

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY J. WILLARD, individually and as;
Trustee of the Larry James Willard Trust Fund;
and OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

Electronically Filed
NO. 77780
Aug 26 2019 04:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; and JERRY HERBST,
an individual,

Respondents.

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 5 OF 19

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¹ This document was inadvertently omitted earlier. It was added here because all of the other papers in the 19-volume appendix had already been numbered.

EXHIBIT 9

EXHIBIT 9

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made by and between Spirit SPE Portfolio 2005-5, LLC a Delaware limited liability company ("Seller"), and Edward Wooley an individual ("Purchaser"). Except as otherwise expressly defined herein, capitalized terms will have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference.

For and in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby mutually covenant and agree as follows:

ARTICLE I

PURCHASE OF PROPERTY

Section 1.01. Agreement To Purchase. Purchaser agrees to purchase, and Seller agrees to sell, in accordance with the terms, conditions and stipulations set forth in this Agreement (the "Transaction"), all of Seller's right, title and interest in and to (a) the real property as more particularly described on Exhibit B attached hereto, and any and all improvements thereon and appurtenances thereto (collectively, the "Real Property"); (b) the fixtures affixed thereto; (c) all leases and rental agreements relating to the Real Property or any portion thereof, including, without limitation, the Lease, and to the extent held by Seller, all rent, prepaid rent, security deposits and other tenant payments and deposits; and (d) all other property interests belonging or appurtenant to the Real Property (all of the foregoing items in clauses (a) through (d) above, now or hereafter existing, collectively, the "Property").

Section 1.02. Purchase Price. The purchase price to be paid by Purchaser to Seller for the Property is Three Million Two Hundred Eighty Six Thousand Five Hundred Fifty Two and 00/100 Dollars (\$3,286,552) (the "Purchase Price"). The Purchase Price, as may be adjusted pursuant to requirements of this Agreement, shall be paid by Purchaser in immediately available federal funds at Closing.

Section 1.03. Earnest Money Deposit. Within three (3) Business Days after the Effective Date of this Agreement, Purchaser shall deposit with the Title Company the sum of Twenty Five Thousand and 00/100 Dollars (\$25,000) (together with all interest accrued thereon, the "Initial Deposit"). Upon the expiration of the Inspection Period, as defined below, Purchaser shall deposit an additional sum of Twenty Five Thousand and 00/100 Dollars (\$25,000) (together with the Initial Deposit and all interest accrued thereon, the "Earnest Money Deposit"). The Earnest Money Deposit shall be placed in an interest-bearing account by the Title Company, and shall be held by the Title Company and applied against the Purchase Price at Closing or disbursed as provided herein.

Section 1.04. Prorations. All taxes, insurance, utilities and maintenance expenses relating to the Property for the year of the Closing to be paid by the tenant pursuant to the Lease shall not be prorated; all other amounts, if any, shall be prorated as of the Closing Date. Rents

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actually paid to and received by Seller with respect to the Property for the month in which the Closing occurs shall be prorated as of the Closing Date.

Section 1.05. Purchaser's Financial Contingency. Within twenty one (21) Business Days after execution of this Agreement (the "Loan Commitment Deadline"), Purchaser shall have obtained a loan commitment for market rate financing (the "Loan"). Purchaser shall diligently and timely pursue obtaining the Loan in good faith and shall execute all documents and furnish all information and documents required by the lender and shall timely pay the costs and fees of obtaining the Loan. Purchaser agrees to satisfy reasonable requirements of lender and shall not withdraw Purchaser's loan application nor intentionally cause any change in circumstances that would prejudice lender's approval of the loan application or funding of the Loan. Purchaser must provide written notice to Seller by the Loan Commitment Deadline of Purchaser's inability to obtain a loan commitment for the Loan. If Purchaser so notifies Seller, this Agreement shall terminate, in which event the Initial Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein. If Seller does not receive timely written notice to terminate and Purchaser does not close, Purchaser shall be in default under this Agreement.

Section 1.06. Condition of Property. Seller and Purchaser understand and agree that Purchaser's purchase of the Property and other rights to be conveyed, sold, transferred and/or assigned pursuant to this Agreement shall be on an "AS IS" "WHERE IS" physical basis, "WITH ALL FAULTS," without representation or warranty, express or implied, with regard to physical condition, including without limitation, any latent or patent defects, conditions of soils or groundwater, existence or nonexistence of hazardous materials, quality of construction, workmanship, merchantability or fitness for any particular purpose as to the physical measurements or useable space thereof. Purchaser hereby acknowledges that Purchaser has inspected or will inspect the Property to Purchaser's satisfaction and that Seller does not plan to conduct its own inspection and shall not be liable for any latent or patent defects in the Property. Purchaser acknowledges that neither Seller nor any representative or agent of Seller has made any representation or warranty as to any of the following: (a) the physical or environmental condition (including surface and subsurface conditions), state of repair, income, expenses, operations of the Property and surrounding property; (b) the assignability, assumability, transferability or validity of any licenses, permits, government approvals, warranties or guaranties relating to the Property or the use and operation thereof; (c) the accuracy or completeness of any information provided by Seller with respect to environmental matters; (d) compliance or noncompliance with local, state or federal statutes, ordinances, orders or regulations concerning the Property or the use thereof; (e) prior or current operations conducted on the Property; or (f) any matter or thing affecting or relating to the Property or this Agreement not expressly stated in this Section 1.06. Purchaser has not been induced by and has not relied upon any statement, representation or agreement, whether express or implied, not specifically set forth in this Agreement. Seller shall not be liable or bound in any manner by any oral or written statement, agreement or information pertaining to the Property or this Agreement furnished by any agent, employee or other Person.

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ARTICLE II

DUE DILIGENCE

Section 2.01. Title Insurance.

(a) ***Title Commitment and Title Policy.*** Within five (5) days of execution of this Agreement, Seller shall order an owner's title insurance commitment ("Title Commitment") with respect to the Property issued by the Title Company, for an owner's title insurance policy (the "Title Policy"). Seller shall cause a copy of the Title Commitment and copies of the Schedule B-2 exceptions to be delivered to Purchaser. The premium related to the Title Policy shall be paid by Purchaser and costs for endorsements, if any, shall be the responsibility of Purchaser.

(b) ***Title Company.*** The Title Company is hereby employed by the parties to act as escrow agent in connection with this Transaction. This Agreement shall be used as instructions to the Title Company, as escrow agent, which may provide its standard conditions of acceptance of escrow; *provided, however*, that in the event of any inconsistency between such standard conditions of acceptance and the terms of this Agreement, the terms of this Agreement shall prevail. The Title Company's receipt of this Agreement and the opening of an escrow pursuant to this Agreement shall be deemed to constitute conclusive evidence of the Title Company's agreement to be bound by the terms and conditions of this Agreement pertaining to the Title Company.

(c) ***Title Company Actions.*** The Title Company is authorized to pay, from any funds held by it for each party's respective credit and in accordance with the closing statements executed by both parties, all amounts set forth on the closing statements as necessary to procure the delivery of any documents and to pay, on behalf of Purchaser and Seller, all charges and obligations payable by them, respectively. Seller and Purchaser will pay all charges payable by them to the Title Company. The Title Company shall not cause the Transaction to close unless and until it has received written instructions from Seller and Purchaser to do so. The Title Company is authorized, in the event any conflicting demand is made upon it concerning these instructions or the escrow, at its election, to hold any documents and/or funds deposited hereunder until an action shall be brought in a court of competent jurisdiction to determine the rights of Seller and Purchaser or to interplead such documents and/or funds in an action brought in any such court. Deposit by the Title Company of such documents and funds, after deducting therefrom its reasonable expenses and attorneys' fees incurred in connection with any such court action, shall relieve the Title Company of all further liability and responsibility for such documents and funds.

(d) ***Title Objections.***

(i) Within three (3) days after the Purchaser's receipt of both the Title Commitment and the Survey, Purchaser shall notify Seller in writing of Purchaser's objection, if any, to any exceptions or other title matters shown on the

Title Commitment or the Survey (each, a "Title Objection"). If any Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(ii) If any supplement to the Title Commitment or the Survey discloses any additional title defects which were not created by or with the consent of Purchaser, and which are not acceptable to Purchaser, Purchaser shall notify Seller in writing of its objection thereto (each, an "Additional Title Objection") within three (3) days following receipt of such supplement or revision. If any Additional Title Objection is not removed or resolved by Seller to Purchaser's satisfaction at least one (1) day prior to the Closing Date, then Purchaser shall have the option, as its sole remedy, to terminate this Agreement upon written notice to Seller, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein.

(iii) Purchaser's failure to timely deliver a Title Objection or an Additional Title Objection shall be deemed Purchaser's acceptance of the matters disclosed by the Title Commitment and the Survey. If Purchaser does not terminate this Agreement by reason of any Title Objection or Additional Title Objection as provided in this Section, then such Title Objection or Additional Title Objection shall be deemed waived and approved by Purchaser and shall thereafter be deemed a Permitted Encumbrance.

Section 2.02. Seller Documents. With reasonable promptness, but in no event later than five (5) days from the Effective Date, Seller shall deliver to Purchaser the following items which are in Seller's possession or under its control (collectively, the "Seller Documents"):

- (a) survey related to the Property (the "Survey");
- (b) environmental report related to the Property (the "Environmental Report"); and
- (c) a full and complete copy of the Lease, together with all amendments, modifications and guaranties relating thereto, and to the extent that the same is not proprietary or confidential, all financial information related to the tenant under the Lease.

Section 2.03. Survey. Purchaser may, at its expense, order an update to the Survey if required by the Title Company or otherwise required by Purchaser.

Section 2.04. Environmental. Purchaser may, at its expense, order an update to the Environmental Report, if deemed necessary by Purchaser in its sole discretion.

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Section 2.05. Tenant Estoppel. Seller shall use commercially reasonable efforts to obtain and deliver to Purchaser, at least three (3) days prior to Closing, a tenant estoppel certificate from the tenant under the Lease certifying (a) that the Lease is in full force and effect and that, except as otherwise stated therein, the Lease has not been amended or modified; (b) the commencement and expiration dates of the Lease; (c) the rent due and payable under the Lease; (d) the security deposits, if any, held by Seller, as landlord under the Lease; (e) except as otherwise stated therein, that no party is in default under the Lease.

Section 2.06. Inspections. From the Effective Date and for a period of ten (10) Business Days after Purchaser's receipt of the Seller Documents (the "Inspection Period"), Purchaser may perform whatever investigations, tests and inspections upon the Property during normal business hours or as otherwise requested by Seller; that Purchaser deems reasonably appropriate (collectively, the "Inspections"); *provided, however*, that prior thereto, (a) Purchaser shall give Seller at least three (3) days' prior notice thereof; and (b) Seller and any representative of Seller shall have the right to be present during any Inspection. Purchaser shall have the right to terminate this Agreement by written notice to Seller on or before the expiration of the Inspection Period if, based upon the Inspections, Purchaser determines, in its sole discretion, that the Property is not satisfactory, in which event, this Agreement shall terminate without further liability to the parties except as expressly set forth herein and the Initial Deposit shall be returned to Purchaser. In the event that Purchaser fails to provide such written notice to Seller on or before expiration of the Inspection Period, Purchaser shall be deemed to have waived any objections based upon the Inspections and subject to Sections 2.01(d), 6.02(a) and 7.01, the Initial Deposit shall be non-refundable.

ARTICLE III

CLOSING

Section 3.01. Closing Date. Subject to the provisions of Article V of this Agreement, the closing date of the Transaction contemplated by this Agreement (the "Closing") shall be set by mutual agreement within ten (10) days after the expiration of the Inspection Period, but in no event later than sixty (60) days after the Effective Date (the "Closing Date"). Pre-closing, which includes the parties' deposit with Seller's counsel (or, if directed by Seller's counsel, with the Title Company) of all documents (including without limitation, the executed Transaction Documents), all as necessary to comply with the parties' respective obligations hereunder, shall occur three (3) Business Days prior to the Closing Date or as otherwise mutually agreed upon by the parties. The parties shall deposit all funds required hereunder with the Title Company on or before the Closing Date.

Section 3.02. Possession. Possession of the Property, free and clear of all tenants or other parties in possession, except for the tenant under the Lease, shall be delivered to Purchaser upon Closing.

Section 3.03. Transaction Costs. Except as otherwise expressly provided in this Agreement, Purchaser shall pay for all costs associated with the updates of the Survey and Environmental Report, procurement of the Loan, endorsements to the Title Policy, recording

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fees, transfer taxes and closing costs. Each party shall pay its own legal fees. Costs for the closing and escrow shall be split between Purchaser and Seller as usual and customary in the jurisdiction in which the Property is located. In no event shall Seller's costs for this Transaction exceed Twenty Thousand and 00/100 Dollars (\$20,000).

Section 3.04. Tenant's Letter. Upon Closing, Purchaser shall deliver the Tenant Letter to the tenant under the Lease in the manner described in the Lease for the giving of notice, or if not so described, by certified or registered U.S. mail, return receipt requested, postage prepaid. The obligation of Purchaser in this Section 3.04 shall survive Closing.

ARTICLE IV

REPRESENTATIONS WARRANTIES AND COVENANTS

Section 4.01. Seller. Seller represents and warrants to, and covenants with, Purchaser as follows:

(a) **Organization and Authority.** Seller is duly organized or formed, validly existing and in good standing under the laws of its state of formation. Seller has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents, and to carry out the Transaction. The Person who has executed this Agreement on behalf of Seller has been duly authorized to do so.

(b) **Enforceability of Documents.** Upon execution by Seller, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

All representations and warranties of Seller made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Seller herein, shall survive for six (6) months following Closing.

Section 4.02. Purchaser. Purchaser represents and warrants to, and covenants with, Seller as follows:

(a) **Organization and Authority.** Purchaser is duly organized and formed, validly existing and in good standing under the laws of its state of formation. Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and all of the other Transaction Documents and to carry out the Transaction. The Person who has executed this Agreement on behalf of Purchaser has been duly authorized to do so.

(b) **Enforceability of Documents.** Upon execution by Purchaser, this Agreement and the other Transaction Documents shall constitute the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(c) **Litigation.** There are no actions or proceedings pending against or involving Purchaser before any Governmental Authority which in any way adversely affect or may adversely affect Purchaser or Purchaser's ability to perform under this Agreement and the other Transaction Documents.

(d) **OFAC List.** Purchaser is not currently identified on the OFAC List, and is not a person with whom a citizen of the United States is prohibited from engaging in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States.

All representations and warranties of Purchaser made in this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing Date, shall be true at and as of the Closing Date, and, together with the covenants made by Purchaser herein, except as otherwise expressly set forth herein, shall survive Closing.

ARTICLE V

CONDITIONS PRECEDENT TO CLOSING

Section 5.01. Purchaser's Conditions to Closing. Purchaser shall not be obligated to close and fund the Transaction until Seller shall have delivered to Purchaser or the Title Company, as applicable, the following items:

- (a) the Deed;
- (b) documents that may be required by the Title Company for issuance of the Title Policy;
- (c) fully executed originals of (i) the Assignment and Assumption of Leases and Rents substantially in the form attached as Exhibit C to this Agreement with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property; and (ii) all of the other Transaction Documents;
- (d) a duly executed letter addressed to the tenant under the Lease, in form and substance satisfactory to the parties (the "Tenant Letter"), notifying the tenant of the change in ownership and providing an address for future rent payments;
- (e) a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

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(f) all documents required to be delivered by this Agreement and the other Transaction Documents; and

(g) such further documents as reasonably may be required in order to fully and legally close this Transaction, including any required assignments and assumptions of operating agreements related to the Property.

Upon the fulfillment or Purchaser's written waiver of all of the above conditions, Purchaser shall deposit immediately available federal funds necessary to close this Transaction with the Title Company and this Transaction shall close in accordance with the terms and conditions of this Agreement. Unless otherwise dated, all of the documents to be delivered at Closing shall be dated as of the Closing Date.

Section 5.02. Seller's Conditions Precedent to Closing. Seller shall not be obligated to close the Transaction until the fulfillment (or written waiver by Seller) of all of the following conditions:

(a) Purchaser shall have delivered to the Title Company the Purchase Price, as adjusted pursuant to the requirements of this Agreement in immediately available federal funds;

(b) Purchaser shall have caused to be executed and delivered to the appropriate Persons fully executed originals of (i) the Assignment and Assumption of Leases and Rents, with modifications as may be required by or customary under applicable state law and necessary to conform to the particular facts of the Property, and (ii) all of the other Transaction Documents;

(c) Purchaser shall have delivered to the Title Company a closing settlement statement reflecting the credits, prorations, and adjustments contemplated by or specifically provided for in this Agreement;

(d) The parties shall have executed the Tenant Letter for delivery to the tenant under the Lease as described in Section 3.04; and

(e) Purchaser shall have delivered to Seller and/or the Title Company such further documents as may reasonably be required in order to fully and legally close this Transaction.

ARTICLE VI

DEFAULTS; REMEDIES

Section 6.01. Default. Each of the following shall be deemed an event of default (each, an "Event of Default"):

- (a) if any representation or warranty of a party set forth in this Agreement or any other Transaction Document is false in any material respect or if a party renders any false statement; or
- (b) if a party fails to keep or perform any of the terms or provisions of this Agreement or if any condition precedent is not satisfied by the other party at or prior to the Closing Date.

Section 6.02. Purchaser Remedies. In the event of any Event of Default by Seller, Purchaser shall be entitled to exercise, at its option, any one of the following:

- (a) Purchaser may terminate this Agreement by giving written notice to Seller in which case the Earnest Money Deposit shall be returned to Purchaser and neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement; or
- (b) Purchaser may proceed to Closing.

Section 6.03. Seller Remedies. In the event of any Event of Default by Purchaser, Seller shall be entitled to receive the Earnest Money Deposit as liquidated damages and terminate this Agreement such that neither party shall have any further obligation or liability, except for the obligations and provisions which are expressly stated to survive termination of this Agreement.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Risk of Loss.

- (a) **Condemnation.** If, prior to Closing, action is initiated to take the Property, or any portion thereof, by eminent domain proceedings or by deed in lieu thereof, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein, or (ii) proceed to close, in which event all of Seller's assignable right, title and interest in and to the award of the condemning authority, to the extent that the amount of such award does not exceed the Purchase Price, shall be assigned to Purchaser at the Closing and there shall be no reduction in the Purchase Price.

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(b) **Casualty.** Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If the Property, or any part thereof, suffers any damage prior to the Closing from fire or other casualty, which Seller, at its sole option, does not elect to repair, Purchaser may elect at or prior to Closing, to (i) terminate this Agreement, in which event the Earnest Money Deposit shall be returned to Purchaser and neither Purchaser nor Seller shall have any further duties or obligations under this Agreement, except as otherwise provided herein; or (ii) consummate the Closing, in which event all of Seller's right, title and interest in and to the proceeds of any insurance covering such damage (less an amount equal to any expense and costs incurred by Seller to repair or restore the Property and any portion paid or to be paid on account of the loss of rents or other income from the Property for the period prior to the Closing Date, all of which shall be payable to Seller), to the extent that the amount of such insurance does not exceed the Purchase Price, shall be assigned to Purchaser at Closing.

Section 7.02. Notices. All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Agreement (collectively called "Notices") shall be in writing and given by (a) hand delivery; (b) express overnight delivery service; (c) certified or registered mail, return receipt requested; or (d) electronic mail message, provided that a copy of such electronic mail message is also sent via certified or registered mail, return receipt requested, within one Business Day of the transmission of such electronic mail message, and shall be deemed to have been delivered upon (i) receipt, if hand delivered; (ii) the next Business Day, if delivered by a reputable express overnight delivery service; (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested; or (iv) transmission, if delivered by electronic mail pursuant to the requirements of Section 7.03(d) above. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Purchaser:

Esward Wooley

Telephone: _____

Facsimile: _____

E-Mail: _____

If to Seller:

Spirit SPE Portfolio 2005-5, LLC

Suite 200

14631 North Scottsdale Road

Scottsdale, AZ 85254-2711

Attention: Mr. Gregg Seibert

Mr. Barry VanNorman

Telephone: (480) 606-0820

Facsimile: (480) 606-0826

E-Mail: gseibert@spiritfinance.com

E-Mail: bvannorman@spiritfinance.com

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With a copy to:

Kutak Rock LLP
 Suite 3100
 1801 California Street
 Denver, CO 80202
 Attention: Michael C. Bullock, Esq.
 Telephone: (303) 297-2400
 Facsimile: (303) 292-7799
 E-Mail: michael.bullock@kutakrock.com

or to such other address or such other Person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Agreement the giving of Notice is required, the giving thereof may be waived in writing at any time by the Person or Persons entitled to receive such Notice.

Section 7.03. Assignment. Purchaser may not assign its rights under this Agreement in whole or in part without the prior written consent of Seller. No assignment of Purchaser's right and interest hereunder shall relieve Purchaser of any liability for the performance of any obligation of Purchaser contained herein.

Section 7.04. Indemnity. Purchaser shall indemnify, defend and hold harmless Seller and its directors, officers, shareholders, managers, members, officers, employees, representatives, successors, assigns, agents, lenders, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees and invitees, as applicable (collectively, the "Indemnified Parties"), from and against any and all Losses of any nature arising from or connected with (a) breach of any of the representations, warranties, covenants, agreements or obligations of Purchaser set forth in this Agreement; and (b) the ownership and operation of the Property on and after the Closing Date. Without limiting the generality of the foregoing, such indemnity shall include, without limitation, any Losses incurred by Seller with respect to any Inspections performed pursuant to Section 2.06. Purchaser's obligations under this Section 7.04 shall survive Closing or termination of this Agreement.

Section 7.05. Brokerage Commission. Each of the parties represents and warrants to the other that neither party has dealt with, negotiated through or communicated with any broker in connection with this Transaction except for Sperry Van Ness on behalf of Purchaser. Upon the Closing and funding of this Transaction, Seller agrees to pay Sperry Van Ness a commission equal to 2% of the Purchase Price paid by Purchaser under this Agreement. Each party shall indemnify, defend and hold harmless the other party from and against any and all claims, loss, costs and expenses, including reasonable attorneys' fees, resulting from any claims that may be made against such party by any broker claiming a commission or fee by, through or under the other party. The parties' respective obligations under this Section 7.05 shall survive Closing or termination of this Agreement.

Section 7.06. Reporting Requirements. The parties agree to comply with any and all reporting requirements applicable to the Transaction which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, and further agree upon request, to furnish the other party with evidence of such compliance.

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Section 7.07. Disclosure. Except as expressly provided in Section 7.06, in this Section 7.07 and by law or judicial action, neither Seller nor Purchaser will make any public disclosure of this Agreement or the other Transaction Documents, the Transaction or the provisions of the Transaction Documents without the prior written consent of the other party hereto. The parties also agree that, notwithstanding any provision contained in this Agreement, any party (and each employee, representative or other agent of any party) may disclose to *any and all Persons, without limitation of any kind*, any matter required under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

Section 7.08. Time is of the Essence. The parties hereto expressly agree that time is of the essence with respect to this Agreement.

Section 7.09. Non-Business Days. If the Closing Date or the date for delivery of a notice or performance of some other obligation of a party falls on a Saturday, Sunday or legal holiday in the state in which any Property is located, then the Closing Date or such notice or performance shall be postponed until the next Business Day.

Section 7.10. Waiver and Amendment. No provision of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

Section 7.11. Personal Liability. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Agreement by Seller, that (i) there shall be absolutely no personal liability on the part of any shareholder, director, officer, manager, member, officer or employee of Seller with respect to any of the terms, covenants and conditions of this Agreement; and (ii) Purchaser waives all claims, demands and causes of action against Seller's officers, directors, managers, members, employees and agents in the event of any breach by Seller of any of the terms, covenants and conditions of this Agreement to be performed by the other party.

Section 7.12. Headings; Internal References. The headings of the various sections and exhibits of this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying the express terms and provisions of this Agreement. Unless stated to the contrary, any references to any section, subsection, exhibit and the like contained herein are to the respective section, subsection, exhibit and the like of this Agreement.

Section 7.13. Construction Generally. This is an agreement between parties who are experienced in sophisticated and complex matters similar to the Transaction and the other Transaction Documents, is entered into by both parties in reliance upon the economic and legal bargains contained herein and therein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Seller and Purchaser were each represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

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Section 7.14. Further Assurances. Each of the parties agrees, whenever and as often as reasonably requested so to do by the other party or the Title Company, to execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments, or other documents as may be necessary, expedient or proper, in order to complete any and all conveyances, transfers, sales and assignments herein provided and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so requested in order to carry out the intent and purpose of this Agreement.

Section 7.15. Attorneys' Fees. In the event of any controversy, claim, dispute or proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled.

Section 7.16. Entire Agreement. This Agreement and all other Transaction Documents, and all other certificates, instruments or agreements to be delivered hereunder and thereunder constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between Seller and Purchaser with respect to the subject matter of this Agreement. Notwithstanding anything in this Agreement to the contrary, upon the execution and delivery of this Agreement by Seller and Purchaser, (a) this Agreement shall supersede any previous discussions, agreements and/or term or commitment letters relating to the Transaction, any and all agreements related to confidentiality, exclusivity, non-competition, non-solicitation of employees, non-solicitation or pursuit of any business opportunity represented by the Transaction, or any other term or condition which restricts any business activity of Seller or its affiliates, (b) the terms and conditions of this Agreement shall control notwithstanding that such terms are inconsistent with or vary from those set forth in any of the foregoing agreements, and (c) this Agreement may only be amended by a written agreement executed by Seller and Purchaser. The provisions of this Section shall survive the Closing.

Section 7.17. Recording. This Agreement shall not be recorded in any governmental office.

Section 7.18. Forum Selection; Jurisdiction; Venue; Choice of Law. For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona, and consent that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Nothing contained in this section shall limit or restrict the right of Seller to commence any proceeding in the federal or state courts located in the state or states in which the Property is located to the extent Seller deems such proceeding necessary or advisable to exercise remedies available under this Agreement.

Section 7.19. Separability; Binding Effect; Governing Law. Each provision hereof shall be valid and shall be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance shall to any extent be invalid or

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unenforceable; the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Subject to the provisions of Section 7.03, all provisions contained in this Agreement shall be binding upon, inure to the benefit of and be enforceable by the successors and assigns of each party hereto, including, without limitation, any United States trustee, any debtor-in-possession or any trustee appointed from a private panel, in each case to the same extent as if each successor and assign were named as a party hereto. This Agreement shall be governed by, and construed with, the laws of the applicable state or states in which the Property are located, without giving effect to any state's conflict of laws principles.

Section 7.20. Survival. Except for the conditions of Closing set forth in Article V, which shall be satisfied or waived in writing as of the Closing Date, and except as otherwise expressly set forth herein, all representations, warranties, agreements, obligations and indemnities of Seller and Purchaser set forth in this Agreement shall survive the Closing.

Section 7.21. Waiver of Jury Trial and Certain Damages. THE PARTIES HERETO SHALL AND THEY HEREBY DO INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM OR INJURY OR DAMAGE RELATED THERETO. THE PARTIES FURTHER WAIVE THE RIGHT TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO.

Section 7.22. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed to constitute one and the same instrument.

Section 7.23. IRC Section 1031 Exchange of Property. The parties agree that a party may elect to complete an Internal Revenue Code 1031 tax-deferred exchange that will not affect the terms and conditions of this Agreement; *provided, however*, that (a) the non-requesting party will cooperate with the requesting party to complete such exchange in a timely manner on the conditions that the non-requesting party shall not be obligated to pay, suffer or incur any additional expenses or liabilities as a result of cooperating in the requesting party's exchange and the non-requesting party shall not be obligated to acquire any other real property in connection with such exchange; (b) the non-requesting party shall not have any liability to the requesting party for failure of the exchange to qualify under the Internal Revenue Code and Treasury Regulations; (c) any assignment(s) made by the requesting party in connection with such exchange shall not relieve the requesting party of its obligations under this Agreement; (d) the requesting party shall cause all documentation necessary or appropriate in connection with such exchange to be prepared and available for execution no later than the Closing; and (e) the completion of one or more tax-deferred exchanges is not a condition to the performance by the requesting party of its obligations set forth in this Agreement.

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[Remainder of page intentionally left blank; signature page(s) to follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

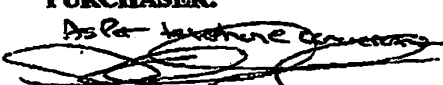
SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a
Delaware limited liability company

By 
Name Gregg A. Selbert
Title Senior Vice President

Date: 5/18/06

PURCHASER:


As Per Investment Agreement
Edward Wooley

Date: 5/14/06

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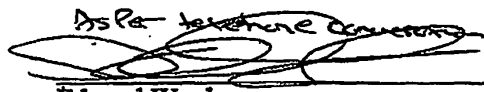
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

SELLER:

SPIRIT SPE PORTFOLIO 2005-5, LLC, a
Delaware limited liability company

By _____
Name _____
Title _____
Date: _____

PURCHASER:



Edward Wooley
Date: 5/4/06

EXHIBIT A**DEFINED TERMS**

The following terms shall have the following meanings for all purposes of this Agreement:

"Additional Title Objection" has the meaning set forth in Section 2.01(d)(ii).

"Agreement" means this Purchase and Sale Agreement.

"Assignment and Assumption of Leases and Rents" means the Assignment and Assumption of Leases and Rents substantially in the form attached hereto as Exhibit C.

"Business Day" means a day on which banks located in Scottsdale, Arizona are not required or authorized to remain closed.

"Closing" shall have the meaning set forth in Section 3.01.

"Closing Date" means the date specified as the closing date in Section 3.01.

"Deed" means that special warranty deed (or its equivalent under the law of the state in which the Property is located) whereby Seller conveys to Purchaser all of Seller's right, title and interest in and to the Property.

"Earnest Money Deposit" has the meaning set forth in Section 1.03.

"Effective Date" shall be the last date that any party executes this Agreement.

"Environmental Report" has the meaning set forth in Section 2.02(b).

"Event of Default" has the meaning set forth in Section 6.01.

"Governmental Authority" means the United States of America, any state, local or other political subdivision thereof, any other entity exercising executive, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

"Indemnified Parties" has the meaning set forth in Section 7.04.

"Inspection Period" has the meaning set forth in Section 2.06.

"Inspections" has the meaning set forth in Section 2.06.

"Lease" means that certain Lease Agreement dated _____ and between _____, as landlord, and _____, as tenant, together with all other amendments, modifications and

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ECW000018

Assessor's Parcel Number: 01-071-02

Recording requested by and
when recorded return to:

Sujata Yalamanchili, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203

MEMORANDUM OF LEASE

On July 14, 2006, the undersigned Lessor and Lessee entered into a certain Lease, wherein Lessor leased to Lessee the real property located in the County of Washoe, State of Nevada, which is described on Exhibit "A" attached hereto and incorporated herein by reference for a term commencing on July __, 2006 and continuing until December 31, 2023. Lessee has the option, pursuant to the Lease, to extend the initial term for four (4) additional successive periods of five (5) years each.

DATED: July 14, 2006

[SIGNATURES ARE CONTAINED ON THE NEXT PAGE]

1365 BERING BLVD

~~045651/00021~~

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ECW000019

Exhibit 9-19

LESSOR:

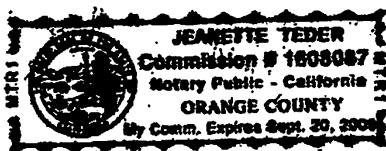
LESSEE:

EDWARD & JUDITH WOOLEY

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporationBy: *E. C. Wooley, Trustee*
Name: *Judith A. Wooley*
Title: *Trustees*By: *[Signature]*
Name: *PAUL MORABITO*
Title: *Chairman*STATE OF *California*)
) :SS
COUNTY OF *Orange*)This instrument was acknowledged before me on July *14*, 2006 by
_____ as _____.

NOTARY PUBLIC

My Commission expires: _____

STATE OF *California*)
) :SS
COUNTY OF *Orange*)This instrument was acknowledged before me on July *14*, 2006 by
Paul Morabito as *Chairman* of BERRY-HINCKLEY
INDUSTRIES.

NOTARY PUBLIC

My Commission expires: *Sept 20, 2009*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

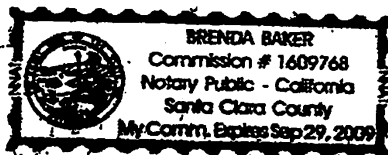
State of California

County of Santa Clara } ss.On July 17, 2006 before me, Brenda Baker Notary Publicpersonally appeared Edward S. Judith Wesley

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Name(s) of Signer(s)

☐ personally known to me
☒ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Brenda Baker
 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached DocumentTitle or Type of Document: Memorandum of LeaseDocument Date: July 17, 2006 Number of Pages: 1Signer(s) Other Than Named Above: N/A**Capacity(ies) Claimed by Signer**

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: _____



ECW000021

EXHIBIT A

Property Address: 1365 Baring Blvd, Sparks, NV

045651/00021 GEDocs 578491v1

ECW000022

Exhibit 9-22

EXHIBIT 10

EXHIBIT 10

06-42646

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is made as of _____, 2006 by and between **EDWARD WOOLEY AND JUDITH WOOLEY**, individuals (collectively "Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

In consideration of the mutual covenants and agreements herein contained, Lessor and Lessee hereby covenant and agree as follows:

1. **Certain Defined Terms.** Capitalized terms not defined herein shall have the meanings set forth in Exhibit A hereto.
2. **Lease of Property; Use; Possession.** In consideration of the Rentals and other Monetary Obligations to be paid by Lessee and of the other terms, covenants and conditions on Lessee's part to be kept and performed, Lessor hereby leases to Lessee, and Lessee hereby takes and leases, the Property (as such term is defined in Exhibit A attached hereto and which Property is located at the address set forth in Exhibit B attached hereto and situated on the real property legally described in Exhibit B attached hereto) and commonly known as 1365 Baring Boulevard, Sparks, Nevada, subject to the Permitted Encumbrances, all Legal Requirements (including any existing violation thereof), and the condition of the Property as of the Effective Date; *provided, however*, that the recital of the Permitted Encumbrances herein shall not be construed as a revival of any Permitted Encumbrance which may have expired or been terminated. During the Lease Term, the Property shall be used for the operation of a Permitted Facility, and lawful or related purposes such as ingress, egress and parking.
3. **Lease Term; Extension.** The initial term of this Lease ("Initial Term") shall commence May __, 2006 ("Effective Date") and shall expire at midnight on October 31, 2023 ("Expiration Date"), unless terminated sooner as provided in this Lease and as may be extended as provided herein. The time period during which this Lease shall actually be in effect, including any Extension Term, is referred to herein as the "Lease Term." Lessee shall have the right and option (each, an "Extension Option") to extend the Initial Term for four (4) additional successive periods of five (5) years each (each, an "Extension Term"), pursuant to the terms and conditions of this Lease then in effect. Lessee may only exercise the Extension Options by giving written notice thereof to Lessor of its election to do so first, no later than two hundred forty (240) days prior to the Expiration Date and two hundred forty (240) days prior to the immediately preceding Extension Term, as the case may be. If written notice of the exercise of any Extension Option is not received by Lessor by the applicable dates described above, then this Lease shall terminate on the last day of the Initial Term or, if applicable, the last day of the Extension Term then in effect.
4. **Rental and Other Monetary Obligations.**
 - A. **Base Monthly Rental.** During the Initial Term, on or before the first day of each calendar month, Lessee shall pay in advance the Base Monthly Rental; *provided, however*, if the Effective Date is a date other than the first day of the month, Lessee shall

Wooley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
000160/09959 GBDOCS 576954v2

pay to Lessor (or any other party designated by Lessor) on the Effective Date the Base Monthly Rental prorated by multiplying the Base Monthly Rental by a fraction, the numerator of which is the number of days remaining in the month (including the Effective Date) for which Rental is being paid, and the denominator of which is the total number of days in such month. During the Extension Terms, if any, Lessee shall pay the Rental (including the Base Monthly Rental) in the manner set forth in this Section 4. Unless otherwise specifically stated to the contrary herein, Lessee shall perform all its obligations under this Lease at its sole cost and expense and shall pay all Rental and any other Monetary Obligation due hereunder when due and payable, without notice or demand.

B. *Adjustments.* On the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the Rent Adjustment. The "Rent Adjustment" shall be an amount equal to two (2) percent of the Base Annual Rental in effect immediately prior to the applicable Adjustment Date. The Adjustment Date shall be on the annual anniversary of the Effective Date.

C. *Additional Rental.* Lessee shall pay and discharge, as additional rental ("Additional Rental"), all sums of money required to be paid by Lessee under this Lease which are not specifically referred to as Base Annual Rental or Base Monthly Rental. Lessee shall pay and discharge any Additional Rental when the same shall become due, provided that amounts which are billed to Lessor or any third party, but not to Lessee, shall be paid within five (5) days after Lessor's demand for payment thereof or, if later, when the same are due. In no event shall Lessee be required to pay to Lessor any item of Additional Rental that Lessee is obligated to pay and has paid to any third party pursuant to any provision of this Lease.

D. *Payment of Rental and Other Monetary Obligations.* All Rental and other Monetary Obligations which Lessee is required to pay hereunder shall due without any setoff, abatement, deferment, deduction or counterclaim whatsoever, except as set forth herein. All payments of Base Monthly Rental and any other Monetary Obligations payable to Lessor shall be remitted to Lessor at Lessor's address set forth in the first paragraph of this Lease or such other address as Lessor may designate pursuant to Section 24 hereof.

E. *Late Payment Charge.* Lessee acknowledges that late payment by Lessee to Lessor of Rental will cause Lessor to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix in advance. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Lessor by the terms of any encumbrance and note secured by any encumbrance covering the Property. Therefore, if any payment which is required to be made by Lessee to Lessor pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, then Lessee shall pay to Lessor, as a late payment charge, five percent (5%) of the amount of the delinquent payment. Additionally, if any payment which is required to be made by Lessee pursuant to the terms of this Lease is made more than ten (10) days after the due date thereof, such

payment shall bear interest at the Default Rate until received by Lessor. The late payment charge and default interest shall be paid to Lessor at the time of payment of the delinquent amount. The late payment charge and the default interest charge shall compensate Lessor for the expenses incurred by Lessor in financing, collecting and processing the late payment. The parties agree that the late charge and the default interest charge represent a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment by Lessee.

5. **Gaming.** Lessor hereby conditionally assigns to Lessee all leases, written or oral, and all agreements for use or occupancy of the Property together with any and all extensions and renewals thereof and any and all further leases, subleases, lettings or agreements (including subleases thereof and tenancies following attornment) upon or covering the use or occupancy of the Property all of which leases, agreements, subleases and tenancies are herein sometimes collectively referred to as the "Assigned Leases"; (ii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or which may now or hereafter become due from or out of the Assigned Leases or any part thereof, including, but not limited to, security deposits, minimum rents, additional rents, parking rents, deficiency rents and liquidated damages following default, any premium payable by any tenant upon the exercise of a cancellation privilege contained in its Lease; all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Property; any and all rights and claims of any kind which Lessor has or hereafter may have against the tenants under the Assigned Leases and any subtenants and other occupants of the Property; any award granted Lessor after the date hereof in any court proceeding involving any tenant in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by any tenant in lieu of rent (any and all such moneys, rights and claims identified in this paragraph are herein sometimes referred to as the "Rents" and sometimes as the "Rent"); and (iii) all of the rights, powers and privileges of Lessor (A) to accept prepayment of more than one (1) monthly installment of the Rent thereunder, and (B) except with respect to the Assigned Lease, (I) to cancel, terminate or accept the surrender of any Assigned Lease, and (II) to amend, modify or abridge any of the terms, covenants or conditions of any Assigned Lease. The assignment contained in this Section 5 and Lessee's interest in the Assigned Leases shall become void and of no further force or effect upon the expiration or early termination of this Lease and upon such event, Lessor shall be the sole party with any interest as a landlord or lessor in the Assigned Leases. Furthermore, Lessee shall have no right to collect any amounts under the Assigned Leases upon the occurrence and continuance of an Event of Default and all such amounts shall be paid to Lessor during any such period.

6. **Nevada Gaming Control Board.** Lessor will follow all laws of the State of Nevada, and cooperate with Winner's Gaming Inc. ("WGI") or its successor in making application to the Nevada Gaming Control Board if such application or approval is required.

7. **Rentals To Be Net to Lessor.** The Base Annual Rental payable hereunder shall be net to Lessor, so that this Lease shall yield to Lessor the Rentals specified during the Lease Term, and all Costs and obligations of every kind and nature whatsoever relating to the Property shall be performed and paid by Lessee, including but not limited to all impositions, operating

charges, maintenance charges, construction costs and any other charges, costs and expenses now existing or that arise or may be contemplated under the Permitted Encumbrances or otherwise, all maintenance and repair expenses, all utility expenses, all Taxes, all premiums for insurance required to be maintained by Lessee pursuant to the terms hereof and all other expenses, charges, assessments and costs associated with the Property or otherwise provided to be paid by Lessee pursuant to the terms of this Lease. All such charges, costs and expenses shall constitute Additional Rental and upon the failure of Lessee to pay any of such costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay Base Annual Rental. It is the intention of the parties except as expressly provided herein that this Lease shall not be terminable for any reason by Lessee, and that Lessee shall in no event be entitled to any abatement of, or reduction in, Rental payable under this Lease, except as otherwise expressly provided herein. Any present or future law to the contrary shall not alter this agreement of the parties.

8. **Taxes and Assessments.** Lessee shall pay, prior to the earlier of delinquency or the accrual of interest on the unpaid balance, one hundred percent (100%) of the following (collectively, "Taxes"): all taxes and assessments of every type or nature assessed against or imposed upon the Property or Lessee during the Lease Term, including without limitation, all ad valorem taxes, assessments and special assessments upon the Property or any part thereof and upon any personal property, trade fixtures and improvements located on the Property, whether belonging to Lessor or Lessee, or any tax or charge levied in lieu of such taxes and assessments; all taxes, charges, license fees and or similar fees imposed by reason of the use of the Property by Lessee; and all excise, transaction, privilege, license, sales, use and other taxes upon the Rental or other Monetary Obligations hereunder, the leasehold estate of either party or the activities of either party pursuant to this Lease, and all interest, surcharges or service or other fees payable in connection with the foregoing.

Upon request of Lessor, Lessee shall, upon prior written request of Lessor, provide Lessor with evidence reasonably satisfactory to Lessor that such payment was made in a timely fashion. Lessee may, at its own expense, contest or cause to be contested by appropriate legal proceedings conducted in good faith and with due diligence, any above-described item or lien with respect thereto, including, without limitation, the amount or validity or application, in whole or in part, of any such item, provided that (A) neither the Property nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (B) no monetary Event of Default has occurred, (C) Lessee shall promptly provide Lessor with copies of all notices received or delivered by Lessee and filings made by Lessee in connection with such proceeding, and (D) Lessee shall indemnify and hold Lessor harmless against any loss, Costs or damages arising from or related to such contest.

If Lessee shall fail to pay any Taxes when due and before any delinquency, penalty or interest is imposed on such Taxes, Lessor shall have the right to pay the same after notice to Lessee, in which case Lessee shall repay in full such amount to Lessor with Lessee's next Base Monthly Rental installment together with interest at the Default Rate.

9. **Utilities.** Lessee shall contract, in its own name, for and pay when due (and hold Lessor free and harmless from) all charges for the connection and use of water, gas, electricity,

telephone, garbage collection, sewer use and other utility services supplied to the Property during the Lease Term. All utility charges, assessments and fees for the last year of the Lease shall be prorated as of the termination date of this Lease. No full or partial utility deprivation including, but not limited to, blackout, brownout, or rationing, nor any loss of or damage to improvements related to disruption or failure of any utility service shall give rise to any abatement of Rentals nor give rise to any right of Lessee to offset Rentals or to terminate the Lease, unless caused by the gross negligence or willful misconduct of Lessor or its agents, employees or contractors (but not of any other tenants or occupants of the Property). Lessor shall reasonably cooperate with Lessee, but without out-of-pocket expense to Lessor, in Lessee's efforts to restore utility service to the Property; provided, however, that if the utility service was disrupted due to Lessor's gross negligence or willful misconduct, then the cost of such restoration shall be borne by Lessor.

10. **Insurance.** Throughout the Lease Term, Lessee shall maintain, at its sole expense, the following types and amounts of insurance:

A. Insurance against loss or damage to the Property and all buildings and improvements thereon under an "all risk" insurance policy, which shall include coverage against all risks of direct physical loss, including loss by fire, lightning, and other risks normally included in the standard ISO special form (which shall include coverage for all risks commonly insured for properties similar to the Property in the Reno, Nevada area, including insurance coverage for damage caused by earthquake, flood, tornado, windstorm and other disasters for which insurance is customarily maintained for similar commercial properties). Such insurance shall be in amounts sufficient to prevent Lessor from becoming a co-insurer under the applicable policies, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an increased cost of construction endorsement, debris removal coverage and a waiver of subrogation endorsement in favor of Lessor. While any portion of the improvements on the Property is being rebuilt on the Land, Lessee shall provide such property insurance in builder's risk completed value form, including coverage available on the so-called "all-risk" non-reporting form of policy in an amount equal to 100% of the full insurable replacement value of the improvements on the Property or such portion as is being rebuilt. The insurance policy shall insure Lessee as loss payee. No parties other than Lessor, Lessor's Lender and Lessee may be named as insureds or loss payees on such property insurance policy.

B. Commercial general liability insurance, including products and completed operation liability, covering Lessor and Lessee against bodily injury liability, property damage liability and personal and advertising injury, liquor liability coverage (to the extent liquor is sold or manufactured at the Property), garage liability coverage including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Property or adjoining ways, streets, parking lots or sidewalks. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Lessee's obligations under Section 15 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Lessee, Lessor or

(vi) Provide that the insurer shall not have the option to restore the Property if Lessor elects to terminate this Lease in accordance with the terms hereof;

(vii) Be in amounts sufficient at all times to satisfy any coinsurance requirements thereof;

(viii) Except for workers' compensation insurance referred to in Section 10.C above, name Lessor and any Lessor Affiliate requested by Lessor, as an "additional insured" (and, with respect to any Lessor's Lender designated by Lessor, as an "additional insured mortgagee") with respect to general liability insurance, and as a "named insured" with respect to real property and "loss payee" with respect to all real property and rent value insurance, as appropriate and as their interests may appear;

(ix) Be evidenced by delivery to Lessor and any Lessor's Lender designated by Lessor of an Acord Form 28 for property coverage (or any other form requested by Lessor) and an Acord Form 25 for liability, workers' compensation and umbrella coverage (or any other form requested by Lessor); provided that in the event that either such form is no longer available, such evidence of insurance shall be in a form reasonably satisfactory to Lessor and any lender designated by Lessor; such certificates of insurance shall be delivered to Lessor prior to the Effective Date; and

(x) Be issued by insurance companies licensed to do business in the states where the Property is located and which are rated A:VIII or better by Best's Insurance Guide or are otherwise approved by Lessor.

It is expressly understood and agreed that (I) if any insurance required hereunder, or any part thereof, shall expire, be withdrawn, become void by breach of any condition thereof by Lessee, or become void or in jeopardy by reason of the failure or impairment of the capital of any insurer, Lessee shall immediately obtain new or additional insurance reasonably satisfactory to Lessor and any lender designated by Lessor; (II) the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease; and (III) Lessee shall procure policies for all insurance for periods of not less than one year and shall provide to Lessor and any servicer or lender of Lessor certificates of insurance or, upon Lessor's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times.

Lessee shall pay as they become due all premiums for the insurance required by this Section 10. In the event that Lessee fails to comply with any of the foregoing requirements of this Section 10 within ten (10) days of the giving of written notice by Lessor to Lessee, Lessor shall be entitled to procure such insurance. Any sums expended by Lessor in procuring such insurance shall be Additional Rental and shall be repaid by Lessee, together with interest thereon at the Default Rate, from the time of payment by Lessor until fully paid by Lessee immediately upon written demand therefor by Lessor.

Anything in this Section 10 to the contrary notwithstanding, any insurance which Lessee is required to obtain pursuant to this Section 10 may be carried under a "blanket" policy or policies covering other properties or liabilities of Lessee provided that such "blanket" policy or policies that otherwise comply with the provisions of this Section 10 and specify the location of the Property.

11. **Intentionally Omitted**

12. **Compliance With Laws, Restrictions, Covenants, Encumbrances and Agreements.** It is expressly understood and agreed that the obligations of Lessee under this Section shall survive the expiration or earlier termination of this Lease for any reason.

A. *Legal and Gaming Law Compliance.* Lessee's use and occupation of the Property, the use and occupation of the Property by any other person (including but not limited to any subtenants and WGI) and the condition of the Property, shall, at Lessee's sole cost and expense, comply with all Legal Requirements (including without limitation the Americans with Disabilities Act and all Legal Requirements related to gaming operations and the sales of tobacco and liquor on the Property). Lessee shall promptly file, or cause to be filed, and provide to Lessor any notices, reports or other filings that Lessee or any other Person is required to file or provide to any Governmental Authorities regarding the business operations conducted on or from the Property, including but not limited to those described in Subsection D(iii) hereof and those required by Governmental Authorities with respect to gaming operations and the sales of tobacco and liquor on the Property, including any filings required to be made in connection with the change of ownership or control of Lessee and, within fifteen (15) days of Lessee's receipt of written notice from Lessor of any planned or actual change in the ownership or control of Lessor or any planned or actual change in the ownership of the Property.

B. *Acts Resulting in Increased Insurance Rates.* Lessee will use its commercially reasonable efforts to prevent any act or condition to exist on or about the Property which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase. Lessee shall comply with all orders and directives of any insurance companies issuing liability, fire, or extended coverage insurance pursuant to Section 10 hereof, and Lessee shall not do, bring, or keep anything in or about the Property that will cause a cancellation of any insurance covering the Property.

C. *Prevention of Nuisance.* Lessee shall not commit nor cause or permit to be committed any public or private nuisance on the Property.

D. **Environmental.**

(i) *Covenants.* All uses and operations on or of the Property, including the use and operation of UST's on the Property, whether by Lessee or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto. Lessee shall keep the Property or cause the

Property to be kept free and clear of all Environmental Liens due to any act or omission of Lessee.

(ii) *Notification Requirements.* Lessee shall immediately notify Lessor in writing upon Lessee obtaining actual knowledge of (1) any Releases or Threatened Releases in, on, under or from the Property other than in Permitted Amounts, or migrating towards any of the Property; (2) any non-compliance with any Environmental Laws related in any way to any of the Property; (3) any actual or potential Environmental Lien; (4) any required or proposed Remediation of environmental conditions relating to any of the Property required by applicable Governmental Authorities; and (5) any written or oral notice or other communication which Lessee becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials, Regulated Substances or USTs, or Remediation thereof at or on the Property, other than in Permitted Amounts, possible liability of any Person relating to the Property pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Subsection D.

(iii) *Reports and Investigations.* Lessee shall promptly supply Lessor with copies of all reports of any testing of the Property conducted by or at the request of Lessor or any Governmental Authorities and all submissions by Lessee to any Governmental Authority concerning environmental matters, the USTs, or Hazardous Materials. Lessee shall furnish to Lessor certificates of enrollment issued by the State of Nevada, Division of Environmental Protection, for each UST at the Property no later than October 30 of each year, and gasoline storage tank permits issued by the Department of Air Quality Management of the County in which the Property is located with respect to each UST on the Property no later than May 5 of each year, and such other certificates or permits as may be issued or required by any other Governmental Authority; all of the foregoing shall evidence continuing compliance of each UST on the Property with all applicable Legal Requirements. Additionally, upon Lessor's reasonable request in the event that Lessor reasonably suspects that Contamination (as hereafter defined) may have occurred or be occurring at the Property, Lessee agrees to perform, at Lessee's sole expense, an environmental assessment of the Property, including soil borings, to confirm whether such Contamination is occurring.

(iv) *Indemnification.* Lessee shall indemnify, defend, protect and hold each of the Indemnified Parties free and harmless from and against any and all Losses, arising from or caused in whole or in part, directly or indirectly, by any of the following, unless arising from or caused by the gross negligence or willful misconduct of the Indemnified Party requesting indemnification: (a) the use, storage, transportation, disposal, release, discharge or generation of Hazardous Materials to, in, on, under or about the Property (whether occurring before or after the date hereof) (any of the foregoing in violation of Legal Requirements is

"Contamination"), including diminution in value of the Property; and (b) the cost of any required or necessary repair, remediation, cleanup or detoxification and the preparation of any closure or other required plans or reports, whether such action is required or necessary prior to or following transfer of title to the Property (such acts are sometimes referred to herein as "Corrective Action"), and (c) Lessee's failure to comply with any Legal Requirements. Lessee's obligations to perform Correction Action shall include, without limitation, and whether foreseeable or unforeseeable, all cost of any investigation (including consultants and attorneys fees and testing) required or necessary repair, remediation, restoration clean up, detoxification or decontamination of the Property and the preparation and implementation of any closure, remedial action or other required plans in connection therewith, and shall survive the expiration or earlier termination of the Term of this Lease. This agreement to indemnify, defend, protect and hold harmless each of the Indemnified Parties shall be in addition to any other obligations or liabilities Lessee may have to Lessor or the Indemnified Parties, if any, at common law under all statutes and ordinances or otherwise and survive the termination of the Lease.

In the event that Lessee is required to perform Corrective Action to address any Contamination, Lessee shall perform such activities in a diligent manner. In the event that Lessee has not completed its Corrective Action (if necessary), as required herein, by the expiration of the Lease Term, Lessor shall grant Lessee, and its consultants, contractors and agents a revocable license, at no cost to Lessee except as set forth in the succeeding sentence, to enter upon the Property from and after the date of expiration of the Lease Term to conduct Corrective Action and to place and remove all necessary equipment and improvements on the Property sufficient to satisfy the requirements of all Governmental Authorities regarding the Contamination. If such post-expiration Corrective Action will unreasonably interfere with a reasonably foreseeable intended commercial use of the Property (i.e., if Lessor cannot reasonably lease the Property for reasonable commercial uses at reasonable market rents), the Lease Term shall be extended until sixty (60) days after the Corrective Action has been performed such that post-expiration Corrective Action by Lessee no longer unreasonably interferes with a reasonably foreseeable commercial use of the Property, and Lessee agrees to keep Lessor apprised of the anticipated completion date of the Corrective Action.

E. Intentionally Omitted.

F. *Dealer Requirements.* In addition to the requirements set forth in this Lease, Lessee, in its use, occupancy and maintenance of the Property shall comply with all requirements of its Dealer Agreements with Dealer. Lessee hereby consents to Lessor providing information it obtains to Dealer and to Lessor obtaining from Dealer information which Dealer receives relating to Lessee's operation of its business on the Property.

G. *WGI Agreements.* Lessee represents that the WGI Agreement is in full force and effect, and that the WGI Agreement permits WGI to operate gaming machines on the Property. Lessee shall abide by all the terms and conditions of the WGI Agreement, and Lessee represents and warrants that WGI has approved this Lease, if WGI has such approval rights under the WGI Agreement.

13. **Maintenance; Repairs and Reconstruction.** Lessee shall, at its sole cost and expense, be responsible for keeping all of the buildings, structures, improvements and signs erected on the Property in good and substantial order, condition, and repair, including but not limited to replacement, maintenance and repair of all structural or load-bearing elements, roofs, walls, foundations, gutters and downspouts, heating, ventilating and air conditioning systems, any building security and monitoring system, windows, walls, doors, electrical and other utility systems and equipment, mechanical equipment, plumbing and all other components of the buildings, mowing of lawns and care, weeding and replacement of plantings; replacing, resurfacing and striping of walkways, driveways and parking areas, and adjacent public sidewalks; removal of snow and ice from the Property and adjacent public sidewalks, removal of trash, maintenance of utility lines and exterior lighting and signage on Property, and any maintenance, repairs or replacements (or fees or reserves therefor) as may be required by any Permitted Encumbrances. All such replacements, maintenance and repair shall keep the Property in good repair and in a clean, safe, and sanitary condition and in compliance with all Legal Requirements and insurance regulations. Lessee must make all repairs, corrections, replacements, improvements or alterations necessitated by age, Lessee's use, or natural elements or as required pursuant to Governmental Authorities or Legal Requirements. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs, corrections, improvements or alterations at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good order, condition or repair, or which would otherwise require Lessor to make repairs, corrections, improvements, replacements or alterations. If the buildings or any improvements on the Property violate any Permitted Encumbrances or Legal Requirements, then Lessee shall, upon the written demand of a Governmental Authority or the written demand of a party to or beneficiary of any Permitted Encumbrance, repair, restore, relocate and/or rebuild the same in accordance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and the Permitted Encumbrances.

Lessee shall, at its sole cost and expense, be responsible to repair or reconstruct damage or destruction to any buildings, structures or improvements erected on the Property from acts of God or any other catastrophes or causes. Any such repairs or reconstruction shall restore the buildings and all improvements on the Property to substantially the same condition immediately prior to such damages or destruction and this Lease shall remain in full force and effect, provided, however, that Lessee shall have the right to replace the improvements with different structures so long as (a) the value of the Property with such different structures is no less than the value of the Property immediately prior to the date of casualty and the different square footage of the new buildings is no less than the buildings existing as of the date hereof, and (b) the new structure can be built and occupied in compliance with Legal Requirements (including any special or conditional use permits or other variances granted specifically for the Property) and

the Permitted Encumbrances. Such repair, restoration, relocation and rebuilding (all of which are herein called a "repair") shall be commenced within a reasonable time however no more than thirty (30) days after the later of (i) the date that such damage or destruction occurred, (ii) the date that all permits and other approvals necessary to authorize such rebuilding have been issued following reasonable pursuit of the same by Lessee, and (iii) the date that any insurance proceeds payable to Lessor or its lender in conjunction with such damage or destruction, if any, have been made available to Lessee as set forth herein; thereafter, the repair shall be diligently pursued to completion. Lessee shall give Lessor at least fifteen (15) days written notice prior to commencing the repair to permit the Lessor to post appropriate notices of non-responsibility, and all such repair work shall be subject to the provisions of Section 14 hereof related to alterations, improvements and additions to the Property.

The proceeds of any insurance maintained under Section 10 hereof shall be made available to Lessee for payment of costs and expense of repair.

14. Waste; Alterations and Improvements; Trade Fixtures and Equipment. Lessee shall not commit actual or constructive waste upon the Property. During the Lease Term, Lessee may construct any additions or improvements to the Property and make such structural or non-structural alterations to the Property as are reasonably necessary or desirable for Lessee's use of the Property for a Permitted Facility. All improvements, alterations, or additions shall be constructed by Lessee at Lessee's sole cost and expense. Prior to the commencement of construction of any additions, improvements, or alterations to the Property, Lessee shall give Lessor at least fifteen (15) days written notice to allow Lessor to post appropriate notices of non-responsibility. Notwithstanding anything herein to the contrary, without Lessor's prior written consent, Lessee shall not make any alterations that will decrease the value or function of the improvements located on the Property.

Lessee's right to make any alterations, improvements and additions shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate Governmental Authorities, the furnishing of a copy thereof to Lessor prior to the commencement of the work and the compliance by Lessee of all conditions of said permit in a prompt and expeditious manner. All alterations, improvements or other construction by Lessee shall be in compliance with all Legal Requirements, and all alterations and improvements shall be done and performed in good and workmanlike manner, using new and first quality materials. All costs of any such improvements shall be paid by Lessee.

Upon completion of any such work, Lessee shall submit to Lessor as-built plans of any structural, mechanical or interior utility improvements and alterations made, a sworn construction statement, lien waivers from all persons or entities providing materials, services or equipment for the work completed and, if available, an endorsement to Lessor's policy of title insurance or other evidence from a title company confirming the absence of any liens or other matters of record related to the work performed.

Unless expressly released by Lessor in writing, all improvements or alterations shall be and remain, at the time of expiration or other termination of this Lease, the property of Lessor without payment or offset unless such improvements are not attached to the Property.

Notwithstanding anything herein to the contrary, all plumbing, electrical, HVAC equipment, doors, ceiling and floor tiles, and wall coverings shall become the property of Lessor and remain in place on the Property upon expiration or other termination of this Lease.

During the Lease Term, Lessee shall have the right to locate in the Property such personal property, furniture, trade fixtures, and equipment (hereafter referred to as "Fixtures and Equipment") as shall be considered by Lessee to be appropriate or necessary to Lessee's use and occupancy of the Property.

All Fixtures and Equipment shall be provided by Lessee at Lessee's own cost and expense. During the term of this Lease, Lessee may remove any Fixtures and Equipment installed by Lessee, and any and all such Fixtures and Equipment shall remain the sole property of Lessee. Lessee shall perform (and pay all costs associated with) any and all restoration necessitated by the removal of Lessee's Fixtures and Equipment, including but not limited to damage resulting from removal of any of Lessee's signs in or about the Property.

Lessee shall keep the Property free and clear of all mechanic's, materialmen or similar liens, including, but not limited to, those resulting from the construction of alterations, improvements, additions, trade fixtures, and equipment performed by or for Lessee.

Lessee shall have the right to contest the correctness or validity of any such lien if, Lessee first procures and records a lien release bond issued by a corporation authorized to issue surety bonds in the state in which the Property are located in an amount required by Legal Requirements to remove such lien. The bond or its equivalent shall meet all applicable requirements of the state in which the Property are located. In the event that any lien does so attach, and is not released within thirty (30) days after written notice to Lessee thereof, Lessor, in its sole discretion, may pay and discharge the same and relieve the Property therefrom, and Lessee agrees to repay and reimburse Lessor as Additional Rental upon demand for the amount so paid by Lessor. On final determination of the lien or claim of lien Lessee will immediately pay any judgment rendered, and all costs and charges, and shall cause the lien to be released or satisfied. In addition, Lessor may require Lessee to pay Lessor's reasonable attorneys' fees and costs in participating in such action if Lessor shall decide it is in its best interest to do so.

15. **Indemnification.** Lessee agrees to use and occupy the Property at its own risk and hereby releases Lessor and Lessor's agents and employees from all claims for any damage or injury to the full extent permitted by law. Lessee agrees that Lessor shall not be responsible or liable to Lessee or Lessee's employees, agents, customers or invitees for bodily injury, personal injury or property damage occasioned by the acts or omissions of any other lessee or such lessee's employees, agents, contractors, customers or invitees. In addition to other specific indemnification provisions set forth in this Lease, Lessee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses caused by, incurred or resulting from Lessee's use and occupancy of the Property, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Lessee or any Person thereon, with supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Lessee, its officers, employees, agents or other

Persons. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

16. **Quiet Enjoyment.** So long as Lessee shall pay the Rental and other Monetary Obligations herein provided and shall keep and perform all of the terms, covenants and conditions on its part herein contained, Lessee shall have, subject and subordinate to Lessor's rights herein, the right to the peaceful and quiet occupancy of the Property, subject to the Permitted Encumbrances, Laws and the WGI Agreement and any use or occupancy agreements, leases or licenses now affecting the Property or hereinafter made by Lessee.

17. **Inspection; Right of Entry.** Lessor and its authorized representatives shall have the right, at all reasonable times and upon giving reasonable prior notice (except in the event of an emergency, in which case no prior notice shall be required), to enter the Property or any part thereof and to inspect the same; to serve, post, or keep posted any notices required or allowed under the provisions of this Lease or by law; to show the Property to prospective brokers, agents, buyers, or persons interested in an exchange, at any time; and to show the Property to prospective tenants within two hundred forty (240) days prior to the expiration of this Lease or any time during the option period and to place upon the Property any "to let" or "for lease" signs at any time within two hundred forty (240) days prior to the expiration of this Lease. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Property and any other loss occasioned by such entry, but, subject to Section 37, excluding damages arising as a result of the negligence or intentional misconduct of Lessor.

18. **Condemnation and Casualty.**

A. *Damage or Destruction to the Property; No Abatement of Rent.* If the Property is damaged or destroyed as a result of fire or other casualty Lessee shall promptly restore the Property pursuant to the terms of Section 13 hereof. Notwithstanding the partial or total destruction of the Property and any part thereof, and notwithstanding whether the casualty is insured or not, there shall be no abatement of Rentals or of any other obligation of Lessee hereunder including, without limitation, payment of operating expenses, insurance premiums and Taxes, by reason of such damage or destruction unless the Lease is terminated by virtue of another provision of this Lease.

B. *Option to Terminate.* If the Property is damaged or destroyed during the last one (1) year of the Lease Term to the extent that the Property is untenable, Lessee may terminate this Lease as of the date of such damage or destruction by giving written notice to Lessor of such election within thirty (30) days following the date of such fire or other casualty, in which case, all insurance proceeds related to the Property (other than attributable to Lessee's Fixtures and Equipment) will be paid over to Lessor, or if required by Lessor's Lender, to such lender.

C. *Termination Upon Taking.* If as a consequence of a Taking, (i) any part of the convenience store building on the Property; or (ii) twenty-five percent (25 %) or more

of the parking area at the Property shall be taken and Lessee determines in its reasonable discretion that such Taking will have a material adverse impact on the ability of Lessee to conduct its normal business operations from the Property, then, within thirty (30) days after the date on which Lessee receives written notice of such Taking, Lessee may terminate this Lease by written notice to Lessor which termination shall be effective as of the date the condemning authority takes actual possession of the portion of the Property that is subject to the Taking. If Lessee terminates this Lease, Lessor shall promptly refund to Lessee all unearned Annual Base Rental and other amounts paid in advance by Lessee.

D. *Obligation to Restore.* If a Taking does not result in a termination of this Lease pursuant to Subsection C hereof, Lessee shall restore the Property to a condition similar in physical appearance to that which existed immediately prior to the Taking to the extent possible such that Lessee can conduct its normal business operations, Lessee shall commence such restoration within ninety (90) days after the occurrence of the taking and shall complete such restoration within six (6) months after the occurrence of the taking.

E. *Condemnation Award.* Any condemnation award payable during the term of this Lease shall belong to and be paid to Lessor, including but not limited to awards payable with respect to damage to either the fee or leasehold estates, except that Lessee shall receive from the award the following:

(i) If Lessee exercises its rights to terminate this Lease, the portion of the award, if any, attributable to Lessee's Equipment or Fixtures that are taken in the Taking and the unamortized cost of any leasehold improvements made to the Property by Lessee after the date hereof that are taken in the Taking.

(ii) The portion of the award, if any, attributable to severance damages for the repair or restoration of the Property (herein called "repair"), but only if Lessee does not exercise Lessee's right to terminate the Lease and further provided, that such damages shall be deposited and disbursed in accordance with the provisions hereof related to the handling of insurance proceeds that are applied to a repair of the Property and Lessee shall promptly commence and diligently complete the repair so that upon completion the Property will have a character and commercial value as nearly as possible equal to the value of the Property immediately prior to the taking, and further provided that, in the event such damages are insufficient to cover the cost of repair, then any amounts required over the amount thereof that are required to complete said repair shall be promptly deposited with the disbursing entity by Lessee in advance of commencing the repair.

(iii) Additionally, if this Lease is terminated as a result of any such taking, Lessee shall be permitted to recover its relocation expenses and the going concern value of Lessee's business from the condemning authority (but not from

Lessor or the portion of the award otherwise payable to Lessor) as provided by law.

19. Intentionally Deleted.

20. **Default, Conditional Limitations, Remedies and Measure of Damages.**

A. *Event of Default.* Each of the following shall be an event of default by Lessee under this Lease (each, an "Event of Default"):

(i) If any Rental or other Monetary Obligation due under this Lease is not paid within five (5) Business Days of notice it is past due,

(ii) if there is an Insolvency Event;

(iii) if Lessee fails to observe or perform any of the other covenants, conditions or obligations of Lessee in this Lease; *provided, however*, if any such failure does not involve the payment of any Monetary Obligation, does not place any rights or property of Lessor in immediate jeopardy, as determined by Lessor in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee notice thereof and a period of thirty (30) days shall have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such thirty (30) day period, as determined by Lessor in its reasonable discretion, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such thirty (30) day period. If Lessee shall fail to correct or cure such failure within such period and said period is not extended by the parties, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(iv) if Lessee shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution.

B. *Remedies.* Upon the occurrence of an Event of Default, Lessor shall provide notice thereof to WGI and shall provide WGI with a thirty day period in which to elect, by notice to Lessor, to cure such Event of Default, in which case, Lessor will provide WGI reasonable access to the Premises to cure such Event of Default, and will accept such cure as if performed by Lessee. WGI may also elect within such thirty day period, to take an assignment of tenant's interests under this Lease, in which case, WGI will have a period of one hundred twenty (120) days following such assignment in which to further assign such tenant's rights, or to sublet the Premises, to a entity or person which will operate the Premises as a Permitted Facility, without the need for Lessor's consent or approval.

If WGI does not elect either such option then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:

(i) To terminate this Lease, whereupon Lessee's right to possession of the Property shall cease and this Lease, except as to Lessee's liability, shall be terminated. Upon such termination, Lessor shall be entitled to recover liquidated damages equal to the total of (i) the cost of recovering possession of the Property; (ii) the unpaid Rental earned at the time of termination, plus interest at the Default Rate thereon; (iii) late charges and interest at the Default Rate on the unpaid Rental; (iv) the present value of the balance of the Base Annual Rental for the remainder of the Lease Term using a discount rate of four percent (4%), less the present value of the reasonable rental value of the Property for the balance of the Term remaining after a one-year period following repossession using a discount rate of four percent (4%); (v) costs of operating the Property until relet and the reasonable costs of performing any obligations of Lessee under this Lease to be performed upon termination or expiration of this Lease (including but not limited to the Lessee's obligations under Sections 12.D and 27 hereof); and (vi) any other sum of money and damages reasonably necessary to compensate Lessor for the detriment caused by Lessee's default.

(ii) To the extent not prohibited by applicable law, to reenter and take possession of the Property (or any part thereof) without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Property to Lessor, deliver to Lessor or its agents the keys to the Property, or both, such actions shall be deemed to be in compliance with Lessor's rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate, and Lessor may recover liquidated damages as set forth in Subsection (i) above.

(iii) To bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor.

(iv) To relet the Property or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Lessor, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the Rental and other Monetary Obligations due from Lessee in such order as Lessor may, in its sole

discretion, determine, which other Monetary Obligations include, without limitation, all commercially reasonable repossession costs, brokerage commissions, attorneys' fees and expenses and repair costs. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice.

(v) To recover from Lessee all Costs paid or incurred by Lessor as a result of such breach, regardless of whether or not legal proceedings are actually commenced.

(vi) To immediately or at any time thereafter, and with or without notice, at Lessor's sole option but without any obligation to do so, correct such breach or default and charge Lessee all Costs incurred by Lessor therein. Any sum or sums so paid by Lessor, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor's right to exercise any or all remedies set forth herein.

(vii) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Lessee held by Lessor under this Lease.

(viii) To seek any equitable relief available to Lessor, including, without limitation, the right of specific performance.

All powers and remedies given by this Section to Lessor, subject to applicable Law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lessor under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by Law to Lessor may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor's right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

C. *Default by Lessor.* Lessor shall be in default under this Lease if Lessor fails or refuses to perform any obligation of Lessor under the terms of this Lease, and if the failure to perform the obligation is not cured within thirty (30) days after notice of the default has been given by Lessee to Lessor. If the default cannot reasonably be cured within thirty (30) days, then Lessor shall not be in default if Lessor commences to cure

the default within the thirty (30) day period and diligently and in good faith continues to cure the default thereafter.

Lessee, at any time after expiration of the cure period provided above and a subsequent written notice to Lessor, may cure the default at Lessor's cost. If Lessee at any time, as a result of Lessor's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Lessee shall be due immediately from Lessor to Lessee at the time the sum is paid, and if paid at a later date shall bear interest at the rate of twelve percent (12%) per annum from the date the sum is paid by Lessee until the date Lessee is reimbursed by Lessor. Any amounts due from Lessor to Lessee pursuant to this Section 15 may be deducted or offset against Lessee's Base Monthly Rental.

21. Mortgage, Subordination and Attornment. Lessor's interest in this Lease and/or the Property shall not be subordinate to any liens or encumbrances placed upon the Property by or resulting from any act of Lessee, and nothing herein contained shall be construed to require such subordination by Lessor. Notwithstanding the terms of or the parties to the WGI Agreement and any other agreements pursuant to which Persons other than Lessee have the right to occupy any portion of the Property, such agreements shall, as between Lessor and Lessee, be treated as an instrument subordinate to Lessor's interest in the Property and this Lease. Lessee shall keep the Property free from any liens for work performed, materials furnished or obligations incurred by Lessee. NOTICE IS HEREBY GIVEN THAT LESSEE IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST, SECURITY INTEREST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PROPERTY OR LESSEE'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID.

This Lease at all times shall automatically be subordinate to the lien of any and all Deeds of Trust now or hereafter placed upon the Property by Lessor, provided, that the holder of such interest shall not disturb Lessee's use and enjoyment of Lessee's rights under this Lease so long as Lessee is not in default hereunder. Lessee covenants and agrees to execute and deliver, upon demand, such further instruments which are acceptable to Lessee, subordinating this Lease to the lien of any or all such Deeds of Trust as shall be desired by Lessor, or any present or proposed Deeds of Trust; provided, that the terms and provisions of any such instrument are commercially reasonable. The Lessee acknowledges that the terms and provisions of the Instrument attached hereto as Exhibit C are commercially reasonable.

If any Lessor's Lender, mortgagee, receiver or other secured party elects to have this Lease and the interest of Lessee hereunder be superior to any such Deed of Trust and evidences such election by notice given to Lessee, then this Lease and the interest of Lessee hereunder shall be deemed superior to any such Deed of Trust, whether this Lease was executed before or after such Deed of Trust and in that event such mortgagee, receiver or other secured party shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of such Deed of Trust and had been assigned to such mortgagee, receiver or other secured party.

In the event any purchaser or assignee of any mortgagee or deed of trust holder at a foreclosure sale acquires title to the Property, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as Lessor under this Lease, Lessee shall attorn to mortgagee or deed of trust holder or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and, if the Successor Lessor in its sole discretion elects to recognize Lessee's tenancy under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue after the date that such Successor Lessor acquires title. The foregoing provision shall be self-operative and effective without the execution of any further instruments.

Lessee shall give written notice to any Lessor's Lender of whom Lessee is notified of in writing of any breach or default by Lessor of any of its obligations under this Lease and give such lender or mortgagee the same rights to which Lessor might be entitled to cure such default before Lessee may exercise any remedy with respect thereto. Upon request by Lessor, Lessee shall authorize Lessor to release to Lessee's financial statements delivered to Lessor pursuant to this Lease to such Lessor's Lender.

22. Estoppel Certificate and Other Documents. At any time, and from time to time, each party shall, promptly and in no event later than ten (10) days after a request from the other execute, acknowledge and deliver to the requesting party, as the case may be, a certificate in the form supplied by the requesting party, certifying: (A) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefor; (B) the commencement and expiration dates of the Lease Term; (C) the date to which the Rentals have been paid under this Lease and the amount thereof then payable; (D) whether there are then any existing defaults by Lessee or Lessor in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (E) that no notice has been received by the certifying party of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (F) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Lessee; and; (G) and any other information reasonably requested by the requesting party.

Lessor and Lessee further agree to reasonably negotiate execute all reasonable documents, including without limitation, estoppel certificates, non-disturbance certificates and other documents requested by WGI, any Lessor's Lender or any lender of Lessee in connection with a loan to be obtained by Lessor or Lessee, or in connection with a sale, assignment, sublease or other disposition of the Lessor's interest under this Lease.

23. Assignment/Subletting. Except as provided in Section 20, above, Lessee's interest in this Lease shall not, voluntarily, involuntarily, or by operation of law, be assigned to any third person or entity without the prior written consent of Lessor which will not be unreasonably withhold conditioned or delayed.

In the event of an assignment of Lessee's interest under this Lease to a third person or entity which has been approved by the Lessor, the original Lessee shall be relieved from any and all further obligations under the terms of this Lease upon delivery to Lessor of an originally executed assumption of all of Lessee's obligations under this Lease by the assignee, and upon cure of all then existing defaults of Lessee under the terms of this Lease.

Other than for the WGI Agreement and any Replacement WGI Agreement, and any other agreements pursuant to which experienced and reputable operators are permitted to occupy discreet portions of the convenience store building located on the site for uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances (such other agreements are referred to herein as "Permitted Subleases"), Lessee may not sublease all or any part of the Property without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned or delayed. In no event will any Permitted Subleases, or any other subleases that Lessor consents to relieve Lessee of any liability hereunder during the period of any such subletting. Additionally, Lessee shall give Lessor at least thirty (30) days advance notice of any proposed Permitted Sublease, which notice shall be accompanied by a copy of the form of the Permitted Sublease.

Each Permitted Sublease, and any other sublease that Lessor may consent to pursuant to the foregoing paragraph shall provide that (i) the term thereof will not exceed the Initial Term hereof and any extensions of the Initial Term that are permitted hereunder; (ii) the sublease and subtenant shall be subject to and bound by all the terms and conditions of this Lease (except that the Lessee shall continue to pay all Rental and Monetary Obligations hereunder and Lessee shall collect any rents owed by the subtenant pursuant to the sublease); (iii) the sublease shall state that, at Lessor's election, the subtenant will attorn to Lessor and recognize Lessor as Lessee's successor under the sublease for the balance of the sublease term if this Lease is surrendered by Lessee or terminated by reason of Lessee's default.

24. **Notices.** All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Lease (collectively called "Notices") shall be in writing and given by any one of the following: (A) hand delivery, (B) express overnight delivery service, (C) certified or registered mail, return receipt requested or (D) facsimile, provided that a copy of such facsimile is also sent via certified or registered mail, return receipt requested, or by overnight delivery service, within one Business Day of the transmission of such facsimile, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) the next Business Day, if delivered by a reputable express overnight delivery service, (iii) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested, or (iv) transmission, if delivered by facsimile pursuant to the requirements of Section 24.D above. Notices shall be provided to the parties and addresses (or electronic mail addresses) specified below:

If to Lessee:	Berry-Hinckley Industries Attn: Paul A. Morabito
---------------	-----------------------------------------------------

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Wooley/BHI
1365 Baring Blvd/BHI
Sparks, Nevada
7/6/2006
000160/09959 GBDOCS 576954v2

425 Maestro Drive
 Reno, NV 89511
 Telephone: (775) 689-1222
 Facsimile: (775) 689-1232

With a copy to:

Hodgson Russ LLP
 Attn: Sujata Yalamanchili
 One M&T Plaza, Suite 2000
 Buffalo, NY 14023
 Telephone: (716) 848-1657
 Facsimile: (716) 849-0349

And with a copy to:

Winners Gaming Inc.
 Attn: Paul A. Morabito
 425 Maestro Drive
 Reno, NV 89511
 Telephone: (775) 689-1222
 Facsimile: (775) 689-1232

If to Lessor:

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

25. **Holdover.** If Lessee remains in possession of the Property after the expiration of the term hereof, Lessee, at Lessor's option and within Lessor's sole discretion, may be deemed a Lessee on a month-to-month basis and shall continue to pay Rentals and other Monetary Obligations in the amounts herein provided, except that the Base Monthly Rental shall be automatically increased to one hundred fifty percent (150%) of the last Base Monthly Rental payable under this Lease.

26. **Intentionally Omitted.**

27. **Surrender.** At the expiration of the Lease Term, Lessee may remove from the Property all of Lessee's Fixtures and Equipment. Lessee shall repair any damage caused by such removal and shall leave the Property broom clean and in good and working condition and repair inside and out, and comply with all of the requirements of Section 12.D hereof. Lessor may, in its sole discretion, elect to retain or dispose of in any manner any Fixtures or Equipment, personal property and vehicles to which Lessee is entitled but which Lessee does not remove from the Property pursuant to this Section within ten (10) days after notice, provided, however, that upon demand, Lessee shall reimburse Lessor for all costs incurred by Lessor in removing any Fixtures and Equipment and any all personal property, vehicles and inventory, Hazardous Materials, USTs and related equipment, located in or about the Property that are left therein by Lessee or in restoring the Property to the condition required by this Lease.

28. **Financial Statements; Compliance Certificate.** Once per calendar year, and within 120 days after the end of Lessee's fiscal year, Lessee shall furnish to Lessor audited financial statements of Lessee for the immediately preceding fiscal year. Lessor shall maintain such statements in confidence but may disclose any financial statements furnished by Lessee to Lessor's lawyers, any prospective purchaser of the Property who has entered into a signed purchase agreement with Lessor, prospective and existing lenders of Lessor, and to Lessor's consultants and accountants; Lessor shall advise such permitted recipients that the financial statements furnished to them are to be held in confidence. In no event shall Lessor knowingly disclose Lessee's financial statements to competitors of Lessee.

29. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform (each, a "Force Majeure Event") shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, expressly excluding, however, the obligations imposed upon Lessee with respect to Rental and other Monetary Obligations to be paid hereunder.

30. **No Merger.** There shall be no merger of this Lease nor of the leasehold estate created by this Lease with the fee estate in or ownership of the Property by reason of the fact that the same person, corporation, firm or other entity may acquire or hold or own, directly or indirectly, (A) this Lease or the leasehold estate created by this Lease or any interest in this Lease or in such leasehold estate, and (B) the fee estate or ownership of the Property or any interest in such fee estate or ownership. No such merger shall occur unless and until all persons, corporations, firms and other entities having any interest in (i) this Lease or the leasehold estate created by this Lease, and (ii) the fee estate in or ownership of the Property or any part thereof sought to be merged shall join in a written instrument effecting such merger and shall duly record the same.

31. **Characterization.** Lessor and Lessee acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant.

32. **Easements.** During the Lease Term, Lessor shall not have the right to grant easements on, over, under and above the Property without the prior consent of Lessee, which consent will not be unreasonably withheld, conditioned or delayed.

33. **Bankruptcy.** Intentionally Omitted.

34. **Attorneys' Fees.** In the event of any judicial or other adversarial proceeding concerning this Lease, to the extent permitted by Law, Lessor the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other Costs in addition to any other relief to which it may be entitled. In addition, the prevailing party shall, upon demand, be

entitled to all attorneys' fees and all other Costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

35. **Memorandum of Lease.** Concurrently with the execution of this Lease, Lessor and Lessee are executing Lessor's standard form memorandum of lease in recordable form, indicating the names and addresses of Lessor and Lessee, a description of the Property, the Lease Term, but omitting Rentals and such other terms of this Lease as Lessor may not desire to disclose to the public. Further, upon Lessor's request, Lessee agrees to execute and acknowledge a termination of lease and/or quit claim deed in recordable form to be held by Lessor until the expiration or sooner termination of the Lease Term.

36. **No Broker.** Lessor and Lessee represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Property. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, Costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

37. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** Lessor and Lessee hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought by either of the parties hereto against the other or its successors with respect to any matter arising out of or in connection with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Property, and/or any claim for injury or damage, or any emergency or statutory remedy. This waiver by the parties hereto of any right either may have to a trial by jury has been negotiated and is an essential aspect of their bargain. Furthermore, Lessee hereby knowingly, voluntarily and intentionally waives the right it may have to seek punitive, consequential, special and indirect damages from Lessor, Lessor's Lenders, and any of the Affiliates, officers, directors, members, managers or employees of Lessor, Lessor's Lenders, or any of their successors with respect to any and all issues presented in any action, proceeding, claim or counterclaim brought with respect to any matter arising out of or in connection with this Lease or any document contemplated herein or related hereto. The waiver by Lessee of any right it may have to seek punitive, consequential, special and indirect damages has been negotiated by the parties hereto and is an essential aspect of their bargain.

38. **Miscellaneous.**

A. *Time Is of the Essence.* Time is of the essence with respect to each and every provision of this Lease.

B. *Waiver and Amendment.* No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Lessor of an amount less than the Rental and other Monetary Obligations stipulated to be due under

this Lease shall be deemed to be other than a payment on account of the earliest such Rental or other Monetary Obligations then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Lessor's right to collect any unpaid amounts or an accord and satisfaction.

C. *Successors Bound.* Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

D. *Captions.* Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

E. *Severability.* The provisions of this Lease shall be deemed severable. If any part of this Lease shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

F. *Other Documents.* Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease; provided such documents are reasonably acceptable to each parties' counsel.

G. *Entire Agreement.* This Lease and any other instruments or agreements referred to herein, constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided.

H. *Forum Selection; Jurisdiction; Venue; Choice of Law.* For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Nevada. Lessee consents that it may be served with any process or paper by registered mail or by personal service within or without the State of Nevada in accordance with applicable law. Furthermore, Lessee waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. Nothing contained in this Section shall limit or restrict the right of Lessor to commence any proceeding in the federal or state courts located in the state where each Property is located to the extent Lessor deems such proceeding necessary or advisable to exercise remedies available under this Lease.

I. *Counterparts.* This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

J. *Prohibited Persons and Transactions.* Lessee and Lessor (each a "Representing Party") represents to its current knowledge to the other that the Representing Party is not a person or entity, nor owns property or interests in property, which is blocked pursuant to Executive Order 13224 signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism" or under any rules and regulations related thereto.

39. **Intentionally Omitted.**

40. **Amendments to Accommodate Sale to Tenants In Common.** At the request of Lessor, Lessee shall execute any amendments to this Lease that Lessor deems reasonably necessary to accommodate Lessor's sale of the Property to tenants in common (and subsequent management of the Property by such tenants in common or a manager appointed by them), provided that such amendments do not materially and negatively impact Lessee's obligations hereunder.

[Remainder of page intentionally left blank; signatures follow]

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSOR:

Edward Wooley, Trustee
EDWARD WOOLEY

Judith Wooley, Trustee
JUDITH WOOLEY

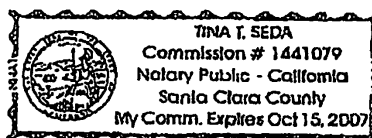
Tax Identification or Social Security No.
[REDACTED]

STATE OF California)
COUNTY OF San Clara) ss

The foregoing instrument was acknowledged before me on June 6, 2006 by
Edward Wooley and Judith Wooley an individual with an address of
41 ROSALVA AVE LOS GATOS, CA. 95030.

Tina J. Seda
Notary Public

My Commission Expires: 10-15-07



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Carson City
5/31/2006
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STATE OF CALIFORNIA
COUNTY OF Santa Clara

} S.S

On June 6, 2006 before me,

Tina T. Seda

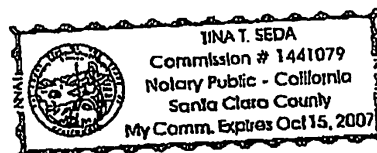
a Notary Public, personally appeared

Edward Woolley

Judith Woolley

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.



(This area for official notarial seal)

Signature Tina T. Seda

LESSEE:

BERRY-HINCKLEY INDUSTRIES, a Nevada
corporationBy: STATE OF ~~NEVADA~~ California,
COUNTY OF ~~WASHOE~~ Orange)^{ss}The foregoing instrument was acknowledged before me on July 14, 2007 by
Paul Magallon as Chairman of BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation.My Commission Expires: Sept 20, 2009 
Notary Public

EXHIBIT A

DEFINED TERMS

The following terms shall have the following meanings for all purposes of this Lease:

"Additional Rental" has the meaning set forth in Section 4.C.

"Adjustment Date" means the first anniversary of the Effective Date, and every anniversary thereafter during the Initial Term, and any Extension Term.

"Affiliate" means any Person which directly or indirectly controls, is under common control with or is controlled by any other Person. For purposes of this definition, "controls", "under common control with", and "controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

"Base Annual Rental" means \$238,275.

"Base Monthly Rental" means an amount equal to 1/12 of the applicable Base Annual Rental.

"Business Day" means Monday through Friday, except those days on which the United States Postal Service does not deliver regular first-class mail.

"Casualty" means any loss of or damage to any property included within or related to any Property or arising from an adjoining property caused by fire, flood or other casualty.

"Condemnation" means a Taking and/or a Requisition.

"Costs" means all reasonable costs and expenses incurred by a Person, including without limitation, reasonable attorneys' fees and expenses, court costs, expert witness fees, costs of tests and analyses, repair and maintenance, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, brokerage fees, escrow fees, title insurance and other insurance premiums, appraisal fees, stamp taxes, recording fees and transfer taxes or fees, as the circumstances require.

"Dealer" means any Person that supplies gasoline and/or diesel fuel to Lessee at the Property for sale to third parties, or its successor or assigns.

"Dealer Agreement" means a written agreement or other document granting Lessee the right to operate a gas station operation under the flag, brand or trade name of a Dealer.

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"Default Rate" means 18% per annum or the highest rate permitted by law, whichever is less.

"Deed of Trust" means any and all deeds of trust, mortgages or other liens to secure debts or other security instruments here and after placed by Lessor on the Property or any part thereof (except the Lessee's personal property or trade fixtures), and to any and all renewals, modifications, consolidations, replacements, extensions or substitutions of any such instruments.

"Effective Date" has the meaning set forth in Section 3 of this Lease.

"Environmental Laws" means federal, state and local laws, ordinances, common law requirements and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees having the effect of law in effect now or in the future and including all amendments, that relate to Hazardous Materials, Regulated Substances, USTs, and/or the protection of human health or the environment, or relating to liability for or Costs of Remediation or prevention of Releases, and apply to Lessee and/or the Property.

"Environmental Liens" means liens that may be imposed pursuant to Environmental Laws, including but not limited to Nevada Revised Statutes Chapters 459 and 618.

"Event of Default" has the meaning set forth in Section 20.A.

"Expiration Date" has the meaning set forth in Section 3.

"Extension Option" has the meaning set forth in Section 3.

"Extension Term" has the meaning set forth in Section 3.

"Force Majeure Event" has the meaning set forth in Section 29.

"Governmental Authority" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority of the United States, any state or any political subdivision thereof (including but not limited to the Nevada Department of Environmental Protection, the Nevada Gaming Control Board and the Nevada Gaming Commission) with authority to adopt, modify, amend, interpret, give effect to or enforce any federal, state and local laws, statutes, ordinances, rules or regulations, including common law, or to issue court orders.

"Hazardous Materials" includes: (a) oil, petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials, contaminants or pollutants which pose a hazard to the Property or to Persons on or about the Property, cause the Property to be in violation of any local, state or federal law or regulation, (including without limitation, any Environmental Law), or are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants", "pollutants", or words of similar import under any applicable local, state or federal law or under the regulations adopted, orders issued, or publications promulgated

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pursuant thereto, including, but not limited to: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; (ii) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801, et seq.; (iii) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901, et seq.; and (iv) regulations adopted and publications promulgated pursuant to the aforesaid laws; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (c) underground storage tanks; and (d) any other Regulated Substances, chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or which may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of any adjoining property.

"Indemnified Parties" means Lessor, any Lessor's Lenders and their members, managers, officers, directors, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns, including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of the assets and business of Lessor or any Lessor's Lenders, as applicable.

"Initial Term" has the meaning set forth in Section 3.

"Insolvency Event" means (a) Lessee's (i) failure to generally pay its debts as such debts become due; (ii) admitting in writing its inability to pay its debts generally; or (iii) making a general assignment for the benefit of creditors; (b) any proceeding being instituted by or against Lessee (i) seeking to adjudicate it a bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property, and in the case of any such proceeding instituted against Lessee, either such proceeding shall remain undismissed for a period of one hundred twenty (120) days or any of the actions sought in such proceeding shall occur; or (c) Lessee taking any corporate action to authorize any of the actions set forth above in this definition.

"Law(s)" means any constitution, statute, rule of law, code, ordinance, order, judgment, decree, injunction, rule, regulation, policy, requirement or administrative or judicial determination, even if unforeseen or extraordinary, of every duly constituted Governmental Authority, court or agency, now or hereafter enacted or in effect.

"Lease Term" shall have the meaning described in Section 3.

"Legal Requirements" means the requirements of all present and future Laws (including without limitation, Environmental Laws and Laws relating to accessibility to, usability by, and discrimination against, disabled individuals), all judicial and administrative interpretations thereof, including any judicial order, consent, decree or judgment, and all covenants, restrictions and conditions now or hereafter of record which may be applicable to Lessee or to the Property, or to the use, manner of use, occupancy, possession, operation, maintenance, alteration, repair or

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restoration of to the Property, even if compliance therewith necessitates structural changes or improvements or results in interference with the use or enjoyment of the Property.

"Lessor's Lender" means any lender of Lessor that has a lien on the Property, including any lenders named in any Deed of Trust.

"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, Costs, diminutions in value, fines, penalties, interest, charges, fees, judgments, awards, amounts paid in settlement and damages of whatever kind or nature, inclusive of bodily injury and property damage to third parties (including, without limitation, attorneys' fees and other Costs of defense).

"Monetary Obligations" means all Rental and all other sums payable or reimbursable by Lessee under this Lease to Lessor, to any third party on behalf of Lessor, or to any Indemnified Party.

"Notices" has the meaning set forth in Section 24.

"Permitted Amounts" shall mean, with respect to any given level of Hazardous Materials or Regulated Substances, that level or quantity of Hazardous Materials or Regulated Substances in any form or combination of forms which does not constitute a violation of any Environmental Laws and is customarily employed in, or associated with, similar businesses located in the states where the Property is located.

"Permitted Encumbrances" shall mean those covenants, restrictions, reservations, liens, conditions, encroachments, easements, survey exceptions, parties in possession and other matters of title that affect the Property as of the date of Lessor's acquisition thereof and those items which hereafter affect title as permitted under this Lease, including but not limited to those identified in the owner's policy of title insurance issued to Lessor by First American Title Insurance Company or an agent thereof in conjunction with Lessor's acquisition of the Property.

"Permitted Facility" means a gas station with convenience store (and restaurant and postal unit operations within a convenience store), and uses incidental or related thereto including but not limited to a car wash, quick lube/oil change facility, the operation of gaming devices within the convenience store and offices for Lessee's operations, together with uses that are complementary to or extensions of Lessee's gas station and convenience store operations (e.g., quick-service restaurants, deli and sandwich shops, coffee shops, juice shops, postal contract units and/or UPS/Federal Express services) when such uses are not in violation of Legal Requirements or the Permitted Encumbrances.

"Permitted Sublease" has the meaning set forth in Section 23.

"Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

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"Property" means, that parcel or parcels of real estate located at the address set forth in Exhibit B and legally described on Exhibit B attached hereto (which parcels may be fee estates or easement estates), together with all rights, privileges, and appurtenances associated therewith, all buildings, fixtures and other improvements now or hereafter located on such parcels of real estate (whether or not affixed to such real estate).

"Regulated Substances" means "petroleum" and "petroleum-based substances" or any similar terms described or defined in any of the Environmental Laws and any applicable federal, state, county or local laws applicable to or regulating USTs.

"Release" means any presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials, Regulated Substances or USTs.

"Remediation" means any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials, Regulated Substances or USTs, any actions to prevent, cure or mitigate any Release, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials, Regulated Substances or USTs.

"Rental" means, collectively, the Base Annual Rental and the Additional Rental.

"Rent Adjustment" has the meaning set forth in Section 4.B.

"Successor Lessor" has the meaning set forth in Section 21.

"Taking" means (a) any taking or damaging of all or a portion of the Property (i) in or by condemnation or other eminent domain proceedings pursuant to any Law, general or special, or (ii) by reason of any agreement with any condemnor in settlement of or under threat of any such condemnation or other eminent domain proceeding, or (iii) by any other means, or (b) any de facto condemnation that constitutes a compensable taking under applicable law. The Taking shall be considered to have taken place as of the later of the date actual physical possession is taken by the condemnor, or the date on which the right to compensation and damages accrues under the law applicable to the Property.

"Threatened Release" means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding any Property which may result from such Release.

"USTs" means any one or combination of tanks and associated product piping systems used in connection with storage, dispensing and general use of Regulated Substances.

"WGI" means Winner's Gaming, Inc.

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"WGI Agreement" means any and all agreements of Lessee with WGI pursuant to which WGI currently operates gaming machines or devices and related equipment (or the technological evolution thereof) on the Property and any Substitute WGI Agreement (as defined in Section 12.F).

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EXHIBIT B

ADDRESS AND LEGAL DESCRIPTION OF PROPERTY

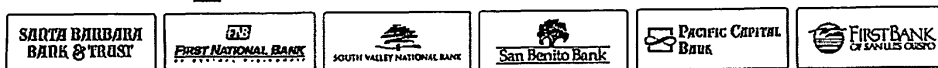
PROPERTY ADDRESS:

PROPERTY LEGAL DESCRIPTION:

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EXHIBIT 11

EXHIBIT 11

 **The Network of Preferred Community BanksSM**


Loan No. 100798974

FIVE YEAR ADJUSTABLE TERM NOTE**July 18, 2006****\$2,100,000.00**

For value received, the undersigned **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**, a California trust, with an address of **41 Peralta Avenue, Los Gatos, California 95030** (collectively, the "Borrower"), jointly and severally, promise to pay to the order of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (together with its successors and assigns, the "Bank"), the principal amount of **Two Million One Hundred Thousand Dollars and Zero Cents (\$2,100,000.00)** on or before **July 18, 2016** (the "Maturity Date"), as set forth below, together with interest from the date hereof on the unpaid principal balance from time to time outstanding until paid in full. The Borrower shall pay consecutive monthly installments of principal and interest, as follows: **\$13,971.35** on **August 18, 2006**, and the same amount (except the last installment which shall be the unpaid balance) on the 18th day of each month thereafter. The aggregate principal balance outstanding shall initially bear interest thereon at a per annum rate equal to **7.00%**. The interest rate on the aggregate principal balance shall change on **July 18, 2011** and on that day every sixtieth month thereafter (each a "Change Date") to a fixed rate equal to **Two and One-Half Percent (2.50%)** above the Treasury Index (as hereinafter defined) on each such Change Date. On each Change Date each monthly installment due and payable until the next Change Date shall be recalculated (increased or reduced) to reflect the adjusted interest rate, the outstanding principal balance at such time and the remaining term of the **360-month** amortization period commencing on the date of this Note in accordance with the Bank's calculation in the Bank's sole discretion.

Notwithstanding anything to the contrary in this Note, the interest rate on this Note is limited by a floor as follows: the minimum interest rate (i.e. floor) is **5.25%**.

Treasury Index means the weekly average yield on United States Treasury securities, adjusted to a constant maturity equal to the Applicable Treasury Rate Period (as hereinafter defined), or, in the event the Treasury Index is no longer available, the base, reference or other rate then designated by the Bank, in its sole discretion, for general commercial loan reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, established from time to time, which serves as the basis upon which effective interest rates are calculated for loans making reference thereto. The Applicable Treasury Rate Period is 5 years.

Principal and interest shall be payable at the Bank's main office or at such other place as the Bank may designate in writing in immediately available funds in lawful money of the United States of America without set-off, deduction or counterclaim. Interest shall be calculated on the basis of actual number of days elapsed in a 360-day year.

At the option of the Bank, this Note shall become immediately due and payable without notice or demand upon the occurrence at any time of any of the following events of default (each, an "Event of Default"): (1) default of any liability, obligation or undertaking of the Borrower or any guarantor hereof to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor hereof under any other loan document delivered by the Borrower or any guarantor, or in connection with the loan evidenced by this Note or any other agreement by the Borrower or any guarantor with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default; (2) failure of the Borrower or any guarantor hereof to maintain aggregate collateral security value satisfactory to the

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Bank continuing for 30 days; (3) default of any material liability, obligation or undertaking of the Borrower or any guarantor hereof to any other party continuing for 30 days; (4) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor hereof in connection with the loan evidenced by this Note or in any supporting financial statement of the Borrower or any guarantor hereof shall be determined by the Bank to have been false in any material respect when made; (5) if the Borrower or any guarantor hereof is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property; (6) the death of the Borrower or any guarantor hereof and, if the Borrower or any guarantor hereof is a partnership or limited liability company, the death of any partner or member; (7) the institution by or against the Borrower or any guarantor hereof of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor hereof is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor hereof of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor hereof of a trust mortgage for the benefit of creditors; (8) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor hereof; (9) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor hereof, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution; (10) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor hereof; (11) the termination or revocation of any guaranty hereof; or (12) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor hereof, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor hereof to the Bank has been or may be impaired.

Any payments received by the Bank on account of this Note shall, at the Bank's option, be applied first, to accrued and unpaid interest; second, to the unpaid principal balance hereof; third to any costs, expenses or charges then owed to the Bank by the Borrower; and the balance to escrows, if any. Notwithstanding the foregoing, any payments received after the occurrence and during the continuance of an Event of Default shall be applied in such manner as the Bank may determine. The Borrower hereby authorizes the Bank to charge any deposit account which the Borrower may maintain with the Bank for any payment required hereunder without prior notice to the Borrower.

If pursuant to the terms of this Note, the Borrower is at any time obligated to pay interest on the principal balance at a rate in excess of the maximum interest rate permitted by applicable law for the loan evidenced by this Note, the applicable interest rate shall be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. More specifically, if from any circumstances whatsoever, fulfillment of any provision of this Note or any other loan document excuted and delivered in connection with this Note, at the time performance of such provision becomes due, would exceed the limit on interest then permitted by any applicable usury statute or any other applicable law, the Bank may, at its option (a) reduce the obligations to be fulfilled to such limit on interest, or (b) apply the amount in excess of such limit on interest to the reduction of the outstanding principal balance of the obligations, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Bank had agreed to accept such extra payments(s) as a premium-free prepayment, so that in no event shall any exaction be possible under this Note or any other loan document that is in excess of the applicable limit on interest. It is the intention of Borrower and Bank that the total liability for payments in the nature of interest shall not exceed the limits imposed by any applicable state or federal interest rate laws. The provisions of this paragraph shall control every other provision of this Note, and any provision of any other loan document in conflict with this paragraph.

The Borrower represents to the Bank that the proceeds of this Note will not be used for personal, family or household purposes or for the purpose of purchasing or carrying margin stock or margin securities within the meaning of Regulations U and X of the Board of Governors of the

Federal Reserve System, 12 C.F.R. Parts 221 and 224.

The Borrower and each guarantor hereof grant to the Bank a continuing lien on and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and each guarantor hereof and any cash, securities, instruments or other property of the Borrower and each guarantor hereof in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower and any guarantor hereof to the Bank or any Bank Affiliate and such deposits and other sums may be applied or set off against such liabilities and obligations of the Borrower or any guarantor hereof to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

No delay or omission on the part of the Bank in exercising any right hereunder shall operate as a waiver of such right or of any other right of the Bank, nor shall any delay, omission or waiver on any one occasion be deemed a bar to or waiver of the same or any other right on any future occasion. The Borrower and every guarantor of this Note, regardless of the time, order or place of signing, waives presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of every kind in connection with the delivery, acceptance, performance or enforcement of this Note and assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of collateral, and to the addition or release of any other party or person primarily or secondarily liable and waives all recourse to suretyship and guarantor defenses generally, including any defense based on impairment of collateral.

The Borrower and each guarantor of this Note shall indemnify, defend and hold the Bank and the Bank Affiliates and their directors, officers, employees, agents and attorneys harmless against any claim brought or threatened against the Bank by the Borrower, by any guarantor, or by any other person (as well as from attorneys' reasonable fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower or any guarantor hereof (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's selection, but at the expense of the Borrower and any guarantor), except for any claim arising out of the gross negligence or willful misconduct of the Bank.

The Borrower and each guarantor of this Note agree to pay, upon demand, costs of collection of all amounts under this Note including, without limitation, principal and interest, or in connection with the enforcement of, or realization on, any security for this Note, including, without limitation, to the extent permitted by applicable law, reasonable attorneys' fees and expenses. Upon the occurrence and during the continuance of an Event of Default, interest shall accrue at a rate per annum equal to the aggregate of 3.0% plus the rate provided for herein. If any payment due under this Note is unpaid for 15 days or more, the Borrower shall pay, in addition to any other sums due under this Note (and without limiting the Bank's other remedies on account thereof), a late charge equal to the greater of \$10.00 or 10.0% of such unpaid amount.

This Note shall be binding upon the Borrower and each guarantor hereof and upon their respective heirs, successors, assigns and legal representatives, and shall inure to the benefit of the Bank and its successors, endorsees and assigns.

The Borrower and each guarantor, if any, hereby waive presentment, demand, protest, notice of dishonor, notice of protest and all other notices and demands of every kind, and all suretyship defenses of any kind, in each case that would otherwise be available in connection with this Note including, without limitation, any right (whether now or hereafter existing) to require the holder hereof to first proceed against the Borrower, or any guarantor, for any security.

The Borrower and each guarantor, if any, further waive to the extent permitted by law any and all rights and defenses that each may have because the debt evidenced by this Note is secured by real property: this means, among other things, that: (1) the Bank may collect from the Borrower and any guarantor, without first foreclosing on any real or personal property, collateral pledged by the Borrower and any guarantor; and (2) if the Bank forecloses on any real property collateral pledged by the Borrower or any guarantor, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) the Bank may collect from the Borrower even if the Bank, by foreclosing on the real property collateral, has destroyed any right the Borrower may have to collect from the underlying debtor. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Borrower may have because the underlying debt is secured by real property. These rights and defenses being waived by the Borrower include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the foregoing or any other provision hereof, the Borrower further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to the Borrower under California Civil Code Sections 2822, 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any such section.

In the event that at any time, a surety is liable upon only a portion of the Borrower's or any guarantor's obligations under this Note and the Borrower provides partial satisfaction of any such obligation(s), each of the Borrower and each guarantor hereof, if any, hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of this Note, be made by the Bank rather than Borrower.

The liabilities of the Borrower and any guarantor of this Note are joint and several; provided, however, the release by the Bank of the Borrower or any one or more guarantors shall not release any other person obligated on account of this Note. Any and all present and future debts of the Borrower to any guarantor of this Note are subordinated to the full payment and performance of all present and future debts and obligations of the Borrower to the Bank. Each reference in this Note to the Borrower, and any guarantor, is to such person individually and also to all such persons jointly. No person obligated on account of this Note may seek contribution from any other person also obligated, unless and until all liabilities, obligations and indebtedness to the Bank of the person from whom contribution is sought have been satisfied in full. The release or compromise by the Bank of any collateral shall not release any person obligated on account of this Note.

The Borrower and each guarantor hereof each authorizes the Bank to complete this Note if delivered incomplete in any respect. A photographic or other reproduction of this Note may be made by the Bank, and any such reproduction shall be admissible in evidence with the same effect as the original itself in any judicial or administrative proceeding, whether or not the original is in existence.

The Borrower will from time to time execute and deliver to the Bank such documents, and take or cause to be taken, all such other further action, as the Bank may request in order to effect and confirm or vest more securely in the Bank all rights contemplated by this Note or any other loan documents related thereto (including, without limitation, to correct clerical errors) or to vest more fully in or assure to the Bank the security interest in any collateral securing this Note or to comply with applicable statute or law.

This Note is delivered to the Bank at one of its offices in California and shall be governed by the laws of the State of California.

Any notices under or pursuant to this Note shall be deemed duly received and effective if delivered in hand to any officer of agent of the Borrower or the Bank, or if mailed by registered or certified mail, return receipt requested, addressed to the Borrower or the Bank at the address set forth in this Note or as any party may from time to time designate by written notice to the other party.

The Borrower and each guarantor of this Note acknowledges that the Bank is entitled to a minimum interest charge of \$75.00.

The Borrower and each guarantor of this Note each irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Note. Each of the Borrower and each guarantor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each of the Borrower and each guarantor hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's or guarantor's address shown below or as notified to the Bank and (ii) by serving the same upon the Borrower(s) or guarantor(s) in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Borrower or such guarantor.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND EACH GUARANTOR AND THE BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVES ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS NOTE, ANY OF THE OBLIGATIONS OF THE BORROWER AND EACH GUARANTOR TO THE BANK, AND ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREES NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER, EACH GUARANTOR AND THE BANK EACH CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.


IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

Due on Sale or Transfer. Bank may, at it option, declare immediately due and payable all sums secured by one or more deed of trusts provided by Borrower to secure this Note upon the sale or transfer, without Bank's prior written consent, of all or any part of the real property covered by any such deed of trust, or any interest in such real property. A "sale or transfer" means the conveyance of the such real property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, option contract, or by sale, assignment or transfer of any beneficial interest in or to any land trust holding title to such real property, or by any other method of conveyance of a real property interest. If Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more that 20% of the voting stock, partnership interests or limited liability company interest, as the case may be, of Borrower. This option shall not be exercised by Bank if such exercise is prohibited by applicable law.

Executed as of **July 18, 2006**.

Borrower:

Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

By: 
Edward C. Wooley, Trustee

By: 
Judith A. Wooley, Trustee

41 Peralta Avenue
Los Gatos, California
95030


The Network of Preferred Community Banks™


Loan No. 100798974

LOAN AGREEMENT

This LOAN AGREEMENT (this "Agreement") entered into as of **July 18, 2006**, between **Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000**, a California trust, with an address of **41 Pertalta Avenue, Los Gatos, California 95030** (the "Borrower") and Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Bank").

FOR VALUE RECEIVED, and in consideration of the granting by the Bank of financial accommodations to or for the benefit of the Borrower, including without limitation respecting the Obligations (as hereinafter defined), the Borrower represents and agrees with the Bank, as of the date hereof and as of the date of each loan, credit and/or other financial accommodation, as follows:

1. THE LOAN

1.1 Loan. Subject to the terms and conditions of this Agreement, the Bank hereby agrees to make a loan to the Borrower in the original principal amount of **\$2,100,000.00** (the "Loan"). The Loan shall be evidenced by that certain Five Year Adjustable Term Note, of even date herewith (the "Note") by Borrower in favor of the Bank in the original principal amount of **\$2,100,000.00**. This Agreement, the Note, and any and all other documents, amendments or renewals executed and delivered in connection with any of the foregoing are collectively hereinafter referred to as the "Loan Documents".

1.2 Definitions. The following definitions shall apply:

- (a) "Code" shall mean the Uniform Commercial Code of California as amended from time to time.
- (b) "Obligation(s)" shall mean, without limitation, all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, owing by the Borrower to the Bank at any time, of each and every kind, nature and description, whether arising under this Agreement or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Borrower to the Bank; or are due indirectly by the Borrower to the Bank as endorser, guarantor or other surety, or as borrower of obligations due third persons which have been endorsed or assigned to the Bank, or otherwise), absolute or contingent, due or to become due, now existing or hereafter arising or contracted, including, without limitation, payment when due of all amounts outstanding respecting any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Borrower or due from the Borrower to the Bank from time to time and all costs and expenses referred to in this Agreement.
- (c) "Person" or "party" shall mean individuals, partnerships, corporations, limited liability companies and all other entities.

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Exhibit 11-7

All words and terms used in this Agreement other than those specifically defined herein shall have the meanings accorded to them in the Code.

2. REPRESENTATIONS AND WARRANTIES

2.1 Records. All books and records of the Borrower's business, including but not limited to its books of account, are accurate and up to date and will be so maintained.

2.2 Title to Properties; Absence of Liens. Borrower has good and clear record and marketable title to all of its properties and assets, and all of its properties and assets are free and clear of all mortgages, liens, pledges, charges, encumbrances and setoffs, except those mortgages, deeds of trust, leases of personal property and security interests previously specifically consented to in writing by the Bank.

2.3 Places of Business. Borrower shall, during the term of this Agreement, keep the Bank currently and accurately informed in writing of each of Borrower's place of residence and Borrower's places of business, and shall not open or close, move or change any existing or new place of business without giving the Bank at least thirty (30) days prior written notice thereof.

2.4 Valid Obligations. The Loan Documents represent legal, valid and binding obligations of Borrower and are fully enforceable according to their terms, except as limited by laws relating to the enforcement of creditors' rights.

2.5 Conflicts. There is no provision in any indenture, contract or agreement to which Borrower is a party which prohibits, limits or restricts the execution, delivery or performance of the Loan Documents.

2.6 Governmental Approvals. The execution, delivery and performance of the Loan Documents does not require any approval of or filing with any governmental agency or authority.

2.7 Litigation. There are no actions, suits or proceedings pending or to the knowledge of Borrower threatened against Borrower which might materially adversely affect the ability of Borrower to conduct its business or to pay or perform the Obligations.

2.8 Taxes. Borrower has filed all Federal, state and other tax returns required to be filed (except for such returns for which current and valid extensions have been filed), and all taxes, assessments and other governmental charges due from the Borrower have been fully paid. The Borrower has established on its books reserves adequate for the payment of all Federal, state and other tax liabilities (if any).

2.9 Use of Proceeds. No portion of any loan is to be used for (i) the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221 and 224 or (ii) primarily personal, family or household purposes.

2.10 Environmental. Except as heretofore disclosed to Bank in writing, as of the date hereof neither the Borrower nor any of Borrower's agents, employees or independent contractors (1) have caused or are aware of a release or threat of release of Hazardous Materials (as defined herein) on any of the premises or personal property owned or controlled by Borrower, or any abutting property, which could give rise to liability under any Environmental Law (as defined herein) or any other Federal, state or local law, rule or regulation; (2) have arranged for the transport of or transported any Hazardous Materials in a manner as to violate, or result in potential liabilities under, any Environmental Law; (3) have received any notice, order or demand from the Environmental Protection Agency or any other Federal, state or local agency under any Environmental Law; (4) have incurred any liability under any Environmental Law in connection with the mismanagement, improper disposal or release of Hazardous Materials; or (5) are aware of any inspection or investigation of any of the premises or personal property owned or controlled

by Borrower or abutting property by any Federal, state or local agency for possible violations of any Environmental Law.

To the best of Borrower's knowledge, no prior owner or tenant of any premises or property presently controlled or owned by Borrower committed or omitted any act which caused the release of Hazardous Materials on such premises or property which could give rise to a lien thereon by any Federal, state or local government. No notice or statement of claim or lien affecting any property or premises owned or controlled by Borrower has been recorded or filed in any public records by any Federal, state or local government for costs, penalties, fines or other charges as to such property.

Borrower agrees to indemnify and hold Bank harmless from all liability, loss, cost, damage and expense, including attorney fees and costs of litigation, arising from any and all of its violations of any Environmental Law (including those arising from any lien by any Federal, state or local government arising from the presence of Hazardous Materials) or from the presence of Hazardous Materials located on or emanating from any of the premises owned or controlled by the Borrower. Borrower further agrees to reimburse Bank upon demand for any costs incurred by Bank in connection with the foregoing. Borrower agrees that its obligations hereunder shall be continuous and shall survive the repayment of all debts to Bank.

The term "Hazardous Materials" includes but is not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Law or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

The term "Environmental Law" means any present and future Federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials, relating to liability for or costs of remediation or prevention of releases of Hazardous Materials or relating to liability for or costs of other actual or threatened danger to human health or the environment. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act.

3. AFFIRMATIVE COVENANTS

3.1 Payments and Performance. Borrower will duly and punctually pay all Obligations becoming due to the Bank and will duly and punctually perform all Obligations on its part to be done or performed under this Agreement.

3.2 Books and Records; Inspection. Borrower will at all times keep proper books of account in which full, true and correct entries will be made of its transactions in accordance with generally accepted accounting principles, consistently applied and which are, in the opinion of a Certified Public Accountant acceptable to Bank, adequate to determine fairly the financial condition and the results of operations of Borrower. Borrower will at all reasonable times make its books and records available in its offices for inspection, examination and duplication by the Bank and the Bank's representatives and will permit inspection of all of its properties by the Bank and the Bank's representatives. Borrower will from time to

time furnish the Bank with such information and statements as the Bank may request in its sole discretion with respect to the Obligations.

3.3 Financial Statements. Borrower will furnish to Bank:

- (a) as soon as available to Borrower, but in any event within 30 days after the end of the prior calendar year in any year and upon request therefor, with personal financial statements addressed to the Bank in form satisfactory to the Bank;
- (b) Borrower's filed Federal tax returns, including all schedules thereto and K-1's or copy of extension, for the prior year within 30 days after the date that Borrower's tax returns are actually filed each such year or by such other date approved by the Bank;
- (c) from time to time, such financial data and information about Borrower as Bank may reasonably request; and
- (d) any financial data and information about any guarantors of the Obligations as Bank may reasonably request.

3.4 Conduct of Business. The Borrower will comply with all laws and regulations of the United States and of any state or states thereof and of any political subdivision thereof, and of any governmental authority which may be applicable to it or to its business; provided that this covenant shall not apply to any tax, assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.5 Taxes. Borrower will promptly pay all real and personal property taxes, assessments and charges and all franchise, income, unemployment, old age benefits, withholding, sales and other taxes assessed against it or payable by it before delinquent; provided that this covenant shall not apply to any tax assessment or charge which is being contested in good faith and with respect to which reserves have been established and are being maintained.

3.6 Maintenance. Borrower will keep and maintain its properties, if any, in good repair, working order and condition. The Borrower will immediately notify the Bank of any loss or damage to or any occurrence which would adversely affect the value of any such property.

3.7 Insurance. Borrower will maintain in force property and casualty insurance on any property of the Borrower, if any, against risks customarily insured against by companies engaged in businesses similar to that of the Borrower containing such terms and written by such companies as may be satisfactory to the Bank, such insurance to be payable to the Bank as its interest may appear in the event of loss and to name the Bank as insured pursuant to a standard loss payee clause; no loss shall be adjusted thereunder without the Bank's approval; and all such policies shall provide that they may not be canceled without first giving at least Thirty (30) days written notice of cancellation to the Bank. In the event that the Borrower fails to provide evidence of such insurance, the Bank may, at its option, secure such insurance and charge the cost thereof to the Borrower. At the option of the Bank, all insurance proceeds received from any loss or damage to any property shall be applied either to the replacement or repair thereof or as a payment on account of the Obligations. From and after the occurrence of an Event of Default, the Bank is authorized to cancel any insurance maintained hereunder and apply any returned or unearned premiums, all of which are hereby assigned to the Bank, as a payment on account of the Obligations.

3.8 Notification of Default. Upon becoming aware of the existence of any condition or event which constitutes an Event of Default, or any condition or event which would upon notice or lapse of time, or both, constitute an Event of Default, Borrower shall promptly give Bank written notice thereof specifying the nature and duration thereof and the action being or proposed to be taken with respect thereto.

3.9 Notification of Material Litigation. Borrower will promptly notify the Bank in writing of any litigation or of any investigative proceedings of a governmental agency or authority commenced or threatened against it which would or might be materially adverse to the financial condition of Borrower or any guarantor of the Obligations.

3.10 Pension Plans. With respect to any pension or benefit plan maintained by Borrower, or to which Borrower contributes ("Plan"), the benefits under which are guaranteed, in whole or in part, by the Pension Benefit Guaranty Corporation created by the Employee Retirement Income Security Act of 1974, P.L. 93-406, as amended ("ERISA") or any governmental authority succeeding to any or all of the functions of the Pension Benefit Guaranty Corporation ("Pension Benefit Guaranty Corporation"), Borrower will (a) fund each Plan as required by the provisions of Section 412 of the Internal Revenue Code of 1986, as amended; (b) cause each Plan to pay all benefits when due; (c) furnish Bank (i) promptly with a copy of any notice of each Plan's termination sent to the Pension Benefit Guaranty Corporation (ii) no later than the date of submission to the Department of Labor or to the Internal Revenue Service, as the case may be, a copy of any request for waiver from the funding standards or extension of the amortization periods required by Section 412 of the Internal Revenue Code of 1986, as amended and (iii) notice of any Reportable Event as such term is defined in ERISA; and (d) subscribe to any contingent liability insurance provided by the Pension Benefit Guaranty Corporation to protect against employer liability upon termination of a guaranteed pension plan, if available to Borrower.

4. NEGATIVE COVENANTS

4.1 Limitations on Indebtedness. Borrower shall not issue any evidence of indebtedness or create, assume, guarantee, become contingently liable for, or suffer to exist indebtedness in addition to indebtedness to the Bank, except indebtedness or liabilities of Borrower, other than for money borrowed, incurred or arising in the ordinary course of business.

4.2 Loans or Advances. Borrower shall not make any loans or advances to any individual, firm or corporation, including without limitation its employees; provided, however, that Borrower may make advances to its employees, with respect to expenses incurred or to be incurred by such employees in the ordinary course of business which expenses are reimbursable by Borrower; and provided further, however, that Borrower may extend credit in the ordinary course of business in accordance with customary trade practices.

4.3 Capital Expenditures. The Borrower shall not, directly or indirectly, make or commit to make capital expenditures by lease, purchase, or otherwise, except in the ordinary and usual course of business for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business.

4.4 Sale of Assets. Borrower shall not sell, lease or otherwise dispose of any of its assets, except in the ordinary and usual course of business and except for the purpose of replacing machinery, equipment or other personal property which, as a consequence of wear, duplication or obsolescence, is no longer used or necessary in the Borrower's business, provided that fair consideration is received therefor; provided, however, in no event shall the Borrower sell, lease or otherwise dispose of any equipment purchased with the proceeds of any loans made by the Bank.

4.5 Restriction on Liens. Borrower shall not grant any security interest in, or mortgage of, any of its properties or assets. Borrower shall not agree with any person other than the Bank to not grant any security interest in, or mortgage of, any of its properties or assets.

4.6 Other Business. Borrower shall not engage in any business other than the business in which it is currently engaged or a business reasonably allied thereto.

4.7 Change of Name. Borrower shall not change its legal name or his or her primary residence,

without giving the Bank at least 30 days prior written notice thereof.

5. DEFAULT

5.1 Default. "Event of Default" shall mean the occurrence of one or more of any of the following events:

- (a) default of any liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to the Bank, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Borrower or any guarantor of the Obligations under any other Loan Document or any other agreement with the Bank continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;
- (b) failure of the Borrower or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Bank continuing for 30 days;
- (c) default of any material liability, obligation or undertaking of the Borrower or any guarantor of the Obligations to any other party continuing for 30 days;
- (d) if any statement, representation or warranty heretofore, now or hereafter made by the Borrower or any guarantor of the Obligations in connection with this Agreement or in any supporting financial statement of the Borrower or any guarantor of the Obligations shall be determined by the Bank to have been false in any material respect when made;
- (e) if the Borrower or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;
- (f) the death of the Borrower or any guarantor of the Obligations and, if the Borrower or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;
- (g) the institution by or against the Borrower or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Borrower or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Borrower or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Borrower or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;
- (h) the service upon the Bank of a writ in which the Bank is named as trustee of the Borrower or any guarantor of the Obligations;
- (i) a judgement or judgements for the payment of money shall be rendered against the Borrower or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;
- (j) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Borrower or any guarantor of the Obligations;
- (k) Borrower shall fail or neglect to perform, keep or observe any financial covenant set forth in this Agreement;

- (l) Borrower shall fail or neglect to perform, keep or observe any financial reporting requirement set forth in this Agreement and the breach is not cured to Bank's satisfaction within 30 days;
- (m) the termination or revocation of any guaranty of the Obligations; or
- (n) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Borrower or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Bank, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Borrower or any guarantor of the Obligations to the Bank has been or may be impaired.

5.2 Acceleration. If an Event of Default shall occur, at the election of the Bank, all Obligations shall become immediately due and payable without notice or demand, except with respect to Obligations payable on DEMAND, which shall be due and payable on DEMAND, whether or not an Event of Default has occurred.

5.3 Nonexclusive Remedies. All of the Bank's rights and remedies not only under the provisions of this Agreement but also under any other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Bank at such time or times and in such order of preference as the Bank in its sole discretion may determine.

6. MISCELLANEOUS

6.1 Waivers. The Borrower waives notice of intent to accelerate, notice of acceleration, notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations, and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof.

6.2 Severability. If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

6.3 Deposit Collateral. The Borrower hereby grants to the Bank a continuing lien and security interest in any and all deposits or other sums at any time credited by or due from the Bank (or any of its banking or lending affiliates, or any bank acting as a participant under any loan arrangement between the Bank and the Borrower, or any third party acting on the Bank's behalf (collectively, the "Bank Affiliates")) to the Borrower and any cash, securities, instruments or other property of the Borrower in the possession of the Bank or any Bank Affiliate, whether for safekeeping or otherwise, or in transit to or from the Bank or any Bank Affiliate (regardless of the reason the Bank or Bank Affiliate had received the same or whether the Bank or Bank Affiliate has conditionally released the same) as security for the full and punctual payment and performance of all of the liabilities and obligations of the Borrower to the Bank or any Bank Affiliate and such deposits and other sums may be applied against such liabilities and obligations of the Borrower to the Bank or any Bank Affiliate at any time, whether or not such are then due, whether or not demand has been made and whether or not other collateral is then available to the Bank or any Bank Affiliate.

6.4 Indemnification. The Borrower shall indemnify, defend and hold the Bank harmless of and from any claim brought or threatened against the Bank by the Borrower, any guarantor or endorser of the Obligations, or any other person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of the Bank's relationship with the Borrower, or any guarantor or endorser of the Obligations (each of which may be defended, compromised, settled or pursued by the Bank with counsel of the Bank's election, but at the expense of the Borrower), except for any claim arising out of the gross negligence or willful misconduct of the Bank. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Bank in favor of the Borrower.

6.5 Costs and Expenses. The Borrower shall pay to the Bank on demand any and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements, court costs, litigation and other expenses) incurred or paid by the Bank in establishing, maintaining, protecting or enforcing any of the Bank's rights or the Obligations, including, without limitation, any and all such costs and expenses incurred or paid by the Bank in defending the Bank's security interest in, title or right to any collateral or in collecting or attempting to collect or enforcing or attempting to enforce payment of any Obligation.

6.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute but one agreement.

6.7 Complete Agreement. This Agreement and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

6.8 Binding Effect of Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Bank shall be entitled to rely thereon) until terminated as to future transactions by written notice from either party to the other party of the termination hereof; provided that any such termination shall not release or affect any Obligations incurred or rights accrued hereunder prior to the effective date of such notice (as hereinafter defined) of such termination. The Bank may transfer and assign this Agreement and deliver it to the assignee, who shall thereupon have all of the rights of the Bank; and the Bank shall then be relieved and discharged of any responsibility or liability with respect to this Agreement. The Borrower may not assign or transfer any of its rights or obligations under this Agreement. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement or the other Loan Documents.

6.9 Further Assurances. Borrower will from time to time execute and deliver to Bank such documents, and take or cause to be taken, all such other or further action, as Bank may request in order to effect and confirm or vest more securely in Bank all rights contemplated by this Agreement and the other Loan Documents (including, without limitation, to correct clerical errors) or to comply with applicable statute or law.

6.10 Amendments and Waivers. This Agreement may be amended and Borrower may take any action herein prohibited, or omit to perform any act herein required to be performed by it, if Borrower shall obtain the Bank's prior written consent to each such amendment, action or omission to act. No course of dealing and no delay or omission on the part of Bank in exercising any right hereunder shall operate as a waiver of such right or any other right and waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy of Bank on any future occasion.

6.11 Terms of Agreement. This Agreement shall continue in full force and effect so long as any Obligations or obligation of Borrower to Bank shall be outstanding, or the Bank shall have any obligation to extend any financial accommodation hereunder, and is supplementary to each and every other agreement between Borrower and Bank and shall not be so construed as to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower under any such agreement, nor shall any contemporaneous or subsequent agreement between Borrower and the Bank be construed to limit or otherwise derogate from any of the rights or remedies of Bank or any of the liabilities, obligations or undertakings of Borrower hereunder, unless such other agreement specifically refers to this Agreement and expressly so provides.

6.12 Notices. Any notice under or pursuant to this Agreement shall be a signed writing or other authenticated record (within the meaning of Article 9 of the Code). Any such notice shall be deemed duly

received and effective (i) if delivered in hand to, or received by, any officer or agent of the Borrower or the Bank, upon such delivery or receipt, or (ii) if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the Borrower or the Bank, two (2) business days after being so mailed. A party's proper address is that set forth for such party in this Agreement or such address as that party may from time to time hereafter designate by notice to the other party.

6.13 Governing Law. This Agreement has been executed or completed and/or is to be performed in California, and it and all transactions thereunder or pursuant thereto shall be governed as to interpretation, validity, effect, rights, duties and remedies of the parties thereunder and in all other respects by the laws of California.

6.14 Reproductions. This Agreement and all documents which have been or may be hereinafter furnished by Borrower to the Bank may be reproduced by the Bank by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

6.15 Jurisdiction and Venue. Borrower irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California, over any suit, action or proceeding arising out of or relating to this Agreement. Borrower irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Borrower hereby consents to any and all process which may be served in any such suit, action or proceeding, (i) by mailing a copy thereof by registered and certified mail, postage prepaid, return receipt requested, to the Borrower's address shown in this Agreement or as notified to the Bank and (ii) by serving the same upon the Borrower in any other manner otherwise permitted by law, and agrees that such service shall in every respect be deemed effective service upon Borrower.

6.16 Civil Code Section 2822. In the event that at any time, a surety is liable upon only a portion of Borrower's obligations under the Loan Documents and Borrower provides partial satisfaction of any such obligation(s), Borrower hereby waives any right it would otherwise have, under Section 2822 of the California Civil Code, to designate the portion of the obligations to be satisfied. The designation of the portion of the obligation to be satisfied shall, to the extent not expressly made by the terms of the Loan Documents, be made by the Bank rather than Borrower.

6.17 **JURY WAIVER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND BANK EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE, OR HAS NOT BEEN, WAIVED. THE BORROWER CERTIFIES THAT NEITHER THE BANK NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BANK WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

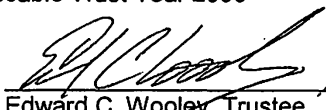
6.18 Arbitration. IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF

SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND JUDGEMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

Executed as of **July 18, 2006**.

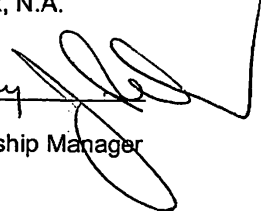
Borrower:

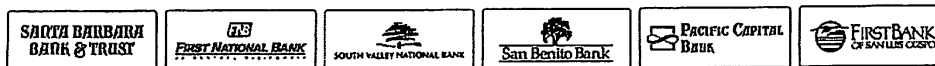
Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

By:  Trustee
Edward C. Wooley, Trustee

By:  Trustee
Judith A. Wooley, Trustee

Accepted: Pacific Capital Bank, N.A.

By: Melinda Cabral by 
Name: Melinda Cabral
Title: Vice President/Relationship Manager

 **The Network of Preferred Community Banks™**


Loan No. 100798974

DISBURSEMENT AUTHORIZATION**DATE:** July 18, 2006
BANK: Pacific Capital Bank, N.A.
 c/o Loan Services, PO Box 60654
 Santa Barbara, California
 93160-0654

BORROWER: Edward C. Wooley and Judith A.
 Wooley Intervivos Revocable Trust
 Year 2000
 41 Pertalta Avenue
 Los Gatos, California
 95030
LOAN: \$2,100,000.00 Term Loan (the "Loan")

The undersigned hereby authorizes and directs the Bank, in its discretion pursuant to the terms of the loan documents (the "Loan Documents") between the Bank and the undersigned respecting the Loan, to disburse \$2,100,000.00 of the loan proceeds available respecting the Loan as set forth below.

Disbursement	Amounts Paid by Customer at Closing	Amount Paid from Loan Proceeds
1. Facility Fee	\$	\$21,000.00
2. Appraisal Fee	\$	\$7,000.00
3. Appraisal Review	\$	\$500.00
4. Environmental Fee	\$	\$300.00
5. Title Policy	\$	\$250.00
6. Flood Fee	\$	\$10.00
7. Tax Service Fee	\$	\$279.00
8. Payable to LandAmerica Lawyers Title	\$	\$2,070,661.00
Total	\$ 0.00	\$ 2,100,000.00

The undersigned represents and warrants to the Bank that there has been no material adverse change in the undersigned's financial condition since the date of the latest financial statements delivered by the undersigned to the Bank. In addition, the undersigned affirms that the representations and warranties contained in the Loan Documents are true and correct as of the date hereof.

The balance of the loan proceeds of \$ 0.00 shall be held by the Bank pending further instruction from the undersigned pursuant to the terms of the Loan Documents.

By your signature below, you agree to the terms and acknowledge receipt of a copy of this Disbursement Authorization.

ECW000074

Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

By: 
Edward C. Wooley, Trustee

By: 
Judith A. Wooley, Trustee

EXHIBIT 12

EXHIBIT 12

COPY - has not been compared
with the Original Document - WCR

DL # 3415811

Conformed Copy

07/21/2006 10:49A Fee:55.00

RPTT 0.00

BK1

Requested By
LANDAMERICA FINANCIAL GROUP INC
Washoe County Recorder
Kathryn L. Burke - Recorder

ASSESSOR'S PARCEL NUMBER: 030-041-08

UPON RECORDATION RETURN TO:

Pacific Capital Bank, N.A.

c/o Loan Services, PO Box 60654

Santa Barbara, California 93160-0654

MAIL TAX STATEMENTS TO:

Edward C. Wooley
Judith A. Wooley
41 Pertalta Avenue
Los Gatos, CA 95030

DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT

06-48646

This DEED OF TRUST, FIXTURE FILING AND SECURITY AGREEMENT (this "Deed of Trust") entered into as of July 18, 2006, among Edward C. Wooley and Judith A. Wooley, Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (collectively and jointly and severally, the "Trustor"), LandAmerica Lawyers Title, with an address of 1850 North Central Avenue, Suite 300 Phoenix, AZ 85004 (the "Trustee") for the use and benefit of Pacific Capital Bank, N.A., a national banking association, doing business as South Valley National Bank, with an address of c/o Loan Services, PO Box 60654, Santa Barbara, California 93160-0654 (the "Beneficiary"), and the Beneficiary.

The real property which is the subject matter of this Deed of Trust has the following address(es):
1365 Baring Blvd., Sparks, Nevada 89434 (the "Address(es)").

This document serves as a fixture filing under Nevada Revised Statutes Section 104.9502.

1. DEED OF TRUST, OBLIGATIONS AND FUTURE ADVANCES

1.1 Deed of Trust. For valuable consideration paid and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Trustor hereby irrevocably and unconditionally mortgages, grants, bargains, transfers, sells, conveys, sets over and assigns to the Trustee and its successors and assigns, IN TRUST, for the benefit and security of the Beneficiary forever, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's right, title and interest in and to the "Property" described below, to secure the prompt payment and performance of the Obligations (as hereinafter defined), including without limitation, all amounts due and owing to the Beneficiary and all obligations respecting that certain Five Year Adjustable Term Note, dated July 18,

ECW000076

2006, by Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 in favor of the Beneficiary in the original principal amount of \$2,100,000.00 (the "Note"; and collectively, along with all other agreements, documents, certificates and instruments delivered in connection therewith, the "Loan Documents"), and any substitutions, modifications, extensions or amendments to any of the Loan Documents.

This Deed of Trust shall secure the principal amount of Obligations of up to \$2,100,000.00. The maximum amount of principal secured hereby may be increased or decreased by amendment to this Deed of Trust. This Deed of Trust shall nevertheless secure payment and performance of all Obligations including, without limitation, any other liabilities and future advances, direct or indirect, absolute or contingent, now existing or hereafter arising from the Trustor to the Beneficiary. Future advances hereunder are governed by Nevada Revised Statutes Sections 106.300 to 106.400, inclusive.

1.2 Security Interest in Property. As continuing security for the Obligations the Trustor hereby pledges, assigns and grants to the Beneficiary, and its successors and assigns, a security interest in any of the Property (as hereinafter defined) constituting personal property or fixtures. This Deed of Trust is and shall be deemed to be a security agreement, fixture filing and financing statement pursuant to the terms of the Uniform Commercial Code of Nevada (the "Uniform Commercial Code") as to any and all personal property and fixtures and as to all such property the Beneficiary shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to its rights hereunder. This Deed of Trust constitutes a financing statement filed as a fixture filing under Section 104.9502(c) of the Uniform Commercial Code covering any Property which now is or later may become a fixture.

1.3 Collateral Assignment of Leases and Rents. The Trustor hereby irrevocably and unconditionally assigns to the Beneficiary, and its successors and assigns, as collateral security for the Obligations all of the Trustor's rights and benefits under any and all Leases (as hereinafter defined) and any and all rents and other amounts now or hereafter owing with respect to the Leases or the use or occupancy of the Property. This collateral assignment shall be absolute and effective immediately, but the Trustor shall have a license, revocable by the Beneficiary, to continue to collect rents owing under the Leases until an Event of Default (as hereinafter defined) occurs and the Beneficiary exercises its rights and remedies to collect such rents as set forth herein.

1.4 Conditions to Grant. To have and to hold the above granted Property unto and to the use and benefit of the Trustee, IN TRUST, for the benefit and security of the Beneficiary, and to the Beneficiary, as the case may be, and their successors and assigns, forever; provided, however, the conveyances, grants and assignments contained in this Deed of Trust are upon the express condition that, if Trustor shall pay and perform the Obligations in full, including, without limitation, all principal, interest and premium thereon and other charges, if applicable, in accordance with the terms and conditions in the Loan Documents and this Deed of Trust, shall pay and perform all other Obligations as set forth in this Deed of Trust and shall abide by and comply with each and every covenant and condition set forth herein and in the Loan Documents, the conveyances, grants and assignments contained in this Deed of Trust shall cease, terminate and be void.

1.5 Property. The term "Property," as used in this Deed of Trust, shall mean that certain parcel of land and the fixtures, structures and improvements and all personal property constituting fixtures, as that term is defined in the Uniform Commercial Code, now or hereafter thereon located at the Address(es), as more particularly described in Exhibit A attached hereto, together with: (i) all rights now or hereafter existing, belonging, pertaining or appurtenant thereto; (ii) the following categories of assets as defined in the Uniform Commercial Code: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software), supporting obligations and any and all proceeds of any thereof, whether now owned or hereafter acquired, that are located on or used in connection with, or that arise in whole or in part out of the Trustor's use of or

business conducted on or respecting, the Property and any substitutions, replacements, accessions and proceeds of any of the foregoing; (iii) all judgements, awards of damages and settlements hereafter made as a result or in lieu of any Taking, as hereinafter defined; (iv) all of the rights and benefits of the Trustor under any present or future leases and agreements relating to the Property, including, without limitation, rents, issues and profits, or the use or occupancy thereof together with any extensions and renewals thereof, specifically excluding all duties or obligations of the Trustor of any kind arising thereunder (the "Leases"); and (v) all contracts, permits and licenses respecting the use, operation or maintenance of the Property.

1.6 **Obligations.** The term "Obligation(s)," as used in this Deed of Trust, shall mean without limitation all loans, advances, indebtedness, notes, liabilities, rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options and amounts, liquidated or unliquidated, now or hereafter owing by the Trustor to the Beneficiary at any time, of each and every kind, nature and description, whether arising under this Deed of Trust or otherwise, and whether secured or unsecured, direct or indirect (that is, whether the same are due directly by the Trustor to the Beneficiary; or are due indirectly by the Trustor to the Beneficiary as endorser, guarantor or other surety, or as obligor of obligations due third persons which have been endorsed or assigned to the Beneficiary, or otherwise), absolute or contingent, due or to become due, now existing or hereafter contracted, including, without limitation, payment of all amounts outstanding when due pursuant to the terms of any of the Loan Documents. Said term shall also include all interest and other charges chargeable to the Trustor or due from the Trustor to the Beneficiary from time to time and all advances, costs and expenses referred to in this Deed of Trust, including without limitation the costs and expenses (including reasonable attorney's fees) of enforcement of the Beneficiary's rights hereunder or pursuant to any document or instrument executed in connection herewith.

1.7 **Cross-Collateral and Future Advances.** It is the express intention of the Trustor that this Deed of Trust secure payment and performance of all of the Obligations, whether now existing or hereinafter incurred by reason of future advances by the Beneficiary or otherwise, and regardless of whether such Obligations are or were contemplated by the parties at the time of the granting of this Deed of Trust. Notice of the continuing grant of this Deed of Trust shall not be required to be stated on the face of any document evidencing any of the Obligations, nor shall such documents be required to otherwise specify that they are secured hereby.

2. REPRESENTATIONS, WARRANTIES, COVENANTS

2.1 **Representations and Warranties.** The Trustor represents and warrants that:

- (a) This Deed of Trust has been duly executed and delivered by the Trustor and is the legal, valid and binding obligation of the Trustor enforceable in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally;
- (b) The Trustor is the sole legal owner of the Property, holding good and marketable fee simple title to the Property, subject to no liens, encumbrances, leases, security interests or rights of others, other than as set forth in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, the Bank in connection with this Deed of Trust (the "Permitted Encumbrances");
- (c) The Trustor is the sole legal owner of the entire lessor's interest in Leases, if any, with full power and authority to encumber the Property in the manner set forth herein, and the Trustor has not executed any other assignment of Leases or any of the rights or rents arising thereunder;

- (d) As of the date hereof, there are no Hazardous Substances (as hereinafter defined) in, on or under the Property, except as disclosed in writing to and acknowledged by the Beneficiary; and
- (e) Each Obligation is a commercial obligation and does not represent a loan used for personal, family or household purposes and is not a consumer transaction.

2.2 Recording; Further Assurances. The Trustor covenants that it shall, at its sole cost and expense and upon the request of the Beneficiary, cause this Deed of Trust, and each amendment, modification or supplement hereto, to be recorded and filed in such manner and in such places, and shall at all times comply with all such statutes and regulations as may be required by law in order to establish, preserve and protect the interest of the Beneficiary in the Property and the rights of the Beneficiary under this Deed of Trust. Trustor will from time to time execute and deliver to the Beneficiary such documents, and take or cause to be taken, all such other further action, as the Beneficiary may request in order to effect and confirm or vest more securely in the Beneficiary all rights contemplated by this Deed of Trust (including, without limitation, to correct clerical errors) or to vest more fully in, or assure to the Beneficiary the security interest in, the Property or to comply with applicable statute or law. To the extent permitted by applicable law, Trustor authorizes the Beneficiary to file financing statements, continuation statements or amendments without Trustor's signature appearing thereon, and any such financing statements, continuation statements or amendments may be signed or authenticated by the Beneficiary on behalf of Trustor, if necessary, and may be filed at any time in any jurisdiction. The Beneficiary may at any time and from time to time file financing statements, continuation statements and amendments thereto that describe the Property as "all assets of Trustor" or words of similar effect and which contain any other information required by Article 9 of the Uniform Commercial Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including whether Trustor is an organization, the type of organization and any organization identification number issued to Trustor; Trustor also authorizes the Beneficiary to file financing statements describing any agricultural liens or other statutory liens held by the Beneficiary. Trustor agrees to furnish any such information to the Beneficiary promptly upon request. In addition, Trustor shall at any time and from time to time, take such steps as the Beneficiary may reasonably request for the Beneficiary (i) to obtain an acknowledgement, in form and substance satisfactory to the Beneficiary, of any bailee having possession of any of the Property that the bailee holds such Property for the Beneficiary, (ii) to obtain "control" of any investment property, deposit accounts, letter-of-credit rights or electronic chattel paper (as such terms are defined in Article 9 of the Uniform Commercial Code relating to what constitutes "control" for such items of Property), with any agreements establishing control to be in form and substance satisfactory to the Beneficiary, and (iii) otherwise to insure the continued perfection and priority of the Beneficiary's security interest in any of the Property and the preservation of its rights therein. Trustor hereby constitutes the Beneficiary its attorney-in-fact to execute and file all filings required or so requested for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; and such power, being coupled with an interest, shall be irrevocable until this Deed of Trust terminates in accordance with its terms, all Obligations are paid in full and the Property is released.

2.3 Restrictions on the Trustor. The Trustor covenants that it will not, nor will it permit any other person to, directly or indirectly, without the prior written approval of the Beneficiary in each instance:

- (a) Sell, convey, assign, transfer, mortgage, pledge, hypothecate, lease or dispose of all or any part of any legal or beneficial interest in the Trustor or the Property or any part thereof or permit any of the foregoing, except as expressly permitted by the terms of this Deed of Trust;
- (b) Permit the use, generation, treatment, storage, release or disposition of any oil or other material or substance constituting hazardous waste or hazardous materials or substances under any applicable Federal or state law, regulation or rule ("Hazardous Substances"); or
- (c) Permit to be created or suffer to exist any mortgage, lien, security interest, attachment or other encumbrance or charge on the Property or any part thereof or interest therein (except for the

Permitted Encumbrances), including, without limitation, (i) any lien arising under any Federal, state or local statute, rule, regulation or law pertaining to the release or cleanup of Hazardous Substances and (ii) any mechanics' or materialmen's lien. The Trustor further agrees to give the Beneficiary prompt written notice of the imposition, or notice, of any lien referred to in this Section and to take any action necessary to secure the prompt discharge or release of the same. The Trustor agrees to defend its title to the Property and the Beneficiary's interest therein against the claims of all persons and, unless the Beneficiary requests otherwise, to appear in and diligently contest, at the Trustor's sole cost and expense, any action or proceeding that purports to affect the Trustor's title to the Property or the priority or validity of this Deed of Trust or the Beneficiary's interest hereunder.

2.4 Operation of Property. The Trustor covenants and agrees as follows:

- (a) The Trustor will not permit the Property to be used for any unlawful or improper purpose, will at all times comply with all Federal, state and local laws, ordinances and regulations, and the provisions of any Lease, easement or other agreement affecting all or any part of the Property, and will obtain and maintain all governmental or other approvals relating to the Trustor, the Property or the use thereof, including without limitation, any applicable zoning or building codes or regulations and any laws or regulations relating to the handling, storage, release or cleanup of Hazardous Substances, and will give prompt written notice to the Beneficiary of (i) any violation of any such law, ordinance or regulation by the Trustor or relating to the Property, (ii) receipt of notice from any Federal, state or local authority alleging any such violation and (iii) the presence or release on the Property of any Hazardous Substances;
- (b) The Trustor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which the Beneficiary may require, provided that, in any case, the Trustor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by applicable Federal law and as otherwise required by the Beneficiary; (iii) comprehensive commercial general liability insurance; (iv) rent loss and business interruption insurance; and (v) such other insurance as the Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise acceptable to the Beneficiary, provide deductible amounts acceptable to the Beneficiary, name the Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least Thirty (30) days prior written notice to the Beneficiary. Such policies shall include (i) a mortgage endorsement determined by the Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of the Beneficiary, shall not be invalidated by any act or neglect of the Trustor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as the Beneficiary may request. The Trustor will furnish to the Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to the Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, the Trustor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions;
- (c) Trustor will not enter into or modify the Leases in any material respect without the prior written consent of the Beneficiary, execute any assignment of the Leases except in favor of the Beneficiary, or accept any rentals under any Lease for more than one month in advance and will at all times perform and fulfill every term and condition of the Leases;

- (d) Trustor will at all times (i) maintain complete and accurate records and books regarding the Property in accordance with generally accepted accounting principles and (ii) permit the Beneficiary and the Beneficiary's agents, employees and representatives, at such reasonable times as the Beneficiary may request, to enter and inspect the Property and such books and records; and
- (e) Trustor will at all times keep the Property in good and first-rate repair and condition (damage from casualty not excepted) and will not commit or permit any strip, waste, impairment, deterioration or alteration of the Property or any part thereof.

2.5 Nevada Covenants. Where not otherwise inconsistent with the other provisions of this Deed of Trust, Covenants Nos. 1; 2 (full replacement value); 3; 4 (highest rate permitted under the Note); 5; 6; 7 (a reasonable percentage); 8; and 9 of Nevada Revised Statutes Section 107.030, are hereby adopted and made a part of this Deed of Trust.

2.6 Payments. The Trustor covenants to pay when due: all Federal, state, municipal, real property and other taxes, betterment and improvement assessments and other governmental levies, water rates, sewer charges, insurance premiums and other charges on the Property, this Deed of Trust or any Obligation secured hereby that could, if unpaid, result in a lien on the Property or on any interest therein. If and when requested by the Beneficiary, the Trustor shall deposit from time to time with the Beneficiary sums determined by the Beneficiary to be sufficient to pay when due the amounts referred to in this Section. The Trustor shall have the right to contest any notice, lien, encumbrance, claim, tax, charge, betterment assessment or premium filed or asserted against or relating to the Property; provided that it contests the same diligently and in good faith and by proper proceedings and, at the Beneficiary's request, provides the Beneficiary with adequate cash security, in the Beneficiary's reasonable judgement, against the enforcement thereof. The Trustor shall furnish to the Beneficiary the receipted real estate tax bills or other evidence of payment of real estate taxes for the Property within thirty (30) days prior to the date from which interest or penalty would accrue for nonpayment thereof. The Trustor shall also furnish to the Beneficiary evidence of all other payments referred to above within fifteen (15) days after written request therefor by the Beneficiary. If Trustor shall fail to pay such sums, the Beneficiary may, but shall not be obligated to, advance such sums. Any sums so advanced by the Beneficiary shall be added to the Obligations, shall bear interest at the highest rate specified in any note evidencing the Obligations, and shall be secured by the lien of this Deed of Trust.

2.7 Notices; Notice of Default. The Trustor will deliver to the Beneficiary, promptly upon receipt of the same, copies of all notices or other documents it receives that affect the Property or its use, or claim that the Trustor is in default in the performance or observance of any of the terms hereof or that the Trustor or any tenant is in default of any terms of the Leases. The Trustor further agrees to deliver to the Beneficiary written notice promptly upon the occurrence of any Event of Default hereunder or event that with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder.

2.8 Takings. In case of any condemnation or expropriation for public use of, or any damage by reason of the action of any public or governmental entity or authority to, all or any part of the Property (a "Taking"), or the commencement of any proceedings or negotiations that might result in a Taking, the Trustor shall promptly give written notice to the Beneficiary, describing the nature and extent thereof. The Beneficiary may, at its option, appear in any proceeding for a Taking or any negotiations relating to a Taking and the Trustor shall promptly give to the Beneficiary copies of all notices, pleadings, determinations and other papers relating thereto. The Trustor shall in good faith and with due diligence and by proper proceedings file and prosecute its claims for any award or payment on account of any Taking. The Trustor shall not settle any such claim without the Beneficiary's prior written consent. The Trustor shall hold any amounts received with respect to such awards or claims, by settlement, judicial decree or otherwise, in trust for the Beneficiary and promptly pay the same to the Beneficiary. The Trustor authorizes any award or settlement due in connection with a Taking to be paid directly to the Beneficiary in amounts not exceeding the Obligations. The Beneficiary may apply such amounts to the Obligations in such order as the Beneficiary may determine.

2.9 Insurance Proceeds. The proceeds of any insurance resulting from any loss with respect to the Property shall be paid to the Beneficiary and, at the option of the Beneficiary, be applied to the Obligations in such order as the Beneficiary may determine; provided, however, that if the Beneficiary shall require repair of the Property, the Beneficiary may release all or any portion of such proceeds to the Trustor for such purpose. Any insurance proceeds paid to the Trustor shall be held in trust for the Beneficiary and promptly paid to it.

3. CERTAIN RIGHTS OF THE BENEFICIARY

3.1 Legal Proceedings. The Beneficiary shall have the right, but not the duty, to intervene or otherwise participate in any legal or equitable proceeding that, in the Beneficiary's reasonable judgement, might affect the Property or any of the rights created or secured by this Deed of Trust. The Beneficiary shall have such right whether or not there shall have occurred an Event of Default hereunder.

3.2 Appraisals/Assessments. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to obtain appraisals, environmental site assessments or other inspections of the portions of the Property that are real estate at such times as the Beneficiary deems necessary or as may be required by applicable law, or its prevailing credit or underwriting policies.

3.3 Financial Statements. The Beneficiary shall have the right, at the Trustor's sole cost and expense, to require delivery of financial statements in form and substance acceptable to the Beneficiary from the Trustor or any guarantor of any of the Obligations and the Trustor hereby agrees to deliver such financial statements and/or cause any such guarantor to so deliver any such financial statement when required by the Beneficiary.

3.4 Substitution of Trustee. The Beneficiary may from time to time, without notice to the Trustor or Trustee and with or without cause and with or without the resignation of Trustee, substitute a successor or successors to the Trustee named herein or acting hereunder. Upon such appointment, the successor trustee shall be vested with all title, powers and duties conferred upon the Trustee named herein or acting hereunder. Each such appointment and substitution shall be made by a writing executed by Beneficiary and when duly recorded in the appropriate office shall be conclusive proof of proper appointment of such successor Trustee. The procedure herein provided for substitution of the Trustee shall be conclusive of all other provisions for substitution, statutory or otherwise.

3.5 Leases and Rent Roll. The Trustor shall deliver to the Beneficiary during each calendar year and at such other times as the Beneficiary shall request a rent roll for the Property, in form acceptable to the Beneficiary, listing all tenants and occupants and describing all of the Leases.

4. DEFAULTS AND REMEDIES

4.1 Events of Default. Event of Default shall mean the occurrence of any one or more of the following events:

- (a) default of any liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to the Beneficiary, hereunder or otherwise, including, without limitation, failure to pay in full and when due any installment of principal or interest or default of the Trustor or any guarantor of the Obligations under any other Loan Document or any other agreement with the Beneficiary continuing for 10 days with respect to the payment of money or continuing for 30 days with respect to any other default;
- (b) failure by the Trustor to perform, observe or comply with any of the covenants, agreements, terms or conditions set forth in this Deed of Trust or the Loan Documents continuing for 30 days;

- (c) the (i) occurrence of any material loss, theft, damage or destruction of, or (ii) issuance or making of any levy, seizure, attachment, execution or similar process on a material portion of the Property;
- (d) failure of the Trustor or any guarantor of the Obligations to maintain aggregate collateral security value satisfactory to the Beneficiary continuing for 30 days;
- (e) default of any material liability, obligation or undertaking of the Trustor or any guarantor of the Obligations to any other party continuing for 30 days;
- (f) if any statement, representation or warranty heretofore, now or hereafter made by the Trustor or any guarantor of the Obligations in connection with this Deed of Trust or in any supporting financial statement of the Trustor or any guarantor of the Obligations shall be determined by the Beneficiary to have been false in any material respect when made;
- (g) if the Trustor or any guarantor of the Obligations is a corporation, trust, partnership or limited liability company, the liquidation, termination or dissolution of any such organization, or the merger or consolidation of such organization into another entity, or its ceasing to carry on actively its present business or the appointment of a receiver for its property;
- (h) the death of the Trustor or any guarantor of the Obligations and, if the Trustor or any guarantor of the Obligations is a partnership or limited liability company, the death of any partner or member;
- (i) the institution by or against the Trustor or any guarantor of the Obligations of any proceedings under the Bankruptcy Code 11 USC §101 *et seq.* or any other law in which the Trustor or any guarantor of the Obligations is alleged to be insolvent or unable to pay its debts as they mature, or the making by the Trustor or any guarantor of the Obligations of an assignment for the benefit of creditors or the granting by the Trustor or any guarantor of the Obligations of a trust mortgage for the benefit of creditors;
- (j) the service upon the Beneficiary of a writ in which the Beneficiary is named as trustee of the Trustor or any guarantor of the Obligations;
- (k) a judgement or judgements for the payment of money shall be rendered against the Trustor or any guarantor of the Obligations, and any such judgement shall remain unsatisfied and in effect for any period of thirty (30) consecutive days without a stay of execution;
- (l) any levy, lien (including mechanics lien), seizure, attachment, execution or similar process shall be issued or levied on any of the property of the Trustor or any guarantor of the Obligations;
- (m) the termination or revocation of any guaranty of the Obligations; or
- (n) the occurrence of such a change in the condition or affairs (financial or otherwise) of the Trustor or any guarantor of the Obligations, or the occurrence of any other event or circumstance, such that the Beneficiary, in its sole discretion, deems that it is insecure or that the prospects for timely or full payment or performance of any obligation of the Trustor or any guarantor of the Obligations to the Beneficiary has been or may be impaired.

4.2 Remedies. On the occurrence of any Event of Default the Beneficiary may, at any time thereafter, at its option and, to the extent permitted by applicable law, without notice, exercise any or all of the following remedies:

- (a) Declare the Obligations due and payable, and the Obligations shall thereupon become immediately due and payable, without presentment, protest, demand or notice of any kind, all of which are hereby expressly waived by the Trustor except for Obligations due and payable on demand, which shall be due and payable on demand whether or not an event of default has occurred hereunder;
- (b) Enter, take possession of, manage and operate the Property (including all personal property and all records and documents pertaining thereto) and any part thereof and exclude the Trustor therefrom, take all actions it deems necessary or proper to preserve the Property and operate the Property as a mortgagee in possession with all the powers as could be exercised by a receiver or as otherwise provided herein or by applicable law; provided, however, the entry by the Beneficiary upon the Property for any reason shall not cause the Beneficiary to be a mortgagee in possession, except upon the express written declaration of the Beneficiary;
- (c) With or without taking possession, receive and collect all rents, income, issues and profits ("Rents") from the Property (including all real estate and personal property and whether past due or thereafter accruing), including as may arise under the Leases, and the Trustor appoints the Beneficiary as its true and lawful attorney with the power for the Beneficiary in its own name and capacity to demand and collect Rents and take any action that the Trustor is authorized to take under the Leases. The Beneficiary shall (after payment of all costs and expenses incurred) apply any Rents received by it to the Obligations in such order as the Beneficiary determines, or in accordance with any applicable statute, and the Trustor agrees that exercise of such rights and disposition of such funds shall not be deemed to cure any default or constitute a waiver of any foreclosure once commenced nor preclude the later commencement of foreclosure for breach thereof. The Beneficiary shall be liable to account only for such Rents actually received by the Beneficiary. Lessees under the Leases are hereby authorized and directed, following notice from the Beneficiary, to pay all amounts due the Trustor under the Leases to the Beneficiary, whereupon such lessees shall be relieved of any and all duty and obligation to the Trustor with respect to such payments so made;
- (d) In addition to any other remedies, to sell the Property or any part thereof or interest therein pursuant to exercise of its power of sale or otherwise at public auction on terms and conditions as the Beneficiary may determine, or otherwise foreclose this Deed of Trust in any manner permitted by law, and upon such sale the Trustor shall execute and deliver such instruments as the Beneficiary may request in order to convey and transfer all of the Trustor's interest in the Property, and the same shall operate to divest all rights, title and interest of the Trustor in and to the Property. In the event this Deed of Trust shall include more than one parcel of property or subdivision (each hereinafter called a "portion"), the Beneficiary shall, in its sole and exclusive discretion and to the extent permitted by applicable law, be empowered to foreclose upon any such portion without impairing its right to foreclose subsequently upon any other portion or the entirety of the Property from time to time thereafter. In addition, the Beneficiary may in its discretion subordinate this Deed of Trust to one or more Leases for the sole purpose of preserving any such Lease in the event of a foreclosure;
- (e) Cause one or more environmental assessments to be taken, arrange for the cleanup of any Hazardous Substances or otherwise cure the Trustor's failure to comply with any statute, regulation or ordinance relating to the presence or cleanup of Hazardous Substances, and the Trustor shall provide the Beneficiary or its agents with access to the Property for such purposes; provided that the exercise of any of such remedies shall not be deemed to have relieved the Trustor from any responsibility therefor or given the Beneficiary "control" over the Property or cause the Beneficiary to be considered to be a mortgagee in possession, "owner" or "operator" of the Property for purposes of any applicable law, rule or regulation pertaining to Hazardous Substances; and

- (f) Take such other actions or proceedings as the Beneficiary deems necessary or advisable to protect its interest in the Property and ensure payment and performance of the Obligations, including, without limitation, appointment of a receiver (and the Trustor hereby waives any right to object to such appointment) and exercise of any of the Beneficiary's remedies provided herein or in any other document evidencing, securing or relating to any of the Obligations or available to a secured party under the Uniform Commercial Code or under other applicable law.

In addition, the Trustee and the Beneficiary shall have all other remedies provided by applicable law, including, without limitation, the right to pursue a judicial sale of the Property or any portion thereof.

The Trustor agrees and acknowledges that the acceptance by the Trustee or the Beneficiary of any payments from either the Trustor or any guarantor after the occurrence of any Event of Default, the exercise by the Trustee or the Beneficiary of any remedy set forth herein or the commencement, discontinuance or abandonment of foreclosure proceedings against the Property shall not waive the Trustee's or the Beneficiary's subsequent or concurrent right to foreclose or operate as a bar or estoppel to the exercise of any other rights or remedies of the Trustee or the Beneficiary. The Trustor agrees and acknowledges that the Trustee or the Beneficiary, by making payments or incurring costs described herein, shall be subrogated to any right of the Trustor to seek reimbursement from any third parties, including, without limitation, any predecessor in interest to the Trustor's title or other party who may be responsible under any law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances.

4.3 Advances. If the Trustor fails to pay or perform any of its obligations respecting the Property, the Beneficiary may in its sole discretion do so without waiving or releasing Trustor from any such obligation. Any such payments may include, but are not limited to, payments for taxes, assessments and other governmental levies, water rates, insurance premiums, maintenance, repairs or improvements constituting part of the Property. Any amounts paid by the Beneficiary hereunder shall be, until paid, part of the Obligations and secured by this Deed of Trust, and shall be due and payable to the Beneficiary, on demand, together with interest thereon to the extent permitted by applicable law, at the highest rate permitted under any of the notes evidencing the Obligations.

4.4 Cumulative Rights and Remedies. All of the foregoing rights, remedies and options (including without limitation the right to enter and take possession of the Property, the right to manage and operate the same, and the right to collect Rents, in each case whether by a receiver or otherwise) are cumulative and in addition to any rights the Beneficiary might otherwise have, whether at law or by agreement, and may be exercised separately or concurrently and none of which shall be exclusive of any other. The Trustor further agrees that the Trustee and the Beneficiary may exercise any or all of its rights or remedies set forth herein without having to pay the Trustor any sums for use or occupancy of the Property.

4.5 Trustor's Waiver of Certain Rights. To the extent permitted by applicable law, the Trustor hereby waives the benefit of all present and future laws (i) providing for any appraisal before sale of all or any portion of the Property or (ii) in any way extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made hereunder.

4.6 Transfer of Title. Upon the completion of any sale or sales of any Property, Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed of conveyance or assignment and transfer, lawfully conveying, assigning, and transferring the Property sold, but without any covenant or warranty, express or implied.

4.7 Effect of Sale. Any sale or sales made by virtue of or under this Deed of Trust, whether under any power of sale herein granted or through judicial proceedings, shall, to the fullest extent permitted by law, operate to divest all right, title, estate, interest, claim, and demand whatsoever, either at law or in equity, of Trustor in and to the property so sold, or any part thereof from, through or under Trustor, its successors and

assigns. The receipt by Trustee shall be full and sufficient discharge to any purchaser of the Property or any part thereof sold as aforesaid for the purchase money; and no purchaser or his representatives, grantees or assigns after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Deed of Trust, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or be bound to inquire as to the authorization, necessity, expedience or regularity of any such sale.

4.8 Reconveyance. Upon written request of the Beneficiary and surrender of this Deed of Trust and any Notes to Trustee for cancellation or endorsement, and upon payment of its fees and charges, Trustee shall reconvey, without warranty, all or any part of the Property then subject to this Deed of Trust. Any reconveyance, whether full or partial, may be made in terms to "the person or persons legally entitled thereto," and the recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

5. MISCELLANEOUS

5.1 Costs and Expenses. To the extent permitted by applicable law, the Trustor shall pay to the Trustee and the Beneficiary, on demand, all reasonable expenses (including attorneys' fees and expenses and reasonable consulting, accounting, appraisal, brokerage and similar professional fees and charges) incurred by the Trustee and the Beneficiary in connection with the Trustee's and the Beneficiary's interpretation, recordation of this Deed of Trust, exercise, preservation or enforcement of any of its rights, remedies and options set forth in this Deed of Trust and in connection with any litigation, proceeding or dispute whether arising hereunder or otherwise relating to the Obligations, together with interest thereon to the extent permitted by applicable law, until paid in full by the Trustor at the highest rate set forth in any of the notes evidencing the Obligations. Any amounts owed by the Trustor hereunder shall be, until paid, part of the Obligations and secured by this Deed of Trust, and the Beneficiary shall be entitled, to the extent permitted by law, to receive and retain such amounts in any action for a deficiency against or redemption by the Trustor, or any accounting for the proceeds of a foreclosure sale or of insurance proceeds.

5.2 Indemnification Regarding Leases. The Trustor hereby agrees to defend, and does hereby indemnify and hold the Beneficiary, Trustee, and each of their respective directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless from all losses, damages, claims, costs or expenses (including attorneys' fees and expenses) resulting from the assignment of the Leases and from all demands that may be asserted against such Indemnitees arising from any undertakings on the part of the Beneficiary to perform any obligations under the Leases. It is understood that the assignment of the Leases shall not operate to place responsibility for the control or management of the Property upon the Beneficiary or any Indemnitee or make them liable for performance of any of the obligations of the Trustor under Leases, respecting any condition of the Property or any other agreement or arrangement, written or oral, or applicable law.

5.3 Indemnification Regarding Hazardous Substances. The Trustor hereby agrees to defend, and does hereby indemnify and hold harmless each Indemnitee from and against any and all losses, damages, claims, costs or expenses, including, without limitation, litigation costs and attorneys' fees and expenses and fees or expenses of any environmental engineering or cleanup firm incurred by such Indemnitee and arising out of or in connection with the Property or resulting from the application of any current or future law, regulation or ordinance relating to the presence or cleanup of Hazardous Substances on or affecting the Property. The Trustor agrees its obligations hereunder shall be continuous and shall survive termination or discharge of this Deed of Trust and/or the repayment of all debts to the Beneficiary including repayment of all Obligations.

5.4 Indemnitee's Expenses. If any Indemnitee is made a party defendant to any litigation or any claim is threatened or brought against such Indemnitee concerning this Deed of Trust or the Property or any part thereof or therein or concerning the construction, maintenance, operation or the occupancy or use thereof by the Trustor or other person or entity, then the Trustor shall indemnify, defend and hold

each Indemnitee harmless from and against all liability by reason of said litigation or claims, including attorneys' fees and expenses incurred by such Indemnitee in connection with any such litigation or claim, whether or not any such litigation or claim is prosecuted to judgement. The within indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by the Beneficiary in favor of the Trustor.

5.5 Waivers. The Trustor waives notice of nonpayment, demand, presentment, protest or notice of protest of the Obligations and all other notices, consents to any renewals or extensions of time of payment thereof, and generally waives any and all suretyship defenses and defenses in the nature thereof. No delay or omission of the Beneficiary in exercising or enforcing any of its rights, powers, privileges, remedies, immunities or discretion (all of which are hereinafter collectively referred to as "the Beneficiary's rights and remedies") hereunder shall constitute a waiver thereof; and no waiver by the Beneficiary of any default of the Trustor hereunder or of any demand shall operate as a waiver of any other default hereunder or of any other demand. No term or provision hereof shall be waived, altered or modified except with the prior written consent of the Beneficiary, which consent makes explicit reference to this Deed of Trust. Except as provided in the preceding sentence, no other agreement or transaction, of whatsoever nature, entered into between the Beneficiary and the Trustor at any time (whether before, during or after the effective date or term of this Deed of Trust) shall be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under this Deed of Trust (nor shall anything in this Deed of Trust be construed as a waiver, modification or limitation of any of the Beneficiary's rights and remedies under any such other agreement or transaction) but all the Beneficiary's rights and remedies not only under the provisions of this Deed of Trust but also under any such other agreement or transaction shall be cumulative and not alternative or exclusive, and may be exercised by the Beneficiary at such time or times and in such order of preference as the Beneficiary in its sole discretion may determine.

5.6 Severability. If any provision of this Deed of Trust or portion of such provision or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of this Deed of Trust (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

5.7 Complete Agreement. This Deed of Trust and the other Loan Documents constitute the entire agreement and understanding between and among the parties hereto relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings among the parties hereto with respect to such subject matter.

5.8 Binding Effect of Agreement. This Deed of Trust shall run with the land and be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and shall remain in full force and effect (and the Beneficiary shall be entitled to rely thereon) until all Obligations are fully and indefeasibly paid. The Beneficiary may transfer and assign this Deed of Trust and deliver any collateral to the assignee, who shall thereupon have all of the rights of the Beneficiary; and the Beneficiary shall then be relieved and discharged of any responsibility or liability with respect to this Deed of Trust and such collateral. Except as expressly provided herein or in the other Loan Documents, nothing, expressed or implied, is intended to confer upon any party, other than the parties hereto, any rights, remedies, obligations or liabilities under or by reason of this Deed of Trust or the other Loan Documents.

5.9 Notices. Any notices under or pursuant to this Deed of Trust shall be deemed duly received and effective if delivered in hand to any officer or agent of the Trustor or the Beneficiary, or if mailed by registered or certified mail, return receipt requested, addressed to the Trustor or the Beneficiary at the address set forth in this Deed of Trust or as any party may from time to time designate by written notice to the other party.

5.10 Governing Law. This Deed of Trust shall be governed by Nevada law without giving effect to the conflicts of laws principles thereof.

5.11 Reproductions. This Deed of Trust and all documents which have been or may be hereinafter furnished by the Trustor to the Beneficiary may be reproduced by the Beneficiary by any photographic, photostatic, microfilm, xerographic or similar process, and any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business).

5.12 Jurisdiction and Venue. The Trustor irrevocably submits to the nonexclusive jurisdiction of any Federal or state court sitting in California and any Federal or state court sitting in Nevada, over any suit, action or proceeding arising out of or relating to this Deed of Trust. The Trustor irrevocably waives, to the fullest extent it may effectively do so under applicable law, any objection it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. The Trustor hereby consents to process being served in any such suit, action or proceeding (i) by the mailing of a copy thereof by registered or certified mail, postage prepaid, return receipt requested, to the Trustor's address set forth herein or such other address as has been provided in writing to the Beneficiary and (ii) in any other manner permitted by law, and agrees that such service shall in every respect be deemed effective service upon the Trustor.

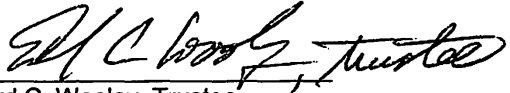
5.13 JURY WAIVER. THE TRUSTOR AND THE BENEFICIARY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AND AFTER AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL, (A) WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING IN CONNECTION WITH THIS DEED OF TRUST, THE OBLIGATIONS, ALL MATTERS CONTEMPLATED HEREBY AND DOCUMENTS EXECUTED IN CONNECTION HERewith AND (B) AGREE NOT TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE, OR HAS NOT BEEN WAIVED. THE TRUSTOR CERTIFIES THAT NEITHER THE BENEFICIARY NOR ANY OF ITS REPRESENTATIVES, AGENTS OR COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE BENEFICIARY WOULD NOT IN THE EVENT OF ANY SUCH PROCEEDING SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY.

5.14 Arbitration. IN THE EVENT THAT THE JURY WAIVER SET FORTH ABOVE IS JUDICIALLY DETERMINED TO NOT BE PERMITTED BY LAW, THE PARTIES AGREE TO ATTEMPT IN GOOD FAITH TO RESOLVE ANY DISPUTES WHICH MAY ARISE AMONG THEM IN CONNECTION WITH THE INTERPRETATION OR ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT, OR THE APPLICATION OR VALIDITY THEREOF. IN THE EVENT THAT ANY DISPUTE CANNOT BE SO RESOLVED, AND UNLESS THE RELIEF SOUGHT REQUIRES THE EXERCISE OF THE EQUITY POWERS OF A COURT OF COMPETENT JURISDICTION, SUCH DISPUTE SHALL BE SUBMITTED TO ARBITRATION. SUCH ARBITRATION PROCEEDINGS SHALL BE HELD IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, IN ACCORDANCE WITH THE ARBITRATION PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. THIS AGREEMENT TO ARBITRATE SHALL BE SPECIFICALLY ENFORCEABLE. ANY AWARD RENDERED IN ANY SUCH ARBITRATION PROCEEDINGS SHALL BE FINAL AND BINDING ON EACH OF THE PARTIES HERETO, AND Judgement MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

EXECUTED under seal as of the date first above written.

Trustor:

Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

By: 
Edward C. Wooley, Trustee

By: 
Judith A. Wooley, Trustee

STATE OF CALIFORNIA

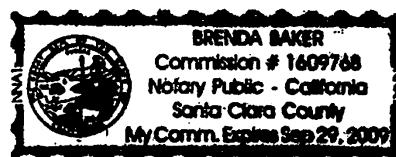
:
SS.COUNTY OF Santa Clara

:

On July, 17, 2008 before me, Brenda Baker Notary Public, personally appeared Edward C. Wooley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Brenda Baker (Seal)



STATE OF CALIFORNIA

:
SS.COUNTY OF Santa Clara

:

On July, 17, 2008 before me, Brenda Baker Notary Public, personally appeared Judith A. Wooley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Brenda Baker (Seal)

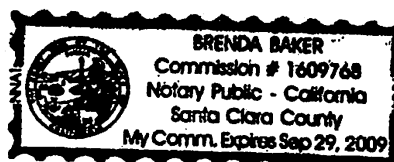


EXHIBIT "A

All that certain real property situated in the County of Washoe, State of Nevada, described as follows:

PARCEL I:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

BEGINNING at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "PARCEL MAP FOR FOOTHILL INVESTMENT CO. AND LEWIS BUILDING CO, INC." recorded January 26, 1983 in the Office of the County Recorder of Washoe County, Nevada, as Parcel Map NO. 1418, File No. 835532 and proceeding;
 Thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing South 44°11'14" East 42.43 feet;
 Thence South 0°48'46" West 15.00 feet;
 Thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet;
 Thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet;
 Thence leaving Sorensen Way North 89°11'14" West 150.00 feet;
 Thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard;
 Thence along Baring Boulevard South 89°11'14" East 169.67 feet to the Point of Beginning.

NOTE: The above metes and bounds description appeared previously in that certain Document recorded March 3, 1997 in Book 4801, Page 0141, as Instrument No. 2076862, Washoe County Official Records.

PARCEL II:

ECW000091

EXHIBIT "A" - Continued

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 32, under Document No. 1248846, Official Records.

NOTE: (The above metes and bounds Legall Description was previously shown on Grant, Bargain, Sale Deed recorded October 13, 2005 Doc/Inst. No. 3291758 of Official Records.

ECW000092

EXHIBIT 13

EXHIBIT 13

1365 Baring Blvd.

First Amendment to Lease Agreement

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is dated as of March 12, 2007 by and between Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 ("Lessor") and **BERRY-HINCKLEY INDUSTRIES**, a Nevada corporation ("Lessee"), whose address is 425 Maestro Drive, Reno, Nevada 89511.

WHEREAS, Lessor and Lessee have entered into that certain Lease Agreement dated as of May __, 2006, (the "Lease") with respect to real property and improvements as further described in Exhibit A;

WHEREAS, Lessor was originally misidentified in the Lease as Edward C. Wooley and Judith A. Wooley;

WHEREAS, Lessor and Lessee wish to amend certain provisions of the Lease as set forth herein; and

WHEREAS, capitalized terms not defined in this Amendment have the meanings given to them in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee agree as follows:

1. **Lessor's Change of Name.** The name of the Lessor is hereby changed to Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000.

2. **WGI Agreements.** The following sentence is added to the end of Section 12.G:

"For purposes of clarification, this Section is not deemed to prohibit the early termination of the WGI Agreement; provided, that within sixty (60) days of termination of the WGI Agreement, a new agreement is entered into by Lessee with WGI, Herbst Gaming, Inc., E.T.T. Inc. Slot Route or a substitute gaming operator approved by Lessor (such approval not to be unreasonably withheld, conditioned or delayed)."

3. **Winner's Corner.** Section 12.H is deleted in its entirety.

4. **Default, Conditional Limitations, Remedies and Measure of Damages.**

The following language is deleted in its entirety from the first paragraph of Section 20.B:

"*Remedies.* Upon the occurrence of an Event of Default, with or without notice or demand, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option,

ECW000093

concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

and replaced with the following:

"Remedies. Upon the occurrence of an Event of Default, Lessor shall give any lender whose name and notice address information has been provided to Lessor in writing, notice of such Event of Default contemporaneously with the delivery of such notice to Lessee. Additionally, lender shall have the right (with no obligation) to cure such Event of Default within the time period afforded Lessee set forth in the Lease with respect to monetary defaults, and with respect to non-monetary defaults, such time reasonably necessary to cure such Event of Default, as long as the lender promptly commences to cure such Event of Default and diligently pursues such cure to completion. If lender does not elect such option to cure, then, except as otherwise expressly provided herein or such other notice as may be required by statute and cannot be waived by Lessee, Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:"

5. **Mortgages, Subordination and Attornment.** Section 21 is hereby amended as follows:

(a) The last sentence of the first paragraph of Section 21 is hereby deleted in its entirety.

(b) The fourth paragraph of Section 21 is deleted in its entirety and replaced with the following: "In the event any purchaser or assignee of any mortgage at a foreclosure sale acquires title to any of the Properties, or in the event that any mortgagee or any assignee otherwise succeeds to the rights of Lessor as landlord under this Lease, Lessee shall attorn to mortgagee or such purchaser or assignee, as the case may be (a "Successor Lessor"), and recognize the Successor Lessor as lessor under this Lease, and Successor Lessor shall recognize and not disturb Lessee's tenancy created hereby. So long as Lessee is not then in default under this Lease, this Lease shall continue in full force and effect as a direct lease between the Successor Lessor and Lessee, provided that the Successor Lessor shall only be liable for any obligations of Lessor under this Lease which accrue from and after the date that such Successor Lessor acquires title to such Property or otherwise succeeds to the rights of Lessor as landlord hereunder. The foregoing provisions shall be self-operative and effective without the execution of further instruments."

6. **Assignment/Subletting.** Section 23 is hereby amended as follows:

(a) The following sentence is added to the end of the first paragraph of Section 23:

"For purposes of clarification, this Section is not and shall not be deemed to prohibit Lessee's right to collaterally assign its interest to any third person or entity, including, without limitation, by placing or granting any lien, encumbrance or other security interest on the Lease or its interests thereunder, all of which such actions may be taken by Lessee without Lessor's consent."

ECW000094

(b) The following paragraph is added to the end of Section 23:

"Notwithstanding any provision to the contrary in this Lease, Lessor consents to the transfer or assignment of Lessee's rights under this Lease upon a foreclosure on Lessee's interests herein, or deed in lieu of foreclosure, to any lender of Lessee or an affiliate of such lender, and to the first transfer or assignment of such rights subsequent to foreclosure by such lender to a third party, so long as the third party can demonstrate sufficient financial creditworthiness reasonably acceptable to Lessor."

7. **Governing Law.** Sections 37 and 38.H are hereby incorporated in full by this reference.

8. **No Other Modification.** Except as expressly set forth in this Amendment, nothing herein contained shall be deemed to modify, supplement, supersede or otherwise amend any term or condition in the Lease, and the parties hereto acknowledge and agree that all terms and conditions of the Lease are and shall remain in full force and effect.

9. **Condition to Effectiveness.** This Amendment shall only be effective upon the closing of that certain transaction whereby the shareholders of P.A. Morabito & Co., Limited ("**PAMCo**"), the corporation that owns all the stock of Lessee, will enter into a Stock Purchase Agreement with Jerry Herbst ("**Herbst**") pursuant to which Herbst will purchase all of the outstanding stock of PAMCo.

10. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original.

[SIGNATURE PAGE FOLLOWS]

ECW000095

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:

EDWARD WOOLEY AND JUDITH WOOLEY

Judith A. Wooley
Judith A. Wooley
Trustee

By: *E.C. Wooley*Printed Name: EDWARD C. WOOLEYTitle: TRUSTEE

LESSEE:

BERRY-HINCKLEY INDUSTRIES

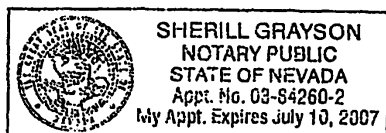
By: _____

Printed Name: _____

Title: _____

AGREED AND ACKNOWLEDGED:

WINNER'S GAMING, INC.

By: *Robert G. King*Printed Name: Robert G. KingTitle: Pres

Sherill Grayson

ECW000096

STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Edward C. Wooley, personally known ~~to me~~ for proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)



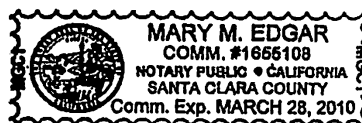
STATE OF California)
COUNTY OF Santa Clara) SS:

On March 12, 2007, before me, Mary M. Edgar, a Notary Public in and for said State, personally appeared Judith A. Wooley, personally known ~~to me~~ for proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Edgar

(SEAL)



ECW000097

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment on the date first above written.

LESSOR:**EDWARD WOOLEY AND JUDITH WOOLEY**

Judith A. Wooley
Judith A. Wooley
Trustee

By: _____

Printed Name: _____

Title: _____

LESSEE:**BERRY-HINCKLEY INDUSTRIES**

By: _____

Printed Name: _____

Title: _____

AGREED AND ACKNOWLEDGED:**WINNER'S GAMING, INC.**

By: _____

Printed Name: _____

Title: _____

ECW000098

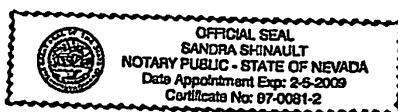
STATE OF NEVADA)
) SS:
 COUNTY OF WASHOE)

On June 28, 2007, before me, Sandra Shinault, a Notary Public in and for said State, personally appeared Trevor Lloyd, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sandra Shinault

(SEAL)



ECW000099

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY J. WILLARD, individually and as;
Trustee of the Larry James Willard Trust Fund;
and OVERLAND DEVELOPMENT
CORPORATION, a California corporation,

NO. 77780

Appellants,

vs.

BERRY-HINCKLEY INDUSTRIES, a
Nevada corporation; and JERRY HERBST,
an individual,

Respondents.

APPENDIX TO APPELLANTS' OPENING BRIEFS

VOLUME 5 OF 19

Submitted for all appellants by:

ROBERT L. EISENBERG (SBN 950)
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Third Floor
Reno, NV 89519
775-786-6868

RICHARD D. WILLIAMSON (SBN 1001)
JONATHAN TEW (SBN 9932)
ROBERTSON, JOHNSON, MILLER & WILLIAMSON
50 West Liberty Street, Suite 600
Reno, NV 89501
775-329-5600

ATTORNEYS FOR APPELLANTS
LARRY J. WILLARD, et al.

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<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
42.	Notice of Entry of Order re Defendants' Motion for Exclude the Expert Testimony of Daniel Gluhaich	01/05/18	16	3599-3602
43.	Notice of Entry of Order re Defendants' Motion for Sanctions	01/05/18	16	3603-3606
44.	Findings of Fact, Conclusions of Law, and Order on Defendants' Motion for Sanctions	03/06/18	16	3607-3640
45.	Notice of Entry of Findings of Facts, Conclusions of Law and Order	03/06/18	16	3641-3644
46.	Request for Entry of Judgment	03/09/18	16	3645-3649
	Exhibit 1: Judgment		16	3650-3653
47.	Notice of Withdrawal of Local Counsel	03/15/18	16	3654-3656
48.	Notice of Appearance – Richard Williamson, Esq. and Jonathan Joe Tew, Esq.	03/26/18	16	3657-3659
49.	Opposition to Request for Entry of Judgment	03/26/18	16	3660-3665
50.	Reply in Support of Request for Entry of Judgment	03/27/18	16	3666-3671
51.	Order Granting Defendant/Counterclaimants' Motion to Dismiss Counterclaims	04/13/18	16	3672-3674
52.	Willard Plaintiffs' Rule 60(b) Motion for Relief	04/18/18	16	3675-3692
	Exhibit 1: Declaration of Larry J. Willard		16	3693-3702
	Exhibit 2: Lease Agreement dated 11/18/05		16	3703-3738
	Exhibit 3: Letter dated 4/12/13 from Gerald M. Gordon to Steven Goldblatt		16	3739-3741

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(cont 52)	Exhibit 4: Operation and Management Agreement dated 5/1/13		16	3742-3746
	Exhibit 5: 13 Symptoms of Bipolar Disorder		16	3747-3749
	Exhibit 6: Emergency Protective Order dated 1/23/18		16	3750-3752
	Exhibit 7: Pre-Booking Information Sheet dated 1/23/18		16	3753-3755
	Exhibit 8: Request for Domestic Violence Restraining Order, filed 1/31/18		16	3756-3769
	Exhibit 9: Motion for Summary Judgment of Plaintiffs Larry J. Willard and Overland Development Corporation, filed October 18, 2017		16	3770-3798
53.	Opposition to Rule 60(b) Motion for Relief	05/18/18	17	3799-3819
	Exhibit 1: Declaration of Brian R. Irvine		17	3820-3823
	Exhibit 2: Transfer of Hearing, January 10, 2017		17	3824-3893
	Exhibit 3: Transfer of Hearing, December 12, 2017		17	3894-3922
	Exhibit 4: Excerpt of deposition transcript of Larry Willard, August 21, 2015		17	3923-3924
	Exhibit 5: Attorney status according to the California Bar		17	3925-3933
	Exhibit 6: Plaintiff's Initial Disclosures, December 12, 2014		17	3934-3941
54.	Reply in Support of the Willard Plaintiffs' Rule 60(b) Motion for Relief	05/29/18	17	3942-3950

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(cont 54)	Exhibit 1: Declaration of Larry J. Willard in Response to Defendants' Opposition to Rule 60(b) Motion for Relief		17	3951-3958
	Exhibit 2: Text messages between Larry J. Willard and Brian Moquin Between December 2 and December 6, 2017		17	3959-3962
	Exhibit 3: Email correspondence between David O'Mara and Brian Moquin		17	3963-3965
	Exhibit 4: Text messages between Larry Willard and Brian Moquin between December 19 and December 25, 2017		17	3966-3975
	Exhibit 5: Receipt		17	3976-3977
	Exhibit 6: Email correspondence between Richard Williamson and Brian Moquin dated February 5 through March 21, 2018			3978-3982
	Exhibit 7: Text messages between Larry Willard and Brian Moquin between March 30 and April 2, 2018		17	3983-3989
	Exhibit 8: Email correspondence Between Jonathan Tew, Richard Williamson and Brian Moquin dated April 2 through April 13, 2018		17	3990-3994
	Exhibit 9: Letter from Richard Williamson to Brian Moquin dated May 14, 2018		17	3995-3997
	Exhibit 10: Email correspondence between Larry Willard and Brian Moquin dated May 23 through May 28, 2018		17	3998-4000
	Exhibit 11: Notice of Withdrawal of Local Counsel		17	4001-4004
55.	Order re Request for Entry of Judgment	06/04/18	17	4005-4009

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56.	Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/06/18	17	4010-4018
	Exhibit 1: Sur-Reply in Support of Opposition to the Willard Plaintiffs' Rule 60(b) Motion for Relief		17	4019-4036
57.	Opposition to Defendants' Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/22/18	18	4037-4053
58.	Reply in Support of Motion to Strike, or in the Alternative, Motion for Leave to File Sur-Reply	06/29/18	18	4054-4060
59.	Order Denying Plaintiffs' Rule 60(b) Motion for Relief	11/30/18	18	4061-4092
60.	Notice of Entry of Order re Order Denying Plaintiffs' Rule 60(b) Motion for Relief	12/03/18	18	4093-4096
	Exhibit 1: Order Denying Plaintiffs' Rule 60(b) Motion for Relief		18	4097-4129
61.	Judgment	12/11/18	18	4130-4132
62.	Notice of Entry of Order re Judgment	12/11/18	18	4133-4136
	Exhibit 1: December 11, 2018 Judgment		18	4137-4140
63.	Notice of Appeal	12/28/18	18	4141-4144
	Exhibit 1: Finding of Fact, Conclusion of Law, and Order on Defendants' Motions for Sanctions, entered March 6, 2018		18	4145-4179
	Exhibit 2: Order Denying Plaintiffs' Rule 60(b) Motion for Relief, entered November 30, 2018		18	4180-4212
	Exhibit 3: Judgment, entered December 11, 2018		18	4213-4216

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<u>TRANSCRIPTS</u>				
64.	Transcript of Proceedings – Status Hearing	08/17/15	18	4217-4234
65.	Transcript of Proceedings - Hearing on Motion for Partial Summary Judgment	01/10/17	19	4235-4303
66.	Transcript of Proceedings - Pre-Trial Conference	12/12/17	19	4304-4331
67.	Transcript of Proceedings - Oral Arguments – Plaintiffs’ Rule 60(b) Motion (condensed)	09/04/18	19	4332-4352
<u>ADDITIONAL DOCUMENTS</u>				
68.	Order Granting Defendants’ Motion for Partial Summary Judgment [Oral Argument Requested] ¹	01/04/18	19	4353-4357

¹ This document was inadvertently omitted earlier. It was added here because all of the other papers in the 19-volume appendix had already been numbered.

EXHIBIT 14

EXHIBIT 14

GUARANTY AGREEMENT

This GUARANTY AGREEMENT, dated as of this 12 day of March, 2007 (this "Agreement"), is made by Jerry Herbst, an individual (the "Guarantor"), for the benefit of Edward C. Wooley and Judith A. Wooley, as trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (the "Lessor").

RECITALS:

A. The Lessor and Berry-Hinckley Industries, a Nevada corporation ("BHI"), are parties to that certain Lease Agreement for 1365 Baring Boulevard, Sparks, Nevada (the "Lease").

B. The Guarantor desires to enter into this Agreement in order to induce the Landlord to (i) provide consent under the Lease to a change of control of P.A. Morabito & Co., Limited ("PAMCo"), the corporation that owns all the stock of BHI and/or (ii) enter into an amendment to the Lease.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby guarantees, promises and undertakes as follows:

1. Guaranty. The Guarantor unconditionally, absolutely and irrevocably guarantees the timely payment and performance of each of BHI's obligations arising out of and under the Lease (such obligations, the "Guaranteed Obligations"). The Guarantor's guaranty made hereby is a guaranty of timely payment and performance of the Guaranteed Obligations and not merely of collectibility or enforceability of such obligations.

2. Remedies and Rights of the Lessor. The Guarantor agrees that if and to the extent that BHI either (a) fails to satisfy any of the Guaranteed Obligations and fails to remedy such failure within thirty (30) days after receiving written notice from the Lessor of such failure, or (b) is subject to a pending petition for relief under Chapter 7 or Chapter 11 of Title 11 of the United States Code, the Guarantor will be directly responsible for the full extent of any unsatisfied Guaranteed Obligations. This Agreement is an unconditional, absolute, present and continuing guaranty of payment and performance, and will remain in full force and effect without regard to, and the obligations of the Guarantor hereunder shall not be impaired, affected or released by, any of the following: (i) any modification, supplement, extension or amendment of any of the Guaranteed Obligations or the Lease; (ii) any extension, indulgence or other action in respect thereto or therefor; (iii) any failure or delay by the Lessor or BHI in exercising any right or power under the Lease; (iv) any invalidity or unenforceability in any respect of, or any irregularity or other defect in any of, the Lease or Guaranteed Obligations; (v) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the Guaranteed Obligations; (vi) any transfer of the assets of Lessor to, or any consolidation or merger of the Lessor with or into, any other entity; (vii) any voluntary or involuntary liquidation,

dissolution, sale or other disposition of all or substantially all of the assets, receivership, insolvency, bankruptcy, reorganization or similar proceeding affecting BHI or any of its assets; or (viii) any allegation or contest of the validity of the Lease or this Agreement. The Guarantor hereby waives any defense to its obligations hereunder that might arise as a result of any of the foregoing, and hereby waives the effect of any fact, circumstance or event of any nature whatsoever that would exonerate, or constitute or give rise to a defense to, the obligation of a surety or guarantor. Without limitation, except to the extent specifically provided in Paragraph 2 hereof, the Guarantor waives any right it may have to require the Lessor, and any obligation the Lessor may have, to proceed first against BHI or exhaust any remedies that it may have against BHI in respect of non-payment or non-performance of the Guaranteed Obligations, before demand for payment or performance by the Guarantor under this Agreement.

The Guarantor acknowledges that the rights and remedies herein provided are not exclusive of any other rights or remedies that the Lessor may otherwise have at law or in equity, and shall not prejudice the Lessor's right to assert any other claim under the Lease.

3. Duration of Agreement. The term of this Agreement will begin on, and this Agreement shall be of no force and effect until, the closing of that certain Stock Purchase Agreement by and among Guarantor, or a company controlled by him, and the stockholders of PAMCo. This Agreement will continue in full force and effect and the obligations of the Guarantor hereunder will not be discharged until the earlier of (i) the date on which the Guaranteed Obligations are fully performed, satisfied and discharged or until BHI's liability to the Lessor under the Lease shall have been completely performed, satisfied and discharged, whichever occurs first, or (ii) upon a change in the control of BHI provided that the Lessor has consented to such change of control, which consent shall not be unreasonably withheld. For the purpose of the foregoing sentence, "change in the control of BHI" shall mean the transfer, on a cumulative basis, of 50% or more of the voting control of BHI to a party not owned, directly or indirectly, by the Guarantor, Edward Herbst, Timothy Herbst or Troy Herbst. Any transfer of Guarantor's interest in BHI other than upon a change in the control of BHI with Lessor's consent pursuant to section (ii) above will not cause this Agreement or Guarantor's obligations hereunder to terminate. The Guaranteed Obligations will not be considered fully performed, satisfied and discharged (a) unless and until all obligations of BHI to the Lessor pursuant to the Lease have been fully and completely performed, satisfied and discharged, or (b) to the extent any claim by the Lessor against BHI remains outstanding.

4. No Assignment. The rights and obligations of the Guarantor hereunder may not be assigned without the prior written consent of the Lessor or the then beneficiary of this Agreement. Any purported assignment in violation of this section shall be null and void. All covenants and agreements in this Agreement made by the Guarantor shall bind and inure to the benefit of its successors and permitted assigns.

5. Integration; Modification; Waiver. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by the Guarantor and acknowledged and accepted by the Lessor or the then beneficiary of this Agreement. No waiver of any of the


provisions of this Agreement will be deemed to be or shall constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

6. No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights or remedies upon any person other than the Lessor and its successors and assigns.


7. Governing Law. This Agreement will be governed in all respects by the laws of the State of Nevada without regard to conflicts of law principles.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Guaranty Agreement to be duly executed as of the date first above written.


JERRY HERBST

Each of the undersigned hereby acknowledges and accepts this Guaranty Agreement as of the date hereof.


EDWARD C. WOOLEY


JUDITH A. WOOLEY

Herbst Lease Guaranty - 1365 Baring.DOC

EXHIBIT 15

EXHIBIT 15

A P No. 030-041-08

Prepared by and when
recorded mail to:

James L. Morgan, Esq.
Henderson & Morgan, LLC
4600 Kietzke Lane, Suite K228
Reno, NV 89502



FOR THE PURPOSE OF COMPLYING WITH NRS 239B.030(4), THE
UNDERSIGNED HEREBY AFFIRMS THAT THIS DOCUMENT DOES NOT CONTAIN
THE SOCIAL SECURITY NUMBER OF ANY PERSON.

**ASSIGNMENT OF ENTITLEMENTS, CONTRACTS,
RENTS AND REVENUES**
(1365 BARING)

THIS ASSIGNMENT OF ENTITLEMENTS, CONTRACTS, RENTS AND
REVENUES (1365 BARING) ("Assignment") is made and entered into as of June 29,
2007 by and between BERRY-HINCKLEY INDUSTRIES, a Nevada corporation,
hereinafter referred to as "Assignor", party of the first part, and FIRST NATIONAL BANK
OF NEVADA, hereinafter referred to, together with its successors and assigns, as
"Lender", party of the second part.

R E C I T A L S:

WHEREAS:

A. Assignor is the lessee of the real property which is situated in the
County of Washoe, State of Nevada and which is particularly described by Exhibit "A"
attached hereto is hereinafter collectively referred to as the "Land".

B. All references herein to the "Real Property" shall be to: (i) the
Land; (ii) all real property which is used in connection with, the Land and in which
Assignor now owns, or hereafter acquires, an interest (the "Adjacent Property"); and
(iii) all tenements, hereditaments and appurtenances to the Land or the Adjacent
Property.

C. Reference is made to that certain Credit Agreement (as it may be
hereafter renewed, extended, amended, restated or otherwise modified, the "Credit
Agreement") dated June 28, 2007, by and among Assignor, JH, INC., a Nevada
corporation and JERRY E. HERBST, as Trustee of the HERBST GAMING TRUST

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CREATED BY AGREEMENT DATED MARCH 19, 2003, all as borrowers (collectively, the "Initial Borrowers") and Lender, as lender.

D. All capitalized words and terms which are used herein (and which are not otherwise defined herein) shall have the respective meanings and be construed herein as provided in Section 1.01 of the Credit Agreement and any reference to a provision of the Credit Agreement shall be deemed to incorporate that provision as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

E. As a condition of the WGI Closing Date, which is referred to in the Credit Agreement, Winners Gaming, Inc., a Nevada corporation ("WGI") is required, among other things, to assume, on a joint and several basis with the Initial Borrowers, all obligations of Initial Borrowers under the Credit Agreement and the Loan Documents. All references herein to the "Borrowers" shall be to: (i) Initial Borrowers; (ii) as of the WGI Closing Date, WGI; and (iii) any other person or entity which hereafter becomes a Borrower under the Credit Agreement.

F. Pursuant to the Credit Agreement, and subject to the terms and conditions specified therein, Lender has agreed to provide: (i) a revolving credit facility to Borrowers with an initial maximum principal amount of Twenty-three Million Seven Hundred Thousand Dollars (\$23,700,000.00) available for Borrowings thereunder (together with all extensions, renewals, amendments, restatements, substitutions and other modifications thereof, the "Revolving Credit Facility"); and (ii) a term loan to Borrowers in the principal amount of Fifty Million Three Hundred Thousand Dollars (\$50,300,000.00) to be funded on the WGI Closing Date, which is referred to in the Credit Agreement (together with all extensions, renewals, amendments, restatements, substitutions and other modifications thereof, the "Term Loan"). The Revolving Credit Facility, the Term Loan and any other loan, credit facility or other credit accommodation which is hereafter provided to Borrowers, or any of them, by Lender, are collectively referred to herein as the "Bank Facilities".

G. It is a condition of the Bank Facilities that all of Assignor's present and future right, title and interest in and to:

(i) all leases and purchase contracts which are now existing or are hereafter entered into, for furniture, fixtures, equipment, signs and other items of personal property which are used in connection with, or which relate to: (aa) the Real Property; (bb) the convenience store and retail gasoline filling station business, any automotive service business and all related activities to be conducted by, or on behalf of, Assignor on the Real Property (collectively, the "Convenience Store Facilities"); or (cc) any other

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business activity now, or hereafter, conducted by, or on behalf of, Assignor on, or in connection with, the Real Property (collectively, the "Additional Business(es)"); all together with any and all modifications, extensions, or renewals thereof (collectively, the "Equipment Agreements");

(ii) all leases, subleases, licenses, concessions, franchises and other use or occupancy agreements which now exist or are hereafter entered into and which relate to any portion of the Real Property, and all guarantees, extensions, renewals, amendments and modifications thereof (collectively, the "Spaceleases");

(iii) all present and future rents, issues, profits, products, earnings, accounts, rights, benefits, income, proceeds, payments, revenue, receipts and deposits of any kind or nature (collectively, the "Proceeds") which relate to, or are derived from, the Real Property, the Convenience Store Facilities, or any Additional Business, including, without limitation, present and future Proceeds, of any nature whatsoever, derived from, or received with respect to, retail activities and any other activity undertaken in operation of, or in relation to, the Real Property, the Convenience Store Facilities or any Additional Business, and also including without limitation, Proceeds from any of the Spaceleases (collectively, the "Rents and Revenues"); and

(iv) all present and future assignable permits, licenses, warranties, contracts and other entitlements, if any, which are issued, granted, agreed to, or entered into in connection with, or relating to, the Real Property, the Convenience Store Facilities or any Additional Business, together with any and all modifications, extensions or renewals thereof (collectively, the "Entitlements");

be presently assigned to Lender in consideration of the Bank Facilities upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the Bank Facilities, Assignor does hereby presently, absolutely and unconditionally assign to the Lender all of its right, title and interest in and to the Equipment Agreements, the Spaceleases, the Rents and Revenues and the Entitlements as follows:

1. Assignor does hereby grant, assign and convey unto Lender all the right, title, interest and privilege which Assignor has or may hereafter acquire, in or to: (i) all Equipment Agreements, Spaceleases and/or Entitlements; and (ii) the Rents

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and Revenues. Without limiting the generality of the foregoing, and subject to the provisions of Sections 4 and 5 below, Lender shall have the present and continuing right with full power and authority, in its own name, or in the name of Assignor, or otherwise: (aa) to do any and all things which Assignor may be or may become entitled to do under the Equipment Agreements, Spaceleases, and/or Entitlements and the right to make all waivers and agreements, give all notices, consents and releases and other instruments and to do any and all other things whatsoever which Assignor may be or may become entitled to do under said Equipment Agreements, Spaceleases and/or Entitlements; and (bb) to make claim for, enforce, collect, receive and make receipt (in its own name, in the name of Assignor, or otherwise) for any and all of the Rents and Revenues and to do any and all things which Assignor is or may become entitled to do for the collection of the Rents and Revenues. Notwithstanding anything herein to the contrary, in no event shall the Equipment Leases or the Spaceleases, which are assigned hereunder, include any lease, license, contract, property rights or agreement to which Assignor is a party or any of its rights or interests thereunder if and for so long as such assignment shall constitute or result in: (i) the abandonment, invalidation or unenforceability of any right, title or interest of Assignor therein; or (ii) in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, property rights or agreement (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Commercial Code), provided however that the assignment shall include any portion of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above.

2. The acceptance of this Assignment and the payment or performance under the Equipment Agreements, the Spaceleases, the Rents and Revenues and/or Entitlements hereby assigned shall not constitute a waiver of any rights of Lender under the terms of the Credit Agreement or any other Loan Document for the benefit of Lender.

3. Assignor shall keep and perform the following with respect to the Equipment Agreements, the Spaceleases and the Entitlements:

(a) Except as may be permitted in the Credit Agreement, Assignor will not further assign any interest in the Equipment Agreements, in the Spaceleases, or in the Entitlements, or create or permit any lien, charge, or encumbrance upon its interests in the Equipment Agreements, in the Spaceleases or in the Entitlements;

(b) Assignor will not, without the prior written consent of Lender:

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(i) cause, or consent to, any cancellation, termination or surrender of any Equipment Agreement, Spacelease or Entitlement if such cancellation, termination or surrender would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business (except for any cancellation or termination of an Equipment Agreement, Spacelease or Entitlement which is caused by a default thereunder on the part of a party other than Assignor or one of its Affiliates);

(ii) permit any event to occur which would entitle any party to an Equipment Agreement, Spacelease or Entitlement to terminate or cancel said Equipment Agreement, Spacelease or Entitlement if such cancellation or termination would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business (except any cancellation or termination of an Equipment Agreement, Spacelease or Entitlement which is caused by a default thereunder on the part of a party other than Assignor or one of its Affiliates);

(iii) amend or modify any of the Equipment Agreements or the Spaceleases or any of the Entitlements if such amendment or modification would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business;

(iv) waive any default under or breach of any Equipment Agreements, any Spaceleases or any Entitlements except for any waiver that would not be reasonably likely to result in any material adverse affect on either the Convenience Store Facilities or any Additional Business; or

(v) give any consent, waiver or approval which would impair Assignor's interest in any of the Equipment Agreements, any of the Spaceleases or any of the Entitlements if such consent, waiver or approval would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business.

(c) Assignor will promptly notify Lender of the occurrence of any default under any of the Equipment Agreements, Spaceleases and/or Entitlements, which, if left uncured, would be reasonably likely to materially and adversely affect either the Convenience Store Facilities or any Additional Business.

4. Notwithstanding anything to the contrary contained in this Assignment, it is understood and agreed that so long as there shall exist no Event of Default under the Credit Agreement there is reserved to Assignor a revocable license to retain, use and enjoy the Equipment Agreements, the Spaceleases, the

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Entitlements and the properties and entitlements which are the subject thereof. Upon the occurrence of an Event of Default, and so long as such Event of Default is continuing, such license granted to Assignor may be immediately revoked by Lender (except that, upon occurrence of an Event of Default under subsections 7.01(g), (h) or (i) of the Credit Agreement, such license granted to Assignor shall be automatically revoked) without further demand or notice and Lender is hereby empowered to enter and take possession of the Real Property and to use, manage and operate the same and to do all acts required or permitted by the Equipment Agreements, the Spaceleases and/or the Entitlements, and perform such other acts in connection with the use, management and operation of the property and entitlements, which are the subject of the Equipment Agreements, the Spaceleases and the Entitlements as Lender, in its sole discretion, may deem proper (including, without limitation, such acts as are otherwise authorized under this Assignment). Lender agrees that, until such license granted to Assignor has been revoked, as set forth above, Lender shall refrain from exercising its rights and remedies which are granted with respect to the Equipment Agreements, the Spaceleases, and/or the properties they concern under Section 1 of this Assignment or under this Section 4. Should the Event of Default which resulted in any such revocation be cured prior to foreclosure, deed-in-lieu of foreclosure, or a similar conveyance under the Deed of Trust, then such license granted to Assignor shall be immediately reinstated without further demand or notice and Lender shall, as soon as reasonably possible, redeliver to Assignor possession of the Equipment Agreements, of the Spaceleases and of the Entitlements (and, at the expense of Assignor, shall execute such notices to third parties as Assignor may reasonably request) and the parties hereto shall each be restored to, and be reinstated in, their respective rights and positions hereunder as if the Event of Default had not occurred (without impairment of or limitation on Lender's right to proceed hereunder upon subsequent Events of Default).

5. It is also understood and agreed that so long as there shall exist no Event of Default under the Credit Agreement there is reserved to Assignor a revocable license to collect the Rents and Revenues as they become due, but not prior to accrual. Upon the occurrence of an Event of Default, and so long as such Event of Default is continuing, such license granted to Assignor may be immediately revoked (except that, upon occurrence of an Event of Default under subsections 7.01(g), (h) or (i) of the Credit Agreement, such license granted to Assignor shall be automatically revoked) without further demand or notice and Lender is hereby empowered, but shall not be obligated, to do any, or all of the following: (i) enter and take possession of the Real Property; (ii) manage and operate all, or any portion of, the Real Property, the Convenience Store Facilities and/or the Additional Businesses (or any of them); (iii) demand payment of the Rents and Revenues from the appropriate party; (iv) give notice that further payments of Rents and Revenues

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are to be made as directed by Lender; and (v) settle compromise, bring suit in respect of Rents and Revenues or otherwise deal with the person owing such Rents and Revenues, either in the name of Assignor or in its own name; all on its own behalf or through a receiver. If any such Rents and Revenues are collected by Assignor in violation of this Assignment, such Rents and Revenues shall be held in trust for the benefit of Lender. No action taken by Lender, or by a receiver, in exercising any of the rights and remedies hereunder shall cause any of them to be characterized as a "Mortgagee in Possession". This Assignment is intended to be and is an absolute present assignment from Assignor to Lender and not merely the passing of a security interest. Lender agrees that, until such license granted to Assignor has been revoked, as set forth above, Lender shall refrain from exercising its rights and remedies which are granted with respect to the Rents and Revenues and/or the collection thereof under Section 1 of this Assignment or under this Section 5. Should the Event of Default which resulted in any such revocation be cured prior to foreclosure, deed-in-lieu of foreclosure, or a similar conveyance under the Deed of Trust, then such license granted to Assignor shall be immediately reinstated without further demand or notice and Lender shall, as soon as reasonably possible, execute, at the expense of Assignor, such notices to third parties as Assignor may reasonably request and the parties hereto shall each be restored to, and be reinstated in, their respective rights and positions hereunder as if the Event of Default had not occurred (without impairment of or limitation on Lender's right to proceed hereunder upon subsequent Events of Default).

6. Lender shall not be obligated to perform or discharge any obligation or duty to be performed or discharged by Assignor under the Equipment Agreements, the Spaceleases, the Entitlements, and/or relating to the Rents and Revenues. This Assignment shall not place responsibility for the management, control, care, operation or repair of the Real Property, the Convenience Store Facilities or any Additional Business, upon Lender, or upon any of its trustees, officers, employees, agents, attorneys or stockholders (collectively, the "Indemnified Parties"); nor shall this Assignment cause any of the Indemnified Parties to be responsible or liable for any negligence in the management, control, care, operation or repair of the Real Property, the Convenience Store Facilities or any Additional Business, which results in loss, injury or death to any tenant, guest, licensee, employee or stranger (provided that this Section 6 shall not act to relieve any Indemnified Party from liability which results from such Indemnified Party's own gross negligence or willful misconduct).

7. Assignor agrees to indemnify, protect, defend and hold harmless the Indemnified Parties from and against any and all losses, damages, expenses or liabilities of any kind or nature from any suits, claims or demands including reasonable

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counsel fees incurred in investigating or defending such claim, suffered by any of them and caused by, relating to, arising out of, resulting from, or in any way connected with: (i) this Assignment; (ii) any of the Equipment Agreements, Spaceleases, Entitlements, or Rents and Revenues; or (iii) the management, control, care, operation or repair of the Real Property, the Convenience Store Facilities and/or any Additional Business; all in accordance with Section 5.13 of the Credit Agreement, which is incorporated by reference herein, as if fully set forth herein (provided that this Section 7 shall not act to relieve any Indemnified Party from liability which results from such Indemnified Party's own gross negligence or willful misconduct).

8. Assignor agrees that this Assignment and the designation and directions herein set forth are irrevocable. Until Bank Facility Termination has occurred, Assignor will not make any other assignment, designation or direction inconsistent herewith (except as otherwise permitted in the Credit Agreement), and any such assignment, designation or direction which is inconsistent herewith shall be void. Assignor will, from time to time, execute all such instruments of further assurance and all such supplemental instruments as may be reasonably requested by Lender.

9. No action or inaction on the part of Lender shall constitute an assumption, on the part of Lender of any obligations or duties under the Equipment Agreements, Spaceleases and/or the Entitlements, or relating to the Rents and Revenues. No action or inaction on the part of Assignor shall adversely affect or limit in any way the rights of Lender under this Assignment or, through this Assignment, under the Equipment Agreements, the Spaceleases and/or the Entitlements, or relating to the Rents and Revenues.

10. Assignor covenants and represents that it has the full right and title to assign the Equipment Agreements, the Spaceleases, the Entitlements, the Rents and Revenues; that no other assignments of its interests in the Equipment Agreements, Spaceleases and/or the Entitlements, or of its interests in the Rents and Revenues have been made; that no notice of termination has been served on it with respect to any Equipment Agreements, the Spaceleases or the Entitlements, the termination of which would be reasonably likely to result in a Material Adverse Change; and that there are presently no defaults existing under any of the Equipment Agreements, the Spaceleases or the Entitlements, which defaults would be reasonably likely to result in a Material Adverse Change if left uncured.

11. The full performance of the terms contained in the Credit Agreement and the other Loan Documents and the due release and termination of the Security Documentation shall render this Assignment void. Upon such performance, release and termination, Lender, at the request and the expense of Assignor, will

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promptly deliver either an instrument canceling this Assignment or assigning the rights of the Lender hereunder, as Assignor shall direct.

12. Assignor and Lender intend that this Assignment shall be a present, absolute and unconditional assignment, subject to the license granted above, and not merely the passing of a security interest. During the term of this Assignment, neither the Equipment Agreements, the Spaceleases, the Entitlements nor the Rents and Revenues shall constitute property of Assignor (or any estate of Assignor) within the meaning of 11 U.S.C. § 541 (as it may be amended or recodified from time to time).

13. This Assignment applies to, binds and inures to the benefit of, the parties hereto and their respective heirs, administrators, executors, successors and assigns. This Assignment may not be modified or terminated orally.

14. All of the rights and remedies of Lender hereunder are cumulative and not exclusive of any other right or remedy which may be provided for hereunder or under any other Loan Document. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to its terms shall be deemed a waiver, by Lender of any rights or remedies under the Loan Documents, and this Assignment is made and accepted without prejudice to any rights or remedies possessed by Lender under the terms of the Loan Documents. The right of the Lender to collect the secured principal, interest, and other Indebtedness, and to enforce any security may be exercised by Lender prior to, simultaneous with, or subsequent to any action taken under this Assignment.

15. Upon the occurrence and during the continuance of an Event of Default, Assignor shall be deemed to have appointed and does hereby appoint Lender the attorney-in-fact of Assignor to prepare, sign, file and/or record such documents or instruments, or take such other actions, as may be reasonably necessary to perfect and preserve, against third parties, the interest in the Equipment Agreements, the Spaceleases, the Entitlements and Rents and Revenues which is granted to Lender hereunder.

16. This Assignment shall be governed by the internal laws of the State of Nevada, without regard to principles of conflict of law.

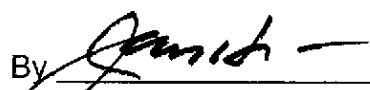
17. This Assignment may be executed in any number of separate counterparts with the same effect as if the signatures hereto and hereby were upon the same instrument. All such counterparts shall together constitute one and the same document.

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IN WITNESS WHEREOF, the parties have executed the foregoing instrument as of the day and year first above written.

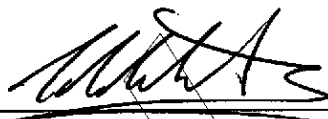
ASSIGNOR:

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporation

By 
Jerry E. Herbst,
President

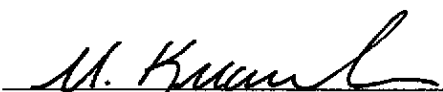
LENDER:

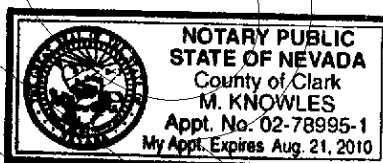
FIRST NATIONAL BANK OF
NEVADA

By 
E. Philip Potamitis,
Senior Vice President

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on June 29, 2007 by JERRY E. HERBST as President of BERRY-HINCKLEY INDUSTRIES.

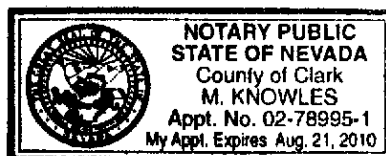

Notary Public



STATE OF NEVADA)
) ss
COUNTY OF CLARK)

This instrument was acknowledged before me on June 29, 2007 by E. PHILIP POTAMITIS as Senior Vice President of FIRST NATIONAL BANK OF NEVADA.


Notary Public



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LEGAL DESCRIPTION

All that certain real property situate in the County of Washoe, State of Nevada, described as follows:

Parcel One (1):

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

Beginning at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "Parcel Map for Foothill Investment Co. and Lewis Building Co., Inc." recorded January 26, 1983 in the Office of the County Recorder of Washoe County, Nevada, as Parcel Map No. 1418, File No. 835532 and proceeding thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing South 44°11'14" East, 42.45 feet; thence South 0°48'46" West, 15.00 feet; thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West, 87.83 feet; thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West, 29.32 feet; thence leaving Sorenson Way North 89°11'14" West, 150.00 feet; thence North 0°48'46" East, 150.00 feet to the Southerly line of Baring Boulevard; thence along Baring Boulevard South 89°11'14" East, 169.67 feet to the Point of Beginning.

Parcel One-A (1A):

An easement for ingress and egress for pedestrian and vehicles as described and conveyed in the Access Easement Agreement recorded May 26, 1988 in Book 2742, Page 321, under Document No. 128846, Official Records.

Document No. 3291758 provided pursuant to the requirements of Section 1.NRS 111.312.

(APN 030-041-08)

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EXHIBIT "A"

Exhibit 15-11

EXHIBIT 16

EXHIBIT 16

APN: 030-041-08

Recording Requested By and

When Recorded Return to:

Brian L. Ballard

HAWLEY TROXEL, ENNIS & HAWLEY LLP

P.O. Box 1617

Boise, Idaho 83701

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

ASSIGNMENT AND ASSUMPTION OF LEASE

This ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") is made as of this 29 day of DECEMBER 2009, by BERRY-HINCKLEY INDUSTRIES, INC., a Nevada corporation ("Assignor"), and JACKSONS FOOD STORES, INC., a Nevada corporation ("Assignee").

RECITALS:

A. Assignor is presently the "tenant" under that certain Lease Agreement dated May of 2006, by and between Assignor and Edward Wooley and Judith Wooley as Trustees of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000 (collectively, the "Landlord"), as amended by that certain First Amendment to Lease Agreement dated March 12, 2007 (collectively, the "Lease"), which Lease affects the real property located in the County of Washoe, State of Nevada more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

B. Pursuant to that certain Asset Transfer Agreement, dated as of August 31, 2009 (the "Agreement"), by and between Assignor and Assignee, Assignor has agreed to assign, and Assignee has agreed to accept, all of Assignor's rights, title, estate, interest, duties and obligations under the Lease.

NOW, THEREFORE, in order to carry out the terms of the Agreement, and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Assignor and Assignee hereby agree as follows:

1. Assignment. Assignor hereby grants, transfers, conveys and assigns to Assignee all of Assignor's right, title, estate and interest in, to and under the Lease, together with any right, title, and interest of Assignor in and to any subleases, if any, relating to any portion of the Property.

2. Assumption. Assignee hereby accepts such assignment of Assignor's right, title, estate and interest in, to and under the Lease, and, in addition, (i) assumes and agrees to be bound by all of the terms of the Lease, and (ii) agrees to keep, perform, fulfill, and observe all of the terms, covenants, obligations, agreements, and conditions required to be kept, performed,

fulfilled, and observed by the Assignor or tenant under the Lease or any sublease thereof from and after the execution and delivery of this Assignment.

3. Indemnification of Assignor. Assignee hereby agrees to indemnify, defend, and hold Assignor harmless from and against any and all liability, losses, costs, damages and expenses (including, without limitation, reasonable attorneys' fees and costs including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignee's failure to keep, perform, fulfill and observe any of the terms, covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease from and after the execution and delivery of this Assignment.

4. Indemnification of Assignee. Assignor hereby agrees to indemnify, defend, and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal) directly or indirectly arising out of or based upon Assignor's failure to keep, perform, fulfill, and observe any of the terms covenants, obligations, agreements, and conditions required to be kept, performed, fulfilled, and observed by the tenant under the Lease prior to the execution and delivery of this Assignment by Assignor and Assignee.

5. Rentals. All rents payable under or pursuant to the Lease shall be prorated as between Assignor and Assignee pursuant to, and in accordance with, the terms of the Agreement.

6. Further Assurances. Assignor hereby covenants that it will, at any time and from time to time following a written request therefor, execute and deliver to Assignee and its successors and assigns, any additional or confirmatory instruments and take such further acts as Assignee may reasonably request to evidence fully the assignment contained herein.

7. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

8. Survival of Certain Provisions. The provisions of Sections 2, 3, 4, 5 and 6 hereof shall survive the execution and delivery of this Assignment by Assignor and Assignee and the assignment of the Lease pursuant hereto.

9. Governing Law. This Assignment shall be construed in accordance with and governed by the laws of the State of Nevada.

10. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[Signatures Appear on Following Page]

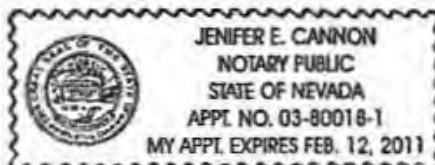
ASSIGNOR:

BERRY-HINCKLEY INDUSTRIES,
a Nevada corporationBy: Jerry HerbstName: Jerry HerbstTitle: PresidentSTATE OF NEVADA)
) ss.
County of Clark)

On this 17 day of December, 2009, before me, Jenifer E Cannon,
a Notary Public in and for said State, personally appeared Jerry Herbst,
known or identified to me to be the President [title] of Berry-Hinckley
Industries, the corporation that executed the within instrument or the person who executed the
instrument on behalf of said corporation, and acknowledged to me that such corporation
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.

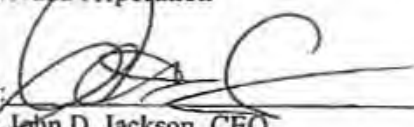
Jenifer E Cannon
Notary Public for the State of Nevada
Residing at Las Vegas, NV
My commission expires _____



ECW000106

ASSIGNEE:

JACKSONS FOOD STORES, INC.,
a Nevada corporation

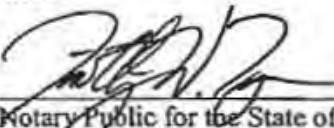
By: 
John D. Jackson, CEO

STATE OF IDAHO)
) ss.
County of Ada)

On this 23 day of December, 2009, before me, TIMOTHY W. TYREE, a Notary Public in and for said State, personally appeared John D. Jackson, known or identified to me to be the CEO of Jacksons Food Stores, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.




Notary Public for the State of Idaho
Residing at BOISE ID
My commission expires 12-14-2010

CONSENT AND AGREEMENT

OF

EDWARD C. WOOLEY AND JUDITH A. WOOLEY,
AS TRUSTEES OF THE EDWARD C. WOOLEY AND JUDITH A. WOOLEY INTERVIVOS
REVOCABLE TRUST YEAR 2000

The undersigned, being the current Landlord under the above referenced Lease which is being assigned from BERRY-HINCKLEY INDUSTRIES, a Nevada corporation, to and for the benefit of JACKSONS FOOD STORES, INC., a Nevada corporation, hereby acknowledge the above and agree and consent to the assignment of the Lease on the terms of the foregoing Assignment.

Date: _____

Edward C. Wooley, Trustee of the Edward C.
C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

Date: _____

Judith A. Wooley, Trustee of the Edward C.
Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000

STATE OF _____)
) ss.
County of _____)

On this ____ day of _____, 20__, before me, _____,
a Notary Public in and for said State, personally appeared Edward C. Wooley, known or
identified to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos
Revocable Trust Year 2000, and acknowledged to me that he executed the instrument in his
capacity as trustee.

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

Notary Public for the State of _____
Residing at _____
My commission expires _____

STATE OF _____)
) ss.
 County of _____)

On this _____ day of _____, 20____, before me, _____,
 a Notary Public in and for said State, personally appeared Judith A. Wooley, known or identified
 to me to be the trustee of the Edward C. Wooley and Judith A. Wooley Intervivos Revocable
 Trust Year 2000, and acknowledged to me that she executed the instrument in her capacity as
 trustee.

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

 Notary Public for the State of _____
 Residing at _____
 My commission expires _____

Exhibit ALEGAL DESCRIPTION
1365 Baring Blvd., Sparks, NV

All that certain real property situate in the County of Washoe, State of Nevada, described as follows:

PARCEL 1:

All that portion of the Southeast Quarter (SE ¼) of Section 34, Township 20 North, Range 20 East, M.D.M., Washoe County, Nevada, further described as follows:

Beginning at the intersection of the Westerly line of Sorenson Way with the Southerly line of Baring Boulevard, as shown on the "Parcel Map for Foothill Investment Co. and Lewis Building Co., Inc.", recorded January 26, 1983 in the office of the County Recorder of Washoe County, Nevada, as Parcel Map No. 1418, File No. 835532 and proceeding thence Southerly along the Westerly line of Sorenson Way on the arc of a curve to the right, from a tangent bearing South 89°11'14" East, with a radius of 30.00 feet, through a central angle of 90°00'00", an arc distance of 47.12 feet, said arc being subtended by a chord bearing south 44°11'14" East 42.45 feet; thence South 0°48'46" West 15.00 feet; thence along the arc of a curve to the right with a radius of 122.50 feet, through a central angle of 42°01'02", an arc distance of 89.83 feet, said arc being subtended by a chord which bears South 21°49'17" West 87.83 feet; thence along the arc of a reverse curve to the left with a radius of 227.50 feet, through a central angle of 7°23'23", an arc distance of 29.34 feet, said arc being subtended by a chord which bears South 39°08'05" West 29.32 feet; thence leaving Sorenson Way North 89°11'14" West 150.00 feet; thence North 0°48'46" East 150.00 feet to the Southerly line of Baring Boulevard; thence along Baring Boulevard South 89°11'14" East 169.67 feet to the point of beginning.

PARCEL 2:

An easement for ingress and egress for pedestrians and vehicles as described and conveyed in the access Easement Agreement recorded May 26, 1988 in Book 2742, Page 321, under Document No. 128846, Official Records.

APN: 030-041-08

Document Number 3291758 provided pursuant to the requirements of Section 1.NRS 111.312

EXHIBIT 17

EXHIBIT 17

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Brian P. Moquin, Esq. (SBN 257583) LAW OFFICES OF BRIAN P. MOQUIN 3506 La Castellet Court San Jose, CA 95148 TELEPHONE NO.: 408.300.0022 FAX NO. (Optional): 408.843.1678 E-MAIL ADDRESS (Optional): bmoquin@lawprism.com ATTORNEY FOR (Name): PLAINTIFF EDWARD C. WOOLEY		FOR COURT USE ONLY FILED MAR 11 2014 P 4:00 J. CAO-NGUYEN
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. FIRST STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN JOSE, CA 95148 BRANCH NAME:		
CASE NAME: WILLARD ET AL. v. HERBST ET AL.		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER: I-13-CV-245021

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): EDWARD C. WOOLEY makes the following substitution:

1. Former legal representative ☐ Party represented self ☒ Attorney (name): L. STEVEN GOLDBLATT
2. New legal representative ☐ Party is representing self* ☒ Attorney
 - a. Name: BRIAN P. MOQUIN
 - b. State Bar No. (if applicable): 257583
 - c. Address (number, street, city, ZIP, and law firm name, if applicable):
3506 La Castellet Court
San Jose, CA 95148
 - d. Telephone No. (include area code): 408.300.0022
3. The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Conservator
- Trustee
- Personal Representative
- Probate fiduciary
- Corporation
- Guardian ad litem
- Unincorporated association

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

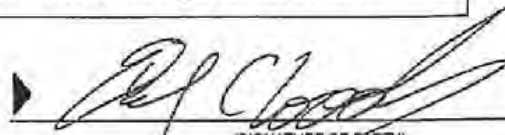
A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.

Date: March 5, 2013

EDWARD C. WOOLEY

(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY)

VIA FAX

5. ☒ I consent to this substitution.

Date: March 6, 2014

L. STEVEN GOLDBLATT

(TYPE OR PRINT NAME)

 3-6-14
(SIGNATURE OF FORMER ATTORNEY)

VIA FAX

6. ☒ I consent to this substitution.

Date: March 5, 2013

BRIAN P. MOQUIN

(TYPE OR PRINT NAME)


(SIGNATURE OF NEW ATTORNEY)

VIA FAX

(See reverse for proof of service by mail)

Page 1 of 2

MC-050

CASE NAME: WILLARD ET AL. v. HERBST ET AL.	CASE NUMBER: 1-13-CV-245021
-----------------------------------------------	--------------------------------

PROOF OF SERVICE BY MAIL
Substitution of Attorney—Civil

Instructions: After having all parties served by mail with the Substitution of Attorney—Civil, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney—Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

1. I am over the age of 18 and **not a party to this cause**. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (specify): **3506 La Castellet Court, San Jose, CA 95148**
2. I served the Substitution of Attorney—Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.
- (1) Date of mailing: **March 6, 2014** (2) Place of mailing (city and state): **San Jose, CA**
3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **March 6, 2014**

BRIAN P. MOQUIN

(TYPE OR PRINT NAME)



(SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

4. a. Name of person served: **JOHN P. DESMOND, ESQ.**
 b. Address (number, street, city, and ZIP): **GORDON SILVER**
100 W. Liberty Street, Suite 940
Reno, Nevada 89501
- c. Name of person served:
 d. Address (number, street, city, and ZIP):
- e. Name of person served:
 f. Address (number, street, city, and ZIP):
- g. Name of person served:
 h. Address (number, street, city, and ZIP):
- i. Name of person served:
 j. Address (number, street, city, and ZIP):

☐ List of names and addresses continued in attachment.

MC-050

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Brian P. Moquin, Esq. (SBN 257583) LAW OFFICES OF BRIAN P. MOQUIN 3506 La Castellet Court San Jose, CA 95148 TELEPHONE NO.: 408.300.0022 FAX NO. (Optional): 408.843.1678 E-MAIL ADDRESS (Optional): bmoquin@lawprism.com ATTORNEY FOR (Name): PLAINTIFF JUDITH A. WOOLEY		FOR COURT USE ONLY ENDORSED 2014 MAR 13 P 1:46 J. CAO-NGUYEN
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. FIRST STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN JOSE, CA 95148 BRANCH NAME:		
CASE NAME: WILLARD ET AL. v. HERBST ET AL.		
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)		CASE NUMBER: I-13-CV-245021

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): JUDITH A. WOOLEY makes the following substitution:

1. Former legal representative ☐ Party represented self ☒ Attorney (name): L. STEVEN GOLDBLATT
2. New legal representative ☐ Party is representing self* ☒ Attorney
- a. Name: BRIAN P. MOQUIN b. State Bar No. (if applicable): 257583
- c. Address (number, street, city, ZIP, and law firm name, if applicable):
 3506 La Castellet Court
 San Jose, CA 95148
- d. Telephone No. (include area code): 408.300.0022
3. The party making this substitution is a ☒ plaintiff ☐ defendant ☐ petitioner ☐ respondent ☐ other (specify):

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Personal Representative
- Guardian ad litem
- Conservator
- Probate fiduciary
- Unincorporated association
- Trustee
- Corporation

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.

Date: March 6, 2014

JUDITH A. WOOLEY

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY)

VIA FAX

5. ☒ I consent to this substitution.

Date: March 6, 2014

L. STEVEN GOLDBLATT

(TYPE OR PRINT NAME)


 (SIGNATURE OF FORMER ATTORNEY)

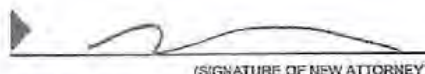
VIA FAX

6. ☒ I consent to this substitution.

Date: March 5, 2013

BRIAN P. MOQUIN

(TYPE OR PRINT NAME)


 (SIGNATURE OF NEW ATTORNEY)

VIA FAX

(See reverse for proof of service by mail)

Page 1 of 2

MC-050

CASE NAME: WILLARD ET AL. v. HERBST ET AL.	CASE NUMBER: 1-13-CV-245021
-----------------------------------------------	--------------------------------

PROOF OF SERVICE BY MAIL
Substitution of Attorney—Civil

Instructions: After having all parties served by mail with the Substitution of Attorney—Civil, have the person who mailed the document complete this Proof of Service by Mail. An unsigned copy of the Proof of Service by Mail should be completed and served with the document. Give the Substitution of Attorney—Civil and the completed Proof of Service by Mail to the clerk for filing. If you are representing yourself, someone else must mail these papers and sign the Proof of Service by Mail.

- I am over the age of 18 and **not a party to this cause**. I am a resident of or employed in the county where the mailing occurred. My residence or business address is (specify): 3506 La Castellet Court, San Jose, CA 95148
- I served the Substitution of Attorney—Civil by enclosing a true copy in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid.
 (1) Date of mailing: March 6, 2014 (2) Place of mailing (city and state): San Jose, CA
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 6, 2014

BRIAN P. MOQUIN

(TYPE OR PRINT NAME)



(SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

4. a. Name of person served: JOHN P. DESMOND, ESQ.
 b. Address (number, street, city, and ZIP): GORDON SILVER
 100 W. Liberty Street, Suite 940
 Reno, Nevada 89501
- c. Name of person served:
 d. Address (number, street, city, and ZIP):
- e. Name of person served:
 f. Address (number, street, city, and ZIP):
- g. Name of person served:
 h. Address (number, street, city, and ZIP):
- i. Name of person served:
 j. Address (number, street, city, and ZIP):

☐ List of names and addresses continued in attachment.

EXHIBIT 18

EXHIBIT 18

1 John P. Desmond, ESQ.
 2 California Bar No. 176430
 3 GORDON SILVER
 4 100 W. Liberty Street
 5 Suite 940
 6 Reno, Nevada 89501
 7 Telephone: (775) 343-7500
 8 Facsimile: (775) 786-0131
 9 E-Mail: jdesmond@gordonsilver.com

10 *Attorneys for Defendants*

11 BRIAN P. MOQUIN, SBN 257583
 12 408.300.0022 / 408.843.1678 fax
 13 bmoquin@lawprism.com
 14 LAW OFFICES OF BRIAN P. MOQUIN
 15 3506 La Castellet Court
 16 San Jose, CA 95148

17 *Attorneys for Plaintiffs*

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 19 **COUNTY OF SANTA CLARA**

20 LARRY J. WILLARD, Trustee of the LARRY
 21 JAMES WILLARD TRUST FUND;
 22 OVERLAND DEVELOPMENT
 23 CORPORATION; and EDWARD C.
 24 WOOLEY and JUDITH A. WOOLEY,
 25 Trustees of the EDWARD C. WOOLEY AND
 26 JUDITH A. WOOLEY INTER VIVOS
 27 REVOCABLE TRUST 2000,

28 Plaintiffs,

v.

29 JERRY HERBST; MARYANNE HERBST;
 30 TIMOTHY HERBST; JH, INC. and its wholly
 31 owned subsidiary BHI (BERRY-HINKLEY,
 32 INC.); TERRIBLE HERBST, INC.; MARC
 33 BERGER; X-ROADS SOLUTIONS GROUP,
 34 LLC; and BUSINESS PARTNERS, LLC,

35 Defendants.

Case No. 1-13-CV-245021

(Unlimited Jurisdiction)

**JOINT STIPULATION TO TAKE
 PENDING HEARINGS OFF CALENDAR
 AND TO WITHDRAW WRITTEN
 DISCOVERY REQUESTS
 PROPOUNDED BY PLAINTIFFS**

Date: March 18, 2014

Time: 9:00 a.m.

Dept.: 8

Judge: Hon. Patricia M. Lucas

Action Filed: April 19, 2013

Trial Date: None Set

1 **WHEREAS**, Plaintiffs in the above-captioned matter ("Plaintiffs") substituted Brian P.
2 Moquin, Esq. as their counsel of record on March 6, 2014 as a result of Plaintiffs' former
3 counsel being seriously injured in an automobile accident;

4 **WHEREAS**, on February 11, 2014, certain Defendants in the above-captioned matter
5 ("Defendants") filed Second Amended Motions to Quash Service of Summons and Complaint
6 and a Second Amended Motion to Dismiss (the "Motions to Quash/Dismiss");

7 **WHEREAS**, Defendants' Motions to Quash/Dismiss are currently set for hearing
8 before this Court on March 18, 2014 at 9:00 a.m.;

9 **WHEREAS**, on February 24, 2014, Defendants filed a Motion to Stay Discovery or,
10 Alternatively, Motions for Protective Order and Sanctions (the "Discovery Motion");

11 **WHEREAS**, Defendants' Discovery Motion is currently set for hearing on April 4,
12 2014 at 9:00 a.m.;

13 **WHEREAS**, Plaintiffs have agreed to withdraw the discovery requests propounded on
14 Defendants on or about February 10, 2014, said requests having been the subject of Defendants'
15 Discovery Motion; and

16 **WHEREAS**, Plaintiffs wish to file a First Amended Complaint and have agreed to do
17 so on or before April 11, 2014;

18 **NOW, THEREFORE**, Plaintiffs and Defendants hereby stipulate as follows:

19 1. In light of Plaintiffs' agreement to withdraw the discovery requests propounded
20 on Defendants on or about February 10, 2014, Defendants agree to withdraw their Discovery
21 Motion without prejudice upon the execution and filing of this joint stipulation.

22 2. Prior to filing a First Amended Complaint, Plaintiffs shall provide a copy thereof
23 to Defendants for review and reasonable approval, upon which approval Plaintiffs and
24 Defendants agree to jointly request leave of court to allow Plaintiffs to file said First Amended
25 Complaint.

26 3. In light of Plaintiffs' represented intention to file a First Amended Complaint on
27 or before April 11, 2014, upon execution and filing of this joint stipulation, Defendants shall
28 withdraw their Motions to Quash/Dismiss without prejudice.

- 2 -

**JOINT STIPULATION TO TAKE PENDING HEARINGS OFF CALENDAR AND
TO WITHDRAW WRITTEN DISCOVERY REQUESTS PROPOUNDED BY PLAINTIFFS**

1 4. In the event that Plaintiffs file a First Amended Complaint on or before April 11,
2 2014, Defendants shall have twenty (20) days from the date on which Plaintiffs' First Amended
3 Complaint is filed to answer or otherwise respond to the First Amended Complaint.

4 5. In the event that Plaintiffs fail to file a First Amended Complaint on or before
5 April 11, 2014, Defendants shall be allowed to re-file their Motions to Quash/Dismiss on or
6 before May 1, 2014 with the hearings being scheduled per standard notice requirements.

7 **IT IS SO STIPULATED.**

8
9 **FOR DEFENDANTS:**

10
11
12 DATED: March 13, 2014

GORDON SILVER

By: 

JOHN P. DESMOND, ESQ.

Attorneys for Defendants

VIA FAX

13
14
15 **FOR PLAINTIFFS:**

16
17
18 DATED: March 13, 2014

LAW OFFICES OF BRIAN P. MOQUIN

By: 

Brian P. Moquin, Esq.

Attorneys for Plaintiffs

EXHIBIT 19

EXHIBIT 19

From: Cindy S. Grinstead cgrinstead@GORDONSILVER.com

Subject: RE: Joint Stipulation

Date: March 14, 2014 at 10:19 AM

To: Brian Moquin bmoquin@lawprism.com

Cc: John P. Desmond jdesmond@GORDONSILVER.com, Benjamin W. Kennedy BKennedy@GORDONSILVER.com

CS

???

From: Brian Moquin [mailto:bmoquin@lawprism.com]

Sent: Friday, March 14, 2014 10:18 AM

To: Cindy S. Grinstead

Cc: John P. Desmond; Benjamin W. Kennedy

Subject: Re: Joint Stipulation

Thank you for confirming that the hearings are off-calendar. I have attached a copy of the file-stamped Joint Stipulation that I filed yesterday.

Best,
Brian

Brian P. Moquin, Esq.
Law Offices of Brian P. Moquin
3506 La Castellet Court
San Jose, CA 95148

skype: brianmoquin
408.300.0022
408.460.7787 cell
408.843.1678 fax

On 3/14/14, 9:33 AM, Cindy S. Grinstead wrote:

?

?

???

?

???

???

?

?

Cindy Grinstead
Legal Assistant / Office Manager
Gordon Silver
100 W. Liberty Street Ste. 940
Reno, NV 89501

Tel: 775.343.7500

Fax: 775.786.0131

E-mail: cgrinstead@gordonsilver.com

1 John P. Desmond, ESQ.
 2 California Bar No. 176430
 3 GORDON SILVER
 4 100 W. Liberty Street
 5 Suite 940
 6 Reno, Nevada 89501
 7 Telephone: (775) 343-7500
 8 Facsimile: (775) 786-0131
 9 E-Mail: jdesmond@gordonsilver.com

10 *Attorneys for Defendants*

11 BRIAN P. MOQUIN, SBN 257583
 12 408.300.0022 / 408.843.1678 fax
 13 bmoquin@lawprism.com
 14 LAW OFFICES OF BRIAN P. MOQUIN
 15 3506 La Castellet Court
 16 San Jose, CA 95148

17 *Attorneys for Plaintiffs*

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **COUNTY OF SANTA CLARA**

20 LARRY J. WILLARD, Trustee of the LARRY
 21 JAMES WILLARD TRUST FUND;
 22 OVERLAND DEVELOPMENT
 23 CORPORATION; and EDWARD C.
 24 WOOLEY and JUDITH A. WOOLEY,
 25 Trustees of the EDWARD C. WOOLEY AND
 26 JUDITH A. WOOLEY INTER VIVOS
 27 REVOCABLE TRUST 2000,

28 Plaintiffs,

v.

29 JERRY HERBST; MARYANNE HERBST;
 30 TIMOTHY HERBST; JH, INC. and its wholly
 31 owned subsidiary BHI (BERRY-HINKLEY,
 32 INC.); TERRIBLE HERBST, INC.; MARC
 33 BERGER; X-ROADS SOLUTIONS GROUP,
 34 LLC; and BUSINESS PARTNERS, LLC,

35 Defendants.

Case No. 1-13-CV-245021

(Unlimited Jurisdiction)

**JOINT STIPULATION TO TAKE
 PENDING HEARINGS OFF CALENDAR
 AND TO WITHDRAW WRITTEN
 DISCOVERY REQUESTS
 PROPOUNDED BY PLAINTIFFS**

Date: March 18, 2014

Time: 9:00 a.m.

Dept.: 8

Judge: Hon. Patricia M. Lucas

Action Filed: April 19, 2013

Trial Date: None Set

1 **WHEREAS**, Plaintiffs in the above-captioned matter ("Plaintiffs") substituted Brian P.
2 Moquin, Esq. as their counsel of record on March 6, 2014 as a result of Plaintiffs' former
3 counsel being seriously injured in an automobile accident;

4 **WHEREAS**, on February 11, 2014, certain Defendants in the above-captioned matter
5 ("Defendants") filed Second Amended Motions to Quash Service of Summons and Complaint
6 and a Second Amended Motion to Dismiss (the "Motions to Quash/Dismiss");

7 **WHEREAS**, Defendants' Motions to Quash/Dismiss are currently set for hearing
8 before this Court on March 18, 2014 at 9:00 a.m.;

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11 **WHEREAS**, Defendants' Discovery Motion is currently set for hearing on April 4,
12 2014 at 9:00 a.m.;

13 **WHEREAS**, Plaintiffs have agreed to withdraw the discovery requests propounded on
14 Defendants on or about February 10, 2014, said requests having been the subject of Defendants'
15 Discovery Motion; and

16 **WHEREAS**, Plaintiffs wish to file a First Amended Complaint and have agreed to do
17 so on or before April 11, 2014;

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21 Motion without prejudice upon the execution and filing of this joint stipulation.

22 2. Prior to filing a First Amended Complaint, Plaintiffs shall provide a copy thereof
23 to Defendants for review and reasonable approval, upon which approval Plaintiffs and
24 Defendants agree to jointly request leave of court to allow Plaintiffs to file said First Amended
25 Complaint.

26 3. In light of Plaintiffs' represented intention to file a First Amended Complaint on
27 or before April 11, 2014, upon execution and filing of this joint stipulation, Defendants shall
28 withdraw their Motions to Quash/Dismiss without prejudice.

1 4. In the event that Plaintiffs file a First Amended Complaint on or before April 11,
2 2014, Defendants shall have twenty (20) days from the date on which Plaintiffs' First Amended
3 Complaint is filed to answer or otherwise respond to the First Amended Complaint.

4 5. In the event that Plaintiffs fail to file a First Amended Complaint on or before
5 April 11, 2014, Defendants shall be allowed to re-file their Motions to Quash/Dismiss on or
6 before May 1, 2014 with the hearings being scheduled per standard notice requirements.

7 IT IS SO STIPULATED.

8
9 FOR DEFENDANTS:

10 GORDON SILVER

11
12 DATED: March 13, 2014

By: 

JOHN P. DESMOND, ESQ.

Attorneys for Defendants

VIA FAX

13
14
15 FOR PLAINTIFFS:

16 LAW OFFICES OF BRIAN P. MOQUIN

17
18 DATED: March 13, 2014

By: 

Brian P. Moquin, Esq.

Attorneys for Plaintiffs

EXHIBIT 20

EXHIBIT 20

*Superior Court
County of Santa Clara*

Today's Date: MAR 21 2014

To: Brian Moduin

From: ART 408-882-2422

Santa Clara County Superior Court
191 North First Street
San Jose, CA 95113

Voice: (408) 882-2100

Fax: (408) 882-2490

Number of Pages Including Cover Sheet: 6

MEMO: RE: 113cv245021

Minute order from 3-18-14

**If You Do Not Receive All pages, Please Call Back
Immediately.**

03/21/2014 11:39 FAX 408 882 2691

DTS CIVIL

002/006

Superior Court Of California
Minute Order - CIVIL LAW AND MOTION
HONORABLE PATRICIA M. LUCAS

Calendar For: 03/18/14

Page: 1

WANDA WALDERA

MARTIN

Reporter: Lisa Brown

Clerk: Naomi Matautia

Bailiff: Bailiff

Dept: Dept 2

5. 09:00AM Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al
Type: Breach Of Contract/Warranty - Unlimited Date Filed: 04/19/13
SubType:
SV: 05/10/13
Event: CV Mtn: Quash

Result Code:

Text: Service of Summons and Complaint by Defs Jerry Herbst,
Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley
Industries, Terrible Herbst Inc., Marc Berger, and X-Roads
Solutions Group (John P. Desmond)

PLT-0002 Overland Development Corporation, Inc.
Atty: Stanley A. Zlotoff
PLT-0001 Larry J. Willard
TRF: The Larry James Willard Trust Fund
Atty: L. Steven Goldblatt
PLT-0003 Edward C. Wooley
TRF: The Wooley Intervivos Revocable Trust 2000
Atty: L. Steven Goldblatt
PLT-0004 Judith A. Wooley
TRF: The Wooley Intervivos Revocable Trust 2000
Atty: L. Steven Goldblatt
DEF-0007 Marc Berger
Atty: John P. Desmond
DEF-0005 BHI (Berry-Hinkley, Inc.)
Atty: John P. Desmond
DEF-0009 Business Partners, LLC
SCO: In Interest To Santa Barbara Bank & Trust, AKA SBB
DEF-0001 Jerry Herbst
Atty: John P. Desmond
DEF-0002 Maryanne Herbst
Atty: John P. Desmond
DEF-0003 Timothy Herbst
Atty: John P. Desmond
DEF-0004 JH, Inc.
Atty: John P. Desmond
DEF-0006 Terrible Herbst, Inc.
Atty: John P. Desmond
DEF-0010 Union Bank
SCO: By Merger To Santa Barbara Bank & Trust Aka SBB&T
Atty: Stephen W. Pearson
DEF-0008 X-Roads Solutions Group, LLC
Atty: John P. Desmond

03/21/2014 11:40 FAX 408 882 2691

DTS CIVIL

003/006

Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al Date: 03/18/14 Page: 2

☒ NO APPEARANCE ☒ OFF CALENDAR ☒ VIA Stipulation Filed 3/13/14
 TENTATIVE RULING: ☐ CONTESTED ☐ NOT CONTESTED
☐ ADOPTED ☐ AS AMENDED ☐ SEE BELOW ☐ SEE ATTACHED

THE COURT ORDERS THIS CASE:

☐ SET FOR _____ ON _____ AT _____ DEPT _____
☐ CONTINUED TO _____ AT _____ DEPT _____
☐ DISMISSED ☐ WITH PREJUDICE ☐ WITHOUT PREJUDICE ☐ RE: _____
☐ NO SERVICE; REISSUED TO _____ AT _____ DEPT _____
☐ TEMPORARY RESTRAINING ORDER TO REMAIN IN EFFECT
☒ MOTION/~~PETITION~~ ☐ ARGUED ☐ GRANTED ☐ DENIED ☒ OTHER (MOOT IN LIGHT OF
RULING ON MOTION TO DISMISS)
☐ DEMURRER ☐ SUSTAINED ☐ WITH _____ DAYS LEAVE TO AMEND ☐ WITH LEAVE TO AMEND BY _____
☐ WITHOUT LEAVE TO AMEND ☐ AS TO _____ CAUSE(S) OF ACTION
☐ OVERRULED _____ DAYS TO ANSWER OR PLEAD FURTHER ☐ AS TO _____ CAUSE(S) OF ACTION
☐ TAKEN UNDER SUBMISSION; WRITTEN DECISION TO BE MAILED
☐ ORDER SIGNED ☐ SERVED ON COUNSEL IN COURT ☐ _____ TO PREPARE ORDER
☐ EXEMPTION: ☐ ALLOWED ☐ DISALLOWED ☐ OTHER _____
☐ PAYMENT GRANTED \$ _____ PER _____ FROM _____ ☐ CERTIFIED COPY OF MINUTES TO SHERIFF
☐ SWORN, EXAMINED AND DISCHARGED ☐ PURGED OF CONTEMPT ☐ ORDERED RELEASED
☐ BAIL: ☐ APPLIED \$ _____ ☐ EXONERATED \$ _____ ☐ FORFEITED ☐ OTHER _____
☐ BENCH WARRANT ORDERED FOR _____ BAIL \$ _____
☐ SET FOR ☐ COURT TRIAL ☐ JURY TRIAL ON _____ AT 8:45 AM. TIME ESTIMATE _____
☐ JURY DEMANDED BY _____ ☐ JURY WAIVED BY _____
☐ TRIAL COUNSEL PLAINTIFF _____ DEFENDANT _____
☐ SETTLEMENT CONFERENCE ON ☐ WEDNESDAY PRIOR TO TRIAL ☐ ON _____
☐ OTHER ORDERS: _____

03/21/2014 11:40 FAX 408 882 2691

DTS CIVIL

004/006

Superior Court Of California
Minute Order - CIVIL LAW AND MOTION
HONORABLE PATRICIA M. LUCAS

Calendar For: 03/18/14

Page: 1

WANDA WALDERA

Reporter: Lisa Brown

Clerk: Naomi Matautia

Bailiff: ~~Bailiff~~ *MARTIN*

Dept: Dept 2

5. 09:00AM Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al
Type: Breach Of Contract/Warranty - Unlimited Date Filed: 04/19/13
SubType:
SV: 05/10/13
Event: CV Mtn: Dismiss

Result Code:

Text: Pursuant to CCP 418.10 by Defs Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH Inc., Berry-Hinkley Industries, Terrible Herbst Inc., Marc Berger, and X-Roads Solutions Group (John P. Desmond)

PLT-0002 Overland Development Corporation, Inc.
Atty: Stanley A. Zlotoff
PLT-0001 Larry J. Willard
TRF: The Larry James Willard Trust Fund
Atty: L. Steven Goldblatt
PLT-0003 Edward C. Wooley
TRF: The Wooley Intervivos Revocable Trust 2000
Atty: L. Steven Goldblatt
PLT-0004 Judith A. Wooley
TRF: The Wooley Intervivos Revocable Trust 2000
Atty: L. Steven Goldblatt
DEF-0007 Marc Berger
Atty: John P. Desmond
DEF-0005 BHI (Berry-Hinkley, Inc.)
Atty: John P. Desmond
DEF-0009 Business Partners, LLC
SCO: In Interest To Santa Barbara Bank & Trust, AKA SBB
DEF-0001 Jerry Herbst
Atty: John P. Desmond
DEF-0002 Maryanne Herbst
Atty: John P. Desmond
DEF-0003 Timothy Herbst
Atty: John P. Desmond
DEF-0004 JH, Inc.
Atty: John P. Desmond
DEF-0006 Terrible Herbst, Inc.
Atty: John P. Desmond
DEF-0010 Union Bank
SCO: By Merger To Santa Barbara Bank & Trust Aka SBB&T
Atty: Stephen W. Pearson
DEF-0008 X-Roads Solutions Group, LLC
Atty: John P. Desmond

03/21/2014 11:41 FAX 408 882 2691

DTS CIVIL

005/006

Case: 1-13-CV-245021 L. Willard, et al vs J. Herbst, et al Date: 03/18/14 Page: 2

☒ NO APPEARANCE () OFF CALENDAR ()
 TENTATIVE RULING: () CONTESTED ☒ NOT CONTESTED
☒ ADOPTED () AS AMENDED () SEE BELOW ☒ SEE ATTACHED

THE COURT ORDERS THIS CASE:

() SET FOR _____ ON _____ AT _____ DEPT _____
 () CONTINUED TO _____ AT _____ DEPT _____
 () DISMISSED () WITH PREJUDICE () WITHOUT PREJUDICE () RE: _____
 () NO SERVICE; REISSUED TO _____ AT _____ DEPT _____
 () TEMPORARY RESTRAINING ORDER TO REMAIN IN EFFECT
 () MOTION/PETITION () ARGUED () GRANTED () DENIED () OTHER _____
 () DEMURRER () SUSTAINED () WITH _____ DAYS LEAVE TO AMEND () WITH LEAVE TO AMEND BY _____
 () WITHOUT LEAVE TO AMEND () AS TO _____ CAUSE(S) OF ACTION
 () OVERRULED _____ DAYS TO ANSWER OR PLEAD FURTHER () AS TO _____ CAUSE(S) OF ACTION
 () TAKEN UNDER SUBMISSION; WRITTEN DECISION TO BE MAILED
 () ORDER SIGNED () SERVED ON COUNSEL IN COURT ☒ COUNSEL FOR PREVAILING PARTY TO PREPARE ORDER
 () EXEMPTION: () ALLOWED () DISALLOWED () OTHER _____
 () PAYMENT GRANTED \$ _____ PER _____ FROM _____ () CERTIFIED COPY OF MINUTES TO SHERIFF
 () SWORN, EXAMINED AND DISCHARGED () PURGED OF CONTEMPT () ORDERED RELEASED
 () BAIL: () APPLIED \$ _____ () EXONERATED \$ _____ () FORFEITED () OTHER _____
 () BENCH WARRANT ORDERED FOR _____ BAIL \$ _____
 () SET FOR () COURT TRIAL () JURY TRIAL ON _____ AT 8:45 AM. TIME ESTIMATE _____
 () JURY DEMANDED BY _____ () JURY WAIVED BY _____
 () TRIAL COUNSEL PLAINTIFF _____ DEFENDANT _____
 () SETTLEMENT CONFERENCE ON () WEDNESDAY PRIOR TO TRIAL () ON _____
 () OTHER ORDERS: _____

Calendar line 5

Case Name: *Willard v. Herbst, et al.*

Case No.: 1-13-CV-245021

Defendants Jerry Herbst, Maryanne Herbst, Timothy Herbst, JH, Inc., Berry-Hinckley Industries, Terrible Herbst, Inc., Marc Berger and X-Roads Solutions Group have filed two motions: (1) to quash service of summons and complaint, and (2) to dismiss or stay pursuant to the doctrine of forum non conveniens. Plaintiffs have not opposed either motion.

The case is dismissed without prejudice as to the moving parties.

- oo0oo -

EXHIBIT 21

EXHIBIT 21

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): BRIAN P. MOQUIN, SBN 257583 LAW OFFICES OF BRIAN P. MOQUIN 3506 LA CASTELLET COURT SAN JOSE, CA 95148 TELEPHONE NO: 408.300.0022 FAX NO: 408.843.1678 E-MAIL ADDRESS: BMOQUIN@LAWPRISM.COM ATTORNEY FOR: Larry J. Willard, Overland Development Corp., Edward C. Wooley, and Judith A. Wooley		FOR COURT USE ONLY ENCLOSED 2014 MAY 19 1:46 By <u>J. CAO-NGUYEN</u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. FIRST STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN JOSE, CA 95113 BRANCH NAME:		
PLAINTIFF/PETITIONER: LARRY J. WILLARD <i>et al.</i> DEFENDANT/RESPONDENT: JERRY HERBST <i>et al.</i>		
REQUEST FOR DISMISSAL		CASE NUMBER: 1-13-CV-245021
A conformed copy will not be returned by the clerk unless a method of return is provided with the document.		
This form may not be used for dismissal of a derivative action or a class action or of any party or cause of action in a class action. (Cal. Rules of Court, rules 3.760 and 3.770.)		

1. TO THE CLERK: Please **dismiss** this action as follows:

- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☒ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name):
- (4) ☐ Cross-complaint filed by (name):
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☐ Other (specify):*

on (date):

on (date):

2. (Complete in all cases except family law cases.)

The court ☐ did ☒ did not waive court fees and costs for a party in this case. (This information may be obtained from the clerk. If court fees and costs were waived, the declaration on the back of this form must be completed).

Date: May 19, 2014

Brian P. Moquin, Esq.

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

*If dismissal requested is of specified parties only or of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

- ☒ Plaintiff/Petitioner ☐ Defendant/Respondent
- ☐ Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

** If a cross-complaint – or Response (Family Law) seeking affirmative relief – is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:

- ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
- ☐ Cross-Complainant

(To be completed by clerk)

4. ☒ Dismissal entered as requested on (date): MAY 19 20145. ☐ Dismissal entered on (date): as to only (name):6. ☐ Dismissal **not entered** as requested for the following reasons (specify):7. a. ☒ Attorney or party without attorney notified on (date): MAY 19 2014

b. ☐ Attorney or party without attorney not notified. Filing party failed to provide

☐ a copy to be conformed ☐ means to return conformed copy

Date: MAY 19 2014

Clerk, by

J. CAO-NGUYEN

Deputy

EXHIBIT 22

EXHIBIT 22

AP #1: 002-368-27

RECORDING REQUESTED BY

T.D. SERVICE COMPANY

and when recorded mail to

T.D. SERVICE COMPANY
4000 W. METROPOLITAN DRIVE
SUITE 400
ORANGE, CA 92868

RECORDED AT THE REQUEST OF
SERVICELINK IRVINE
03/21/2014 03:22PM
FILE NO.443196
ALAN GLOVER
CARSON CITY RECORDER
FEE \$246.00 DEP LRD

15909710

Space above this line for recorder's use

**NOTICE OF BREACH AND DEFAULT AND ELECTION TO CAUSE SALE OF
REAL PROPERTY UNDER DEED OF TRUST**



T.S. No: B544533 NV Unit Code: B Loan No: 24377125601/WOOLEY/EDWARD C.

Property Address: 1820 HIGHWAY 50 EAST, CARSON CITY, NV 89704

NOTICE IS HEREBY GIVEN THAT T.D. SERVICE COMPANY is either the original Trustee, the duly appointed substituted Trustee, or acting as agent for the Trustee or Beneficiary under the following described Deed of Trust:

Trustor: EDWARD C. WOOLEY, JUDITH A. WOOLEY

Recorded January 30, 2007 as Instr. No. 363893 in Book --- Page --- of Official
Records in the office of the Recorder of CARSON CITY County, NEVADA

Said Deed of Trust secures certain obligations including one Note for the sum of
\$2,200,000.00.

**AND MODIFICATION AGREEMENT(S) DATED 05/25/12, AND SAID DEED OF
TRUST CONTAINS A SECURITY AGREEMENT OF EVEN DATE, AMENDED &
RESTATED THREE YEAR ADJUSTABLE TERM NOTE**

That the Beneficial interest under such Deed of Trust and the obligations secured thereby are presently held by the Beneficiary; That a breach of, and default in, the obligations for which such Deed of Trust is security has occurred in that payment has not been made of:
THE INSTALLMENT OF PRINCIPAL AND INTEREST WHICH BECAME DUE APRIL 25, 2013 AND ALL SUBSEQUENT INSTALLMENTS OF PRINCIPAL AND INTEREST. PLUS LATE CHARGE(S). PLUS ACCRUED LATE CHARGE(S) IN THE AMOUNT OF \$916.97. DELINQUENT REAL ESTATE TAXES. DEFAULT INTEREST AT 3% EFFECTIVE 9-8-13.

That by reason thereof, the present Beneficiary under such Deed of Trust has executed and delivered to said duly appointed Trustee, a written Declaration of Default and Demand for Sale, and has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect

Page 2

T.S. No: B544533 NV Unit Code: B Loan No: 24377125601/WOOLEY/EDWARD C.

to cause the trust property to be sold to satisfy the obligations secured thereby.

You may have the right to cure the default hereon and reinstate the obligation secured by such Deed of Trust above described. Section NRS 107.080 permits certain defaults to be cured upon the payment of the amounts required by that statutory section without requiring payment of that portion of principal and interest which would not be due had no default occurred. Where reinstatement is possible, if the default is not cured within the statutory period set forth in Section NRS 107.080 the right of reinstatement will terminate and the property may thereafter be sold. The Trustor may have the right to bring a court action to assert the nonexistence of a default or any other defense of Trustor to acceleration and Sale.

Direct Foreclosure status inquiries to:

T.D. Service Company
4000 W. Metropolitan Drive
Suite 400
Orange, CA 92868-1988
(800) 843-0260

If you would like to discuss your loan or set up a meeting for us to assess your financial situation and explore options that may be available to avoid foreclosure please contact us at:

Union Bank, N.A.
9885 Towne Centre Drive 2-69-220
San Diego, CA 92121
Toni Scandlyn

You may wish to consult a credit-counseling agency to assist you. The following is a local counseling agency approved by the Department of Housing and Urban Development (HUD). Nevada Legal Services (Statewide) 877-693-2163, www.nevadalegalservices.org. HUD can provide you with the names and addresses of additional local counseling agencies if you call HUD's toll-free telephone number: 800-569-4287. Additional information may also be found on HUD's website: <http://portal.hud.gov/portal/page/portal/HUD/localoffices>.

DATED: 03/21/14

T.D. SERVICE COMPANY, AS TRUSTEE

BY  BY _____

MICHELLE PINO
VICE PRESIDENT OPERATIONS

The Beneficiary may be attempting to collect a debt and any information obtained may be used for that purpose.

Page 3

T.S. No: B544533 NV Unit Code: B Loan No: 24377125601/WOOLEY/EDWARD C.

STATE OF CALIFORNIA
COUNTY OF ORANGE

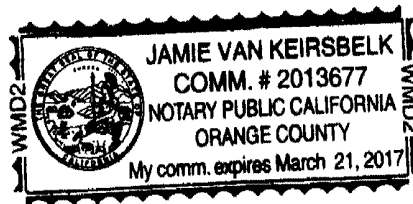
)SS)

On 03/21/14 before me, JAMIE VAN KEIRSBELK, a Notary Public, personally appeared MICHELLE PINO, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the Laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)



Borrower(s): EDWARD & JUDITH WOOLEY
 Property Address: 1820 HIGHWAY 50 EAST, CARSON CITY, NV. 89704
 T.S. Number: B544533

DECLARATION OF COMPLIANCE

NV SB 321 (2013) Sec. 11

The undersigned, as an authorized agent or employee of the mortgage servicer named below, hereby declares that:

- ☐ The mortgage servicer has contacted the borrower pursuant to SB321 Section 11(2) in order to assess the borrower's financial situation and explore options for the borrower to avoid a foreclosure sale and to provide the toll free number to enable the borrower to find a housing counselor certified by HUD. Thirty (30) calendar days or more have passed since "initial contact" was made.
- ☐ The mortgage servicer has tried with due diligence to contact the borrower pursuant to SB321 Section 11(5) in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure sale. Despite the exercise of due diligence, the mortgage servicer has been unable to contact the borrower. Thirty (30) calendar days or more have passed since the due diligence requirements were satisfied.
- ☐ The requirements set forth in SB321 Section 11 do not apply because the individual did not meet the definition of "Borrower" pursuant to SB 321 Section 3.
- ☒ The requirements set forth in SB321 Section 11 do not apply because the subject loan is not a "residential mortgage loan" as defined by SB321 Section 7. A residential mortgage loan as defined by SB321 Section 7 is a loan primarily for personal, family or household use and which is secured by a mortgage or deed of trust on owner-occupied housing as defined in N.R.S. §107.086.
- ☐ The requirements of SB321 Section 11 do not apply because the default event which precipitated this foreclosure was not a monetary default as defined in SB321 Section 11.
- ☐ Pursuant to SB 321 (2013) Sec. 7 because the property is not "owner-occupied" real property (as defined in N.R.S. § 107.086).
- ☐ No contact is required because the mortgage servicer is a financial institution as defined in N.R.S. § 660.45 that, during its immediately preceding annual reporting period, as established with its primary regulator, has foreclosed on 100 or fewer real properties located in this state which constitute owner-occupied housing as defined N.R.S. §107.86

Dated: 2/18/14

UNION BANK, N.A SUCCESSOR BY MERGER TO PACIFIC
 CAPITAL BANK DBA SOUTH VALLEY NATIONAL BANK, Mortgage Servicer

BY: 

Terilyn S. Baran, Vice President
 Name typed or printed

AFFIDAVIT OF AUTHORITY TO EXERCISE THE POWER OF SALE

Record Title Holder: Edward C. Wooley and Judith A. Wooley, Trustees of The Edward C. Wooley and Judith A. Wooley Intervivos Revocable Trust Year 2000		Trustee Name and Address: T.D. Service Company 4000 West Metropolitan Drive Suite 400 Orange, CA 92868 <i>TS# B-544533</i>
Property Address: 1820 Highway 50 East Carson City, NV 89704		Deed of Trust Document Recorded January 30, 2007 as Instrument No. 363893

STATE OF California)COUNTY OF Ventura)
ss:

The affiant, Terrilyn S. Baron, being first duly sworn upon oath and under penalty of perjury, attests as follows:

1. I am an employee of Union Bank, N.A. Succesor by merger to Pacific Capital Bank, N.A. dba South Valley National Bank. I am duly authorized to make this Affidavit for Union Bank, N.A. Succesor by merger to Pacific Capital Bank, N.A. dba South Valley National Bank in its capacity as the current beneficiary of the subject Deed of Trust ("Beneficiary") for the current beneficiary of the Deed of Trust.

2. I have the personal knowledge required to execute this Affidavit, as set forth in NRS 107.080(2)(c) and can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.

3. In the regular and ordinary course of business, it is Union Bank, N.A. Succesor by merger to Pacific Capital Bank, N.A. dba South Valley National Bank's practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services, including the Subject Loan (collectively, "Business Records"). I have continuing access to the Business Records for the Subject Loan, and I am familiar with the Business Records and I have personally reviewed the business records relied upon to compile this Affidavit.

4. The full name and business address of the current trustee or the current trustee's representative or assignee is:

T.D. Service Company		4000 West Metropolitan Drive Suite 400 Orange, CA 92868
Full Name		Street, City, State, Zip

APN#033-071-08

File No.: V543621

5. The full name and business address of the current holder of the note secured by the Deed of Trust is:

Union Bank, N.A		3151 East Imperial Highway Brea, CA. 92821
Full Name		Street, City, State, Zip

6. The full name and business address of the current beneficiary of record of the Deed of Trust is:

Union Bank, N.A		3151 East Imperial Highway Brea, CA. 92821
Full Name		Street, City, State, Zip

7. The full name and business address of the current servicer of the obligation or debt secured by the Deed of Trust is:

Union Bank, N.A.		3151 East Imperial Highway Brea, CA. 92821
Full Name		Street, City, State, Zip

8. The beneficiary, its successor in interest, or the trustee of the Deed of Trust has: (I) actual or constructive possession of the note secured by the Deed of Trust; and/or (II) is entitled to enforce the obligation or debt secured by the Deed of Trust. If the latter is applicable and the obligation or debt is an "instrument," as defined in NRS § 104.3103(2), the beneficiary, successor in interest to the beneficiary, or trustee entitled to enforce the obligation or debt is either: (1) the holder of the instrument constituting the obligation or debt; (2) a non-holder in possession of the instrument who has the rights of the holder; or (3) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to a court order issued NRS § 104.3309.

9. The beneficiary, its successor in interest, the trustee, the servicer of the obligation or debt secured by the Deed of Trust, or an attorney representing any of those persons, has sent to the obligor or borrower of the of the obligation or debt secured by the Deed of Trust a written statement containing the following information (I) the amount of payment required to make good the deficiency in performance or payment, avoid the exercise of the power of sale and reinstate the underlying obligation or debt, as of the date of the statement; (II) The amount in default; (III) the principal amount of the obligation or debt secured by the Deed of Trust; (IV) the amount of accrued interest and late charges; (V) a good faith estimate of all fees imposed in connection with the exercise of the power of sale; (VI) contact information for obtaining the most current amounts due and a local or toll free telephone number where the obligor or

APN#033-071-08 File No.: V543621

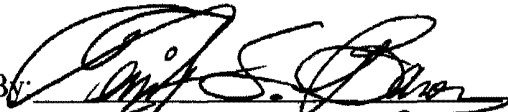
borrower of the obligation or debt may call to receive the most current amounts due and a recitation of the information contained in this Affidavit.

10. The borrower or obligor may utilize the following toll-free or local telephone number to inquire about the default, obtain the most current amounts due, receive a recitation of the information contained in this Affidavit, and/or explore loss mitigation alternatives: 800-999-4406 or 818-865-3236.

11. Pursuant to my personal review of the business records of the beneficiary, the successor in interest of the beneficiary, and/or the business records of the servicer of the obligation or debt secured by the Deed of Trust; and/or the records of the county recorder where the subject real property is located; and/or the title guaranty or title insurance issued by a title insurer or title agent authorized to do business in the state of Nevada, the following is the (I) date, (II) recordation number (or other unique designation); and (III) assignee of each recorded assignment of the subject Deed of Trust:

Recorded Date or Dated Date	Recording number.	Name of Assignee (From/To)
N/A	N/A	N/A

Signed By:



Dated:

3/11/14

Print Name:

Terrilyn S. Baron

STATE OF

) ss:

COUNTY OF

On this _____ day of _____, 2014, personally appeared before me, a Notary Public, in and for said County and State, _____, known to me to be the persons described in and who executed the foregoing instrument in the capacity set forth therein, who acknowledged to me that he/she executed the same freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

Attached please find California All-purpose Acknowledgment.

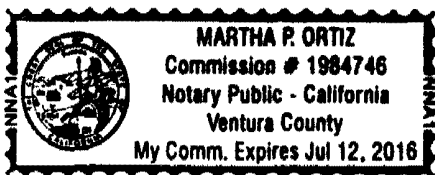
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
CIVIL CODE § 1189

State of California }

County of Ventura

On 03-11-2014 before me, Martha P Ortiz, Notary Public
 Date Here Insert Name and Title of the Officer

personally appeared Terrilyn Sue Baron
 Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Place Notary Seal Above

Signature: [Signature]
 Signature of Notary Public

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit of authority to exercise the power of sale. Document Date: 3-11-2014

Number of Pages: 3 Signer(s) Other Than Named Above: none

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

EXHIBIT 23

EXHIBIT 23

From: Terrilyn Baron <Terrilyn.Baron@unionbank.com>
To: Edward Wooley <edwooley@me.com>
Date: February 5, 2014 at 8:56:54 AM HST
Subject: RE: Final PA ?

Ed.,

I need a complete copy of the signed version of the document not just the signature pages and a draft not signed.

We still need to talk about the Cross Collateral clause in the Sparks and Carson City docs and how to resolve this since the Demand & Default is out on Sparks also and the potential sale does not resolve it.

You may want to have your attorney involved in that conversation with me and my attorney.

Let me know if we can schedule a time to talk tomorrow or Friday with counsel.

Sincerely,

Terri Baron
 Vice President, Senior Workout Specialist
 Real Estate Special Assets Division

Direct 818-865-3236 | Fax 818-865-3261
 Union Bank | 30343 Canwood Street, Suite 100
 Mail Code 4-41C-7934 | Agoura Hills, CA 91301
terrilyn.baron@unionbank.com | unionbank.com



From: Edward Wooley [<mailto:edwooley@me.com>]
Sent: Wednesday, February 05, 2014 10:50 AM
To: Terrilyn Baron
Subject: Fwd: Final PA ?

Begin forwarded message:

From: Dan Gluhaich <dgluhaich@interorealestate.com>
Subject: Fwd: Final PA ?
Date: February 5, 2014 at 8:20:52 AM HST
To: "edwooley@me.com" <edwooley@me.com>
Reply-To: Dan Gluhaich <dgluhaich@interorealestate.com>

Sent from Samsung tablet

----- Original message -----
From: "Gluhaich, Dan (LAS)" <Dan.Gluhaich@colliers.com>
Date: 02/05/2014 10:18 AM (GMT-08:00)
To: Dan Gluhaich <dgluhaich@interorealestate.com>
Subject: Fwd: Final PA ?

Psa

EXHIBIT 24

EXHIBIT 24

A. Settlement StatementU.S. Department of Housing
and Urban Development

OMB No. 2502-0265

B. Type of Loan				6. File Number 062749-PAH		7. Loan Number		8. Mortgage Ins Case Number	
1. <input type="checkbox"/> FHA 2. <input type="checkbox"/> FmHA 3. <input type="checkbox"/> Conv Unins 4. <input type="checkbox"/> VA 5. <input type="checkbox"/> Conv Ins. 6. <input type="checkbox"/> Seller Finance									
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.									
D. Name & Address of Borrower Asset Exchange Company As QI for The Richard Wray 1981 Family Trust				E. Name & Address of Seller The Edward C. Wooley and Judith A. Wooley Intervivos Revocable Living Trust			F. Name & Address of Lender		
G. Property Location 1365 Baring Blvd Sparks, NV 89436				H. Settlement Agent Name Western Title Company, LLC 5390 Kietzke Ln, Suite 101 Reno, NV 89511 Tax ID: 80-0263542 Underwritten By: First American Title Company				I. Settlement Date 5/20/2014 Fund:	
J. Summary of Borrower's Transaction				K. Summary of Seller's Transaction					
100. Gross Amount Due from Borrower				400. Gross Amount Due to Seller					
101. Contract Sales Price		\$3,100,000.00		401. Contract Sales Price		\$3,100,000.00			
102. Personal Property				402. Personal Property					
103. Settlement Charges to borrower		\$8,695.00		403.					
104.				404.					
105.				405.					
Adjustments for items paid by seller in advance				Adjustments for items paid by seller in advance					
106. County Property Taxes 05/20/14 to 06/30/14		\$1,225.34		406. County Property Taxes 05/20/14 to 06/30/14		\$1,225.34			
107. Sewer Use Fee 05/20/14 to 05/31/14		\$156.49		407. Sewer Use Fee 05/20/14 to 05/31/14		\$156.49			
108. HOA Dues				408. HOA Dues					
109. Assessments				409. Assessments					
110. RENTS				410. RENTS					
111.				411.					
112.				412.					
113.				413.					
114.				414.					
115.				415.					
116.				416.					
120. Gross Amount Due From Borrower		\$3,110,076.83		420. Gross Amount Due to Seller		\$3,101,381.83			
200. Amounts Paid By Or In Behalf Of Borrower				500. Reductions in Amount Due to Seller					
201. Deposit or earnest money		\$100,000.00		501. Excess Deposit					
202. Principal amount of new loan(s)				502. Settlement Charges to Seller (line 1400)		\$147,847.30			
203. Existing loan(s) taken subject to				503. Existing Loan(s) Taken Subject to					
204. Loan Amount 2nd Lien				504. Payoff of first mortgage loan					
205.				505. Payoff of second mortgage loan					
206. EXCHANGE FUNDS -				506. PAYOFF UNION BANK		\$2,075,236.35			
207.				507.					
208.				508.					
209.				509.					
Adjustments for items unpaid by seller				Adjustments for items unpaid by seller					
210. County Property Taxes				510. County Property Taxes					
211. Sewer Use Fee				511. Sewer Use Fee					
212. HOA Dues				512. HOA Dues					
213. Assessments				513. Assessments					
214. RENTS 05/20/14 to 05/31/14		\$7,453.79		514. RENTS 05/20/14 to 05/31/14		\$7,453.79			
215.				515.					
216.				516.					
217.				517.					
218.				518.					
219.				519.					
220. Total Paid By/For Borrower		\$107,453.79		520. Total Reduction Amount Due Seller		\$2,230,537.44			
300. Cash At Settlement From/To Borrower				600. Cash At Settlement To/From Seller					
301. Gross Amount due from borrower (line 120)		\$3,110,076.83		601. Gross Amount due to seller (line 420)		\$3,101,381.83			
302. Less amounts paid by/for borrower (line 220)		\$107,453.79		602. Less reductions in amt. due seller (line 520)		\$2,230,537.44			
303. Cash From Borrower		\$3,002,623.04		603. Cash To Seller		\$870,844.39			

Section 5 of the Real Estate Settlement Procedures Act (RESPA) requires the following: • HUD must develop a Special Information Booklet to help persons borrowing money to finance the purchase of residential real estate to better understand the nature and costs of real estate settlement services; • Each lender must provide the booklet to all applicants from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate; • Lenders must prepare and distribute with the Booklet a Good Faith Estimate of the settlement costs that the borrower is likely to incur in connection with the settlement. These disclosures are mandatory.

Section 4(a) of RESPA mandates that HUD develop and prescribe this standard form to be used at the time of loan settlement to provide full disclosure of all charges imposed upon the borrower and seller. These are third party disclosures that are designed to provide the borrower with pertinent information during the settlement process in order to be a better shopper. The Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information requested does not lend itself to confidentiality.

File No. 062749-PAH

I. Settlement Charges

700. Total Sales/Broker's Commission based on price	\$3,100,000.00	@4.25 % = \$131,750.00	Paid From	Paid From
Division of Commission (line 700) as follows:			Borrower's	Seller's
			Funds at	Funds at
			Settlement	Settlement
701. \$65,875.00	to Colliers International			
702. \$65,875.00	to Perkins Company of Nevada			
703. Commission Paid at Settlement			\$0.00	\$131,750.00
800. Items Payable in Connection with Loan				
801. Loan Origination Fee %	to			
802. Loan Discount %	to			
803. Appraisal Fee	to			
804. Credit Report	to			
805. Lender's Inspection Fee	to			
806. Mortgage Insurance Application	to			
807. Assumption Fee	to			
900. Items Required by Lender To Be Paid in Advance				
901. Interest from 5/20/2014 to 6/1/2014 @ 50/day				
902. Mortgage Insurance Premium for months	to			
903. Hazard Insurance Premium for years	to			
1000. Reserves Deposited With Lender				
1001. Hazard insurance	months @	per month		
1002. Homeowner's insurance	months @	per month		
1003. County Property Taxes	months @	per month		
1004. Sewer Use Fee	months @	per month		
1005. HOA Dues	months @	per month		
1006. Assessments	months @	per month		
1007.	months @	per month		
1008.	months @	per month		
1011. Aggregate Adjustment				
1100. Title Charges				
1101. Escrow Fee	to Western Title Company FEES		\$2,000.00	\$2,000.00
1102. Abstract or title search	to			
1103. Title examination	to Western Title Company FEES			
1104. Title insurance binder	to Western Title Company FEES			
1105. Document preparation	to Western Title Company FEES			
1106. Notary fees	to			
1107. Attorney's fees	to			
(includes above items numbers:)				
1108. Title insurance	to Western Title Company FEES			\$6,617.00
(includes above items numbers:)				
1109. Lender's coverage	\$0.00/\$0.00			
1110. Owner's coverage	\$3,100,000.00/\$6,617.00			
1111. Wire Fees	to Western Title Company FEES		\$20.00	\$20.00
1112. Courier/Messenger Fee	to Western Title Company FEES		\$20.00	\$40.00
1113. E-mail Documents	to Western Title Company FEES			
1200. Government Recording and Transfer Charges				
1201. Recording Fees	Deed \$30.00, Mortgage, Ref \$20.00	to Western Title Company FEES	\$30.00	\$20.00
1202. City/county tax/stamps	Deed \$12,710.00, Mortgage	to Western Title Company FEES	\$6,355.00	\$6,355.00
1203. State tax/stamps	Deed, Mortgage	to		
1204. Tax certificates	to			
1205. Misc. Recordings- IF ANY- ESTIMATE	to Western Title Company FEES		\$50.00	\$50.00
1206. Recording Submission Fee-ESTIMATE	to Western Title Company FEES		\$20.00	\$20.00
1300. Additional Settlement Charges				
1301. Survey	to			
1302. Pest Inspection	to			
1303. PAY SEWER CURRENT	to City of Sparks			\$723.58
1304. PAY WASTE MANAGEMENT to 5-16-14	to Waste Management of Nevada			\$251.72
1305. EXCHANGE FEE	to ASSET EXCHANGE COMPANY	POC (B) \$200.00		
1306. PAD IF NEEDED	to Western Title Company		\$200.00	
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			\$8,695.00	\$147,847.30

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a completed copy of pages 1, 2 and 3 of this HUD-1 Settlement Statement.

EXHIBIT 25

EXHIBIT 25

Department of the Treasury - Internal Revenue Service (99)		Form 1040 U.S. Individual Income Tax Return 2014		OMB No. 1545-0045 (01-01-2014) (01-01-2014) (01-01-2014)	
For the year Jan. 1 (or 2) 2014, or other tax year beginning _____, 2014 ending _____, 2014				See separate instructions.	
Your first name and last name Edward C. Wooley				Your social security number [REDACTED]	
If a co-owner, add the name of the other owner Judith A. Wooley				Spouse's social security number [REDACTED]	
Home address (street and city), if you have a P.O. Box, put that address 68-1025 N. Kaniku Drive #516				▲ Make sure the SSN(s) above and on line 6c are correct. Presidential Election Campaign Check here if you, or your spouse if filing jointly, want \$2 to go to this fund. (Checking a box below will not change your tax or refund.) <input checked="" type="checkbox"/> You <input checked="" type="checkbox"/> Spouse	
City, state or first office, county, and ZIP code. If you have a foreign address, also include it on a separate line. Kamehala, HI 96741-8782					
Filing Status					
1 <input type="checkbox"/> Single 2 <input checked="" type="checkbox"/> Married filing jointly (use if you are not alone) 3 <input type="checkbox"/> Married filing separately. Enter spouse's SSN above & last name here.				4 <input type="checkbox"/> Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here.	
5 <input type="checkbox"/> Qualifying widow(er) with dependent child					
Check only one box					
Exemptions					
6a <input checked="" type="checkbox"/> Yourself. If someone else claims you as a dependent, do not check this box. b <input checked="" type="checkbox"/> Spouse c Dependents				7 <input type="checkbox"/> Dependent's social security number 8 <input type="checkbox"/> Dependent's relationship to you	
(i) First name Last name (ii) Social security number (iii) Relationship to you				9 <input type="checkbox"/> If you are claiming a dependent, check one of the following boxes: <input type="checkbox"/> Child (see instructions) <input type="checkbox"/> Student (see instructions) <input type="checkbox"/> Relative (see instructions) <input type="checkbox"/> Other (see instructions)	
d Total number of exemptions claimed				e Add members to lines above	
Income					
7 Wages, salaries, tips, etc. Attach Form(s) W-2. 8a Taxable interest. Attach Schedule D if required. b Tax-exempt interest. Do not include on line 8a.				7 8a 57. 8b	
9a Ordinary dividends. Attach Schedule D if required. b Qualified dividends.				9a 3,611. 9b 3,611.	
10 Taxable refunds, credits, or offsets of state and local income taxes. 11 Alimony received. 12 Business income or loss. Attach Schedule C or C-EZ. 13 Capital gains or losses. Attach Schedule D. 14 Other gains or losses. Attach Form 4797.				10 11 12 13 1,834,021. 14	
15a IRA distributions. 15a Taxable amount.				15b	
16a Pensions and annuities. 16a Taxable amount.				16b	
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E.				17 -173,024.	
18 Farm income or loss. Attach Schedule F.				18	
19 Unemployment compensation.				19	
20a Social security benefits. 20a 45,479. 20b Taxable amount.				20b 38,657.	
21 Other income. See instructions.				21 1,768.	
22 Combine lines 7 through 21. This is your total income.				22 1,705,090.	
Adjusted Gross Income					
23 Educator expenses. 24 Certain business expenses of research, performing arts, and health care. Attach Form 2136 or 7199-CT. 25 Health savings account deduction. Attach Form 8889. 26 Moving expenses. Attach Form 3903. 27 Deductible part of self-employment tax. Attach Schedule SE. 28 Self-employed SEP, SIMPLE, and qualified plans. 29 Self-employed health insurance deduction. 30 Penalty on early withdrawal of savings. 31a Amount paid. 31b Spouse's SSN.				23 24 25 26 27 83. 28 29 1,085. 30 31a 31b	
32 IRA deduction. 33 Student loan interest deduction. 34 Tuition and fees. Attach Form 8879. 35 Qualified plan or 401(k) deduction. Attach Form 8881. 36 ROTH IRA. 36a Through 36d.				32 33 34 35 36 1,168.	
37 Subtract line 36 from line 22. This is your adjusted gross income.				37 1,703,922.	

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see separate instructions.

Form 1040 (2014)

Form 1040 (2014)		Edward C. and Judith A. Woolley		Page 2			
Tax and Credits		38	Amount from line 37 (adjusted gross income)	38	1,703,922		
39a Check <input checked="" type="checkbox"/> You were born before January 2, 1955. <input type="checkbox"/> Spouse was born before January 2, 1955. <input type="checkbox"/> Total lower checked = 39a		40	Standard deduction from Schedule E or your standard deduction (see instructions)	40	13,766		
b If your spouse is a dependent, check if any from: <input type="checkbox"/> Form 9814 <input type="checkbox"/> Form 4972		41	Subtract line 40 from line 38	41	1,684,156		
42 Exemptions. If line 21 is \$12,000 or less, multiply \$1,000 by the number on line 41. Otherwise, see instructions.		42	Taxable income. Subtract line 42 from line 41.	42	0		
43 Taxable income. Subtract line 42 from line 41.		43	Taxable income. Subtract line 42 from line 41.	43	1,684,156		
44 Tax (see instructions). Check if any from: <input type="checkbox"/> Form 9814 <input type="checkbox"/> Form 4972		44	Alternative minimum tax (see instructions). Attach Form 6251.	44	302,881		
45 Alternative minimum tax (see instructions). Attach Form 6251.		45	Excess advance premium tax credit repayment. Attach Form 8962.	45	0		
46 Excess advance premium tax credit repayment. Attach Form 8962.		46	Add lines 44, 45, and 46.	46	302,881		
47 Add lines 44, 45, and 46.		47	Foreign tax credit. Attach Form 1116, if required.	47	302,881		
48 Foreign tax credit. Attach Form 1116, if required.		48	Credit for child and dependent care expenses. Attach Form 244.	48			
49 Credit for child and dependent care expenses. Attach Form 244.		49	Education credits from Form 8863, line 19.	49			
50 Education credits from Form 8863, line 19.		50	Retirement savings contributions credit. Attach Form 8809.	50			
51 Retirement savings contributions credit. Attach Form 8809.		51	Child tax credit. Attach Schedule 8812, if required.	51			
52 Child tax credit. Attach Schedule 8812, if required.		52	Residential energy credit. Attach Form 8809.	52			
53 Residential energy credit. Attach Form 8809.		53	Other tax credits from: <input type="checkbox"/> 380 <input type="checkbox"/> 381 <input type="checkbox"/> 382 <input type="checkbox"/> 383 <input type="checkbox"/> 384 <input type="checkbox"/> 385 <input type="checkbox"/> 386 <input type="checkbox"/> 387 <input type="checkbox"/> 388 <input type="checkbox"/> 389 <input type="checkbox"/> 390 <input type="checkbox"/> 391 <input type="checkbox"/> 392 <input type="checkbox"/> 393 <input type="checkbox"/> 394 <input type="checkbox"/> 395 <input type="checkbox"/> 396 <input type="checkbox"/> 397 <input type="checkbox"/> 398 <input type="checkbox"/> 399 <input type="checkbox"/> 400	54	Other tax credits from: <input type="checkbox"/> 380 <input type="checkbox"/> 381 <input type="checkbox"/> 382 <input type="checkbox"/> 383 <input type="checkbox"/> 384 <input type="checkbox"/> 385 <input type="checkbox"/> 386 <input type="checkbox"/> 387 <input type="checkbox"/> 388 <input type="checkbox"/> 389 <input type="checkbox"/> 390 <input type="checkbox"/> 391 <input type="checkbox"/> 392 <input type="checkbox"/> 393 <input type="checkbox"/> 394 <input type="checkbox"/> 395 <input type="checkbox"/> 396 <input type="checkbox"/> 397 <input type="checkbox"/> 398 <input type="checkbox"/> 399 <input type="checkbox"/> 400	54	10,575
54 Other tax credits from: <input type="checkbox"/> 380 <input type="checkbox"/> 381 <input type="checkbox"/> 382 <input type="checkbox"/> 383 <input type="checkbox"/> 384 <input type="checkbox"/> 385 <input type="checkbox"/> 386 <input type="checkbox"/> 387 <input type="checkbox"/> 388 <input type="checkbox"/> 389 <input type="checkbox"/> 390 <input type="checkbox"/> 391 <input type="checkbox"/> 392 <input type="checkbox"/> 393 <input type="checkbox"/> 394 <input type="checkbox"/> 395 <input type="checkbox"/> 396 <input type="checkbox"/> 397 <input type="checkbox"/> 398 <input type="checkbox"/> 399 <input type="checkbox"/> 400		55	Add lines 48 through 54. These are your total credits.	55	10,575		
55 Add lines 48 through 54. These are your total credits.		56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-	56	292,306		
56 Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-		57	Self-employment tax. Attach Schedule SE.	57	165		
57 Self-employment tax. Attach Schedule SE.		58	Unemployment tax. Attach Schedule SE.	58			
58 Unemployment tax. Attach Schedule SE.		59	Additional tax on IRA, other qualified retirement plan, or 529 plan. Attach Form 529, if required.	59			
59 Additional tax on IRA, other qualified retirement plan, or 529 plan. Attach Form 529, if required.		60a	Household employment taxes from Schedule E.	60a			
60a Household employment taxes from Schedule E.		60b	First-time homebuyer credit repayment. Attach Form 5405, if required.	60b			
60b First-time homebuyer credit repayment. Attach Form 5405, if required.		61	Health care individual responsibility (see instructions). Attach Form 8949.	61			
61 Health care individual responsibility (see instructions). Attach Form 8949.		62	Tax from: <input type="checkbox"/> Form 9814 <input type="checkbox"/> Form 4972 <input type="checkbox"/> Form 9814 <input type="checkbox"/> Form 4972	62			
62 Tax from: <input type="checkbox"/> Form 9814 <input type="checkbox"/> Form 4972 <input type="checkbox"/> Form 9814 <input type="checkbox"/> Form 4972		63	Add lines 56 through 62. This is your total tax.	63	292,471		
63 Add lines 56 through 62. This is your total tax.		64	Federal income tax withheld from Forms 1099, 1042-S, and 1043.	64			
64 Federal income tax withheld from Forms 1099, 1042-S, and 1043.		65	Other income tax payments and amount applied from 1042-S.	65	350,000		
65 Other income tax payments and amount applied from 1042-S.		66a	Earned income credit (EIC).	66a			
66a Earned income credit (EIC).		66b	Nonrefundable credit pay election.	66b			
66b Nonrefundable credit pay election.		67	Additional child tax credit. Attach Schedule 8812.	67			
67 Additional child tax credit. Attach Schedule 8812.		68	American opportunity credit from Form 8863, line 1.	68			
68 American opportunity credit from Form 8863, line 1.		69	Net premium tax credit. Attach Form 8862.	69			
69 Net premium tax credit. Attach Form 8862.		70	Any other payments requested by the IRS.	70			
70 Any other payments requested by the IRS.		71	Excess social security and tier 1 FICA tax withheld.	71			
71 Excess social security and tier 1 FICA tax withheld.		72	Credit for federal tax on health. Attach Form 4136.	72			
72 Credit for federal tax on health. Attach Form 4136.		73	Credits from Form 8811.	73			
73 Credits from Form 8811.		74	Add lines 64, 65, 66a, 67, 68, 69, 70, 71, 72, and 73. This is your total payments.	74	350,000		
74 Add lines 64, 65, 66a, 67, 68, 69, 70, 71, 72, and 73. This is your total payments.		75	Refund. If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid.	75	57,529		
75 Refund. If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid.		76a	Amount of line 75 you would like refunded to you. If Form 8879 is attached, check here.	76a	57,273		
76a Amount of line 75 you would like refunded to you. If Form 8879 is attached, check here.		76b	Refunding number.	76b			
76b Refunding number.		76c	Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	76c			
76c Type: <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings		77	Amount of line 76a you want refunded to you. 2013 estimated tax.	77			
77 Amount of line 76a you want refunded to you. 2013 estimated tax.		78	Amount you owe. Subtract line 77 from line 63. Tax shown on how to pay the instructions.	78			
78 Amount you owe. Subtract line 77 from line 63. Tax shown on how to pay the instructions.		79	Estimated tax penalty (see instructions).	79	256		
79 Estimated tax penalty (see instructions).		Third Party Designee					
Third Party Designee		Do you want to allow another person to discuss this return with the IRS (see instructions)? <input checked="" type="checkbox"/> Yes. Complete below. <input type="checkbox"/> No					
Do you want to allow another person to discuss this return with the IRS (see instructions)? <input checked="" type="checkbox"/> Yes. Complete below. <input type="checkbox"/> No		Designee's name: Robert W. Bianchi Phone: 831-373-1697 Designee's signature: 93940					
Designee's name: Robert W. Bianchi Phone: 831-373-1697 Designee's signature: 93940		Sign Here					
Sign Here		Under penalty of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I understand that anyone who furnishes false or misleading information on a tax return or who omits material or information on a tax return is guilty of tax evasion, tax fraud, and other crimes that can result in severe penalties, including imprisonment and fines. I declare under penalty of perjury that the information on this return is true, correct, and complete.					
Under penalty of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I understand that anyone who furnishes false or misleading information on a tax return or who omits material or information on a tax return is guilty of tax evasion, tax fraud, and other crimes that can result in severe penalties, including imprisonment and fines. I declare under penalty of perjury that the information on this return is true, correct, and complete.		Taxpayer's signature: Edward C. Woolley Date: 3/31/15 Preparer's signature: Robert W. Bianchi Date: 3/31/15 Preparer's signature: Robert W. Bianchi Date: 3/31/15					
Taxpayer's signature: Edward C. Woolley Date: 3/31/15 Preparer's signature: Robert W. Bianchi Date: 3/31/15 Preparer's signature: Robert W. Bianchi Date: 3/31/15		If the EIC test you are filing this return (75) under is from 2013, enter:					
If the EIC test you are filing this return (75) under is from 2013, enter:		PTN: P00067313					
PTN: P00067313		Paid Preparer Use Only					
Paid Preparer Use Only		Preparer's name: Bianchi, Kathryn & Figue, LLP Preparer's address: 1000 Monterey Ave. Ste. 200 Monterey, CA 93940 Preparer's phone: 831-373-1697					
Preparer's name: Bianchi, Kathryn & Figue, LLP Preparer's address: 1000 Monterey Ave. Ste. 200 Monterey, CA 93940 Preparer's phone: 831-373-1697		Form 1040 (2014)					

SCHEDULE A
(Form 1040)**Itemized Deductions**

OMB No. 1545-0047

2014Department of the Treasury
Schedule A (Form 1040) 2014Department of the Treasury
Internal Revenue Service (99)Information about Schedule A and its separate instructions is at www.irs.gov/schedulea.
Attach to Form 1040.

Form 1040-SS (01-10-14)

Your social security number

Edward C and Judith A Wooley

Medical and Dental Expenses	Caution: Do not include expenses reimbursed or paid by others.		
1 Medical and dental expenses (see instructions).	Statement, 2	1	16,598.
2 Enter amount from Form 1040, line 38	2	1,703,922.	
3 Multiply line 2 by 10% (.10). But if either you or your spouse was born before January 2, 1950, multiply line 2 by 7.5% (.075) instead.		3	127,794.
4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-		4	0.
Taxes You Paid	5 State and local (check only one box):		
a <input checked="" type="checkbox"/> Income taxes, or		5	35,591.
b <input type="checkbox"/> General sales taxes		6	2,915.
6 Real estate taxes (see instructions)		7	
7 Personal property taxes		8	
8 Other taxes. List type and amount		9	38,506.
9 Add lines 5 through 8			
Interest You Paid	10 Home mortgage interest not reported to you on Form 1098. See instructions.	10	21,845.
11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address.		11	
Note: Your mortgage interest deduction may be limited (see instructions).		12	
12 Points not reported to you on Form 1098. See instructions for special rules.		13	
13 Mortgage insurance premiums (see instructions)		14	1,381.
14 Investment interest. Attach Form 4952 if required. (See instructions.)		15	23,226.
15 Add lines 10 through 14			
Gifts to Charity	16 Gifts by cash or check. If you made any gift of \$250 or more, see instructions.	16	
If you made a gift and got a benefit for it, see instructions.	17 Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500.	17	
18 Carryover from prior year.		18	
19 Add lines 16 through 18		19	0.
Casualty and Theft Losses	20 Casualty or theft loss(es). Attach Form 4684. (See instructions.)	20	0.
Job Expenses and Certain Miscellaneous Deductions	21 Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.)	21	
22 Tax preparation fees		22	1,500.
23 Other expenses — investment, safe deposit box, etc. List type and amount		23	141.
24 Add lines 21 through 23		24	1,641.
25 Enter amount from Form 1040, line 38	25	1,703,922.	
26 Multiply line 25 by 2% (.02)		26	34,078.
27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-		27	0.
Other Miscellaneous Deductions	28 Other — from and as instructions. List type and amount	28	0.
Total Itemized Deductions	29 Is Form 1040, line 38, over \$12,525? <input type="checkbox"/> No. Your deduction is not limited. Add the amounts in line for right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. <input checked="" type="checkbox"/> Yes. Your deduction may be limited. See the Itemized Deductions Worksheet in the instructions to figure the amount to enter.	29	19,766.
30 If you elect to itemize deductions even though they are less than your standard deduction, check here			

SCHEDULE B
(Form 1040A or 1040)Department of the Treasury
Internal Revenue Service (IRS)**Interest and Ordinary Dividends**

▶ Attach to Form 1040A or 1040.

▶ Information about Schedule B and its instructions is at www.irs.gov/scheduleb.

OMB No. 1545-0048

2014Adjusted
Gross Income No. **08**

Name(s) shown on return

Edward C. and Judith A. Wooley

Your social security number

Part I
Interest(See
instructions for
Form 1040A, or
Form 1040,
line 8a.)**Note.** If you
received a Form
1099-INT, Form
1099-DIV, or
substitute statement
from a brokerage
firm, list the form's
name as the payer
and enter the total
interest shown on
that form.

- 1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address. ▶

Bank of America

Amount

57.

1

- 2 Add the amounts on line 1. ▶ 57.
-
- 3 Excludable interest on series EE and U.S. savings bonds issued after 1989. Attach Form 8815. ▶ 3

- 4 Subtract line 3 from line 2. Enter the result here and on Form 1040A, or Form 1040, line 8a. ▶ 4 57.

Note. If line 4 is over \$1,500, you must complete Part III.

Amount

Part II**Ordinary
Dividends**(See
instructions for
Form 1040A, or
Form 1040,
line 9a.)**Note.** If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the form's name as the payer and enter the ordinary dividends shown on that form.

- 5 List name of payer. ▶

Merrill Lynch

1,486.

Merrill Lynch

2,123.

5

- 6 Add the amounts on line 5. Enter the total here and on Form 1040A, or Form 1040, line 9a. ▶ 6 3,611.

Note. If line 6 is over \$1,500, you must complete Part III.

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

Yes No

Part III
**Foreign
Accounts
and Trusts**(See
instructions.)

- 7a At any time during 2014, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions. ▶ X

If 'Yes,' are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements. ▶

- b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located. ▶

- 8 During 2014, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If 'Yes,' you may have to file Form 3520. See instructions. ▶ X

SCHEDULE D
(Form 1040)**Capital Gains and Losses**

* Attach to Form 1040 or Form 1040NR.

- * Information about Schedule D and its separate instructions is at www.irs.gov/schedule.
 * Use Form 8949 to list your transactions for lines 1b, 2, 3, 8b, 9, and 10.

OMB No. 1545-0047

2014

Attachment Copywork No. 12

Name shown on return

Edward C and Judith A Wooley

Your social security number

Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b.				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked	892,498.	922,818.	2,716.	-27,602.
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4694, 6781, and 8824				4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				5
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your Capital Loss Carryover Worksheet in the instructions				6
7 Net short-term capital gain or (loss). Combine lines 1a through 6 in column (h). If you have any long-term capital gain or losses, go to Part II below. Otherwise, go to Part III on page 2				7 -27,602.

Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked				
9 Totals for all transactions reported on Form(s) 8949 with Box E checked				
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4694, 6781, and 8824				11 1,888,916.
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				12
13 Capital gain distributions. See notes				13
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your Capital Loss Carryover Worksheet in the instructions				14 -27,293.
15 Net long-term capital gain or (loss). Combine lines 8a through 14 in column (h). Then go to Part III on page 2				15 1,861,623.

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule D (Form 1040) 2014

FD-8949-13, 12/01/14

Part III Summary

16 Combine lines 7 and 15 and enter the result.

16 1,834,021.

- If line 16 is a **gain**, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below.
- If line 16 is a **loss**, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22.
- If line 16 is **zero**, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.

17 Are lines 15 and 16 **both** gains?☒ **Yes.** Go to line 18.☐ **No.** Skip lines 18 through 21, and go to line 22.18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions.

18 0.

19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions.

19 70,048.

20 Are lines 18 and 19 **both** zero or blank?☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below.☒ **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of:

- The loss on line 16 or
- (\$3,000), or if married filing separately, (\$1,500)

21

Note. When figuring which amount is smaller, treat both amounts as positive numbers.

22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b?

☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42).☐ **No.** Complete the rest of Form 1040 or Form 1040NR.

Schedule D (Form 1040) 2014

SCHEDULE D
(Form 1040)**Alternative Minimum Tax**
Capital Gains and Losses

OMB No. 1545-0047

2014Department of the Treasury
Internal Revenue Service (IRS)

- Information about Schedule D and its separate instructions is at www.irs.gov/scheduled.
- Use Form 8949 to list your transactions for lines 1b, 2, 3, 9b, 9, and 10.

Attachment Sequence No. **12**

Name (if different on return)

Your social security number

Edward C and Judith A Wooley**Part I Short-Term Capital Gains and Losses – Assets Held One Year or Less**

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b.				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked	892,498.	922,813.	2,718.	-27,602.
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8324				4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				5
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your Capital Loss Carryover Worksheet in the instructions.				6
7 Net short-term capital gain or (loss). Combine lines 1a through 6 in column (h). If you have any long-term capital gain or losses, go to Part II below. Otherwise, go to Part III on page 2.				7 -27,602.

Part II Long-Term Capital Gains and Losses – Assets Held More Than One Year

See instructions for how to figure the amounts to enter on the lines below.

This form may be easier to complete if you round off cents to whole dollars.

	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b.				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked				
9 Totals for all transactions reported on Form(s) 8949 with Box E checked				
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8324				11 1,801,850.
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				12
13 Capital gain distributions. See instructions.				13
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your Capital Loss Carryover Worksheet in the instructions.				14 -27,400.
15 Net long-term capital gain or (loss). Combine lines 8a through 14 in column (h). Then go to Part III on page 2.				15 1,774,450.

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule D (Form 1040) 2014

FD46252L 12/18/14

Part III Summary**Alternative Minimum Tax**

16 Continue lines 7 and 15 and enter the result

16

1,746,848.

- If line 16 is a **gain**, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below.
- If line 16 is a **loss**, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22.
- If line 16 is **zero**, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.

17 Are lines 15 and 16 **both** gains?

- ☒ **Yes.** Go to line 18.
- ☐ **No.** Skip lines 18 through 21, and go to line 22.

18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions.

18

0.

19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions.

19

20 Are lines 18 and 19 **both** zero or blank?

- ☒ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below.
- ☐ **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.

21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of:

21

- The loss on line 16 or
- (\$3,000), or if married filing separately, (\$1,500)

Note. When figuring which amount is smaller, treat both amounts as positive numbers.

22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b?

- ☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42).
- ☐ **No.** Complete the rest of Form 1040 or Form 1040NR.

Schedule D (Form 1040) 2014

Sales and Other Dispositions of Capital Assets

* Information about Form 8949 and its separate instructions is at www.irs.gov/form8949

► File with your Schedule D to list your transactions for lines 1b, 2, 3, 8b, 9, and 10 of Schedule D.

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2014

Attachment
Continuation No. 12A

Please(s) comment on return

Edward C and Judith A Woolley

5.5.4.4. ne sagatāvērt identifikāciju ar:

Before you check Box 4, 5, or C below, see whether you received any Form(s) 1099-B in subsequent statement(s) from your broker. A subsequent statement will have the same information as Form 1099-B. Either may show your taxes (usually your cost) even if your broker did not report it to the IRS. Brokers must report gains to the IRS for most stock you bought in 2011 or later (not for certain debt investments you bought in 2014 or later).

Part I **Short-Term.** Transactions involving capital assets you held 1 year or less are short term. For long-term transactions, see page 2.

Note. You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the total directly on Schedule D, line 1a; you are not required to report these transactions on Form 8949 (see instructions).

You must check Box A, B, or C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes, complete as many forms with the same box checked as you need.

- ☒ (A) Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (see Note above)

[illegible]

Notes. If you checked box A above but the basis reported to the IRS was incorrect, enter in column (v) the basis as reported to the IRS, and enter an adjustment in column (g) to correct the basis. See Column (g) in the separate instructions for how to figure the amount of the adjustment.

Department of the Treasury
Internal Revenue Service

* Information about Form 8949 and its separate instructions is at www.irs.gov/form8949.

1. *Journal of the American Medical Association*, 277: 1005-1006, 1997.

55th or higher identification no.

Edward C. and Judith A. Wooley

Move your 401(k) Plan, IRA, or C plan; use whether you received any Form(s) 1099-R or substitute statement(s) from your broker. A substitute statement will have the same information as Form 1099-R. Either may show your basis (usually your cost) even if your broker did not report it to the IRS. Brokers must report losses to the IRS for most stock you bought in 2011 or later. Send the cost-basis statement(s) to the IRS in 2014 or later.

Part I **Short-Term.** Transactions involving capital assets you held 1 year or less are short term. For long-term transactions, see page 2.

Note. You may aggregate all short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS and for which no adjustments or codes are required. Enter the total directly on Schedule D, line 1a; you are not required to report these transactions on Form 8949 (see instructions).

You must check Box A, B, or C below. Check only one box. If more than one box applies for your short-term transactions, complete a separate Form 8949, page 1, for each applicable box. If you have more short-term transactions than will fit on this page for one or more of the boxes complete as many forms with the same box checked as you need.

- ☒ (A) Short-term transactions reported on Form(s) 1099-B showing basis was reported to the IRS (See Note above)

[illegible]

Note. If you checked Box A above but the basis reported to the IRS was incorrect, enter in column (g) the basis as reported to the IRS, and enter an adjustment in column (h) to correct the basis. See Column (g) in the separate instructions for how to figure the amount of the adjustment.

SCHEDULE E
(Form 1040)**Supplemental Income and Loss**

OMB No. 1545-0047

2014Attachment Sequence No. **13**Department of the Treasury
Internal Revenue Service (99)

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, 1040NR, or Form 1041.

▶ Information about Schedule E and its separate instructions is at www.irs.gov/schedulee.

Name shown on return

Edward C and Judith A Wooley

Enter social security number

Part I **Income or Loss From Rental Real Estate and Royalties** **Note.** If you are in the business of renting personal property, see Schedule C or C-EZ (see instructions). If you are an individual, report your rental income or loss from Form 985 on page 1, line 42.**A** Did you make any payments in 2014 that would require you to file Form(s) 1099? (see instructions)☐ Yes ☒ No**B** If 'Yes,' did you or will you file required Form(s) 1099?☐ Yes ☐ No**1a** Physical address of each property (street, city, state, ZIP code)**A** 1820 Highway 50, Carson City, NV 89706**B** 1365 Baring Blvd, Sparks, NV 89434**C****1b** Type of Property
(check all that apply)**2** For each rental real estate property listed above, report the number of fair rental and personal use days. Check the **QJV** box only if you meet the requirements to file as a qualified joint venture. See instructions.**Fair Rental Days****Personal Use Days****QJV****A** 4**A** 365**B** 4**B** 136**C****C****Type of Property:****1** Single Family Residence**3** Vacation/Short-Term Rental**5** Land**7** Joint-Rental**2** Multi-Family Residence**4** Commercial**6** Royalties**8** Other (describe)**Income:****Properties:****3** Rents received**3****A** 39,418.**B** 11,807.**C****4** Royalties received**4****Expenses:****5** Advertising**5****6** Auto and travel (see instructions)**6****7** Cleaning and maintenance**7****8** Commissions**8****9** Insurance**9****A** 1,538.**10** Legal and other professional fees**10****A** 37,489.**B** 10,065.**11** Management fees**11****A** 0.000.**12** Mortgage interest paid in 2014, etc. (see instructions)**12****A** 109,616.**B** 41,467.**13** Other interest**13****A** 24,976.**14** Repairs**14****A** 165.**15** Supplies**15****16** Taxes**16****A** 3,536.**B** 3,956.**17** Utilities**17****A** 5,416.**18** Depreciation expense or depletion**18****A** 41,374.**B** 5,981.**19** Other (list) ▶ See Sta 5. See Sta 6.**19****A** 26,235.**B** 10,435.**20** Total expenses. Add lines 5 through 19**20****A** 252,345.**B** 71,904.**21** Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 9888.**21****A** -212,927.**B** 39,903.**22** Deductible rental real estate loss, after limitation, if any, on Form 8582 (see instructions)**22****A** -212,927.**23a** Total of all amounts reported on line 3 for all rental properties**23a****A** 151,225.**b** Total of all amounts reported on line 4 for all royalty properties**23b****c** Total of all amounts reported on line 12 for all properties**23c****A** 151,083.**d** Total of all amounts reported on line 16 for all properties**23d****A** 47,355.**e** Total of all amounts reported on line 20 for all properties**23e****A** 324,249.**24** Income. Add positive amounts shown on line 21. Do not include any losses.**24****A** 39,903.**25** Losses. Add royalty losses from line 21 and rental real estate losses from line 22. Enter total losses here.**25****A** -212,927.**26** Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, add line 40 on page 2 or not apply to you, add enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 7.**26****A** -173,024.**BAA** For Paperwork Reduction Act Notice, see the separate instructions.

1040-2014 12-30-14

Schedule E (Form 1040) 2014

Name(s) shown on return. Do not enter name and social security number if shown on Page 1.

Your social security number

Edward C and Judith A Wooley

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk, excess farm loss, or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unrecaptured partnership expenses? If you answered "Yes," see instructions before completing this section. ☐ Yes ☒ No

28	(a) Name	(b) Enter P for partnership, S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	See Statement 7				
B					
C					
D					

Passive Income and Loss		Nonpassive Income and Loss	
(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562
A			
B			
C			
D			
29a Totals			
b Totals			
30 Add columns (g) and (i) of line 29a			30
31 Add columns (f), (h), and (i) of line 29a			31
32 Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below			32

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

Passive Income and Loss		Nonpassive Income and Loss	
(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A			
B			
34a Totals			
b Totals			
35 Add columns (d) and (f) of line 34a			35
36 Add columns (c) and (e) of line 34a			36
37 Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below			37

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) – Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess receipt from Schedules Q, line 1c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1d	(e) Income from Schedules Q, line 3b
39 Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below					39

Part V Summary

40 Net farm rental income or (loss) from Form 4835. Also, complete line 42 below		40	
41 Total income or (loss). Combine lines 36, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18		41	-173,024.
42 Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code V; and Schedule K-1 (Form 1041), box 14, code F (see instructions)		42	
43 Reconciliation for real estate professionals. If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules		43	1,715,892.

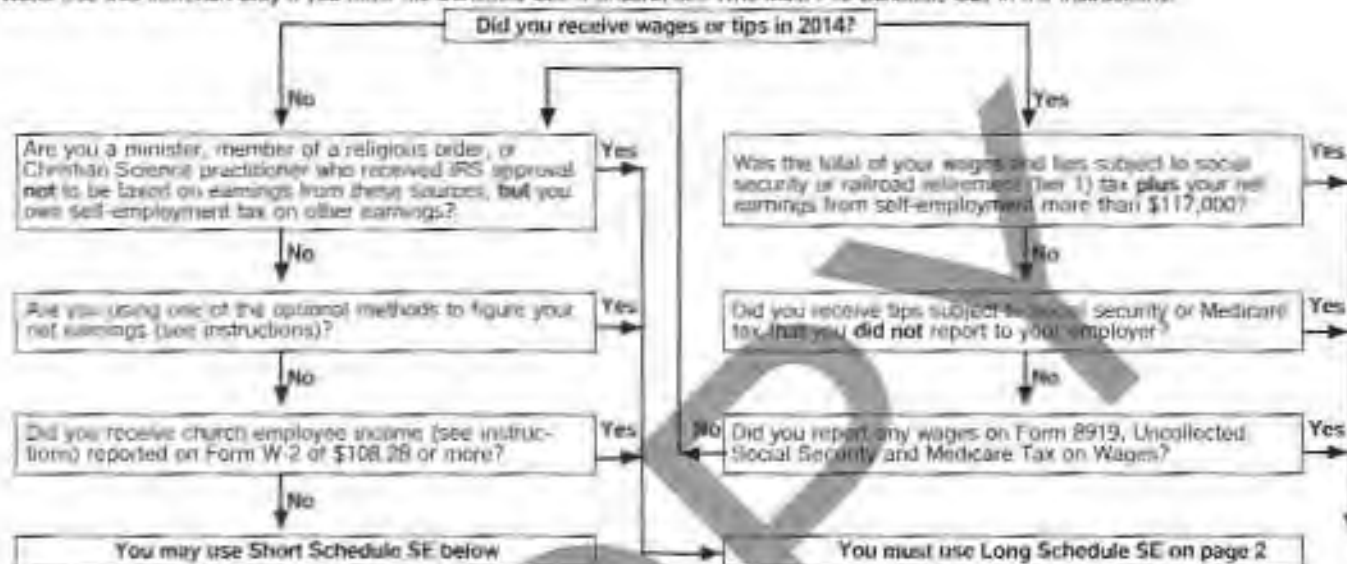
SCHEDULE SE
(Form 1040)Department of the Treasury
Internal Revenue Service (99)**Self-Employment Tax**Information about Schedule SE and its separate instructions is at www.irs.gov/schedulese.
Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0047

2014Attachment
Sequence No. 17

Name of person with self-employment income (as shown on Form 1040 or Form 1040NR)

Edward C Woolley

Social security number of person
with self-employment income ▶**Before you begin:** To determine if you must file Schedule SE, see the instructions.**May I Use Short Schedule SE or Must I Use Long Schedule SE?****Note.** Use this flowchart only if you must file Schedule SE. If unsure, see Who Must File Schedule SE, in the instructions.**Section A – Short Schedule SE.** *Caution. Read above to see if you can use Short Schedule SE.*

1a Net farm profit or (loss) from Schedule F, line 34, and farm partnerships, Schedule K-1 (Form 1065), box 14, code A	1a	
b If you received social security retirement or disability benefits, enter the amount of Conservation Reserve Program payments included with Schedule F, line 4b, or listed on Schedule K-1 (Form 1065), box 20, code Z	1b	
2 Net profit or (loss) from Schedule C, line 31; Schedule C-EZ, line 5; Schedule K-1 (Form 1065), box 14, code A (other than farming); and Schedule K-1 (Form 1065-B), box 9, code J1. Ministers and members of religious orders, see instructions for types of income to report on this line. See instructions for other income to report.	2	1,168.
3 Combine lines 1a, 1b, and 2.	3	1,168.
4 Multiply line 3 by 92.35% (.9235). If less than \$400, you do not owe self-employment tax; do not file this schedule unless you have an exception on line 1b. Note. If line 4 is less than \$400 due to Conservation Reserve Program payments on line 1b, see instructions.	4	1,079.
5 Self-employment tax. If the amount on line 4 is: • \$117,000 or less, multiply line 4 by 15.3% (.153). Enter the result here and on Form 1040, line 57, or Form 1040NR, line 55. • More than \$117,000, multiply line 4 by 2.9% (.029). Then, add \$14,508 to the result. Enter the total here and on Form 1040, line 57, or Form 1040NR, line 55.	5	165.
6 Deduction for one-half of self-employment tax. Multiply line 5 by 50% (.50). Enter the result here and on Form 1040, line 27, or Form 1040NR, line 27.	6	
83.	83.	

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule SE (Form 1040) 2014

(99A)1201 1040000

Form **4797**

Sales of Business Property
(Also Involuntary Conversions and Recapture Amounts
Under Sections 179 and 280F(b)(2))
• Attach to your tax return.

OMB No. 1545-0047

2014(Allocation)
Successor No. **27**Department of the Treasury
Internal Revenue Service• Information about Form 4797 and its separate instructions is at www.irs.gov/form4797.

Name(s), shown as return preparer

Identifying number

Edward C and Judith A Wooley

1 Enter the gross proceeds from sales or exchanges reported to you for 2014 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions)

1 **3,100,000.**

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft – Most Property Held More Than 1 Year (see instructions)

2	(a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable under applicable law	(f) Cost or other basis, plus improvements and expenses of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)

3 Gain, if any, from Form 4584, line 35

3

4 Section 1231 gain from installment sales from Form 6252, line 25 or 37

4

5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824

5

6 Gain, if any, from line 32, from other than casualty or theft

6 **1,888,916.**

7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:

7 **1,888,916.**

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 5. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8 Nonrecaptured net section 1231 losses from prior years (see instructions)

8

9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, skip the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 9 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)

9

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not excluded on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11
12	Gain, if any, from line 7 or amount from line 8, if applicable	12
13	Gain, if any, from line 37	13
14	Net gain or (loss) from Form 4584, lines 31 and 38a	14
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16
17	Combine lines 10 through 16	17

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:

a If the loss on line 11 includes a loss from Form 4584, line 35, column (b)(iv), enter first part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 25, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from Form 4797, line 18a. See instructions.

18a

b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14.

18b

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 4797 (2014)

Form **4797**

Alternative Minimum Tax
Sales of Business Property
 (Also Involuntary Conversions and Recapture Amounts
 Under Sections 179 and 280F(b)(2))
 • Attach to your tax return.

OMB No. 1545-0048

2014Attachment
Sequence No. **27**

Department of the Treasury

Internal Revenue Service

• Information about Form 4797 and its separate instructions is at www.irs.gov/form4797.

Name(s) shown on return

Identifying number

Edward C. and Judith A. Wooley

1 Enter the gross proceeds from sales or exchanges reported to you for 2014 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) 1 3,100,000.

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft – Most Property Held More Than 1 Year (see instructions)

2	(a) Description of property	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Gross sales price	(e) Depreciation allowed or allowable basis adjustment	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) (Subtract (f) from the sum of (d) and (e))

3 Gain, if any, from Form 4684, line 39

4 Section 1231 gain from installment sales from Form 6252, line 26 or 37

5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824

6 Gain, if any, from line 32, from other than casualty or theft

7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 5. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8 Nonrecaptured net section 1231 losses from prior years (see instructions)

9 Subtract line 8 from line 7. If zero or loss, enter 0. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 9 on line 12 below and enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return (see instructions).

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11 Loss, if any, from line 7

12 Gain, if any, from line 7 or amount from line 9, if applicable

13 Gain, if any, from line 3

14 Net gain or (loss) from Form 4684, lines 31 and 38a

15 Ordinary gain from installment sales from Form 6252, line 25 or 36

16 Ordinary gain or (loss) from like-kind exchanges from Form 8824

17 Combine lines 10 through 16

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:

a If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(i), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from Form 4797, line 18a. See instructions.

b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14.

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form **4797** (2014)

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255
(see instructions)

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A EDPA building having - audited	7/01/06	5/16/14
B		
C		
D		

These columns relate to the properties on lines 19A through 19D

		Property A	Property B	Property C	Property D
20 (Gross sales price (Note: See line 1 before completing.)	20	3,100,000.			
21 Cost or other basis (plus amount of gain)	21	1,336,027.			
22 Depreciation (or depletion) allowed or allowable	22	124,943.			
23 Adjusted basis. Subtract line 22 from line 21.	23	1,211,084.			
24 Total gain. Subtract line 23 from line 20.	24	1,888,916.			
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a				
b Enter the smaller of line 24 or 25a	25b				
26 If section 1250 property: If straight-line depreciation was used, enter -0- on line 26a, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instructions)	26a				
b Applicable percentage multiplied by the smaller of line 24 or line 26a (see instructions)	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is less than line 26a, use line 26a and 26b.	26c				
d Additional depreciation after 1985 & before 1998	26d				
e Enter the smaller of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26a, 26d, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of landmines or if the land is being converted to a partnership (other than an existing partnership).					
a Tax, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the smaller of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining reclamation costs, and depletion (see instructions)	28a				
b Enter the smaller of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of gain/loss, calculated from income under section 1255 (see instructions)	29a				
b Enter the smaller of line 24 or 29a (see instructions)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24.	30	1,888,916.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 12.	31	0.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4698, line 11. Enter the portion from other than casualty or theft on Form 4797, line 6.	32	1,888,916.

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less
(see instructions)

	(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33	
34 Recaptured depreciation (see instructions)	34	
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report.	35	

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255
(see instructions)

Alt. Minimum Tax

19(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr)	(c) Date sold (mo., day, yr)
A EDPA building baring - audited	7/01/06	5/16/14
B		
C		
D		

These columns relate to the properties on lines 19A through 19D

	Property A	Property B	Property C	Property D
20 Gross sales price (Note: See line 1 before completing.)	20 3,100,000.			
21 Cost or other basis plus expense of sale	21 1,336,027.			
22 Depreciation (or depletion) allowed or allowable	22 37,877.			
23 Adjusted basis. Subtract line 22 from line 21.	23 1,298,150.			
24 Total gain. Subtract line 23 from line 20.	24 1,801,850.			
25 If section 1245 property:				
a Depreciation allowed or allowable from line 22.	25a			
b Enter the smaller of line 24 or 25a.	25b			
26 If section 1250 property: If straight-line depreciation was used, enter -0- on line 26g, except for a corporation, subject to section 291.				
a Additional depreciation after 1975 (see instructions).	26a			
b Applicable percentage multiplied by the smaller of line 24 or line 26a (see instructions).	26b			
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e.	26c			
d Additional depreciation after 1981 & before 1976.	26d			
e Enter the smaller of line 26c or 26d.	26e			
f Section 291 amount (corporations only).	26f			
g Add lines 26b, 26e, and 26f.	26g 0.			
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this farm is being completed for a partnership (other than an electing large partnership).				
a Soil, water, and land clearing expenses.	27a			
b Line 27a multiplied by applicable percentage (see instructions).	27b			
c Enter the smaller of line 24 or 27b.	27c			
28 If section 1254 property:				
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion (see instructions).	28a			
b Enter the smaller of line 24 or 28a.	28b			
29 If section 1255 property:				
a Applicable percentage of payables, excluded from income under section 126 (see instructions).	29a			
b Enter the smaller of line 24 or 29a (see instructions).	29b			

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24.	30 1,801,850.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13.	31 0.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4797, line 33. Enter the portion from other than casualty or theft on Form 4797, line 34.	32 1,801,850.

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less
(see instructions)

	(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years.	33	
34 Recaptured depreciation (see instructions).	34	
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report.	35	

Form **6251****Alternative Minimum Tax – Individuals**

OMB No. 1545-0047

2014Attachment
Sequence No. **32**Department of the Treasury
Internal Revenue Service (IRS)Information about Form 6251 and its separate instructions is at www.irs.gov/form6251.
• Attach to Form 1040 or Form 1040NR.

Form 6251 (2014) (Use Form 1040)

Edward C. and Judith A. Woolley

Your social security number

Part I Alternative Minimum Taxable Income (See instructions for how to complete each line.)

1	1,684,156
2	
3	38,506
4	
5	
6	-41,966
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	-87,171
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	1,593,523

Part II Alternative Minimum Tax (AMT)

29	
30	1,593,523
31	284,755
32	
33	284,755
34	302,881
35	0

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

Form 6251 (2014)

Form 6251 (2014)

Part III Tax Computation Using Maximum Capital Gains Rates

Complete Part III only if you are required to do so by line 31 or by the Foreign Earned Income Tax Worksheet in the instructions.

36	Enter the amount from Form 6251, line 30, if you are filing Form 2555 or 2555-EZ; enter the amount from line 3 of the worksheet in the instructions for line 31	36	1,593,523.
37	Enter the amount from line 6 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 13 of the Schedule D Tax Worksheet in the instructions for Schedule D (Form 1040), whichever applies (as required for the AMT, if necessary) (see instructions). If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	37	1,749,135.
38	Enter the amount from Schedule D (Form 1040), line 19 (as required for the AMT, if necessary) (see instructions). If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	38	
39	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 57. Otherwise, add lines 37 and 38, and enter the smaller of that result or the amount from line 10 of the Schedule D Tax Worksheet (as required for the AMT, if necessary). If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	39	1,749,135.
40	Enter the smaller of line 36 or line 39	40	1,593,523.
41	Subtract line 40 from line 36	41	
42	If line 41 is \$182,500 or less (\$91,250 or less if married filing separately), multiply line 41 by 28% (.28). Otherwise, multiply line 41 by 20% (.20) and subtract \$1,600 (\$1,625 if married filing separately) from the result	42	
43	Enter: • \$71,800 if married filing jointly or qualifying widow(er), • \$35,900 if single or married filing separately, or • \$48,400 if head of household	43	71,800.
44	Enter the amount from line 7 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 14 of the Schedule D Tax Worksheet in the instructions for Schedule D (Form 1040), whichever applies (as required for the regular tax). If you did not complete either worksheet for the regular tax, enter the amount from Form 990, line 43; if zero or less, enter -0-. If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	44	0.
45	Subtract line 44 from line 43. If zero or less, enter -0-	45	71,800.
46	Enter the smaller of line 36 or line 45	46	1,593,523.
47	Enter the smaller of line 45 or line 46. This amount is taxed at 15%	47	71,800.
48	Subtract line 47 from line 46	48	1,519,723.
49	Enter: • \$406,750 if single • \$228,800 if married filing separately • \$457,600 if married filing jointly or qualifying widow(er) • \$432,200 if head of household	49	457,600.
50	Enter the amount from line 48	50	71,800.
51	Enter the amount from line 7 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 14 of the Schedule D Tax Worksheet, whichever applies (as required for the regular tax). If you did not complete either worksheet for the regular tax, enter the amount from Form 1040, line 43; if zero or less, enter -0-. If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter	51	0.
52	Add line 50 and line 51	52	71,800.
53	Subtract line 52 from line 49. If zero or less, enter -0-	53	383,800.
54	Enter the smaller of line 49 or line 53	54	383,800.
55	Multiply line 54 by 15% (.15)	55	57,570.
56	Add lines 47 and 54	56	457,600.
57	If lines 56 and 36 are the same, skip lines 57 through 61 and go to line 62. Otherwise, go to line 57.	57	1,135,923.
58	Subtract line 56 from line 46	58	221,185.
59	Multiply line 57 by 20% (.20)	59	
60	If line 38 is zero or blank, skip lines 59 through 61 and go to line 62. Otherwise, go to line 59.	60	
61	Add lines 41, 58, and 59	61	
62	Subtract line 59 from line 36	62	284,755.
63	Multiply line 61 by 25% (.25)	63	
64	Add lines 42, 55, 58, and 61	64	442,536.
65	If line 36 is \$182,500 or less (\$91,250 or less if married filing separately), multiply line 36 by 28% (.28). Otherwise, multiply line 36 by 20% (.20) and subtract \$1,600 (\$1,625 if married filing separately) from the result	65	284,755.
66	Enter the smaller of line 63 or line 65 here and on line 31. If you are filing Form 2555 or 2555-EZ, do not enter this amount on line 31. Instead, enter it on line 8 of the worksheet in the instructions for line 31	66	

Form **4952****Investment Interest Expense Deduction**

OMB No. 1545-0047

Department of the Treasury
Internal Revenue Service (99)• Information about Form 4952 and its instructions is at www.irs.gov/form4952
• Attach to your tax return.**2014**Assessment
October 15, 2014

Name(s) shown on return

Edward C and Judith A Wooley

Identifying number

Part I Total Investment Interest Expense

1	Investment interest expense paid or accrued in 2014 (see instructions).....	1	1,381.
2	Disallowed investment interest expense from 2013 Form 4952, line 7.....	2	
3	Total investment interest expense. Add lines 1 and 2.....	3	1,381.

Part II Net Investment Income

4a	Gross income from property held for investment (excluding any net gain from the disposition of property held for investment).....	4a	3,668.
4b	Qualified dividends included on line 4a.....	4b	611.
4c	Subtract line 4b from line 4a.....	4c	57.
4d	Net gain from the disposition of property held for investment.....	4d	
4e	Enter the smaller of line 4d or your net capital gain from the disposition of property held for investment (see instructions).....	4e	
4f	Subtract line 4e from line 4d.....	4f	
4g	Enter the amount from lines 4b and 4e that you elect to include in investment income (see instructions).....	4g	1,324.
4h	Investment income. Add lines 4c, 4f, and 4g.....	4h	1,381.
5	Investment expenses (see instructions).....	5	
6	Net investment income. Subtract line 5 from line 4h. If zero or less, enter -0-.....	6	1,381.

Part III Investment Interest Expense Deduction

7	Disallowed investment interest expense to be carried forward to 2015. Subtract line 6 from line 3. If zero or less, enter -0-.....	7	0.
8	Investment interest expense deduction. Enter the smaller of line 3 or 6. See instructions.....	8	1,381.

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 4952 (2014)

10-273991 06/13/14

Form **8582****Passive Activity Loss Limitations**

OMB No. 1545-0048

2014Revised
OMB No. 88Department of the Treasury
Internal Revenue Service (20)

- See separate instructions.
• Attach to Form 1040 or Form 1041.
• Information about Form 8582 and its instructions is available at www.irs.gov/form8582.

Name (as shown on return)

Identifying number

Edward C. and Judith A. Wooley

Part I 2014 Passive Activity Loss**Caution:** Complete Worksheets 1, 2, and 3 before completing Part I.**Rental Real Estate Activities With Active Participation** (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a	
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b	
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c	
d	Combine lines 1a, 1b, and 1c	1d	

Commercial Revitalization Deductions From Rental Real Estate Activities

2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a	
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b	
c	Add lines 2a and 2b	2c	

All Other Passive Activities

3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a	
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b	
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c	-70,312.
d	Combine lines 3a, 3b, and 3c	3d	-70,312.

4 Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used.

- If line 4 is a loss, and:
- Line 1d is a loss, go to Part II.
 - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
 - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, **do not** complete Part II or Part III. Instead, go to line 15.

Part II Special Allowance for Rental Real Estate Activities With Active Participation**Note:** Enter all numbers in Part II as positive amounts. See instructions for an example.

5	Enter the smaller of the loss on line 1d or the loss on line 4	5	
6	Enter \$150,000. If married filing separately, see instructions	6	
7	Enter modified adjusted gross income, but not less than zero (see instructions)	7	1,838,172.
8	Subtract line 7 from line 6	8	
9	Multiply line 8 by 50% (.5). Do not enter more than \$25,000. If married filing separately, see instructions	9	
10	Enter the smaller of line 5 or line 9	10	0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities**Note:** Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

11	Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	Total losses allowed from all passive activities for 2014. Add lines 10, 14, and 15. See instructions for how to report the losses on your tax return	16	

BAA For Paperwork Reduction Act Notice, see instructions.

Form 8582 (2014)

(12/21/14) 101114

Caution: The worksheets must be filed with your tax return. Keep a copy for your records.

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c *					

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b *			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
Coast Capital Income Fund LLC			29,902.		29,902.
Coast Capital Income Fund LLC			33,781.		33,781.
Atlantis Aquariums LLC			6,629.		6,629.
Total. Enter on Form 8582, lines 3a, 3b, and 3c *			70,312.		

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total *			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
Coast Capital Income Fund LLC 50	Sch E Ln 28	29,902.	0.425276	29,902.
Coast Capital Income Fund LLC	Sch E Ln 28	33,781.	0.480444	33,781.
Atlantis Aquariums LLC	Sch E Ln 28	6,629.	0.094280	6,629.
Total *		70,312.	1.00	70,312.

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
Total				0

See Statement B	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total			1.00		

Name of activity					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions):					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total			1.00		

Form **8582**Alternative Minimum Tax
Passive Activity Loss Limitations

OMB No. 1545-0047

2014Attachment
Sequence No. **88**Department of the Treasury
Internal Revenue Service (99)

• See separate instructions.
 • Attach to Form 1040 or Form 1041.
 • Information about Form 8582 and its instructions is available at www.irs.gov/form8582.

Name(s) shown on return

Edward C. and Judith A. Wooley

Identifying number

Part I 2014 Passive Activity Loss

Caution: Complete Worksheets 1, 2, and 3 before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation, see Special Allowance for Rental Real Estate Activities in the instructions.)

1 a	Activities with net income (enter the amount from Worksheet 1, column (a))		
1 b	Activities with net loss (enter the amount from Worksheet 1, column (b))		
1 c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))		
1 d	Combine lines 1a, 1b, and 1c		

Commercial Revitalization Deductions From Rental Real Estate Activities

2 a	Commercial revitalization deductions from Worksheet 2, column (a)		
2 b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)		
2 c	Add lines 2a and 2b		

All Other Passive Activities

3 a	Activities with net income (enter the amount from Worksheet 3, column (a))		
3 b	Activities with net loss (enter the amount from Worksheet 3, column (b))		
3 c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	-79,915.	
3 d	Combine lines 3a, 3b, and 3c		-79,915.

4 Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used.

- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
 - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
 - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See instructions for an example.

5	Enter the smaller of the loss on line 1d or the loss on line 4		
6	Enter \$150,000. If married (filing separately, see instructions)		
7	Enter modified adjusted gross income, but not less than zero (see instrs.)		
8	Subtract line 7 from line 6		
9	Multiply line 8 by 50% (.5). Do not enter more than \$25,000. If married filing separately, see instructions		
10	Enter the smaller of line 5 or line 9		0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

11	Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions		
12	Enter the loss from line 4		
13	Reduce line 12 by the amount on line 10		
14	Enter the smallest of line 3c (treated as a positive amount), line 11, or line 13		

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total		
16	Total losses allowed from all passive activities for 2014. Add lines 10, 14, and 15. See instructions to find out how to report the losses on your tax return		

BAA For Paperwork Reduction Act Notice, see instructions.

Form 8582 (2014)

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Alternative Minimum Tax

Form 8582 (2014) Edward C and Judith A Wooley

Page 2

Caution: The worksheets must be filed with your tax return. Keep a copy for your records.

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Total. Enter on Form 8582, lines 1a, 1b, and 1c.					

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b.			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
Coast Capital Income Fund LLC			30,157.		30,157.
Coast Capital Income Fund LLC			34,048.		34,048.
Atlantis Aquariums LLC			15,710.		15,710.
Total. Enter on Form 8582, lines 3a, 3b, and 3c.			79,915.		

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
Coast Capital Income Fund LLC 50	Sch E Ln 28	30,157.	0.377363	30,157.
Coast Capital Income Fund LLC	Sch E Ln 28	34,048.	0.426053	34,048.
Atlantis Aquariums LLC	Sch E Ln 28	15,710.	0.196584	15,710.
Total		79,915.	1.00	79,915.

Form **5695****Residential Energy Credits**

• Information about Form 5695 and its separate instructions is at www.irs.gov/form5695.
 • Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0047

2014

Revised January 15, 2015

Department of the Treasury

Internal Revenue Service

Edward C. and Judith A. Wooley

First social security number

Part I Residential Energy Efficient Property Credit (See instructions before completing this part.)**Note.** Skip lines 1 through 11 if you only have a credit carryforward from 2013.

1	Qualified solar electric property costs	1	35,251.
2	Qualified solar water heating property costs	2	
3	Qualified small wind energy property costs	3	
4	Qualified geothermal heat pump property costs	4	
5	Add lines 1 through 4	5	35,251.
6	Multiply line 5 by 30% (.30)	6	10,575.
7a	Qualified fuel cell property. Was qualified fuel cell property installed during its production with your main home located in the United States? (See instructions.)	7a	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Caution: If you checked the "No" box, you cannot take a credit for qualified fuel cell property. Skip lines 7b through 11.			
b Print the complete address of the main home where you installed the fuel cell property.			
Number and Street		Unit No.	
City, State, and ZIP code			
8	Qualified fuel cell property costs	8	
9	Multiply line 8 by 30% (.30)	9	
10	Kilowatt capacity of property on line 8 above	10	X 31,000
11	Enter the smaller of line 9 or line 10	11	
12	Credit carryforward from 2013. Enter the amount, if any, from your 2013 Form 5695, line 10	12	
13	Add lines 6, 11, and 12	13	10,575.
14	Limitation based on tax liability. Enter the amount from the Residential Energy Efficient Property Credit Limit Worksheet (see instructions)	14	302,881.
15	Residential energy efficient property credit. Enter the smaller of line 13 or line 14. Also include this amount on Form 1040, line 53, or Form 1040NR, line 50.	15	10,575.
16	Credit carryforward to 2015. If line 15 is less than line 13, subtract line 15 from line 13	16	

BAA For Paperwork Reduction Act Notice, see your tax return instructions.

Form 5695 (2014)

Form 5695 (2014)

2014

Federal Statements

Page 1

Client 0814

Edward C and Judith A Wooley

3/31/15

04:53PM

Statement 1
Form 1040, Line 21
Other Income

Merrill Lynch	\$	600.
Silicon Valley Real Estate Group II, Inc.		1,168.
Total	\$	1,768.

Statement 2
Schedule A, Line 1
Medical and Dental Expenses

Doctors, Dentists, and Nurses	\$	755.
Insurance Premiums		14,056.
Lab Fees		278.
Prescription Medicines and Drugs		1,509.
Total	\$	16,598.

Statement 3
Schedule A, Line 10
Home Mortgage Interest Reported on Form 1099

Wells Fargo Bank	\$	21,845.
Total	\$	21,845.

Statement 4
Schedule A, Line 14
Investment Interest

Merrill Lynch	\$	689.
Merrill Lynch		692.
Total	\$	1,381.

Statement 5
Schedule E, Line 19 - 1920 Highway 50
Other Rental and Royalty Expenses

Amortization	\$	2,552.
Bank Charges		12,186.
Foreclosure fees		6,878.
Gardening		1,525.
Loan fees		1,750.
Plumbing and Electrical		990.
Snow Removal		354.
Total	\$	26,235.

Edward C and Judith A Wooley

04:53PM

Statement 6
Schedule E, Line 19 - 1365 Baring Blvd
Other Rental and Royalty Expenses

Rent allocated to buyer

	\$	10,435.
Total	\$	<u>10,435.</u>

COPY

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Statement 7
Schedule E, Page 2
Part II - Income or Loss From Partnerships and S Corporations

Name	Type	Is it Foreign?	Employer ID No.	2014 Net Income	2014 PTD	Partnership Losses	Partnership Income	Partnership Losses	Partnership Income	Partnership Losses	Partnership Income	Partnership Losses
Coast Capital Income Fund LLC 50%	P		20-4636647	20-4636647								

Coast Capital Income Fund LLC	P		20-4636647	20-4636647								
-------------------------------	---	--	------------	------------	--	--	--	--	--	--	--	--

Acadia Acquisition LLC	P		20-4636647	20-4636647								
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Statement 8

8582

Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC 50%

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,463.		16,463.	0.550365	16,463.	
Form 4797	4,463.		4,463.	0.149254	4,463.	
Sh E Ln 28	8,976.		8,976.	0.300181	8,976.	
	<u>29,902.</u>	<u>0.</u>	<u>29,902.</u>	<u>1.000000</u>	<u>29,902.</u>	<u>0.</u>

Statement 8

8582

Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,716.		16,716.	0.494834	16,716.	
Form 4797	4,170.		4,170.	0.123442	4,170.	
Sh E Ln 28	12,895.		12,895.	0.381723	12,895.	
	<u>33,781.</u>	<u>0.</u>	<u>33,781.</u>	<u>1.000000</u>	<u>33,781.</u>	<u>0.</u>

Statement 8

8582

Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Atlantis Aquariums LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	6,629.		6,629.	1.000000	6,629.	
	<u>6,629.</u>	<u>0.</u>	<u>6,629.</u>	<u>1.000000</u>	<u>6,629.</u>	<u>0.</u>

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Statement 9

8582

Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC 50%

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,582.		16,582.	0.549856	16,582.	
Form 4797	4,478.		4,478.	0.148400	4,478.	
Sh E Ln 28	9,097.		9,097.	0.301655	9,097.	
	<u>30,157.</u>	<u>0.</u>	<u>30,157.</u>	<u>1.000000</u>	<u>30,157.</u>	<u>0.</u>

Statement 9

8582

Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Coast Capital Income Fund LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	16,799.		16,799.	0.493392	16,799.	
Form 4797	4,181.		4,181.	0.122797	4,181.	
Sh E Ln 28	13,068.		13,068.	0.383811	13,068.	
	<u>34,048.</u>	<u>0.</u>	<u>34,048.</u>	<u>1.000000</u>	<u>34,048.</u>	<u>0.</u>

Statement 9

8582

Worksheet 7 - Activities with Losses on 2 or more Forms/Schedules

Name of Activity: Atlantis Aquariums LLC

Form/Sch	Net Loss	Net Income	Net Loss - Net Income	Ratio	Unallowed Loss	Allowed Loss
Sh E Ln 28	15,710.		15,710.	1.000000	15,710.	
	<u>15,710.</u>	<u>0.</u>	<u>15,710.</u>	<u>1.000000</u>	<u>15,710.</u>	<u>0.</u>

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2014 Federal Depreciation Schedule

Edward C and Judith A Wooley

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No.	Description	Date Acquired	Cost Basis	Cost/Res.	Bus. Prop.	Cur. Prop.	Special Dep.	Other Dep.	179/Dep.	179/Dep.	Dep. Rate	Salvage	Dep. Basis	Dep. Rate	First Year	Method	Life	Years	Current Year
-----	-------------	---------------	------------	-----------	------------	------------	--------------	------------	----------	----------	-----------	---------	------------	-----------	------------	--------	------	-------	--------------

Schedule E - 1800 Highway Commercial Building

Amortization

5	LCM COSTS - SCH E	10/19/00	48,800										48,800	32.00%	22,798	S/L	20		2,277
6	Appraisal fees	1/20/02	4,350										4,350	33.33%	1,513	S/L	30		275

Total Amortization

			76,354										76,354		24,718				2,552
--	--	--	--------	--	--	--	--	--	--	--	--	--	--------	--	--------	--	--	--	-------

Buildings

1	Appraisal	6/30/06	4,800										4,800		1	S/L	9		0
2	Edison Exch	10/19/00	951,742										951,742	33.33%	315,581	S/L	30	02554	24,531
3	Smith Exch	5/18/03	3,700										3,700	33.33%	1,233	S/L	30		80
4	Highway 10	4/14/05	644,411										644,411	33.33%	214,804	S/L	30	02554	15,625

Total Buildings

			1,618,453										1,618,453		431,544				41,234
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Total Depreciation

			1,618,453										1,618,453		431,544				41,234
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Schedule E - 1800 Highway Commercial Building

Amortization

9	Loan fees	2/01/05	27,418										27,418		27,418	S/L	3		0
---	-----------	---------	--------	--	--	--	--	--	--	--	--	--	--------	--	--------	-----	---	--	---

Total Amortization

			27,418										27,418		27,418				0
--	--	--	--------	--	--	--	--	--	--	--	--	--	--------	--	--------	--	--	--	---

Buildings

			27,418										27,418		27,418				0
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2014 Federal Depreciation Schedule

Edward C and Judith A Wooley

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No.	Description	Disc. Acquired	Only Sold	Cost/Basis	Bus. Prod.	Cur. 179 Election	Special Dep. 179	Prior 179/Revol. Dep.	Prior Dep. Bal.	Salvage/Est. Res.	Deprec. Taken	Prior Dep.	Wtd. Avg. Life	Current Dep.
6	Building being installed	7/21/76	3/16/14	621,997							621,997	118,962	29.7034	1,401
	Total Buildings			621,997	0	0	0	0	0	0	621,997	118,962		1,401
	Land													0
7	Land being installed into	7/21/76	3/16/14	374,142							374,142			0
	Total Land			374,142	0	0	0	0	0	0	374,142			0
	Total Depreciation			1,196,149	0	0	0	0	0	0	1,196,149	118,962		1,401
	2014 Total Amortization			98,370	0	0	0	0	0	0	98,370	46,537		2,492
	Amortization Assets Sold			21,419	0	0	0	0	0	0	21,419	21,819		0
	Asset Remaining Assets			16,191	0	0	0	0	0	0	76,951	24,718		2,492
	Grand Total Depreciation			287,461	0	0	0	0	0	0	287,461	143,595		47,984
	Depreciation Assets Sold			1,196,149	0	0	0	0	0	0	1,196,149	118,962		1,401
	Dep. Remaining Assets			1,678,479	0	0	0	0	0	0	1,678,479	407,543		27,794

Edward C and Judith A Wooley

3431155

64-53714

[illegible]

Schedule E - 1120 Highway Construction Building

Dallmanns

[illegible]

Yoda Ruffington

Total Decarbon	
1,218,410	41,314
0	0

Schneider E - 1363 Beijing (China) C. 2000 Beijing

Bibliography

Building Name - Address	7/01/20	5/15/18	6/1/18	7/1/18	5/1/18	20	2254	1,000	1,000				
Total Buildings	621,000	11,000						1,000	1,000	0	0	0	0

Contest

γ	γ (with damping + residual stress)	γ (with damping)	γ (with residual stress)
0	0	0	0
1	0.000000	0.000000	0.000000
2	0.000000	0.000000	0.000000
3	0.000000	0.000000	0.000000
4	0.000000	0.000000	0.000000
5	0.000000	0.000000	0.000000
6	0.000000	0.000000	0.000000
7	0.000000	0.000000	0.000000
8	0.000000	0.000000	0.000000
9	0.000000	0.000000	0.000000
10	0.000000	0.000000	0.000000
11	0.000000	0.000000	0.000000
12	0.000000	0.000000	0.000000
13	0.000000	0.000000	0.000000
14	0.000000	0.000000	0.000000
15	0.000000	0.000000	0.000000
16	0.000000	0.000000	0.000000
17	0.000000	0.000000	0.000000
18	0.000000	0.000000	0.000000
19	0.000000	0.000000	0.000000
20	0.000000	0.000000	0.000000
21	0.000000	0.000000	0.000000
22	0.000000	0.000000	0.000000
23	0.000000	0.000000	0.000000
24	0.000000	0.000000	0.000000
25	0.000000	0.000000	0.000000
26	0.000000	0.000000	0.000000
27	0.000000	0.000000	0.000000
28	0.000000	0.000000	0.000000
29	0.000000	0.000000	0.000000
30	0.000000	0.000000	0.000000
31	0.000000	0.000000	0.000000
32	0.000000	0.000000	0.000000
33	0.000000	0.000000	0.000000
34	0.000000	0.000000	0.000000
35	0.000000	0.000000	0.000000
36	0.000000	0.000000	0.000000
37	0.000000	0.000000	0.000000
38	0.000000	0.000000	0.000000
39	0.000000	0.000000	0.000000
40	0.000000	0.000000	0.000000
41	0.000000	0.000000	0.000000
42	0.000000	0.000000	0.000000
43	0.000000	0.000000	0.000000
44	0.000000	0.000000	0.000000
45	0.000000	0.000000	0.000000
46	0.000000	0.000000	0.000000
47	0.000000	0.000000	0.000000
48	0.000000	0.000000	0.000000
49	0.000000	0.000000	0.000000
50	0.000000	0.000000	0.000000
51	0.000000	0.000000	0.000000
52	0.000000	0.000000	0.000000
53	0.000000	0.000000	0.000000
54	0.000000	0.000000	0.000000
55	0.000000	0.000000	0.000000
56	0.000000	0.000000	0.000000
57	0.000000	0.000000	0.000000
58	0.000000	0.000000	0.000000
59	0.000000	0.000000	0.000000
60	0.000000	0.000000	0.000000
61	0.000000	0.000000	0.000000
62	0.000000	0.000000	0.000000
63	0.000000	0.000000	0.000000
64	0.000000	0.000000	0.000000
65	0.000000	0.000000	0.000000
66	0.000000	0.000000	0.000000
67	0.000000	0.000000	0.000000
68	0.000000	0.000000	0.000000
69	0.000000	0.000000	0.000000
70	0.000000	0.000000	0.000000

Total Cost

[illegible]

Grand Total Delivered

23.643	11.664	47.355	47.355	0	0	0
1.000	0.000	0.000	0.000	0.000	0.000	0.000

EXHIBIT 26

EXHIBIT 26

KEEP THIS PORTION FOR YOUR RECORDS

Taxpayer Name: WOOLEY, JUDITH A WOOLEY, EDWARD C
Case Number: 639329

DETAIL OF ACCOUNT

DATE	TAX PERIOD	TAX LIABILITY	PENALTY	INTEREST	FEES	TOTAL	CREDITS & PAYMENTS	AMOUNT DUE	INTEREST TO
10/20/15	2014	114,502.00	22,569.50	5,668.46	50.00	142,789.96	28,000.00	114,789.96	12/20/15
Total		\$114,502.00	\$22,569.50	\$5,668.46	\$ 50.00	\$142,789.96	\$28,000.00	\$114,789.96	

Form D-101C
(Rev. 2010)

DETACH HERE

Form (Rev. 2008)
ICS-202V

STATE OF HAWAII - DEPARTMENT OF TAXATION
TAX PAYMENT VOUCHER (CBV)

DO NOT WRITE (OR STAPLE IN THIS SPACE)



015081

DATE OF NOTICE: 12/03/15

PAYMENT DUE DATE: 12/15/15

TOTAL AMOUNT DUE: \$ 114,789.96

WOOLEY, JUDITH A
WOOLEY, EDWARD C

CASE NO: 639329

LOCATION CODE: 000002

BILLING CODE: 999991

AMOUNT
ENCLOSED: \$

ECW-TT-000605

STATE OF HAWAII – DEPARTMENT OF TAXATION
BALANCE DUE NOTICE

WOOLEY, JUDITH A.
 WOOLEY, EDWARD C.
 611-1025 N KANIKU DR APT 516
 KAMUELA HI 96743-8782

Payment Due By: 12/15/15

Date: 12/03/15
 Billing Code: 999991
 Case Number: 639329
 SSN/FEIN: XXXXXXXXXX

Dear Taxpayer,

Please disregard this notice if you have paid your outstanding balance in full.

Our records indicate that your account has an outstanding balance. The amount due includes penalty and interest projected to the payment due date. To avoid additional penalties and interest, please pay the total amount due by the payment due date. If you pay in full before the payment due date, your account may result in a credit balance, which will then be subject to our refunding process.

If you have any questions, please contact Oahu District Office,

Department of Taxation
 Oahu District Office
 Attn: Taxpayer Services Branch
 P.O. Box 259
 Honolulu, HI 96809-0259

Telephone: 808-587-4242
 Fax: 808-587-1488

For Neighbor Islands and Continental U.S:
 Toll Free: 1-800-222-3229

SUMMARY OF TAXES DUE (Refer to Detail of Accounts)

TAX TYPE	AMOUNT DUE
Individual Income Tax	\$ 114,789.96
TOTAL AMOUNT DUE (See Payment Voucher)	\$114,789.96

TO MAKE A PAYMENT

1. **Do not send cash.** Make your check or money order in U. S. dollars payable to **HAWAII STATE TAX COLLECTOR**
2. Write your Case Number as shown above, and SSN/FEIN, on your check or money order
3. Enter the check or money order amount in the Amount Enclosed box on the Tax Payment Voucher (CBV)
4. Detach and mail the Tax Payment Voucher, and the check or money order using the enclosed envelope, or to the mailing address shown above.
5. **You may also pay this bill using an electronic check or credit card through our Internet website at www.chawaii.gov/efile.**

Tax forms are available on the Department's website at tax.hawaii.gov or by calling the Taxpayer Services' Call Center at 808-587-4242 or toll free from the neighbor islands or Continental U.S. at 1-800-222-3229.

Form D-101C

ECW-TT-000606

EXHIBIT 27

EXHIBIT 27



First American Title Insurance Company
National Commercial Services
 5 First American Way • Santa Ana, CA 92707

Seller's Final Settlement Statement

Property: 7695 & 7699 S. Virginia, Reno, NV

File No: NCS-203502-SA1

Officer: Dawn Niehaus/mlb

New Loan No:

Settlement Date: 02/24/2006

Disbursement Date: 02/24/2006

Print Date: 3/16/2006, 11:14 AM

Buyer: Overland Development Inc.; Larry James Willard Trust; Xchange Solutions, Inc. as Q.I.

Address: c/o Dan Gluhaich, Intero Real Estate, 175 E. Main St., Ste. 130, Morgan Hill, CA 95037

Seller: P.A. Morabito & Co., Limited

Address: c/o Jiffy Lube International, Inc., 668 N. Pacific Coast Highway, Ste. 517, Laguna Beach, CA 92651

Charge Description	Seller Charge	Seller Credit
Consideration:		
Total Consideration		17,750,000.00
Prorations:		
February Rent Credit 02/24/06 to 03/01/06 @\$3870.97/day	19,354.85	
Commission:		
Commission Paid at Settlement to Sperry Van Ness	350,000.00	
Title/Escrow Charges to:		
Leasehold Policy (\$1,464,375) - First American Title Insurance Company National Commercial Services	820.05	
Policy-Standard ALTA 1992 Owner's - First American Title Insurance Company National Commercial Services	3,550.00	
Closing-Escrow Fee - First American Title Insurance Company National Commercial Services	3,483.75	
Misc Recording Fees - First American Title Company	87.00	
Documentary Trans Tax (1/2)-County - First American Title Company	36,387.50	
Disbursements Paid:		
Transfer to NCS-203502-A to First American Title Insurance Co.	17,218,306.40	
Cash (X To) (From) Seller	118,010.45	
Totals	17,750,000.00	17,750,000.00



First American Title Insurance Company
National Commercial Services
 5 First American Way • Santa Ana, CA 92707

Buyer's Final Settlement Statement

Property: 7695 & 7699 S. Virginia, Reno, NV

File No: NCS-203502-SA1

Officer: Dawn Niehaus/km

New Loan No:

Settlement Date: 02/24/2006

Disbursement Date: 02/24/2006

Print Date: 3/1/2006, 12:07 PM

Buyer: Overland Development Inc.; Larry James Willard Trust; Xchange Solutions, Inc. as Q.I.

Address: c/o Dan Gluhaich, Intero Real Estate, 175 E. Main St., Ste. 130, Morgan Hill, CA 95037

Seller: P.A. Morabito & Co., Limited

Address: c/o Jiffy Lube International, Inc., 668 N. Pacific Coast Highway, Ste. 517, Laguna Beach, CA 92651

Charge Description	Buyer Charge	Buyer Credit
Consideration:		
Total Consideration	17,750,000.00	
Deposits in Escrow:		
Receipt No. 164760 on 11/29/2005 by XChange Solutions, Inc. fbo Larry Willard		250,000.00
Receipt No. 166764 on 02/22/2006 by Xchange Solutions, Inc. f/b/o Larry Willard		1,000,000.00
Receipt No. 166786 on 02/23/2006 by Xchange Solutions, Inc. as Q.I. for Overland Dev		3,418,739.49
Prorations:		
February Rent Credit 02/24/06 to 03/01/06 @\$3870.97/day		19,354.85
New Loan(s):		
Lender: South Valley National Bank		
New Loan Amount - South Valley National Bank		13,250,000.00
Environmental - South Valley National Bank	600.00	
Appraisal Fee - South Valley National Bank	6,000.00	
Tax Service Fee - South Valley National Bank	1,359.00	
Appraisal Review Fee - South Valley National Bank	400.00	
Facility Fee - South Valley National Bank	132,500.00	
Flood Search Fee - South Valley National Bank	10.00	
Title/Escrow Charges to:		
Closing-Loan Tie-In Fee - First American Title Insurance Company National Commercial Services	125.00	
Closing-Escrow Fee - First American Title Insurance Company National Commercial Services	3,483.75	
Policy-Extended ALTA 1992 Lender - First American Title Insurance Company National Commercial Services	2,650.00	
Misc Recording Fees - First American Title Company	107.00	
Documentary Trans Tax (1/2)-County - First American Title Company	36,387.50	
Disbursements Paid:		
Legal Fees to Robert E. Hales	375.00	
Legal Fees to Rossi Hamerslough Reischl Chuck	3,954.09	
Buyer Refund to Xchange Solutions, Inc.	143.00	
Totals	17,938,094.34	17,938,094.34

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into effective as of November 18, 2005 ("Effective Date") between and among P. A. MORABITO & CO., LIMITED., a Nevada corporation having an address at 425 Maestro Drive, Reno, Nevada ("Seller") and LARRY WILLARD, an individual having an address at _____ ("Buyer").

RECITALS

A. Seller ~~owns portion of~~ *is under contract to purchase* the real property located at 7695 and 7699 S. Virginia, Reno, Nevada. Consisting of approximately 41,000 square feet ("Property"), as more particularly described in Exhibit "A". *(initials)*

B. The Property will be owned by Buyer, but the business operations at the Property and the gaming machines at the Property will remain the property of the Seller or licensed operator, as the case may be.

C. The Seller will be the "Lessee", and Buyer shall be the "Lessor" at the Property.

D. Seller desires to lease-back the Property pursuant to a lease in substantially the form attached hereto as Exhibit "B" ("Lease"). The Lease shall be signed at the closing of this matter. The parties desire to lease with an initial rent term of twenty (20) years, with two (2) five (5) years options to extend the Lease. The initial annual rent shall be **ONE MILLION FOUR HUNDRED SIXTY-FOUR THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS PER ANNUM (\$1,464,375)**. Lease payments shall commence on Closing. Thereafter, rent payments under the Lease shall be made monthly on the first day of each month. If the first lease payment is not on the first of each month, the payment shall be prorated. The minimum rent shall be adjusted upward by two (2) percent compounded annually, on the anniversary date of the first lease payment date under the Lease during each year of the initial and extended terms of the Lease. Buyer and Seller acknowledge that the Lease is a NNN Lease, and Seller as Lessee shall be responsible for all liens and encumbrances. No security deposit from Seller as Lessee to Buyer as Lessor shall be required.

NOW, THEREFORE, in consideration of the mutual promises, and subject to the conditions set forth below, the parties now agree as follows:

1. **Purchase Price.** The total purchase price to be paid by Buyer to Seller for the purchase of the Property shall be the sum of **SEVENTEEN MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$17,750,000)** ("Purchase Price"). The provisions of this Agreement shall constitute joint instructions to the Escrow Holder (as defined below).

1.1 **Payment of Deposit.** Upon execution of this Agreement, Buyer will make an initial deposit of **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)** in cash or

Purchase and Sale Agreement
Tibaron/Willard
7695 and 7699 S. Virginia, Reno
11/18/2005

certified funds, payable in the form of a certified check or wire transfer, with the Escrow Holder. Any and all fees due by Buyer shall be payable from this Initial Payment ("Initial Payment")

1.2 Payment of Balance of Purchase Price. At Closing, Buyer shall pay in cash or certified funds, payable in the form of a certified check or wire transfer, the balance of the purchase price (such balance being SEVENTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$17,500,000), subject to adjustments as set forth herein.

2. CLOSING; ESCROW HOLDER.

2.1 Escrow Holder; Deposit; Closing Date. Escrow Holder shall cause, at Buyer's expense, a current commitment for title insurance ("Title Commitment") concerning the Property to be issued by First American Title Company. Terri Hovdestad, Escrow Officer, First American Title Insurance Company, 1 First American Way, Santa Ana, CA 92707, 714-800-3167 shall serve as title agent and "Escrow Holder" for this transaction. Buyer and Seller shall share equally all reasonable and customary escrow fees and charges. The Closing shall occur no later than 01/16/2006. Promptly after mutual execution of this Agreement, Buyer and Seller shall open an escrow with Escrow Holder, and shall execute such instructions, as Escrow Holder may request which are not inconsistent with the provisions of this Agreement. Escrow Holder is hereby authorized and instructed to conduct the escrow in accordance with this Agreement, applicable law and custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the Internal Revenue Code.

2.2 Documents Required at or before Closing. Seller shall deliver to Escrow Holder in time for delivery to Buyer at the Closing, an original ink signed deed duly executed by the appropriate party and in recordable form, conveying fee title to the Property to Buyer.

2.3 Other Obligations at Closing. At Closing, the parties shall execute and deliver to one another all documents set forth in this Agreement, and, in addition, such other documents as may be necessary or appropriate to accomplish in a complete and proper manner the transaction contemplated by this Agreement.

3. TITLE REPORT; TITLE. Seller will provide Buyer with a preliminary title report on the Property ("Property Title Report"), together with full legible copies of all exceptions in the Report upon opening of escrow. Seller, at its expense, shall provide or cause to be provided, good, valid and marketable title to free and clear of all liens and in a form acceptable to Buyer, as evidenced by Escrow Holder's ALTA standard policy of title insurance in the amount of the Purchase Price, showing title in the Property vested in Buyer.

4. CLOSING COSTS. All State, County and City transfer taxes and/or documentary transfer taxes, premium for the policy of title insurance, and all other costs and expenses of escrow including escrow fees and recording fees shall be according to the County custom of the Property's jurisdiction.

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5. **BUYER'S AND SELLER'S CONDITIONS TO CLOSING.**

5.1 **Buyer's Conditions to Closing.** Buyer's obligation to close shall be conditioned on the satisfaction of only the following conditions at Closing. Buyer's review and all inspections are at Buyer's sole cost and expense. All documentation, including but not limited to reports and records supplied by Seller and Buyer's review and inspection and copying shall be strictly confidential and distribution shall be limited to Buyer's agents and representatives, legal and financial advisors, and/or third parties with an economic interest in the transaction.

A. **Due Diligence Period.** The "**Due Diligence Period**" for review of all documents shall expire within five days of mutual execution of this Agreement by Buyer and Seller. Buyer's acknowledges receipt of the (i) preliminary title report; (ii) survey; and (iii) phase I environmental report concurrent with the execution of this Agreement. No other diligence is due from Seller to Buyer.

B. **Financial Ability.** Buyer shall provide, upon Seller's request, written evidence from Buyer's lender or another financial institution and/or Qualified Intermediary with knowledge of Buyer's ability to purchase this Property.

C. **Deeds and Title Insurance on Property.** Buyer's receipt of Title Insurance on the Property as specified in Section 3 above.

D. **Performance by Seller.** On or before the Closing Date, Seller will have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required of any of them by this Agreement.

E. **Accuracy of Seller's Warranties.** Except as otherwise permitted by this Agreement, all warranties by Seller in this Agreement, or in any written document that will be delivered to Buyer by any of them under this Agreement, must be true in all material respects on the Closing Date as though made at that time.

5.2 **Seller's Condition to Closing.** Seller's obligation to close shall be conditioned on the satisfaction of the following conditions precedent in favor of Seller at Closing:

A. **Performance by Buyer.** On or before the Closing Date, Buyer will have performed, satisfied and complied in all material respects with all covenants, agreements and conditions required by this Agreement.

6. **REPRESENTATIONS AND WARRANTIES OF SELLER.** As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller makes the following representations and warranties to Buyer:

6.1 **Organization and Qualification.** Seller is a validly existing corporation and in good standing under the laws of the State of Nevada, and is qualified to do business in the State of Nevada and has the power and authority to lease and operate its business at the Property.

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6.2 Authority Relative to this Agreement. Seller has the power and authority to enter into this Agreement and this Agreement and all agreements, instruments of transfer, documents and deeds to be executed in connection with the Closing of this transaction, have been or will be, as applicable, duly executed and delivered by Seller and constitute valid and binding obligations of Seller, enforceable against Seller, in accordance with their terms. Seller has the right, power, legal capacity and authority to enter into and perform its respective obligations under this Agreement, and except as otherwise provided for or disclosed in this Agreement, no approvals or consents of any persons other than Seller are required. The execution and delivery of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller.

6.3 Title to Assets and the Property. Except as otherwise provided for or disclosed in this Agreement, Seller has, or will cause to be conveyed to Buyer, at the time of the Closing, good and marketable title to the Property. The Property will be as of the Closing Date free and clear of mortgages, liens, mechanics' or materialmen's lien rights, pledges, charges, monetary encumbrances (other than bonds or improvement assessments as provided elsewhere in this Agreement), equities and claims.

6.4 Buyer's Acceptance of the Property. Buyer represents to Seller that it has made a visual inspection of the Property. Buyer acknowledges that it has the obligation to conduct studies and investigations of the Property, at its sole cost and expense, for the purposes of becoming familiar with the condition of the Property to the extent it deems necessary. Purchaser acknowledges and agrees that it has been or will, prior to the expiration of the Due Diligence Period, be given a full opportunity to inspect and investigate every aspect of the Real Property and Purchaser's desired development and use of the Real Property. Purchaser specifically acknowledges and agrees that the Real Property is being sold by Seller on an "AS IS WITH ALL FAULTS" basis and in its condition as of the date of this Agreement and as of the Closing Date, except as expressly set forth in this Agreement. Except as expressly set forth in this Agreement, no representations or warranties have been made or are made and no responsibility has been or is assumed by Seller or by any member, manager, agent, attorney, or representative of Seller acting or purporting to act on behalf of Seller as to any matters concerning the Property or Project. Purchaser acknowledges that it is not relying upon any statement or representation by Seller unless such statement or representation is specifically embodied in this Agreement.

6.5 Due Diligence Materials. Buyer acknowledges that Seller makes no representation or warranty about the completeness, accuracy or veracity of any due diligence materials provided by Seller to Buyer.

6.6 Litigation. There is no pending, or, to the best of Seller's knowledge, threatened, suit action, arbitration, or legal, administrative, or other proceeding, or governmental investigation against or affecting the Property.

6.7 **Compliance with Laws and Regulations.** To Seller's present knowledge, the Property is in compliance with all material requirements of law, Federal, State and local, and all material requirements of all governmental bodies or agencies having jurisdiction over the Property. The Seller has not received any notice, not heretofore complied with, from any Federal, State or municipal authority or any insurance or inspection body that the Property fails to comply with any applicable law, ordinance, regulation, building or zoning law, or requirement of any public body or authority.

6.8 **Valid and Binding Agreement** The representations, warranties, and covenants made under this Agreement constitute valid and binding obligations of Seller and are enforceable against Seller.

7. **REPRESENTATIONS AND WARRANTIES OF BUYER.** As a material inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer makes the following representations and warranties to Seller:

7.1 **Organization and Qualification.** Buyer has the power and authority to enter into this Agreement and to own the Property.

7.2 **Authority Relative to this Agreement.** This Agreement and all agreements, instruments of transfer, documents and deeds to be executed in connection with the closing of this transaction, have been or will be, as applicable, duly executed and delivered by Buyer and constitute valid and binding obligations of Buyer, enforceable against Buyer, in accordance with their terms.

7.3 **Valid and Binding Agreement.** The representations, warranties, and covenants made under this Agreement constitute valid and binding obligations of Buyer and are enforceable against Buyer.

8. **CONFIDENTIALITY.** Buyer and Seller shall keep this Agreement and any and all information, materials and documentation, including but not limited to financial statements, reports, records and asset lists, and information submitted by any party hereto to the other, whether submitted pursuant to the terms of this Agreement, or otherwise, or otherwise discovered in furtherance of this Agreement, confidential and make no public announcement of its content, nor shall either party divulge, communicate, disclose or use to the detriment of the other party, or for the benefit of any other person or persons, such information, documents or materials in any manner nor use such information or materials for any purposes other than as set forth in this Agreement. Disclosure to each party's respective agents, representatives, attorneys, accountants, lenders and/or third parties with an economic interest in the transaction is exempt.

9. **ADDITIONAL AGREEMENTS.**

9.1 **Fees and Expenses.** Buyer, on the one side, and Seller, on the other side, shall each bear their own expenses for legal and accounting fees, costs and expenses incurred in

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negotiating and preparing this Agreement, negotiating and preparing all of the other paperwork in connection with this Agreement, and carrying out the transactions contemplated by this Agreement.

9.2 **Broker's Fees.** The Buyer is represented by Sperry Van Ness ("**Sperry Van Ness**"). Seller will pay a commission amount equal to \$350,000 to Sperry Van Ness at Closing and Seller will be solely responsible for payment of such fee. Buyer will not be responsible for payment of any fee or commission to Sperry Van Ness.

9.3 **Further Acts.** The parties agree to execute and deliver all documents and perform all further acts that may be reasonably necessary to carry out the provisions of this Agreement and to cooperate with each other in connection with the foregoing.

9.4 **Controlling Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of State of Nevada.

9.5 **Attorneys' Fees and Costs.** If any party hereto institutes any legal action or proceeding arising out of or related to this Agreement the prevailing party shall be entitled to reasonable attorneys' fees and expenses, and all other recoverable costs and damages, including any and all such costs on appeal.

9.6 **Parties in Interest.** This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other person any right or remedies of any nature whatsoever under or by reason of this Agreement.

9.7 **Assignment.** This Agreement (including the other documents and instruments referred to herein) may not be assigned without the written consent of each other party hereto, which consent shall not be unreasonably withheld.

9.8 **Provisions Separable.** The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

9.9 **Integration.** This Agreement contains the entire understanding among the parties hereto with respect to the subject matter hereof, and except as herein contained supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. This Agreement may not be modified or amended other than by an agreement in writing signed by each of the parties named on the first page of this Agreement.

9.10 **Time is of Essence.** Time is of the essence of this Agreement, all documents and all transactions contemplated herein.

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9.11 **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when (1) delivered (personally, by courier service such as Federal Express, or by other messenger); (2) if transmitted by facsimile transmission, then on the date of transmission as confirmed by the facsimile equipment the recipient location; provided that if transmission is after 5:00 p.m. on any day, then notice shall not be deemed given until the following business day; or (3) on the date mailed, when deposited in the United States mails, certified mail, postage prepaid, return receipt requested, addressed as set forth below:

TO:

Seller:

Paul Morabito
668 North Pacific Coast Highway, Suite 517
Laguna Beach, California 92651
P: (949) 464-9251
F: (949) 464-9261

with a copy to:

Sujata Yalamanchili, Esq.
Hodgson Russ LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14202
P: (716) 848-1657
F: (716) 849-0349

TO:

Buyer:

Larry Willard
c/o Dan Gluhaich/Intero Real Estate
175 E. Main Street, Suite 130
Morgan Hill, California
P: (408) 201-0120

Notice by mail shall be by airmail if posted outside of the continental United States. Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section for the giving of notice.

9.12 **Execution in Counterparts and Via Facsimile.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, bear the signatures of all of the parties reflected hereon as

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the signatories. A signature on this Agreement sent via facsimile shall be deemed an original signature for the purposes of enforcement.

9.13 Section Headings. The section headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect their interpretation.

9.14 Number of Days. In computing the number of days for purposes of this Agreement, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or holiday on which federal banks are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or such holiday.

9.15 Construction of Agreement. This Agreement has been prepared, and negotiations in connection with it have been conducted, by the joint efforts of Seller and Buyer. This Agreement is to be construed simply and fairly, and not strictly for or against any of the parties.

9.16 Further Acts. The parties agree to execute and deliver all documents and perform all further acts that may be reasonably necessary to carry out the provisions of this Agreement.

9.17 Tax Deferred Exchange. Seller and Buyer are aware and acknowledge that Buyer may be purchasing the Property and Seller may be selling the Property as part of a transaction to qualify as a tax-deferred exchange pursuant to section 1031 of the Internal Revenue Code of 1986, as amended. Buyer and Seller agree to use their best efforts and cooperate in completing any such exchange, including executing and acknowledging all documents reasonably requested by the other party (subject to the reasonable approval of the parties' respective counsel), at no additional liability or cost to the other party. Buyer and Seller shall indemnify and hold one another harmless from any and all claims, liabilities, and costs resulting from each such party's exchange transaction. Seller makes no legal or tax representations regarding Buyer's exchange.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

SELLER:

P. A. MORABITO & CO., LIMITED,
a Nevada corporation

By: Paul Morabito 11/21/05
Paul Morabito
President

BUYER:

Larry Willard 11/21/05
Larry Willard

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EXHIBIT "A"
LEGAL DESCRIPTION

Purchase and Sale Agreement
Tibarom/Willard
7695 and 7699 S. Virginia, Reno
11/18/2005

000160/09959 G8DOCS 468872v2

Exhibit 27-12