:	
Net earnings	\$4,932,456
Adjustments to reconcile net earnings to net cash provided by operating activities:	
Realized (gains) losses on investments	521,885
Depreciation expense	189,973
Deferral of deferred acquisition costs, net	(2,443,154)
Accretion of discount	265,049
Change in:	
Accrued investment and interest income	103,291
Premiums receivable	4,291,868
Reinsurance recoverable/payable and ceded unearned premiums	(24,867,948)
Due from affiliate	761,899
Funds held by reinsured	8,680,449
Funds on deposit	(285,945)
Income taxes	1,998,042
Unpaid losses and loss adjustment expenses	23,697,646
Unearned premiums	19,043,222
Ceded premiums payable	(6,108,792)
Due to affiliate	118,141
Accounts payable and accrued expenses	(2,174,984)
Collateral held	349,182
Prepaid items	(95,415)
Deferred revenue	1,239,058
Other, net	<u>(1,172,536)</u>

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Net cash provided by operating activities	<u>28,778,338</u>
Cash flow from investing activities:	
Purchases of fixed maturities	(68,102,237)
Purchases of equity securities	-
Proceeds from sale of fixed maturities	36,992,276
Proceeds from sale of equity investments	103,550
Decrease in short-term investments	15,727,137
Decrease notes receivable - other	65,932
Sale (purchase) of real estate	3,238,278
Purchase of fixed assets, net	<u>(138,177)</u>
Net cash used in investing activities	<u>(12,113,241)</u>
Cash flow from financing activities:	
Purchase of treasury stock	(111,741)
Proceeds from issuance of common stock	368,496
Repayment of loan payable	(2,511,162)
Repayment of escrow deposits	(1,244,021)
Withdrawals (deposits) of restricted cash	(487,159)
Proceeds from trust preferred offering	-
Dividends paid	<u>(1,701,302)</u>
Net cash (used in) provided by financing activities	<u>(3,198,847)</u>
Net increase in cash and cash equivalents	13,466,250
Cash and cash equivalents at beginning of period	<u>1,302,842</u>
Cash and cash equivalents at end of period	<u>\$14,769,092</u>
	=====

See accompanying notes to consolidated financial statements (unaudited).

-4-

**American Safety Insurance Holdings, Ltd. and Subsidiaries  
Consolidated Statements of Comprehensive Earnings >  
(Unaudited)**

	Three Months Ended September 30,		
	<u>2002</u>	<u>2003</u>	<u>200</u>
Net earnings	\$ 1,033,529	\$ 2,962,050	\$ 4,932,
Other comprehensive earnings (loss) before income taxes:			
Unrealized gains (losses) on securities available for sale	3,665,505	(852,795)	3,508,
Unrealized (losses) on hedging transaction	-	27,338	
Reclassification adjustment for realized gains (losses) included in net earnings	<u>(56,183)</u>	<u>35</u>	<u>(521,</u>
Total other comprehensive earnings (loss) before taxes	3,721,688	(825,492)	4,030,
Income tax expense (benefit) related to items of other comprehensive income	<u>849,568</u>	<u>(163,320)</u>	<u>897,</u>
Other comprehensive earnings (loss) net of income taxes	<u>2,872,120</u>	<u>(662,172)</u>	<u>3,132,861</u>

Total comprehensive earnings	\$ 3,905,649	\$2,299,878	\$ 8,065,
	=====	=====	=====

See accompanying notes to consolidated financial statements (unaudited).

-6-

**American Safety Insurance Holdings, Ltd. and Subsidiaries**  
**Notes to Consolidated Financial Statements**  
**(Unaudited)**

**Note 1 - Basis of Presentation**

The accompanying unaudited interim consolidated financial statements of American Safety Insurance Holdings, Ltd. ( American Safety ) and its subsidiaries (collectively, the Company ) are prepared in accordance with accounting principles generally accepted in the United States of America and, in the opinion of management, reflect all adjustments, consisting of normal recurring adjustments, considered necessary for a fair presentation of the interim period presented. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates, based on the best information available, in recording transactions resulting from business operations. The balance sheet amounts that involve a greater extent of accounting estimates and actuarial determinations subject to future changes are the Company's liabilities for unpaid losses and loss adjustment expenses. As additional information becomes available (or actual amounts are determinable), the recorded estimates may be revised and reflected in operating results. While management believes that the liability for unpaid losses and loss adjustment expenses is adequate to cover the ultimate liability, such estimates may be more or less than the amounts actually paid when claims are settled.

The results of operations for the three months and nine months ended September 30, 2003 may not be indicative of the results that may be expected for the full year ending December 31, 2003. These unaudited interim consolidated financial statements and notes should be read in conjunction with the financial statements and notes included in the audited consolidated financial statements of American Safety and its subsidiaries for the year ended December 31, 2002.

The unaudited interim consolidated financial statements include the accounts of American Safety and each of its subsidiaries. All significant intercompany balances have been eliminated. Certain items from prior periods have been reclassified to conform with the 2003 presentation.

**Note 2 - Accounting Pronouncements**

During the second quarter of 2003, the FASB issued Statement of Financial Accounting Standards ( SFAS ) No. 149, Amendment of Statement 133 on Derivative Instruments and Hedging Activities, and SFAS No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity. These pronouncements do not have a material effect on our financial statements.

In January 2003, the FASB issued Interpretation No. 46, Consolidation of Variable Interest Entities. This interpretation addresses consolidation and disclosure issues associated with variable interest entities. The requirements of the interpretation will be adopted by the Company on December 31, 2003 and are not expected to have a material impact on our financial position or results of operations.

-7-

### Note 3 - Nature of Operations

The following is a description of certain risks facing the Company:

Legal/Regulatory Risk is the risk that changes in the legal or regulatory environment in which an insurer operates will create additional expenses not anticipated by the insurer in pricing its products beyond those recorded in the financial statements. Regulatory initiatives designed to reduce insurer profits or otherwise affecting the industry in which the Company operates, new legal theories or insurance company insolvencies through guaranty fund assessments, may create costs for the Company beyond those recorded in the financial statements. The Company attempts to mitigate this risk by writing insurance business in several states, thereby spreading this risk over a large geographic area.

Potential Risk of United States Taxation of Bermuda Operations. Under current Bermuda law, American Safety is not required to pay any taxes in Bermuda on either income or capital gains. American Safety has received an undertaking from the Minister of Finance in Bermuda that will exempt American Safety from taxation until the year 2016 in the event of any such taxes being imposed. The Company, exclusive of its United States subsidiaries, does not consider itself to be engaged in a trade or business in the United States and accordingly does not expect to be subject to direct United States income taxation. The Company's U.S. subsidiaries are subject to taxation in the United States.

Whether a foreign corporation is engaged in a United States trade or business or is carrying on an insurance business in the United States depends upon the level of activities conducted in the United States. If the activities of a foreign company are continuous, regular, and considerable, the foreign company will be deemed to be engaged in a United States trade or business. Due to the fact that American Safety will continue to maintain an office in Bermuda and American Safety and its Bermuda insurance subsidiary's business is reinsuring contracts via treaty reinsurance agreements, which are all signed outside of the United States, American Safety does not consider itself to be engaged in a trade or business in the United States and, accordingly, does not expect to be subject to United States income taxes. This position is consistent with the position taken by various other entities that have the same operational structure as American Safety.

However, because the Internal Revenue Code of 1986, as amended, the Treasury Regulations and court decisions do not definitively identify activities that constitute being engaged in a United States trade or business, and because of the factual nature of the determination, there can be no assurance that the Internal Revenue Service will not contend that American Safety or its Bermuda insurance subsidiary are engaged in a United States trade or business. In general, if American Safety or its Bermuda insurance subsidiary are considered to be engaged in a United States trade or business, it would be subject to (i) United States Federal income tax on its taxable income that is effectively connected with a United States trade or business at graduated rates and (ii) the 30 percent branch profits tax on its effectively connected earnings and profits deemed repatriated from the United States.

-8-

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Credit Risk is the risk that issuers of securities owned by the Company or secured notes receivable will default or that other parties, including reinsurers that have obligations to the insurer, will not pay or perform. The Company attempts to mitigate this risk by adhering to a conservative investment strategy, by obtaining sufficient collateral for secured note obligations and by maintaining sound reinsurance, credit and collection policies.

Interest Rate Risk is the risk that interest rates will change and cause a decrease in the value of an insurer's investments. The Company attempts to mitigate this risk by attempting to match the maturities of its assets with the expected payouts of its liabilities.

**Note 4 - Investments**

The amortized cost and estimated fair values of investments at December 31, 2002 and September 30, 2003 are as follows:

	Amortized <u>cost</u>	Gross unrealized <u>gains</u>	Gross unrealized <u>losses</u>
December 31, 2002:			
Securities available for sale:			
Fixed maturities:			
U.S. Treasury securities and obligations of U.S. Government corporations and agencies	\$36,361,353	\$1,451,538	\$ 569
Corporate securities	34,791,767	2,006,419	60,538
Mortgage-backed securities	<u>10,945,048</u>	<u>359,776</u>	<u>4,136</u>
Total fixed maturities	\$82,098,168	\$3,817,733	\$ 65,243
	=====	=====	=====
September 30, 2003:			
Securities available for sale:			
Fixed maturities:			
U.S. Treasury securities and obligations of U.S. Government corporations and agencies	\$44,145,840	\$1,575,331	\$ 183,894
Corporate securities	21,827,919	326,256	140,360
Obligations of states and political subdivisions	46,347,201	1,853,880	238,660
Mortgage-backed securities	<u>34,802,544</u>	<u>137,045</u>	<u>542,433</u>
Total fixed maturities	147,123,504	3,892,512	1,105,347
Equity Securities:			
Common stock	<u>1,474,504</u>	<u>26,231</u>	<u>23,612</u>
Total securities	\$ 148,598,008	\$3,918,743	\$1,128,959
	=====	=====	=====

-9-

**Note 5 - Segment Information**

The Company initially segregates its business into the following segments: Real Estate and Insurance Operations. The Insurance Operations segment is further classified into three reportable segments: Environmental Specialty, Excess and Surplus Lines and Program Business.

Real estate consists of the Harbour Village project in Ponce Inlet, Florida, as discussed in Note 7. In our Insurance Operations segment, Environmental Specialty writes insurance coverages for the environmental remediation industry. Excess and Surplus Lines provides commercial casualty insurance coverages, generally in the area of construction and products liability. Program Business facilitates the offering of insurance to homogeneous niche groups of risks.

The Company measures the Real Estate and Insurance Operations segments using net earnings, total assets and total equity. The reportable Insurance Operations segments are measured by net premiums earned, incurred losses and loss adjustment expenses and acquisition expenses. Assets are not allocated to the reportable Insurance Operations segments. The following table presents key financial data by segment for the nine months ended September 30, 2002 and September 30, 2003 (in thousands):

September 30, 2002	Real Estate	Environmental	Insurance E&S	Programs	Other	Con &
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Net premiums earned	-	6,338	23,852	8,339	7,770
Losses and loss adjustment expenses	-	2,896	12,960	5,243	7,080
Acquisition expenses	-	1,891	5,498	(1,120)	1,555
Underwriting profit/(loss)	-	1,551	5,394	4,216	(865)
Income tax/(benefit)	2,319			346	
Net earnings/(loss)	3,560			2,846	
Assets	49,434		296,665		
Equity	14,856		51,999		

	September 30, 2003	Real Estate	Environmental	E&S	Insurance Programs	Other
Net premiums earned	-		10,543	38,855	15,971	4,548
Losses and loss adjustment expenses	-		4,654	21,981	10,670	4,395
Acquisition expenses	-		2,903	8,396	1,265	796
Underwriting profit/(loss)	-		2,986	8,478	4,036	(643)
Income tax/(benefit)	602				875	
Net earnings/(loss)	998				4,993	
Assets	56,173				385,372	
Equity	14,405				55,734	

-10-

Additionally the Company conducts business in the following insurance geographic segments: United States and Bermuda. Significant differences exist in the regulatory environment in each country. Those differences include laws regarding the types of investments, capital requirements, solvency monitoring, pricing, corporate taxation, etc. The following provides key measurable information about the insurance geographic segments for the nine months ended September 30, 2002 and September 30, 2003 (in thousands):

September 30, 2002	United States	Bermuda
Income tax	346	-
Net earnings	578	2,268
Assets	248,089	48,576
Equity	33,328	18,671

September 30, 2003	United States	Bermuda
Income tax	875	-
Net earnings	2,475	2,518
Assets	320,587	64,785
Equity	36,122	19,612

The following table presents key financial data by segment for the three months ended September 30, 2002 and September 30, 2003 (in thousands):

	September 30, 2002	Real Estate	Environmental	E&S	Insurance Programs	Other
Net premiums earned	-		2,439	9,656	3,793	1,963
Losses and loss adjustment expenses	-		1,003	5,211	2,374	2,060
Acquisition expenses	-		804	2,202	(235)	368
Underwriting profit/(loss)	-		632	2,243	1,654	(465)

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Income tax/(benefit)	270			360		
Net earnings/(loss)	679			1,248		
	September 30, 2003	Real Estate	Environmental	Insurance E&S	Programs	Other
Net premiums earned	-		3,854	14,936	5,581	1,509
Losses and loss adjustment expenses	-		1,643	8,548	3,884	1,648
Acquisition expenses	-		1,035	3,221	402	266
Underwriting profit/(loss)	-		1,176	3,167	1,295	(405)
Income tax/(benefit)	707			111		
Net earnings/(loss)	1,173			1,768		

-11-

The following provides key measurable information about the insurance geographic segments for the three months ended September 30, 2002 and September 30, 2003 (in thousands):

September 30, 2002	United States	Bermuda
Income tax	360	-
Net earnings	668	580
September 30, 2003	United States	Bermuda
Income tax	111	-
Net earnings	898	870

The Company has changed its segment reporting to coincide with the strategic direction of the Company and the management reporting. Historically the Company has reviewed information segmented between real estate and geographical insurance operations as disclosed in our historical filings. The division of real estate, U.S. insurance and Bermuda insurance was the breakdown that met the definition of operation segments as defined in SFAS No. 131 Paragraph 10 as this was the level of segmentation reviewed by management. As a by-product of a change in the chief executive officer, our management team changed the strategic direction of the Company to focus on certain lines of business. As a result, our management reporting was modified to reflect a more streamlined segment reporting structure. Prior period segment information has been restated to conform to the current segment structure.

**Note 6 - Shareholder Matters**

Through September 30, 2003, the Company has repurchased 1,612,189 shares of its stock at a total price of \$9,727,463 in open market transactions which commenced in 1999 pursuant to its share repurchase programs.

**Note 7 - Investment in Real Estate**

The Company's investment in the development of the Harbour Village Golf and Yacht Club ( Harbour Village ) project is comprised of 173 acres of property in Ponce Inlet, Florida (the Property ) that was acquired through foreclosure on April 13, 1999. At the date of foreclosure, the Company evaluated the carrying value of its investment in real estate by comparing the fair value of the foreclosed collateral to the book value of the underlying loan and accrued interest. As the book value of the loan and accrued interest was less than the fair value of the collateral, no loss was recognized on foreclosure and the basis of real estate was recorded in accordance with EITF Abstract 98-11, which included the recognition of \$5.8 million in a deferred tax asset.

-12-

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As of December 31, 2002 and September 30, 2003, the investment in real estate for the Harbour Village project is as follows (in thousands):

	<u>December 31, 2002</u>	<u>September</u>
Land	\$2,437	\$
Capitalized overhead, interest and taxes	3,021	3
Work in process	<u>35,593</u>	<u>3</u>
Total	\$41,051	\$4
	=====	==

During the quarter ended September 30, 2003, the Company closed 55 condominium units and 4 boat slips at Harbour Village and for the quarter ended September 30, 2002, the Company closed 32 condominium units and 14 boat slips. During the nine months ended September 30, 2003, the Company closed 132 condominium units and 16 boat slips at Harbour Village and for the nine months ended September 30, 2002, the Company closed 147 units and 59 boat slips. The Company recognizes revenue when title to each individual unit or boat slip passes to the purchaser. When title passes, the Company uses a percentage of completion method, based on actual costs to total estimated costs (including allocated common costs) to recognize revenue. The difference between total sales price and the revenue recognized is set up as deferred revenue and will be recognized as the additional costs of each building are incurred.

**Note 8 - Income Taxes**

Total income tax expense for the periods ended September 30, 2002 and 2003 were allocated as follows:

	Three Months Ended September 30,		Nine Mon Septem
	<u>2002</u>	<u>2003</u>	<u>2002</u>
Tax expense attributable to			
Income from continuing			
operations	\$ 178,143	\$ 833,831	\$ 2,033,436
Change in unrealized			
gains/losses on hedging			
transaction	-	9,295	-
Change in unrealized			
gains/losses on securities			
available for sale	849,564	<u>(172,615)</u>	<u>897,714</u>
Total	\$1,027,707	\$670,511	\$2,931,150
	=====	=====	=====

U.S. Federal and state income tax expense (benefit) from continuing operations consists of the following components:

-13-

	<u>Current</u>	<u>Deferred</u>
Three Months Ended		
September 30, 2002	\$ (239,778)	\$ 417,921
September 30, 2003	1,796,770	962,939
Nine Months Ended		
September 30, 2002	\$ 271,259	\$ 1,762,177
September 30, 2003	5,291,703	(2,860,614)

The state income tax expense (benefit) aggregated \$520,985 and \$131,270 for the nine months ended September 30, 2002 and 2003, respectively, and \$70,984 and \$135,399 for the three months ended September 30, 2002 and 2003,

respectively.

Income tax expense (benefit) for the periods ended September 30, 2002 and 2003 differed from the amount computed by applying the U.S. Federal income tax rate of 34% to earnings before Federal income taxes as a result of the following:

	Three Months Ended September 30,		Nine Months September
	<u>2002</u>	<u>2003</u>	<u>2002</u>
Expected income tax expense	\$ 411,968	\$1,290,600	\$ 2,368,403
Foreign earned income not subject to U.S. taxation	(276,593)	(295,786)	(686,813)
State taxes and other	<u>42,768</u>	<u>(160,983)</u>	<u>351,846</u>
	\$ 178,143	\$ 833,831	\$ 2,033,436
	=====	=====	=====

Deferred income taxes are based upon temporary differences between the financial statement and tax bases of assets and liabilities. The following deferred taxes are recorded:

	December 31, <u>2002</u>
Deferred tax assets:	
Loss reserve discounting	\$3,196,291
Unearned premium reserves	2,301,174
Difference between tax and GAAP basis of Harbour Village project.	4,057,362
Difference between tax and GAAP method at Harbour Village project	-
Warranty reserve	<u>1,022,173</u>
Gross deferred tax assets	<u>\$10,577,000</u>
Deferred tax liabilities:	
Deferred acquisition costs	1,718,506
Net unrealized gains	852,800
Difference between tax and GAAP method of Harbour Village Project	408,073
Other	<u>192,035</u>
Gross Deferred tax liabilities	<u>3,171,414</u>
Net deferred tax asset	\$7,405,586
	=====

## Note 9 - Notes Receivable

The Company ceases the accrual of interest on loans when any payment is past due. Additionally, the Company assesses loan impairment by comparing the carrying value of such loan, including accrued but unpaid interest at the valuation date, to the fair value of collateral held with respect to such loan. Any shortage of fair value over carrying value is first recognized by reversing interest income recognized for the year of impairment and then recognizing any

further loss against the allowance for loan losses. Cash receipts on impaired notes receivable are applied to reduce the principal amount of such notes until the principal has been recovered and are recognized as interest income, thereafter.

As of September 30, 2003, notes receivable consisted of two notes which are secured by real and personal property and various corporate and personal guarantees. These notes are currently in default and the Company has filed suit against the borrowers and the guarantors of the indebtednesses.

The recorded investment in notes receivable, which meets the definition of impaired loans at December 31, 2002 and September 30, 2003 were \$6,324,716 and \$5,342,198, respectively. The weighted average recorded investment in impaired notes receivable as of December 31, 2002 and September 30, 2003 were \$7,723,853 and \$5,833,457, respectively. No interest income was recognized on impaired notes receivable during the three and nine months ended September 30, 2002 and September 30, 2003. During the quarter ended September 30, 2003, the Company received \$22,567 in payments on these impaired notes receivable. During the nine months ended September 30, 2003, the Company received \$982,518 in payments on these impaired notes.

-15-

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### **Note 10 - Goodwill and Intangibles**

The Company adopted SFAS No. 142 on January 1, 2002. Under SFAS No. 142, goodwill and indefinite-lived intangible assets are no longer amortized but are reviewed annually (or more frequently if impairment indicators arise) for impairment. Separable intangible assets that are not deemed to have an indefinite life will continue to be amortized over their useful lives (but with no maximum life). The recorded indefinite-lived intangibles at December 31, 2002 and September 30, 2003 was \$1,466,629.

In accordance with the disclosure requirements of SFAS No. 142 there were no effects of goodwill on the net earnings for the nine months ended September 30, 2002 and 2003.

### **Note 11 - Commitments and Contingencies**

During the fourth quarter of 2001, one of the Company's former reinsurers, Berkley Insurance Company, disputed its obligations under several reinsurance treaties entered into during the soft reinsurance market that existed in 1998 and 1999. Berkley is a subsidiary of W.R. Berkley Corp. (NYSE:BER). As a result of adverse loss experience to the reinsurer from certain lines of business, Berkley stopped reimbursing the Company for amounts due under such treaties and requested that the Company retroactively consider taking a greater portion of the losses than is required under the treaties or, alternatively, to rescind and reform portions of certain treaties. The Company instituted arbitration proceedings against the reinsurer and the arbitration hearing commenced May 19, 2003. During the first week of the arbitration, the Company settled its reinsurance recoverables dispute with Berkley. As part of the settlement, Berkley agreed to reimburse the Company for all paid losses outstanding as of December 31, 2002, and continue to make payments under reinsurance treaties in the ordinary course of business. In consideration, the Company agreed to modify the terms of a reinsurance treaty and to certain other conditions, including the release of Berkley from its other claims in the arbitration. The settlement is governed by a confidentiality undertaking between the parties.

### **Note 12 - Employee Stock Options**

At September 30, 2003, the Company had an employee stock options plan. The Company applied the recognition and measurement principles of APB Opinion No. 25, Accounting for Stock Issued to Employees, and related interpretations in accounting for the plan. No compensation expense is reflected in net earnings as all options granted under our stock option plan have an exercise price equal to the market value of the underlying common stock on the date of grant. The options in the plan vest evenly over a three year period. The following table illustrates the effect on

net earnings and earnings per share, assuming we had applied the fair value recognition provisions of SFAS No. 123, Accounting for Stock-Based Compensation.

-16-

	Three Months Ending September 30,		Nine Months September
	<u>2002</u>	<u>2003</u>	<u>2002</u>
	(In thousands, except per share amounts)		
Net earnings:			
As reported	\$ 1,034	\$ 2,962	\$ 4,932
Effect of stock options	<u>—</u>	<u>—</u>	<u>286</u>
Pro forma net earnings	\$ 1,034 =====	\$ 2,962 =====	\$4,646 =====
Net earnings per share			
Basic - as reported	\$ 0.22	\$ 0.62	\$ 1.04
Basic - pro forma	\$ 0.22	\$ 0.62	\$ 0.98
Diluted - as reported	\$ 0.21	\$ 0.58	\$ 1.01
Diluted - pro forma	\$ 0.21	\$ 0.60	\$ 0.95

### Note 13 - Trust Preferred Payable

The Company issued a \$5.0 million variable rate trust preferred security with a maturity in 30 years during the third quarter of 2003 to support the growth of its insurance business and for general corporate purposes. This security requires interest payments on a quarterly basis calculated at a floating rate of LIBOR + 3.95%. The securities can be redeemed by the Company commencing in five years. This debt obligation exposes the Company to variability in interest payments due to changes in interest rates.

Management entered into an interest rate swap to manage fluctuations in interest expense resulting from interest rate risk. Under the interest rate swap, the Company receives variable interest payments and makes fixed interest rate payments, thereby creating fixed rate long term debt. The overall effective fixed rate expense as a result of this hedge is 7.6% over the first five years of the obligation. Interest expense for the nine months ended September 30, 2003 includes no gains or losses from the interest rate swap. Changes in fair value of the interest rate swap designated as a hedging instrument of the variability of cash flow associated with a floating rate, long-term debt obligation is reported in accumulated other comprehensive income. The gross unrealized loss on the interest rate swap at September 30, 2003 was \$112,713. The interest rate swap is effective at September 30, 2003.

The Company issued an \$8.0 million variable rate trust preferred security with a maturity in 30 years during the second quarter of 2003 to support the growth of its insurance business, to repay short-term debt and for general corporate purposes. This security requires interest payments on a quarterly basis calculated at a floating rate of LIBOR + 4.2%. The securities can be redeemed by the Company commencing in five years. This debt obligation exposes the Company to variability in interest payments due to changes in interest rates.

Management entered into an interest rate swap to manage fluctuations in interest expense resulting from interest rate risk. Under the interest rate swap, the Company receives variable interest payments and makes fixed interest rate payments, thereby creating fixed rate long term debt. The overall effective fixed rate expense as a result of this hedge is 7.1% over the first five years of the obligation. Interest expense for the nine months ended September 30, 2003 includes no gains or losses from the interest rate swap. Changes in fair value of the interest rate swap designated as a hedging instrument of the variability of cash flow associated with a floating rate, long-term debt obligation is reported in accumulated other comprehensive income. The gross unrealized gain on the interest rate swap at September 30, 2003 was \$39,103. The interest rate swap is effective at September 30, 2003.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations***General*

American Safety Insurance Holdings, Ltd. (the Company or American Safety) is a specialty insurance holding company organized under the laws of Bermuda which, through its subsidiaries, develops, underwrites, manages and markets primary casualty insurance and reinsurance programs in the alternative insurance market in all 50 states for environmental remediation, contracting and other specialty risks. The Company is also the owner/developer of the Harbour Village Golf & Yacht Club (Harbour Village), a residential condominium, marina, par 3 golf course and beach club project in Ponce Inlet, Florida. Unless the context indicates otherwise, all references to the Company or American Safety refer to American Safety Insurance Holdings, Ltd. and its subsidiaries.

The following table sets forth the Company's consolidated revenues:

	Three Months Ended September 30,		Nine Months Ended September 30,		Three En Sept 3
	<u>2002</u>	<u>2003</u>	<u>2002</u>	<u>2003</u>	200 2
	(Dollars in thousands)				
Environmental	2,439	3,854	6,338	10,543	5
Excess and surplus Programs	9,656	14,936	23,852	38,855	5
Other	3,793	5,581	8,339	15,971	4
	<u>1,963</u>	<u>1,509</u>	<u>7,770</u>	<u>4,548</u>	(2
Total net premiums earned	<u>17,851</u>	<u>25,880</u>	<u>46,299</u>	<u>69,917</u>	4
Net investment income	973	1,309	2,848	3,568	3
Management fees from affiliate	247	313	740	835	2
Net realized gains (losses)	(56)	-	(522)	3,040	10
Real estate income	10,724	16,281	44,659	38,878	5
Other income	<u>64</u>	<u>83</u>	<u>256</u>	<u>115</u>	
Total Revenues	<u>\$29,803</u>	<u>\$43,866</u>	<u>\$94,280</u>	<u>\$116,353</u>	4

The following table sets forth the components of the Company's GAAP combined ratio for the periods indicated:

	Three months ended <u>September 30,</u>		Nine Months ended <u>September 30,</u>	
	<u>2002</u>	<u>2003</u>	<u>2002</u>	<u>2003</u>
Insurance operations:				
Loss and loss adjustment expense ratio	59.7%	60.8%	60.9%	59.6%
Expense ratio	<u>37.5</u>	<u>33.8</u>	<u>38.4</u>	<u>35.6</u>
Combined ratio	97.2%	94.6%	99.3%	95.2%

**Quarter Ended September 30, 2003 Compared to Quarter Ended September 30, 2002**

*Net Premiums Earned.* Net premiums earned increased 45.0% to \$25.9 million in the quarter ended September 30, 2003 from \$17.9 million in the quarter ended September 30, 2002. The principal factors accounting for the increase were a \$5.2 million increase in excess and surplus lines premiums, and a \$1.8 million increase in program business premiums. Net premiums earned for workers' compensation, commercial lines, and surety decreased 23.1% to \$1.5

million from \$2.0 million, which is consistent with the Company's strategy to focus on its more profitable lines of insurance business.

-20-

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*Net Investment Income.* Net investment income increased to \$1.3 million in the quarter ended September 30, 2003 from \$973,000 in the quarter ended September 30, 2002 due to higher levels of invested assets generated from positive cash flows from operations. The average pre-tax yield on investments was 4.7% in the quarter ended September 30, 2002 and 3.9% in the quarter ended September 30, 2003. The average after-tax yield on investments was 3.5% in the quarter ended September 30, 2002 and 3.0% in the quarter ended September 30, 2003.

*Management Fees.* Income from insurance brokerage operations and management fees increased 11.4% from \$281,000 in the quarter ended September 30, 2002 to \$313,000 in the quarter ended September 30, 2003. This increase in management fees is the result of increased insurance operating costs allocated to the Company's non-subsiary risk retention group affiliate.

*Net Realized Gains (Losses).* Net realized gains (losses) increased from a net loss of \$56,000 in the quarter ended September 30, 2002 to a net gain of \$35 for the quarter ended September 30, 2003. During the quarter ended September 30, 2003, the Company had minimal sales of investments.

*Real Estate Income.* Real estate income at the Harbour Village project increased 51.8% to \$16.3 million in the quarter ended September 30, 2003 from \$10.7 million in the quarter ended September 30, 2002. This income was realized from the closing of 55 condominium units and 4 boat slips in the quarter ended September 30, 2003 as compared to the closing of 32 condominium units and 14 boat slips in the quarter ended September 30, 2002. See Exhibit 99 included in this Report for further information regarding Harbour Village.

*Losses and Loss Adjustment Expenses.* Losses and loss adjustment expenses increased 47.7% from \$10.6 million in the quarter ended September 30, 2002 to \$15.7 million in the quarter ended September 30, 2003 due to increases in earned premiums. The loss ratio increased to 60.8% in the quarter ended September 30, 2003 from 59.7% in the quarter ended September 30, 2002.

*Acquisition Expenses.* Policy acquisition expenses increased to \$4.9 million for the quarter ended September 30, 2003 from \$3.1 million for the quarter ended September 30, 2002 as a result of increased earned premiums in program business. Premium expense has decreased to \$442,000 from \$541,000 due to lower volumes of direct premiums which are subject to premium taxes.

*Payroll and Other Expenses.* Payroll and other expenses increased 23.7% from \$4.0 million in the quarter ended September 30, 2002 to \$5.0 million in the quarter ended September 30, 2003 due to increased regulatory fees and interest expense.

*Real Estate Expenses.* Real estate expenses associated with Harbour Village increased from \$9.6 million in the quarter ended September 30, 2002 to \$14.4 million in the quarter ended September 30, 2003. Of the \$14.4 million of costs recognized during the quarter ended September 30, 2003, \$13.7 million were previously capitalized variable costs related to the sale of condominium units and boat slips, and the remaining \$723,000 were fixed costs of the project, which includes advertising and other administration costs. Of the \$9.6 million of costs recognized during the quarter ended September 30, 2002, \$8.6 million was previously capitalized variable costs related to the sale of condominium units and boat slips and the remaining \$1.0 million were fixed costs of the project, which includes advertising and other administration costs. See Exhibit 99 included in this Report for further information regarding Harbour Village.

-21-



*Expense Due to Rescission.* Expense due to rescission litigation was \$45,000 for the quarter ended September 30, 2003 as compared to \$1.2 million for the quarter ended September 30, 2002. The \$45,000 recognized in the quarter ended September 30, 2003 were for expenses related to the litigation.

*Income Taxes.* Federal and state income taxes increased to \$834,000 in the quarter ended September 30, 2003 from \$178,000 in the quarter ended September 30, 2002 due to higher levels of income in the Company's U.S. insurance and real estate operations. The effective income tax rate increased to 22.0% for the quarter ended September 30, 2003 from 14.7% in the quarter ended September 30, 2002. The effective rate increased due to the absence of the rescission charge in the current quarter compared to the prior quarter.

*Net Earnings.* Net earnings after tax increased 186.6% to \$3.0 million for the quarter ended September 30, 2003 from \$1.0 million for the quarter ended September 30, 2002, which is detailed as follows:

	<u>Quarter Ended</u> <u>September 30, 2002</u>	<u>Quarter Ended</u> <u>September 30, 2003</u>
Insurance Operations	\$ 1,248	\$ 1,768
Real Estate Operations	679	1,173
Other, including realized gains (losses).	<u>(893)</u>	<u>21</u>
Net Earnings	\$ 1,034 =====	\$ 2,962 =====

#### **Nine Months Ended September 30, 2003 Compared to Nine months ended September 30, 2002**

*Net Premiums Earned.* Net premiums earned increased 51.0% to \$69.6 million in the nine months ended September 30, 2003 from \$46.3 million in the nine months ended September 30, 2002. The principal factors accounting for the increase were a \$15.0 million increase in excess and surplus lines premiums, and a \$7.6 million increase in program business premiums. Net premiums earned for workers' compensation, commercial lines, and surety decreased 41.4% to \$4.5 million from \$7.8 million, which is consistent with the Company's strategy to focus on its more profitable lines of insurance business.

*Net Investment Income.* Net investment income increased to \$3.6 million in the nine months ended September 30, 2003 from \$2.8 million in the nine months ended September 30, 2002 due to higher levels of invested assets generated from positive cash flows from operations. The average pre-tax yield on investments was 4.1% in the nine months ended September 30, 2002 and 3.6% in the nine months ended September 30, 2003. The average after-tax yield on investments was 3.0% in the nine months ended September 30, 2002 and 2.8% in the nine months ended September 30, 2003.

-22-

*Management Fees.* Income from insurance brokerage operations and management fees decreased 4.8% from \$877,000 in the nine months ended September 30, 2002 to \$835,000 in the nine months ended September 30, 2003. This decrease is the result of lower brokerage income generated from insurance operations.

*Net Realized Gains (Losses).* Net realized gains (losses) increased from a net loss of \$522,000 in the nine months ended September 30, 2002 to a net gain of \$3.0 million for the nine months ended September 30, 2003 due to the sale of bonds in the Company's investment portfolio. The Company and its professional investment advisers determined it was prudent to realize these gains as a result of the current interest rate environment, and also to increase the statutory surplus of our insurance companies.

*Real Estate Income.* Real estate income at the Harbour Village project decreased 12.9% to \$38.9 million in the nine months ended September 30, 2003 from \$44.7 million in the nine months ended September 30, 2002. This income

was realized from the closing of 132 condominium units and 16 boat slips in the nine months ended September 30, 2003 as compared to the closing of 147 condominium units and 59 boat slips in the nine months ended September 30, 2002. See Exhibit 99 included in this Report for further information regarding Harbour Village.

*Losses and Loss Adjustment Expenses.* Losses and loss adjustment expenses increased 48.0% from \$28.2 million in the nine months ended September 30, 2002 to \$41.7 million in the nine months ended September 30, 2003 due to increases in earned premiums. The loss ratio decreased to 59.6% in the nine months ended September 30, 2003 from 60.9% in the nine months ended September 30, 2002 as a result of decreased earned premium in commercial lines, surety, and workers compensation lines of business.

*Acquisition Expenses.* Policy acquisition expenses increased to \$13.4 million for the nine months ended September 30, 2003 from \$7.8 million for the nine months ended September 30, 2002 as a result of increased earned premiums in program business. Premium tax expense decreased to \$1.4 million from \$2.2 million due to lower volumes of direct premiums which are subject to premium taxes.

*Payroll and Other Expenses.* Payroll and other expenses increased 21.6% from \$11.0 million in the nine months ended September 30, 2002 to \$13.4 million in the nine months ended September 30, 2003 due to legal expenses associated with the arbitration proceedings with Berkley Insurance Company and from increased regulatory fees.

*Real Estate Expenses.* Real estate expenses associated with Harbour Village decreased from \$38.8 million in the nine months ended September 30, 2002 to \$37.3 million in the nine months ended September 30, 2003. Of the \$37.3 million of costs recognized during the nine months ended September 30, 2003, \$34.3 million were previously capitalized variable costs related to the sale of condominium units and boat slips, and the remaining \$3.0 million were fixed costs of the project, which includes advertising and other administration costs. Of the \$38.8 million of costs recognized during the nine months ended September 30, 2002, \$36.0 million was previously capitalized variable costs related to the sale of condominium units and boat slips and the remaining \$2.8 million were fixed costs of the project, which includes advertising and other administration costs. See Exhibit 99 included in this Report for further information regarding Harbour Village.

-23-

*Expense Due to Rescission.* Expense due to rescission litigation was \$190,000 for the nine months ended September 30, 2003 as compared to \$1.5 million for the nine months ended September 30, 2002. The \$190,000 incurred in the nine months ended September 30, 2003 were for expenses related to the litigation.

*Income Taxes.* Federal and state income taxes increased to \$2.4 million in the nine months ended September 30, 2003 from \$2.0 million in the nine months ended September 30, 2002 due to higher levels of income in the Company's U.S. insurance operations. The effective tax rate decreased to 23.3% for the nine months ended September 30, 2003 from 29.2% for the prior period due to lower levels of real estate earnings.

*Net Earnings.* Net earnings after tax increased 62.1% to \$8.0 million for the nine months ended September 30, 2003 from \$4.9 million for the nine months ended September 30, 2002.

The Company's net earnings are detailed as follows (in thousands):

	Nine Months Ended <u>September 30, 2002</u>	Nine Months Ended <u>September 30, 2003</u>
Insurance Operations	\$ 2,846	\$ 4,993
Real Estate Operations	3,560	998
Other, including realized gains (losses).	<u>(1,474)</u>	<u>2,005</u>

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Net Earnings

\$ 4,932

\$ 7,996

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*Liquidity and Capital Resources*

The Company historically has met its cash requirements and financed its growth principally through cash flows generated from operations. During the past decade, the Company has operated in a soft market cycle which was characterized by excess insurance capacity and declining insurance premium rates; however, commencing in fiscal year 2000 the Company has operated in a hardening market with increased insurance premium rates for workers compensation and excess and surplus lines. The Company's primary sources of cash flow are proceeds from the sale or maturity of invested assets, premiums written, investment income, income from real estate development sales, commission income, management fees and reinsurance recoverables from reinsurers. The Company's short-term cash requirements are primarily for claims payments, reinsurance premiums, commissions, salaries, employee benefits, real estate development expenses, other operating expenses, and the purchase of investment securities, which have historically been satisfied from operating cash flows. Due to the uncertainty regarding settlement of unpaid claims, the long-term liquidity requirements of the Company may vary, and the Company has attempted to structure its investment portfolio to take into account the historical payout patterns. The Company also purchases reinsurance to mitigate the effect of large claims and to help stabilize demands on its liquidity. Management believes that the Company's current cash flows are sufficient for the short-term needs of its insurance business and the Company's invested assets are sufficient for the long-term needs of its insurance business.

-24-

On a consolidated basis, net cash provided from operations was \$28.8 million for the nine months ended September 30, 2002 and \$59.6 million for the nine months ended September 30, 2003. The positive cash flows for said periods were primarily attributable to net premiums written, net earnings and real estate sales and collections from Berkley Insurance Company of the disputed reinsurance recoverables. During the quarter ended September 30, 2003, the Company received \$13.4 million from Berkley Insurance Company, which represented payment under reinsurance treaties. Since workers' compensation and general liability claims may be paid over an extended period of time, the Company has established loss reserves for such lines of business. The assets supporting the Company's reserves continue to earn investment income until claims payments are made.

Total assets increased from \$365.1 million at December 31, 2002 to \$441.7 million at September 30, 2003 primarily due to increases in invested assets, cash and reinsurance recoverables. Cash, invested assets, and notes receivable increased from \$174.0 million at December 31, 2002 to \$243.7 million at September 30, 2003, as a result of increases in fixed maturities, cash, receivables for securities and real estate investments.

American Safety is an insurance holding company whose principal assets are its investment portfolio and its investment in the capital stock of its subsidiaries. American Safety's ability to pay dividends to its shareholders will depend, to a significant degree, on the ability of the Company's subsidiaries to generate earnings from which to pay dividends to American Safety. The jurisdictions in which American Safety and its insurance and reinsurance subsidiaries are domiciled place limitations on the amount of dividends or other distributions payable by insurance companies in order to protect the solvency of insurers.

During the third quarter of 2003, the Company issued a 30 year trust preferred security in the amount of \$5.0 million. This obligation bears interest at LIBOR + 3.95% and is payable on a quarterly basis, and can be called solely at the Company's option in five years. The Company also entered into a hedge agreement which sets the interest rate at 7.6% for the first five years.

During the second quarter of 2003, the Company issued a 30 year trust preferred security in the amount of \$8.0 million. This obligation bears interest at LIBOR +4.20% and is payable on a quarterly basis, and can be called solely

at the Company's option in five years. The Company also entered into a hedge agreement which sets the interest rate at 7.1% for the first five years.

The Company, through its subsidiary, American Safety Holdings Corp., had a loan facility of \$5.0 million, bearing interest at LIBOR plus 2.5%. This loan was paid off during the quarter.

Management has planned that the Harbour Village project will be developed in three Phases with projected completion in 2005. Through September 30, 2003, the Company had outstanding borrowings of \$19.1 million from an initial \$37 million development and construction loan facility. The estimated completion cost for the remainder of the Harbour Village project is approximately \$26.2 million. No assurance can be given, however, as to either future sales activities of the condominium units or the impact of local and national economic conditions on our marketing efforts for the development of the Harbour Village project.

Management believes that the bank credit facility, together with anticipated cash flows from marketing and sales operations, will meet the liquidity needs for the construction and development of the Harbour Village project. There can be no assurance, however, that the amounts available from the Company's sources of liquidity, exclusive of the bank credit facility for the project, will be sufficient or available to meet the Company's future capital needs for the project. See Exhibit 99 for further information regarding Harbour Village.

-25-

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### ***Income Taxes***

American Safety is incorporated under the laws of Bermuda and, under current Bermuda law, is not obligated to pay any taxes in Bermuda based upon income or capital gains. American Safety has received an undertaking from the Minister of Finance in Bermuda pursuant to the provisions of The Exempted Undertakings Tax Protection Act 1966, which exempts American Safety and its shareholders, other than shareholders ordinarily resident in Bermuda, from any Bermuda taxes computed on profits, income or any capital asset, gain or appreciation, or any tax in the nature of estate, duty or inheritance until March 28, 2016. The Company, exclusive of its United States subsidiaries, does not consider itself to be engaged in a trade or business in the United States and accordingly does not expect to be subject to direct United States income taxation. The Company's U.S. subsidiaries are subject to taxation in the United States.

### ***Impact of Inflation***

Property and casualty insurance premiums are established before the amounts of losses and loss adjustment expenses are known and therefore before the extent by which inflation may affect such expenses is known. Consequently, the Company attempts, in establishing its premiums, to anticipate the potential impact of inflation. However, for competitive and regulatory reasons, the Company may be limited in raising its premiums consistent with anticipated inflation, in which event the Company, rather than its insureds, would absorb inflation costs. Inflation also affects the rate of investment return on the Company's investment portfolio with a corresponding effect on the Company's investment income.

### ***Combined Ratio***

The combined ratio of an insurance company measures only the underwriting results of insurance operations and not the profitability of the overall company. Our reported combined ratio for our insurance operations may not provide an accurate indication of our overall profitability due to the exclusion of expenses related to fee and commission income generated in our management and agency subsidiaries prior to 2002 and the exclusion of such expenses under a cost allocation arrangement commencing in 2002. Depending on our mix of business going forward, the combined ratio may fluctuate from time to time and may not reflect the overall profitability of our insurance operations.

### ***Reserves***

Certain of the Company's insurance policies and reinsurance assumed, including general and pollution liability policies covering environmental remediation, excess and surplus, and workers' compensation risks, may be subject to claims brought years after an incident has occurred or the policy period has ended. The Company is required to maintain loss reserves to cover the unpaid portion of its estimated liability for losses and loss adjustment expenses with respect to reported and unreported claims. The Company engages an independent internationally recognized actuarial consulting firm to provide reserve studies, rate studies, and regulatory opinions. Loss and loss adjustment expense reserves are estimates at a given time, involving actuarial and statistical projections of what the Company expects to be the cost of the ultimate settlement and adjustment costs of claims. The establishment of appropriate loss reserves is an inherently uncertain process, and there can be no assurance that such ultimate payments will not materially exceed the Company's reserves.

-25-

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### ***Forward Looking Statements***

This Report contains forward-looking statements within the meaning of United States securities laws which are intended to be covered by the safe harbors created thereby. Such statements include the Company's estimations of future insurance claims and losses, and the Company's expectations with respect to the outcome of the Principal Management acquisition rescission litigation, and the future profitability and value of the Harbour Village real estate project, as reflected in the Company's consolidated financial statements and Exhibit 99 to this Report. In addition, all statements, other than statements of historical facts, included or incorporated by reference in this Report that address activities, events or developments that the Company expects or anticipates will or may occur in the future constitute forward-looking statements.

Forward-looking statements involve risks and uncertainties which may cause actual results to differ materially, and are subject to change based on various insurance industry factors, including, without limitation, competitive conditions in the insurance industry, levels of new and renewal insurance business, unpredictable developments in loss trends, adequacy and changes in loss reserves, timing or collectibility of reinsurance receivables, market acceptance of new coverages and enhancements, changes in reinsurance costs and availability, potential adverse decisions in litigation and arbitration proceedings, and changes in levels of general business activity and economic conditions. With respect to the development of the Harbour Village project, such forward-looking statements involve risks and uncertainties which may cause actual results to differ materially, and are subject to change based on various real estate development industry factors, including competitive housing conditions in the local market area, risks inherent in real estate development and new construction, increases in construction costs, construction delays, weather, zoning, litigation, changes in interest rates and the availability of mortgage financing for prospective purchasers of condominium units and boat slips, and changes in local and national levels of general business activity and economic conditions. An adverse outcome of the Principal Management acquisition rescission litigation would have a material adverse effect on the financial condition of the Company. See discussion in Part II, Item 1 of this Report as to this material matter.

Although the Company believes that the assumptions underlying the forward-looking statements contained herein are reasonable, any of the assumptions could over time prove to be inaccurate and therefore, there can be no assurance that the forward-looking statements included in this Report will themselves prove to be accurate. In light of the significant uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by the Company or any other person that the objectives and plans of the Company will be achieved. The Company expressly disclaims any obligation to update any forward-looking statements except as required by law.

-27-

### **Item 3. Quantitative and Qualitative Disclosures About Market Risks.**

The Company's market risk has not changed materially since December 31, 2002.

### **Item 4. Controls and Procedures**

#### Evaluation of Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, after evaluating the effectiveness of the Company's disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) as of the end of the period covered by this Report, concluded that, as of such date, the Company's disclosure controls and procedures were adequate and effective to ensure that material information relating to the Company (including consolidated subsidiaries) would be made known to them.

#### Changes in Internal Control

There were no significant changes in the Company's internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f)) that could significantly affect the Company's disclosure controls and procedures subsequent to the date of such evaluation, nor were there any significant deficiencies or material weaknesses in the Company's internal control over financial reporting.

-28-

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## **PART II - OTHER INFORMATION**

### **Item 1. Legal Proceedings.**

The Company, through its subsidiaries, is routinely a party to pending or threatened litigation or disputes in the normal course of or related to its business. Based upon information presently available, in view of legal and other defenses available to the Company's subsidiaries, management does not believe that any pending or threatened litigation or disputes will have any material adverse effect on the Company's financial condition or results of operations except for the following matters.

Principal Management, Inc. et al. In January 2000, the Company acquired (i) the stock of L&W Holdings, Inc. and its wholly-owned subsidiary, RCA Syndicate #1, Ltd., an Illinois licensed insurer operating on the INEX (formerly the Illinois Insurance Exchange), (ii) the stock of Principal Management, Inc., an insurance program development and management company headquartered in Okemos, Michigan, and in a related transaction, the Company also acquired (iii) the stock of Pegasus Insurance, a Cayman Islands licensed insurer. The transactions were structured as stock acquisitions, with the purchase price payable by the Company consisting of \$3,500,000 plus 200,000 American Safety common shares and earnout provisions for up to an additional 254,000 American Safety common shares over a five-year period. Of the purchase price, \$1,000,000 of cash and 109,086 shares of stock are held by the Company in escrow to secure the obligations of the sellers.

When RCA Syndicate #1, Ltd. filed its 1999 Annual Statement with the Illinois Department of Insurance in March 2000, the Company first became aware that there had been a material adverse change in the business affairs and financial condition of the acquired companies from that represented by the sellers. The Company launched an investigation which disclosed that the insurance claims experience of the acquired companies had been misrepresented and that incurred losses from insurance claims were significantly in excess of the amounts reported in their claims records and their financial statements. As a result, the Company then made written demand upon the selling shareholders of the acquired companies for rescission of the acquisitions, including a return of the purchase price paid

for the companies. The Company filed a lawsuit in April 2000 in the United States District Court for the Northern District of Georgia for damages and, alternatively, to rescind the acquisitions based upon the sellers' breach of the representations and warranties made concerning the business affairs and financial condition of the acquired companies. The sellers' misrepresentations as to the business affairs and financial condition of the acquired companies, and the under-reserving for claims, relate only to the operations of the acquired companies. The sellers/defendants filed several motions for summary judgment opposing the Company's rescission claims. In September 2002, the Court entered an order granting the defendants' motions for summary judgment. However, the Court did not rule that the representations and warranties of the defendants in the definitive agreements were correct. The Court also granted the Company's motions for summary judgment on various counterclaims. The Company filed a motion for reconsideration with respect to the Court's order which the Court denied in November 2002. In August 2003, the Company filed a motion requesting the Court certify its previous order granting the defendants' motion for summary judgment as final so that the Company can appeal the adverse rulings. If the motion is not granted or the Circuit Court of Appeals does not agree to hear the appeal (before a trial), the remaining issues on the case will be set for trial. Thereafter, the Company will have the right to appeal all adverse rulings in the case.

-29-

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Berkley Insurance Company. During the fourth quarter of 2001, one of the Company's former reinsurers, Berkley Insurance Company, disputed its obligations under several reinsurance treaties entered into during the soft reinsurance market that existed in 1998 and 1999. Berkley is a subsidiary of W.R. Berkley Corp. (NYSE:BER). As a result of adverse loss experience to the reinsurer from certain lines of business, Berkley stopped reimbursing the Company for amounts due under such treaties and requested that the Company retroactively consider taking a greater portion of the losses than is required under the treaties or, alternatively, to rescind and reform portions of certain treaties. The Company instituted arbitration proceedings against the reinsurer and the arbitration hearing commenced May 19, 2003. During the first week of the arbitration, the Company settled its reinsurance recoverables dispute with Berkley. As part of the settlement, Berkley agreed to reimburse the Company for all paid losses outstanding as of December 31, 2002, and continue to make payments under reinsurance treaties in the ordinary course of business. In consideration, the Company agreed to modify the terms of a reinsurance treaty and to certain other conditions, including the release of Berkley from its other claims in the arbitration. The settlement is governed by confidentiality undertaken between the parties.

Harbour Village Zoning. On March 2, 2002, the Town of Ponce Inlet filed a petition for declaratory relief in the Circuit Court of Volusia County, Florida seeking clarification that the Company could not construct a building higher than 35 feet on its beachfront parcels in the last phase of the Harbour Village project, although the Town had permitted 30 other buildings in the Town over 35 feet in height, including 10 at the Harbour Village project. The Company's position was that the Town's 1984 ordinance and subsequent development agreements permitted it to construct a beachfront building of up to 70 feet in height in the Harbour Village project. On March 17, 2003, the Court found that a 1983 Town charter amendment limited all buildings in the Town of Ponce Inlet to 35 feet and accordingly ruled that all ordinances and development agreements of the Town adopted since the 1983 charter amendment were beyond the scope of the Town's authority (i.e., ultra vires).

The Company immediately filed a motion for rehearing and upon rehearing on April 11, 2003, the Court vacated its original ruling and issued a new ruling which limited construction of a building no higher than 35 feet on the beachfront parcels. In connection with the rehearing, the Company and the Town of Ponce Inlet agreed to settle pending disputes as to the Company's development plan for the last phase of Harbour Village project and to release all claims against each other. Under the settlement, the Company would (i) continue construction of the 7 story buildings in the Links phase (containing 376 units), (ii) build not more than a 3 story building with condominium units or a beach club on the beachfront parcels, (iii) reduce the Fisherman's Harbour building to a 2 or 3 story commercial center rather than a mixed use 7 story building (planned for 70 units), and (iv) make other accommodations including the payment of \$500,000 to the Town.

These changes in the Company's development plans would reduce the size of the Harbour Village project from 809 to 676 condominium units. As a result, the Company has reallocated the common and land costs of the Harbour Village project over such reduced number of condominium units.

-30-

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**Item 2. Changes in Securities and Use of Proceeds.**

Not applicable.

**Item 3. Defaults Upon Senior Securities.**

Not applicable.

**Item 4. Submission of Matters to a Vote of Security Holders.**

None

**Item 5. Other Information.**

None.

**Item 6. Exhibits and Reports on Form 8-K.**

(a) The following exhibits are filed as part of this Report:

<u>Exhibit No.</u>	<u>Description</u>
10.5(b)	First Amendment to the 1998 Director Stock Award Plan
11	Computation of Earnings Per Share
31.1	Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002
32.2	Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002
)	
99	Harbour Village Development Status

b. Reports on Form 8-K.

On October 14, 2003, the Company filed a report on Form 8-K that its wholly owned subsidiary, American Safety Holdings Corp., had completed a \$5 million private placement of trust preferred securities, whose payments are guaranteed by the Company. The net proceeds of the offering are to be used to support the growth of the Company's insurance business and for general corporate purposes.

-31



On August 7, 2003, the Company filed a report on Form 8-K with respect to the issuance of a press release reporting its financial results for the first quarter ended March 31, 2003 and a press release reporting its financial results for the second quarter ended June 30, 2003.

-32-

SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 6<sup>th</sup> day of November 2003.

American Safety Insurance Holdings

By: /s/ Stephen R. Crim  
 Stephen R. Crim  
 President and Chief Executive Officer

By: /s/ Steven B. Mathis  
 Steven B. Mathis  
 Chief Financial Officer  
 (Principal Financial Officer)

-33-

**Exhibit 11**  
**American Safety Insurance Holdings, Ltd. and subsidiaries**  
**Computation of Earnings Per Share**

	<u>Three Months Ended</u>		<u>Nine Months</u>
	September 30, <u>2002</u>	September 30, <u>2003</u>	September 30, <u>2002</u>
Basic:			
Earnings available to common shareholders.....	\$ 1,033,529 =====	\$ 2,962,050 =====	\$ 4,932,456 =====
Weighted average common shares outstanding.....	4,746,695	4,749,266	4,731,822
Basic earnings per common shares ...	\$ .22 =====	\$ .62 =====	\$ 1.04 =====
Diluted:			
Earnings available to common shareholders.....	\$ 1,033,529 =====	\$ 2,962,050 =====	\$ 4,932,456 =====
Weighted average common shares outstanding.....	4,746,695	4,749,266	4,731,822
Weighted average common shares			

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equivalents associated with options....	117,755	350,155	144,837
Total weighted average common shares.....	4,864,450	5,099,421	4,876,659
	=====	=====	=====
Diluted earnings per common shares.....	\$ .21	\$ .58	\$ 1.01
	=====	=====	=====

-34-

Exhibit 31.1

**Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002**

I, Stephen R. Crim, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Safety Insurance Holdings, Ltd.;
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
  - b. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
  - c. designed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record,

process, summarize and report financial information; and

- b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 6, 2003

/s/ Stephen R. Crim  
Stephen R. Crim  
Chief Executive Officer  
American Safety Insurance Holdings,

-35-

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Exhibit 31.2

**Certification Pursuant to § 302 of the Sarbanes-Oxley Act of 2002**

I, Steven B. Mathis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of American Safety Insurance Holdings, Ltd.;
2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;
3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this Report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. designed such disclosure controls and procedures or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;
  - b. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this Report based on such evaluation; and
  - c. designed in this Report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an Annual Report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

- a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: November 6, 2003

/s/ Steven B. Mathis  
Steven B. Mathis  
Chief Financial Officer  
American Safety Insurance Holdings,

-36-

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Exhibit 32.1

**Certification Pursuant to § 906 of the  
Sarbanes-Oxley Act of 2002**

The undersigned, as the Chief Executive Officer of American Safety Insurance Group, Ltd., certifies that, to the best of his knowledge and belief, the Quarterly Report on Form 10-Q for the period ended September 30, 2003, which accompanies this certification fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of American Safety Insurance Group, Ltd. at the dates and for the periods indicated. The foregoing certification is made pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350) and shall not be relied upon for any other purpose.

Date: November 6, 2003

/s/ Stephen R. Crim  
Stephen R. Crim  
Chief Executive Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to American Safety Insurance Holdings, Ltd. and will be retained by American Safety Insurance Holdings, Ltd. and furnished to the Securities and Exchange Commission or its staff upon request.

The information in this Exhibit 32.1 shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, except as shall be expressly set forth by specific reference in such filing.

-37-

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Exhibit 32.2

**Certification Pursuant to § 906 of the  
Sarbanes-Oxley Act of 2002**

The undersigned, as the Chief Financial Officer of American Safety Insurance Group, Ltd., certifies that, to the best of his knowledge and belief, the Quarterly Report on Form 10-Q for the period ended September 30, 2003, which

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accompanies this certification fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of American Safety Insurance Group, Ltd. at the dates and for the periods indicated. The foregoing certification is made pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350) and shall not be relied upon for any other purpose.

Date: November 6, 2003

/s/Steven B. Mathis  
Steven B. Mathis  
Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to American Safety Insurance Holdings, Ltd. and will be retained by American Safety Insurance Holdings, Ltd. and furnished to the Securities and Exchange Commission or its staff upon request.

The information in this Exhibit 32.2 shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, except as shall be expressly set forth by specific reference in such filing.

-38-

	Exhibit 99			
	Harbour Village Development Status			
	(000)s except references to Condo Units			
	<u>(unaudited)</u>			
	Phase 1			Ph
	Townhouses			The
	Marina	Oak		Links
	Condos	Hammock	Riverwalk	North
	<u>9/30/2003</u>			
Planned Number of Condo Units and Boat Slips	248	18	28	188
Condo Units and Boat Slips under Contract	248	15	26	176
Value of Pre-sale Contracts (Note 1)	62,892	6,696	10,130	44,506
Number of Buildings	8	4	6	4
Number of Closed Units	248	15	22	109
Number of Buildings Complete by Task				
Building Foundation	8	4	6	4
Vertical Building Completed	8	4	6	4
Interior Finish Completed	8	4	6	3
Certificate of Occupancy Received	8	4	6	3
	<u>3rd Quarter Actual</u>			
Units Closed	-	2	3	50
Revenue Recognized	148	846	1,462	12,736
Other Revenue				

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Total Revenue				
Gross Profit Recognized	(614)	(102)	77	3,061
Other Expense (Income) Items - Note 2				
Pre-Tax Profit				
<u>Outlook For 4th Quarter of 2003</u>				
Units Closed	-	-	-	59
Revenue Recognized	31	-	-	16,405
Other Revenue				
Total Revenue				
Gross Profit Recognized	3	-	-	2,871
Other Expense (Income) Items - Note 2				
Pre-Tax Profit				

Note 1 - No assurance can be given that purchasers under binding pre-sale contracts with deposits will close each contemplated transaction .

Note 2 - Other includes net brokerage commissions, advertising, promotion, and other general and administrative costs. These items are not allocated to specific buildings.

The projected results contained above for unit closings, revenue, gross profit, fixed costs and pre-tax profit are forward looking statements. With respect to the Company's development of the Harbour Village property, such forward looking statements involve risks and uncertainties which may cause actual results to differ materially, and are subject to change based on various real estate development industry factors, including competitive housing conditions in the local market area, risks inherent in real estate development and new construction, increases in construction costs, construction delays, weather, litigation, changes in interest rates and the availability of mortgage financing for prospective purchasers of condominium units and boat slips and changes in local and national levels of general business activity and economic conditions.