

Loan No. E0045

## NOTE SECURED BY DEED OF TRUST

\$6,600,000.00

June 12, 2002

In installments as herein stated, for value received, the undersigned promises to pay to **GOLD MOUNTAIN FINANCIAL INSTITUTION, INC.**, or order ("Lender"), at 201 Lafayette Circle, 2nd Floor, Lafayette CA 94549, or such other place as may be designated by Lender in writing, the principal sum of **\$6,600,000.00 (SIX MILLION SIX HUNDRED THOUSAND DOLLARS AND NO/100 CENTS)**, plus interest from the DATE OF FUNDING on the unpaid principal balance outstanding from time to time. Each month during the term of this Note the undersigned shall pay Lender a MONTHLY INSTALLMENT payment on the MONTHLY PAYMENT DATE. On the MATURITY DATE all unpaid principal and any accrued interest or other charges shall be due and payable in full.

The "RATE OF INTEREST" for this Note for the first fiscal year is TEN per cent (10%) per annum.

The "RATE OF INTEREST" for the remainder of the term of this Note is TWELVE per cent (12%) per annum.

The "DATE OF FUNDING" of this Note is June 19, 2002

The "MONTHLY PAYMENT DATE" for this Note is the 19th day of each month beginning one month after the DATE OF FUNDING and continuing on the same day of each month thereafter during the term of this Note until the MATURITY DATE.

This Note is for a term of SEVENTY-TWO (72) fiscal months beginning on the DATE OF FUNDING. The "MATURITY DATE" of this Note is the last day of said term.

The "MONTHLY INSTALLMENT" payment due each month for the first fiscal year of the term of this Note shall be \$55,000.00 (FIFTY-FIVE THOUSAND DOLLARS AND NO/100 CENTS). The "MONTHLY INSTALLMENT" for the remainder of the term of this Note shall be \$66,000.00 (SIXTY-SIX THOUSAND DOLLARS AND NO/100 CENTS) per month. If the principal balance of this Note is reduced at any time during the term of this Note then, at Lender's option, the MONTHLY INSTALLMENT may be adjusted so that interest only is paid, or the Lender will apply the MONTHLY INSTALLMENT first to accrued interest and other charges, and then to the reduction of principal.

**LOAN FEE:** The undersigned agrees to pay to BAR K, INC. a fee of \$330,000.00, which shall be due and payable upon the funding of the loan evidenced by this Note. This fee shall be deducted from the proceeds of the loan at the time of funding. This fee is not a payment towards principal, interest, or other amounts due under this Note.

**BALLOON PAYMENT:** This Note is payable in full on the MATURITY DATE. The payments required under this Note are not sufficient in amount to reduce the principal to zero on the  
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**EXHIBIT "A"**

**MATURITY DATE**, therefore, on the **MATURITY DATE** there will be a balloon payment equal to the unpaid principal plus all accrued and unpaid interest and other charges. **THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT LENDER IS NOT OBLIGATED TO REFINANCE THE LOAN EVIDENCED BY THIS NOTE.**

**PREPAYMENT:** This Note may be prepaid in whole or in part at any time without penalty

**LATE CHARGE:** If any sum, except a balloon payment, due hereunder is delinquent more than 10 days, the undersigned shall pay a late charge on each such sum of 10% of the delinquent amount. If any balloon payment (defined as a payment which is more than double the regular **MONTHLY INSTALLMENT**) is delinquent more than 10 days, then for each month that the balloon payment remains unpaid the undersigned shall pay a monthly late charge equal to the late charge which could be assessed on the largest regular **MONTHLY INSTALLMENT** due under this Note. All late charges are to be paid immediately upon demand.

**UNPAID CHECKS:** If any check given to Lender is returned by the bank unpaid, the undersigned shall pay an unpaid check charge of \$25.00 or 4% whichever is greater. This amount is in addition to any late charge or default interest which may be applicable. If, during the term of this Note, two or more checks are returned by the bank unpaid, at any time thereafter Lender can require that all future payments be by cashier's check.

**DUE ON SALE OR ENCUMBRANCE:** This Note is secured by a **DEED OF TRUST ASSIGNMENT OF RENTS AND FIXTURE FILING** which contains the following provision, the terms of which are incorporated herein by this reference: "Trustor shall not transfer the Property without the prior written consent of Beneficiary, which consent may be withheld in Beneficiary's sole discretion. Consent to one transfer shall not be deemed to be a waiver of the right to require consent to other transfers. Except for a transfer resulting in a partial reconveyance of this Deed of Trust if the Note or this Deed of Trust has a partial release clause, if Trustor transfers the Property or any portion thereof, or any interest therein, without first obtaining the written consent of Beneficiary, all indebtedness secured by this Deed of Trust shall, at the option of Beneficiary and without notice or demand, become immediately due and payable. As used herein, transfer includes, but is not limited to, the sale, option to sell, contract to sell, convey, encumber, mortgage (including encumber by a deed of trust), pledge, hypothecate, or lease with option to purchase of the Property, or any portion thereof, or any interest therein, whether voluntary, involuntary, by operation of law, or otherwise, or the transfer of more than a 50% interest of Trustor if Trustor is anything other than a natural person. Notwithstanding the generality of the foregoing, if the Property consists of only a dwelling which will be owned and occupied by one of the Trustors of this Deed of Trust within 90 days of the execution of this Deed of Trust, then a transfer shall not include an encumbrance, mortgage (including deed of trust), pledge, or hypothecation."

**APPLICATION OF PAYMENT; COSTS OF COLLECTION:** Each payment shall be credited first to interest or other charges then due and payable to Lender and the remainder to principal, and interest shall thereupon cease upon the principal so credited. Upon default in the payment of any sum due Lender, the entire balance of this Note shall become immediately due and payable in full at the option of Lender. All costs, expenses, advances and/or attorney's fees incurred by Lender relating to this Note or the deed of trust, mortgage, or security agreement securing this Note shall be

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immediately owed by the undersigned to Lender. All such advances, expenses, and/or attorney's fees shall accrue interest at the rate stated in this Note from the date incurred until paid. If any amounts which are payable under this Note are not paid when due, the undersigned promises to pay, in addition to the principal and interest due under this Note, all costs of collection and any reasonable attorney's fees incurred by the Lender, whether or not suit is filed or foreclosure is commenced.

**MISCELLANEOUS:** Principal and interest is payable in lawful money of the United States of America. As an inducement to cause Lender to make this loan, the undersigned represents that the undersigned has the financial ability to make the payments stated herein. The undersigned consents to all renewals, replacements, and extensions of time for payment hereof and waives notice, demand, protest and any applicable statute of limitations. Liability under this Note and any deed of trust, mortgage, or security agreement relating to this Note shall be joint and several.

**COMPOUNDING:** Any interest or other charge which becomes due under this Note or the deed of trust, mortgage, or security agreement securing this Note which remains due for more than one month shall accrue interest as of the date the interest or other charge was otherwise due at the same rate and upon the same terms as the principal under this Note.

**DEFAULT INTEREST RATE:** If this Note or the deed of trust, mortgage, or security agreement securing this Note is in default for more than one month, then the RATE OF INTEREST on this Note during the period of such default shall be automatically increased, effective as of the date of default and continuing until the default is cured, to an amount equal to the RATE OF INTEREST stated on the first page of this Note plus five per cent (5%).

**SECURITY:** This Note is secured by one or more deeds of trust, mortgages, or security agreements.

End Real Estate Development,  
A California Limited Liability Company

By:           X-CELL           - Agent

Its:           Managing Member

WHEN RECORDED MAIL TO  
Gold Mountain Financial Institution, Inc  
c/o BAR K, INC.  
201 LAFAYETTE CIRCLE  
2nd FLOOR  
LAFAYETTE CA 94549

DOC # 2002-119882

05/20/2002 08:00A M Fee:66.00

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Recorded In Official Records  
County of San Mateo

Warren Slocum  
Assessor-County Clerk-Recorder  
Recorded By NORTH AMERICAN TITLE COMPANY



NATCO  
52070066

E0045

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## DEED OF TRUST ASSIGNMENT OF RENTS AND FIXTURE FILING

16p

This deed of trust (Deed of Trust) is dated as of June 12, 2002.

The Trustor under this Deed of Trust is End Real Estate Development, a California Limited Liability Company.

The Trustor's address is 2995 Woodside Road, #543, Woodside, CA 94062.

The Trustee under this Deed of Trust is BAR K, INC., a California corporation.

The Beneficiary under this Deed of Trust is GOLD MOUNTAIN FINANCIAL INSTITUTION INC., a California corporation.

Trustor owes Beneficiary the principal sum of \$6,600,000.00. This debt is evidenced by a NOTE SECURED BY DEED OF TRUST dated June 12, 2002 (Note).

Trustor does irrevocably grant, transfer, and assign to Trustee in trust, with power of sale, as security for the obligations evidenced by the Note and this Deed of Trust, all of Trustor's right, title, and interest now owned or later acquired in the real property located in the City of Woodside, County of San Mateo, State of California, and more particularly described as

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF**

together with the rents, issues, and profits derived therefrom (subject to the right granted by this Deed of Trust to Trustor to collect such rents, issues, and profits until there is a default hereunder), for the purpose of securing, in any order of priority that Beneficiary determines: (1) the payment of the indebtedness evidenced by the Note and all extensions, modifications, or renewals of the Note; (2) the payment of the interest on that indebtedness according to the terms of the Note; (3) the payment of all other sums becoming due and payable to Beneficiary pursuant to the terms of the Note or this Deed of Trust; (4) the performance of every other obligation contained in the Note and this Deed of Trust; and, (5) the payment of all other sums and performance all other obligations owed by Trustor to Beneficiary that by their terms recite that they are secured by this Deed of Trust.

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**EXHIBIT "B"**

Trustor also grants, transfers, and assigns to Trustee in trust, with power of sale, all of Trustor's right, title, and interest now owned or later acquired in the following property to the extent that the same is located on or related to the real property described above:

Improvements. All buildings, structures, fixtures, and improvements now or hereafter located on the real property;

Plans. All plans, specifications, drawings, engineering or similar studies or calculations, tests, surveys, designs, or related materials pertaining to the real property or any personalty related to the real property;

Easements and Permits. All easements, rights-of-way, licenses, strips and gores of land, streets, alleys, sewer rights, water, water courses, water rights, water stock, air rights, mineral rights, utility deposits, permits, approvals, development agreements, development entitlements, franchises, consents, plans, and specifications now or hereafter relating to the real property or any personalty related to the real property;

Fixtures and Personal Property. All inventory, merchandise, goods, stock in trade, machinery, furnishings, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, fire suppression, lighting, fans, generators, alarm systems, communications, and elevator fixtures), and other personal property of every kind and nature, whether tangible or intangible, now or hereafter located upon the real property including, without limitation, chairs, desks, lamps, mirrors, bookcases, tables, couches, shelves, outdoor furniture, grills, cabinets, rugs, carpeting, floor coverings, draperies and drapery rods and brackets, curtains, shades, venetian blinds, screens, awnings, paintings, hangings, pictures, keys or other entry systems, cable t.v. equipment, intercom equipment, electric and electronic equipment, private telephone systems, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, fittings, plants, stoves, ranges, microwaves, dishwashers, garbage disposal units, refrigerators, washers and dryers, tools, lawn mowers, pool equipment, exercise equipment, vending machines, machinery, water heaters, incinerators, machines, engines, boilers, dynamos, elevators, stokers, tanks, and all materials and supplies of any nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, and all proceeds and products of the above;

Leases and Rents. All present and future leases and subleases affecting the use, enjoyment, or occupancy of the real property or any personalty related to the real property, and all rents, revenues, issues, and profits derived therefrom (including all oil and gas or other mineral royalties and bonuses), and all right, title, and interest of Trustor in any cash or securities deposited with Trustor or any other person to secure the performance by the lessees of their obligations thereunder;

Condemnation Awards. All awards or payments, including interest thereon, which may be made with respect to the real property or any personalty related to the real property as a result of the exercise of the right of eminent domain (including but not limited to any transfer made in settlement of such the right);

Insurance Proceeds. All proceeds of, and any unearned premiums on, any insurance policies covering the real property or any personalty related to the real property;

Refunds. All refunds, rebates, or credits in connection with a reduction in real estate taxes or assessments charged against the real property or any personalty related to the real property;

Agreements. All agreements (including agreements relating to washers, dryers, and vending machines), contracts, escrows, escrow deposits, and other arrangements, now or hereafter entered into, respecting or pertaining to the use, occupation, construction, management or operation of the real property or any personalty related to the real property;



**Trademarks.** All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books, and records and all other general intangibles relating to or used in connection with the operation of the real property or any personalty related to the real property;

**Intangibles.** All accounts, accounts receivable, book, records, documents, instruments, chattel paper, claims, warranties, general intangibles, actions, claims, suits, judgments, proofs of claim in bankruptcy, and causes of action which now or hereafter relate to, are derived from, or are used in connection with the real property or any personalty related to the real property; and

**Proceeds.** Any and all proceeds derived from the sale, transfer, assignment, or financing of the real property or Property or any personalty related to the real property.

The term "Property" when used in this Deed of Trust includes the real property described above, any personalty related to the real property, and all of the above property, whether real or personal.

Until the entire indebtedness evidenced by the Note or secured by this Deed of Trust has been paid in full, Trustor covenants to and agrees as follows:

1. **General Obligations.** Trustor will timely perform all the covenants, agreements, terms, and conditions to be performed by Trustor: (i) under this Deed of Trust; (ii) under the Note; and (iii) under all other agreements between Trustor and Beneficiary. Without limiting the generality of any other provision of this Deed of Trust, if at any time Trustor fails to pay or perform any obligation secured hereby, Beneficiary shall have the right, but not the obligation, to take such action as Beneficiary deems necessary to protect its interest in the Property, including, without limitation, the right to pay or perform such obligation, and all expenses incurred by Beneficiary in connection therewith shall be paid by Trustor to Beneficiary upon demand.

2. **Insurance.** (a) Until all indebtedness secured by this Deed of Trust has been paid in full, Trustor shall obtain and maintain insurance with at least the following coverages: (i) comprehensive all risk insurance (including, without limitation, riot and civil commotion, vandalism, malicious mischief, water, fire, burglary, and theft) covering full replacement cost of any improvements now located or hereinafter constructed on the Property; (ii) flood hazard insurance if any portion of the Property is currently or at any time in the future located in a federally designated special flood hazard area (it being the responsibility of Trustor to determine if the Property is located in such an area); and (iii) such other insurance, including earthquake, and in such amounts as Beneficiary from time to time may request. If the Property encumbered by this Deed of Trust is commercial property (including an apartment complex), Trustor shall also maintain (i) comprehensive general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, such insurance to be on the so-called "occurrence" form with a combined single limit of not less than \$1 million; and (ii) business income or rent interruption insurance covering losses of income derived from the Property resulting from any risk or casualty in an amount equal to 100% of the projected gross income from the Property for a period of twelve months.

(b) All insurance shall be in such forms and in such amounts as may from time to time be satisfactory to Beneficiary, issued by financially sound and responsible insurance companies reasonably acceptable to Beneficiary. All policies of insurance shall name Beneficiary, its successors and assigns, or other designees of Beneficiary, as loss payees (with an ISO Standard Mortgagee Clause – meaning that such insurance cannot be invalidated as to Beneficiary by any act or neglect of the Trustor or the owner of the Property) and as the insured or an additional insured.

(c) All Policies of insurance shall contain clauses or endorsements to the effect that: the Policy shall not be materially changed (other than to increase the coverage provided on the Property thereby) or canceled without at least thirty (30) days' prior written notice to Beneficiary; and each Policy shall provide that the issuers thereof shall give written notice to Beneficiary if the Policy has not been renewed thirty (30) days prior to its expiration.



(d) Not less than thirty (30) days prior to the expiration dates of any insurance, certified copies of the policies or binders marked "premium paid" or accompanied by evidence satisfactory to Beneficiary of payment of the premiums shall be delivered by Trustor to Beneficiary. If at any time Beneficiary is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Beneficiary shall have the right, but not the obligation, without notice to Trustor, to take such action as Beneficiary deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Beneficiary in its sole discretion deems appropriate. All expenses incurred by Beneficiary in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Trustor to Beneficiary upon demand.

(e) Trustor will promptly notify Beneficiary in writing after any loss or damage caused by fire or other casualty to the Property, and prior to the making of any repairs or the collection of any insurance proceeds Trustor will furnish to Beneficiary: (i) evidence satisfactory to Beneficiary that sufficient funds are available to Trustor, including insurance proceeds, to complete the repair or reconstruction; and (ii) evidence satisfactory to Beneficiary that the repair or reconstruction may be completed in accordance with all applicable laws, rules, regulations, and ordinances and that all necessary permits and approvals have been or will be obtained. If the Property is to be repaired, then Beneficiary shall have the right to require that all insurance proceeds, and any additional moneys required to complete the repairs, be deposited into an escrow or other similar account controlled by Beneficiary to insure that the funds, when disbursed, are used to pay for the costs of the repairs. If Trustor does not furnish this evidence to Beneficiary within a reasonable period, or if Beneficiary in its sole discretion determines that repair or reconstruction is not economically feasible, then Beneficiary will have the option to have all insurance proceeds paid directly to Beneficiary and applied against the indebtedness secured by this Deed of Trust. If Beneficiary elects this option, Trustor will immediately transfer to Beneficiary all insurance proceeds, if any, previously received by it. If the insurance proceeds exceed the indebtedness, any excess insurance proceeds will belong to and be paid over to Trustor.

3. **Condemnation.** Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion of it, Trustor shall notify Beneficiary of the pendency of the proceedings. Beneficiary may participate in any proceedings and Trustor shall deliver to Beneficiary all instruments requested by Beneficiary to permit participation. If there are condemnation proceedings, the award or compensation shall be paid to Beneficiary. Beneficiary will be under no obligation to question the amount of any award or compensation and may accept it in the amount in which it is paid. In any condemnation proceedings, Beneficiary may be represented by counsel selected by Beneficiary. The proceeds of any award or compensation received will, at the option of Beneficiary, either be applied to the prepayment of the Note or be paid over to Trustor for restoration of the improvements on the Property.

4. **Maintenance, Waste, and Repair.** Trustor will maintain the improvements on the Property now or later existing in good condition and repair, and will not structurally alter them without the prior written consent of Beneficiary, nor remove or demolish them in whole or in part, nor will Trustor suffer any waste of the Property (including the nonpayment of taxes or insurance premiums) or make any change in the use of the Property that will in any way impair the security of this Deed of Trust. Trustor will not abandon the Property or leave the Property unprotected, vacant, or deserted. Trustor will not permit any of the fixtures to be removed at any time from the Property without the prior written consent of Beneficiary unless actually replaced by articles of equal suitability and value. Trustor will not initiate, join in, or consent to any change in any zoning of the real property without the prior written consent of Beneficiary.

5. **Taxes.** Trustor will pay when due all real estate and personal property taxes and other assessments pertaining to the Property. Within 5-days of written demand Trustor will provide Beneficiary with reasonable written evidence showing that all taxes and assessments have been paid. If at any time Beneficiary fails to pay any of the taxes or assessments, Beneficiary shall have the right, but not the obligation, without notice to Trustor, to take such action as Beneficiary deems necessary to protect its interest in the Property, including, without



limitation, the right to pay such taxes and assessments, and all expenses incurred by Beneficiary in connection therewith shall be paid by Trustor to Beneficiary upon demand.

6. **Impositions.** Trustor will faithfully perform every covenant to be performed by Trustor, and pay any sum to be paid by Trustor, under any lien, encumbrance, or ground lease, including mortgages, deeds of trust, leases, CC&Rs, and other agreements that affect the Property, that may be prior and superior to or on a parity with the lien or charge of this Deed of Trust. Within 5-days of written demand Trustor will provide Beneficiary with reasonable written evidence showing that all such obligations have been paid or performed. A breach of or a default under any such lien or encumbrance will constitute a default under this Deed of Trust. If Trustor fails to pay or perform any such obligation, Beneficiary, without demand or notice and in its sole judgment, may take such action as Beneficiary deems necessary to cure any such default, including the payment of the same, and all expenses incurred by Beneficiary in connection therewith shall be paid by Trustor to Beneficiary upon demand.

7. **Leasehold Protection.** If Trustor's interest in the real property or Property, or any portion thereof, is that of a lessee, then Trustor shall: (i) pay prior to delinquency all rent and other charges that fall due under the provisions of such lease; (ii) fully, faithfully, and punctually observe and perform all other terms, covenants, agreements, and conditions required of it under the terms of such lease; (iii) promptly notify Beneficiary, in writing, of the default by Trustor or the lessor under any provisions of such lease, or of the occurrence of any event which, with notice or the passage of time, would constitute a default under such lease; (iv) promptly cause any notice which it receives from the lessor under such lease to be delivered to Beneficiary; (v) if any indebtedness secured by this Deed of Trust remains unpaid at a time when notice may or must be given by Trustor of the exercise of any right or option to extend the term of such lease, then Trustor shall promptly give notice of the exercise of such right or option in accordance with the provisions of such lease; (vi) promptly notify the lessor under such lease of the existence and execution of this Deed of Trust and the name and address of Beneficiary; and (vii) not terminate (including a termination or rejection as a part of any bankruptcy or similar proceeding), cancel, surrender, modify, change, alter, or amend such lease, either orally or in writing, without the written consent of Beneficiary. Without imposing any obligation upon Beneficiary to do so, Trustor hereby appoints Beneficiary as Trustor's attorney in fact to perform any or all of the foregoing acts to the extent necessary to preserve and protect Trustor and Beneficiary's interest in said leasehold estate.

8. **Interest.** Any sums expended by Beneficiary in accordance with the provisions of this Deed of Trust shall bear interest from the date expended until the date repaid at the interest rate specified in the Note (including the default interest rate set forth in the Note, if any), if any such sum is not paid by Trustor to Beneficiary within 5-days of written demand.

9. **Impounds** At the request of Beneficiary, Trustor will pay to Beneficiary on a monthly basis an amount equal to one-twelfth of the annual cost of taxes, assessments, and insurance on the Property. The accumulated funds will be released to Trustor for payment of taxes, assessments, and insurance premiums, or may be directly applied by Beneficiary, if Beneficiary elects.

10. **Compliance with Law.** Trustor will comply with all present and future laws, ordinances, rules, regulations, and requirements of every governmental authority or agency and of every board of fire underwriters (or similar body exercising similar functions) having jurisdiction that may be applicable to it or to the Property or to the use or manner of occupancy, possession, operation, maintenance, alteration, or repair of the Property or any part of it, whether the law, ordinance, rule, order, regulation, or requirement necessitates structural changes or improvements or interferes with the use or enjoyment of the Property.

11. **Statement of Unpaid Balance.** Beneficiary, within the time allowed by law, and upon the payment of the maximum charge permitted by law (currently \$60.00), will furnish a beneficiary statement or payoff demand statement in accordance with the provisions of Civil Code Section 2943.



12. **Indemnity.** If any action or proceeding is threatened or commenced that affects the Property or any portion of it, or becomes necessary to defend or uphold the lien of this Deed of Trust, including, without limitation, any actions or proceedings in any bankruptcy court which may affect or impair the lien of this Deed of Trust on any of the Property in any way, then all costs, fees, and expenses incurred by Beneficiary with respect to the action or proceeding (including, without limitation, attorney's and expert witness fees and expenses) will, within ten (10) days of demand, be paid by Trustor. In addition, Trustor agrees to pay all costs, including, without limitation, attorney fees and expenses, incurred by Beneficiary in enforcing the terms of the Note or this Deed of Trust. Trustor agrees to indemnify and hold Beneficiary harmless from all liability, loss, damage, or expense (including, without limitation, attorney fees) that it may incur under this Deed of Trust, or in connection with the making of any of the loans or financial arrangements secured by this Deed of Trust, the enforcement of any of Beneficiary's rights or remedies, any action taken by Beneficiary under this Deed of Trust, or by reason or in defense of any claims or demands that may be asserted against Beneficiary arising out of the Property or this Deed of Trust.

13. **Due on Sale or Encumbrance.** Trustor shall not transfer the Property without the prior written consent of Beneficiary, which consent may be withheld in Beneficiary's sole discretion. Consent to one transfer shall not be deemed to be a waiver of the right to require consent to other transfers. Except for a transfer resulting in a partial reconveyance of this Deed of Trust if the Note or this Deed of Trust has a partial release clause, if Trustor transfers the Property or any portion thereof, or any interest therein, without first obtaining the written consent of Beneficiary, all indebtedness secured by this Deed of Trust shall, at the option of Beneficiary and without notice or demand, become immediately due and payable. As used herein, transfer includes, but is not limited to, the sale, option to sell, contract to sell, convey, encumber, mortgage (including encumber by a deed of trust), pledge, hypothecate, or lease with option to purchase of the Property, or any portion thereof, or any interest therein, whether voluntary, involuntary, by operation of law, or otherwise, or the transfer of more than a 50% interest of Trustor if Trustor is anything other than a natural person. Notwithstanding the generality of the foregoing, if the Property consists of only a dwelling which will be owned and occupied by one of the Trustors of this Deed of Trust within 90 days of the execution of this Deed of Trust, then a transfer shall not include an encumbrance, mortgage (including deed of trust), pledge, or hypothecation.

14. **Environmental Provisions.** Trustor acknowledges and agrees that Beneficiary has all of the rights of a secured party under the provisions of California Civil Code Section 2929.5, and California Code of Civil Procedure Sections 564 and 726.5, and 736. If the foregoing legislation is amended or superceded by other statute(s) after the date of recordation of this Deed of Trust, then Beneficiary shall have the right to elect to be governed by the foregoing legislation as of the date of recordation of this Deed of Trust, or as of the date of enforcement of Beneficiary's rights thereunder (as amended or superceded), unless the amended or new statute(s) mandate another result. Trustor agrees to protect, defend (by counsel selected by Beneficiary and reasonably acceptable to Trustor), indemnify, and hold harmless Beneficiary and Beneficiary's officers, directors, members, managers, partners, shareholders, employees, affiliates, agents, attorneys, successors, assigns, and any person firm or corporation purchasing the Property at a foreclosure resulting from the loan to be made by Beneficiary to Trustor (collectively "Beneficiary" and intended third party beneficiaries of this Agreement) from and against any and all liabilities (including sums paid in settlement), losses (including diminution in the value), costs, damages, fines, assessments, penalties, forfeitures, judgments, orders, attorneys' fees and expenses (including experts' and consultants' fees and costs, and any attorneys' fees or costs incurred in enforcing or interpreting this Agreement), and claims of any kind or nature whatsoever (whether foreseeable or unforeseeable) (collectively, the "Liabilities") sought from or asserted against Beneficiary as a result of, directly or indirectly, the presence, suspected presence, release, suspected release, or threat of release of any Hazardous or Toxic Materials in, on, under, above, from, or affecting (1) the Property and/or (2) any real property or body of water adjacent to or in the vicinity of the Property to which Hazardous or Toxic Materials have spread from the Property. Liabilities shall also include: (i) injury or death to any person, (ii) damage to or loss of use of the Property or any other property, ground water, waterway, or body of water adjacent to the Property; and (iii) the cost of removal, clean-up or remedial action of any and all Hazardous or Toxic Materials from the Property or real property or body of water in the vicinity of the Property. As used in this Agreement: "Environmental Law" shall mean and include any



federal, state, or local statute, law, rule, regulation, ordinance, code, policy, administrative order, consent decree, or judgment now or hereafter in effect, relating to Hazardous or Toxic Materials; and "Hazardous or Toxic Materials" shall include but not be limited to: (a) any solid, gaseous or liquid wastes, air pollutants, substances, materials, mixtures, as such terms are defined in any present or future Environmental Law, (b) any substance or material which now or in the future is known to constitute a threat to health, safety, property or the environment, or exposure to which is prohibited, limited or regulated by any Environmental Law, and (c) any petroleum or petroleum products or by-products, radioactive materials, asbestos, whether friable or non-friable, urea formaldehyde foam insulation, polychlorinated biphenyls, or radon gas.

**15. Assignment of Leases, Rents, Issues, and Profits.** Trustor irrevocably assigns to Beneficiary all of Trustor's right, title, and interest in all present and future leases and subleases for the Property, and the rents, issues, and profits related thereto, for the purpose of further securing the obligations described above. Until there is a default under the Note, this Deed of Trust, or any other agreement secured by this Deed of Trust, Trustor may collect such rents, issues, issues, and profits. Trustor agrees that the provisions of Civil Code Section 2938 shall be deemed incorporated herein by this reference, and Trustor and Beneficiary shall have all of the rights and obligations specified in Civil Code Section 2938. If Civil Code Section 2938 is amended, or superceded by other statute(s), after the date of recordation of this Deed of Trust, then Beneficiary shall have the right to elect to be governed by Civil Code Section 2938 as of the date of recordation of this Deed of Trust, or as of the date of enforcement of Beneficiary's rights thereunder (as amended or superceded), unless the amended or new statute(s) mandate another result.

**16. Lease Obligations.** Trustor covenants and agrees, at Trustor's sole cost and expense: (i) to perform all obligations of the lessor under any leases and subleases for the Property and to enforce performance by the lessees of their obligations under any leases or subleases; (ii) to enforce all remedies available to Trustor in case of default by the lessees under any leases or subleases for the Property and prosecute and defend any action, arbitration, or other controversy relating to any of any leases or subleases; (iii) to give Beneficiary prompt notice of any default that occurs under any leases or subleases for the Property, whether by the lessees or Trustor; (iv) if the Property is rental Property to exercise diligent, good-faith efforts to keep all portions of the Property leased at all times and at rentals not less than the fair market rental value; and (v) to promptly, upon execution or demand by Beneficiary, deliver to Beneficiary copies of all leases and subleases relating to the Property.

**17. Default.** If a default occurs under the provisions of the Note, this Deed of Trust, or any other agreement secured by this Deed of Trust, then Beneficiary may declare all the indebtedness secured by this Deed of Trust to be due and payable in full without any further presentment, demand, protest, or notice of any kind, and Beneficiary may: (i) in person, by agent, or by a receiver (whom Trustor agrees may be appointed ex parte and without notice), and without regard to the adequacy of security, the solvency of Trustor, or the existence of waste, enter on and take possession of the Property or any part of it; (ii) commence an action to foreclose this Deed of Trust; (iii) commence non judicial foreclosure proceedings; or (iv) exercise any of these remedies in combination, or any other remedy provided by this Deed of Trust, or any other remedy at law or in equity.

**18. Power of Sale.** If a default occurs under the provisions of the Note, this Deed of Trust, or any other agreement secured by this Deed of Trust, Beneficiary may declare all sums secured hereby immediately due and payable and Beneficiary may deliver to Trustee a written declaration of default and demand for sale, or a notice of default and of election to cause the Property to be sold, which notices Trustee shall cause to be filed for record, recorded, and served as required by law. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and any documents requested by Trustee to evidence expenditures secured hereby. After the lapse of such time as then may be required by law following the recordation and service of any notice of default and notice of sale required by law, Trustee shall sell the Property at the time and place fixed by it in such notice of sale, either as a whole or in separate parcels as Beneficiary may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. If the Property consists of personal property or several lots or parcels or any combination thereof, Beneficiary may designate the order in which the same shall be offered for sale or sold, and Beneficiary may conduct more than one sale, either at the same time or from time to time, in



order to foreclose all of the Property that is security for the obligations secured by this Deed of Trust. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Property to be sold, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including the Trustor, Trustee, or Beneficiary as hereinafter defined may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the rate prescribed in the Note; all other sums then secured thereby; and the remainder, if any, to the person or persons legally entitled thereto. Trustor expressly waives any right of redemption.

**19. Security Agreement.** This Deed of Trust also constitutes a security agreement, on all of the terms and conditions set forth herein, to the extent that any of the Property is severable from the real property ("Collateral"). Trustor agrees that as to the Collateral Beneficiary shall have all of the rights and remedies of a secured party under the California Commercial Code, as well as all other rights and remedies available at law or in equity. Trustor agrees to execute and deliver on demand, and irrevocably constitutes and appoints Beneficiary the attorney-in-fact of Trustor to execute, deliver, and/or file, any security agreements, financing statements, continuation statements, or other instruments that Beneficiary may require to impose, perfect, or continue the perfection of the lien or security interest created by this Deed of Trust. On the occurrence of any default under the provisions of the Note, this Deed of Trust, or any other agreement secured by this Deed of Trust, Beneficiary shall have the right to enforce any and all of the rights and/or remedies of a secured party under the California Commercial Code including, without limitation: (i) the right to require Trustor to immediately assemble all or any portion of the Collateral and to make the same available to Beneficiary at a place designated by Beneficiary; (ii) the right to immediately take physical possession of all or any portion of the Collateral wherever it may be found, using all necessary lawful force to do so, and to exclude Trustor from such possession, and Trustor waives all claims to damages arising from or connected with any such taking or exclusion; (iii) the right to proceed with the foreclosure sale of all or any portion of the Collateral, from time to time, in any manner as may be permitted by California Commercial Code, Civil Code, or Code of Civil Procedure; and, in Beneficiary's discretion, to operate all or any portion of the Collateral as a going concern pending the completion of any foreclosure sale; and (iv) the right to sell all or any portion of the Collateral at one or more public or private sales with or without having said Collateral at the place of sale, and upon such terms and in such manner as Beneficiary may determine, and Beneficiary is authorized to purchase the same at any such sale. Prior to any sale, Beneficiary may, at its option, repair or recondition all or any portion of the Collateral to such extent as Beneficiary may deem advisable and any sums expended therefore by Beneficiary shall be immediately repaid by Trustor. Expenses of retaking, holding, and preparing for sale, selling, or the like will be borne by Trustor and will include Beneficiary's and Trustee's attorney fees and legal expenses. Beneficiary will give Trustor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of the Collateral or of the time of or after which any private sale or any other intended disposition is to be made. If the notice is sent to Trustor in the manner provided for the mailing of notices in this Deed of Trust, it is deemed reasonable notice to Trustor.

**20. Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing, and it shall be recorded in the Official Records of the County Recorder of the county in which the Property is located with respect to all fixtures included within the term "Property" as used in this Deed of Trust and with respect to any goods, Collateral, or other personal property that may now be or later become fixtures. The address of Beneficiary, from which information concerning this security interest may be obtained, is set forth in the upper left corner of page 1 of this Deed of Trust.

**21. Protection of Security.** If an Event of Default occurs and is continuing, Beneficiary or Trustee, without any obligation to do so, without notice to or demand upon Trustor, and without releasing Trustor from any obligations or defaults may: (i) enter on the Property in any manner and to any extent that either deems necessary to protect the security of this Deed of Trust; (ii) appear in and defend any action or proceeding



purporting to affect, in any manner, the Property; (iii) pay, purchase, or compromise any encumbrance, charge, or lien that in the judgment of Beneficiary or Trustee is prior or superior to this Deed of Trust; and (iv) pay necessary expenses, employ counsel, and pay reasonable attorney fees. Trustor agrees to repay on demand all sums expended by Trustee or Beneficiary pursuant to this Section with interest at the Rate specified in the Note, and those sums, with interest, will be secured by this Deed of Trust.

22. **Receiver.** If a default under the provisions of the Note, this Deed of Trust, or any agreement secured by this Deed of Trust occurs, Beneficiary, as a matter of strict right and without notice to Trustor or anyone claiming under Trustor and without regard to the then value of the Property, will have the right to apply ex parte to any court having jurisdiction to appoint a receiver to take possession of the Property, and Trustor waives notice of any such application, provided a hearing to confirm the appointment with notice to Trustor is set within fourteen (14) days after the appointment. Any receiver will have all the powers and duties of receivers in similar cases, including the right to encumber or sell the Property with the approval of both Beneficiary and the court after proper notice and a hearing.

23. **Remedies Cumulative.** Every power or remedy given by this instrument to Trustee or Beneficiary may be exercised from time to time and as often may be deemed expedient by Trustee or Beneficiary. If there exists multiple items of collateral securing the performance of the obligations secured hereby, the holder of the Note, at its sole option and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled either concurrently, or from time to time, with whatever other rights it may have in connection with such any other collateral in such order as it may determine. All rights, powers, and remedies provided for in this Deed of Trust are cumulative and will be in addition to all other rights and remedies provided by law. The exercise of any right, power, or remedy will not prejudice Beneficiary in the exercise of any of its other rights.

24. **Successor Trustee.** Beneficiary may remove Trustee or any successor trustee at any time and appoint a successor trustee by recording a written substitution in the county where the Property is located, or in any manner permitted by law. Upon that appointment, all of the powers, rights, and authority of Trustee will immediately become vested in the successor.

25. **No Waiver.** No waiver by Beneficiary of any default or breach by Trustor will be implied from any omission by Beneficiary to take action on account of that default if the default persists or is repeated. Also, no express waiver will affect any default other than the default expressly waived, and the waiver will be operative only for the time and to the extent stated. A waiver of any covenant, term, or condition in this Deed of Trust will not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by Beneficiary for any act by Trustor requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval for any subsequent similar act.

26. **Notices.** All notices, advises, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmations, or denials that may be required or contemplated under this Deed of Trust for any party to serve on or give to any other will be in writing, and if not in writing, will not be deemed to have been given.

27. **Survival.** The covenants and agreements in this Deed of Trust will bind and inure to the benefit of Beneficiary and Trustor and their successors and assigns. It is agreed that Beneficiary may assign the Note or this Deed of Trust or grant a participation to one or more lenders, free from any right of counterclaim, recoupment, or setoff by Trustor.

28. **Severability.** If any term, provision, covenant, or condition of this Deed of Trust or any application of it is held by a court of competent jurisdiction to be invalid, void, or unenforceable, in whole or in part, all terms, provisions, covenants, and conditions of this Deed of Trust and all applications of it not held invalid, void, or unenforceable will continue in full force and will not be affected, impaired, or invalidated.



29. **Rights of Beneficiary and Trustee.** At any time and from time to time, without liability and without notice, and without releasing or otherwise affecting the liability of any person for payment of any indebtedness secured by this Deed of Trust: (i) Beneficiary, at its sole discretion and only in writing, may extend the time for payment or release any person now or later liable for payment of any indebtedness secured by this Deed of Trust, or accept or release additional security, or subordinate the lien or charge of this Deed of Trust; or (ii) Trustee, on written request of Beneficiary and presentation of the Note, any additional notes secured by this Deed of Trust, and this Deed of Trust for endorsement, may reconvey any part of the Property, consent to the making of any map or plat of it, join in granting any easement on it, or join in any agreement of extension or subordination. On Beneficiary's written request and surrender of the Note, any additional notes secured by this Deed of Trust, and this Deed of Trust to Trustee for cancellation, and on payment to Trustee of its fees and expenses, Trustee will reconvey without warranty the then trust property. The recitals in any reconveyance will be conclusive proof of the truthfulness of them, and the grantee in any reconveyance may be described as the person or persons legally entitled thereto.

30. **No Merger.** So long as any of the indebtedness secured by this Deed of Trust remains unpaid or Trustor has any further obligation under this Deed of Trust, unless Beneficiary otherwise consents in writing, the fee estate of Trustor in the Property or any part of it will not merge, by operation of law or otherwise, with any leasehold or other estate in the Property or any part of it, but will always be kept separate and distinct, regardless of the union of the fee estate and the leasehold or other estate in Trustor or any other person.

31. **Inspection of Property.** Beneficiary is authorized by itself or its agents, employees, or workers to enter the Property at any reasonable time for the purpose of inspecting it, and for the purpose of performing any of the acts it is authorized to perform under the terms of this Deed of Trust. Trustor agrees to cooperate with Beneficiary to facilitate any inspection.

32. **Waiver of Statute of Limitations.** The pleading of any statute of limitations as a defense to any obligations secured by this Deed of Trust is waived, to the fullest extent permissible by law.

33. **Entire Agreement.** This Deed of Trust shall not be amended except by a written instrument duly executed by Trustor and Beneficiary.

34. **Waiver of Marshaling Rights.** Trustor, for itself and for all parties claiming through or under Trustor, and for all parties who may acquire a lien on or interest in the Property, waives all rights to have the Property or any other property that now or later may be security for any obligation secured by this Deed of Trust marshaled on any foreclosure.

35. **Acceptance of Trust, Powers and Duties of Trustee.** Trustee accepts this trust when this Deed of Trust is recorded. From time to time on written request of Beneficiary and presentation of this Deed of Trust for endorsement, and without affecting the personal liability of any person for payment of any indebtedness or the performance of any obligations, Trustee may: (i) reconvey all or any part of the Property; (ii) consent to the making of any map or plat; and (iii) join in any grant of easement, any declaration of covenants, conditions, and restrictions, any extension agreement, or any agreement subordinating the lien or charge of this Deed of Trust. Except as may be required by applicable law, Trustee or Beneficiary may from time to time apply to any court of competent jurisdiction for aid and direction in the execution of the trust and the enforcement of the rights and remedies available, and may obtain orders or decrees directing, confirming, or approving acts in the execution of the trust and the enforcement of the remedies. Trustee has no obligation to notify any party of any pending sale or any action or proceeding, including, without limitation, actions in which Trustor, Beneficiary, or Trustee will be a party, unless held or commenced and maintained by Trustee under this Deed of Trust. Trustee will not be obligated to perform any act required of it under this Deed of Trust unless the performance of the act is requested in writing and Trustee is reasonably indemnified and held harmless against any loss, cost, liability, or expense.



36. **Releases, Extensions, Modifications, and Additional Security.** Without notice to or the consent, approval, or agreement of any persons or entities having any interest at any time in the Property, Beneficiary may, from time to time, release any person or entity from liability for the payment or performance of any obligation secured by this Deed of Trust; take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any obligation secured by this Deed of Trust; or accept additional security or release the Property or any other security. None of these actions will release or reduce the personal liability of any of Trustor, or release or impair the lien of this Deed of Trust, or the priority of it on the Property.

37. **Subrogation.** Beneficiary will be subrogated to the lien of all encumbrances, whether released of record, paid in whole or in part by the proceeds of any loan secured by this Deed of Trust.

38. **Beneficiary** If the beneficial interest under the Note is held by more than one person, as defined by California Civil Code section 2941.9, then the provisions of California Civil Code section 2941.9 shall apply. If the loan evidenced by the Note and this Deed of Trust is being administered on behalf of the Beneficiary by a loan servicing agent, then any expense incurred by such servicing agent on behalf of the Beneficiary in accordance with the provisions of this Deed of Trust shall be deemed as expense incurred by the Beneficiary, the repayment or reimbursement of which is secured by this Deed of Trust.

39. **Obligations of Trustor, Joint and Several.** If more than one person has executed this Deed of Trust as Trustor, the obligations of all those persons will be joint and several.

40. **Recourse to Separate Property.** Any married person who executes this Deed of Trust as a Trustor agrees that any money judgment that Beneficiary or Trustee obtains pursuant to the terms of this Deed of Trust or any other obligation of that married person secured by this Deed of Trust may be collected by execution on that person's separate property, and any community property of that person.

41. **No Offset.** Trustor will pay to Beneficiary all amounts owing under the Note, this Deed of Trust, or any other obligation secured by this Deed of Trust without deduction, offset, or counterclaim of any kind.

42. **Governing Law.** The parties expressly agree that this Deed of Trust will be governed by and construed in accordance with the laws of the State of California.

43. **Gender and Number.** As used in this Deed of Trust, the masculine, feminine, and neuter gender, and the singular and plural number, shall each be deemed to include the other whenever the context requires.

#### SIGNATURES ON NEXT PAGE



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44. Notice of Default and Notice of Sale. Trustor requests that a copy of any notice of default and any notice of sale under this Deed of Trust be mailed to Trustor at the address set forth above.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.

End Real Estate Development,  
A California Limited Liability Company

By: Recall-Agent

Its: Managing member

STATE OF CALIFORNIA )  
COUNTY OF \*\*\*San Mateo\*\*\* )ss.

On 6-18-, 2000 before me, the undersigned, a Notary Public in and for said State and County, personally appeared Paul Charlton, ~~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.



Y. Luttrell



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# Exhibit "A"

Loan No. E0045

Commonly known as: 122 Lakeview Drive, Woodside California

## Description:

The land referred to herein is situated in the State of California, County of San Mateo, City of Woodside, and is described as follows:

### PARCEL I:

PORTION OF LOTS 1 AND 2, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "MAP SHOWING SUBDIVISION OF THE J.J. MOORE RANCH PORTION OF THE MEZES TRACT NEAR MENLO PARK SAN MATEO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON SEPTEMBER 28, 1911 IN BOOK 7 OF MAPS, AT PAGE 48, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT MARKED BY AN IRON PIPE SET IN THE CENTER OF THE REDWOOD CITY TO PESCADERO COUNTY ROAD, SAID POINT BEING THE MOST NORTHERLY CORNER OF LOT 1, AS SHOWN ON THE MAP ABOVE MENTIONED; THENCE ON AND ALONG THE CENTER LINE OF SAID COUNTY ROAD, AS SAID ROAD APPEAR ON THE ABOVE MAP, THE FOLLOWING COURSES AND DISTANCES; SOUTH 54° 10' WEST 107.90 FEET TO AN IRON PIN, SOUTH 6° 41' WEST 209.50, SOUTH 14° 10' EAST 371.10 FEET AND SOUTH 87° 51' WEST 170.18 FEET TO THE MOST WESTERLY CORNER OF SAID LOT 1; THENCE CONTINUING ALONG THE CENTER LINE OF SAID COUNTY ROAD SOUTH 87° 51' WEST 71.42 FEET, SOUTH 47° 03' WEST 155.70 FEET, SOUTH 23° 15' WEST 151.80 FEET, SOUTH 42° 05' WEST 232.50 FEET, SOUTH 74° 32' WEST 116.80 FEET AND SOUTH 55° 46' WEST 151.90 FEET; THENCE LEAVING THE CENTER LINE OF THE ABOVE MENTIONED ROAD AND RUNNING ON AND ALONG THE CENTER LINE OF A 30 FOOT PRIVATE ROAD AND THE FOLLOWING COURSES AND DISTANCES; SOUTH 56° 26' EAST 76.30 FEET; SOUTH 76° 12' EAST 68.56 FEET NORTH 69° 01' EAST 213.20 FEET, NORTH 58° 40' EAST 310.47 FEET; THENCE NORTH 79° 24' EAST 100.58 FEET AND SOUTH 33° 42' EAST 236.28 FEET; THENCE LEAVING THE CENTER LINE OF SAID PRIVATE ROAD AND RUNNING NORTH 12° 49' EAST 207.17 FEET, NORTH 3° 59' WEST 129.00 FEET TO THE POINT IN THE DIVIDING LINE BETWEEN LOTS 1 AND 2, SAID POINT BEING DISTANT ALONG SAID LINE SOUTH 47° 14' EAST 301.95 FEET FROM THE MOST NORTHERLY CORNER OF LOT 2; THENCE ALONG SAID DIVIDING LINE BETWEEN LOTS 1 AND 2 SOUTH 47° 14' EAST 206.66 FEET AND SOUTH 64° 30' EAST 433.38 FEET; THENCE LEAVING SAID DIVIDING LINE BETWEEN LOTS 1 AND 2 AND IN A DIRECT LINE SOUTH 65° EAST 387.67 FEET TO A POINT WHICH BEARS NORTH 64° 50' 40" WEST 22.33 FEET FROM THE MOST WESTERLY CORNER OF THAT CERTAIN 0.26 ACRE TRACT AS CONVEYED TO DOROTHY VAN SICKLEN LYMAN BY DEED RECORDED JUNE 7, 1917 IN BOOK 264 OF DEEDS AT PAGE 346, RECORDS OF SAN MATEO COUNTY; THENCE SOUTH 16° 41' 35" EAST 29.7796 FEET TO A POINT IN THE WESTERLY LINE OF THE 14 FOOT RIGHT OF WAY CONNECTING THE 0.26 ACRE TRACT ABOVE MENTIONED WITH THE MAIN ROAD IN THE J.J. MOORE RANCH SUBDIVISION AS MENTIONED IN THE ABOVE DEED TO DOROTHY VAN SICKLEN LYMAN; THENCE ALONG THE NORTHWESTERLY LINE OF SAID 14 FOOT RIGHT OF WAY NORTH 31° 27' 30" EAST 22.33 FEET TO THE MOST WESTERLY CORNER OF SAID 0.26 ACRE TRACT ABOVE MENTIONED; THENCE ON AND ALONG THE WESTERLY AND NORTHERLY LINES OF SAID 0.26 ACRE TRACT NORTH 11° 57' EAST 248.28 FEET, NORTH 0° 15' EAST 107.08 FEET NORTH 21° 27' EAST 100.37 FEET AND SOUTH 57° 18' EAST 25.45 FEET TO THE WESTERLY LINE OF THAT CERTAIN 3.70 ACRE TRACT CONVEYED TO DOROTHY VAN SICKLEN LYMAN BY DEED RECORDED JUNE 1, 1916 IN BOOK 255 OF DEEDS AT PAGE 4, RECORDS OF SAN MATEO COUNTY; THENCE ALONG THE WESTERLY BOUNDARY OF SAID 3.70 ACRE TRACT NORTH 43° 27' EAST 250.10 FEET, MORE OR LESS, TO A POINT ON THE NORTHERLY LINE OF THE ABOVE MENTIONED LOT 1; NORTH 59° 05' WEST 256. FEET DISTANT FROM THE MOST EASTERLY CORNER OF SAID LOT 1; THENCE ALONG SAID NORTHERLY LINE OF LOT 1 NORTH 59° 05' WEST 1394.44 FEET AND NORTH 70° 52' WEST 33.40 FEET TO THE POINT OF BEGINNING.



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EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED BY ATHOLL MCBEAN AND MARGARET NEWHALL MCBEAN, HIS WIFE TO LATHAM MCMULLIN BY QUIT CLAIM DEED DATED FEBRUARY 4, 1929 AND RECORDED FEBRUARY 21, 1929 IN BOOK 406 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 59 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT NORTH 64° 50' 40" WEST 22.33 FEET FROM THE SOUTHWESTERLY CORNER OF A CERTAIN 0.26 ACRE TRACT, AS SAID POINT IS REFERRED TO IN THE DESCRIPTION OF THAT CERTAIN PARCEL OF LAND CONVEYED TO MCBEAN BY DEED RECORDED IN BOOK 183 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 493, SAID POINT OF BEGINNING BEING FURTHER DESCRIBED AS A POINT ON THE DIVIDING LINE BETWEEN MCMULLIN AND MCBEAN, TANGENT TO THE ARC OF A CIRCULAR CURVE HAVING A RADIUS OF 20 FEET, SAID CURVE ALSO BEING TANGENT TO THE NORTHWESTERLY LINE OF A 14 FOOT RIGHT OF WAY AS DESCRIBED IN THAT CERTAIN 6.23 ACRE TRACT CONVEYED TO J.M. MOORE INCORPORATED TO LATHAM MCMULLIN, RECORDED IN BOOK 192 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 34; THENCE FROM SAID POINT OF BEGINNING AND RUNNING ALONG THE DIVIDING LINE BETWEEN MCMULLIN AND MCBEAN, NORTH 64° 36' WEST 388.45 FEET; THENCE LEAVING SAID DIVIDING LINE AND RUNNING ACROSS THE LANDS OF MCBEAN SOUTH 75° 21' EAST 97.88 FEET, SOUTH 67° 45' EAST 77.41 FEET, SOUTH 69° 01' EAST 183.00 FEET AND SOUTH 16° 14' EAST 48.98 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED BY ATHOLL MCBEAN AND MARGARET NEWHALL MCBEAN, HIS WIFE TO THE COUNTY OF SAN MATEO, A POLITICAL SUBDIVISION, FOR HIGHWAY PURPOSES, BY DEED DATED JUNE 26, 1934 AND RECORDED SEPTEMBER 26, 1934 IN BOOK 640 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 14 (47433-C).

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED BY R.K. DAVIES AND LOUISE M. DAVIES, HIS WIFE TO PENINSULA FOOTHILL LAND CO., A CORPORATION, DATED MAY 21, 1937 AND RECORDED JUNE 18, 1937 IN BOOK 750 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 215 (8123-D).

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED BY R.K. DAVIES AND LOUISE M. DAVIES, HIS WIFE TO WILLIAM ALSTON B. HAYNE AND MARION G. HAYNE, HIS WIFE, IN JOINT TENANCY BY DEED DATED JANUARY 24, 1940 AND RECORDED JANUARY 30, 1940 IN BOOK 891 OF OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 3 (79891-D).

ALSO EXCEPTING THEREFROM PORTIONS THEREOF CONVEYED BY R.K. DAVIES AND WIFE TO THE STATE OF CALIFORNIA BY DEED DATED MAY 26, 1966 AND RECORDED JULY 13, 1966 IN BOOK 5189 OF OFFICIAL RECORDS OF SAN MATEO COUNTY PAGE 124 (81039-Z).

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED BY RALPH K. DAVIES, ALSO KNOWN AS R.K. DAVIES, AND LOUISE M. DAVIES, HIS WIFE TO THE STATE OF CALIFORNIA, BY DEED DATED DECEMBER 17, 1968 AND RECORDED FEBRUARY 21, 1969 IN BOOK 5601 OFFICIAL RECORDS OF SAN MATEO COUNTY AT PAGE 678 (14559-AC).

PARCEL II:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF LOT 1, AS SHOWN ON THE MAP ENTITLED "MAP SHOWING SUBDIVISION OF THE J.J. MOORE RANCH PORTION OF THE MEZES TRACT NEAR MENLO PARK SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON SEPTEMBER 28, 1911 IN BOOK 7 OF MAPS AT PAGE 48, SAID POINT BEING NORTH 59° 05' WEST 194.65 FEET FROM THE MOST EASTERLY CORNER OF SAID LOT 1; THENCE ALONG SAID NORTHERLY LINE NORTH 59° 05' WEST 61.35 FEET TO THE NORTHEAST CORNER OF THE PROPERTY OF R.K. DAVIES; THENCE ALONG THE EASTERLY LINE OF THE PROPERTY OF R.K. DAVIES SOUTH 43° 27' WEST 40 FEET;



THENCE LEAVING SAID EASTERLY LINE SOUTH 88° 14' EAST 80 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

PARCEL III:

PORTION OF LOT 2, AS DESIGNATED ON THE MAP ENTITLED "MAP SHOWING SUBDIVISION OF THE J. J. MOORE RANCH PORTION OF THE MEZES TRACT NEAR MENLO PARK, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON SEPTEMBER 28, 1911 IN BOOK 7 OF MAPS AT PAGE 48, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT MARKED BY A 2" X 2" STAKE IN THE LINE DIVIDING LOTS 1 AND 2, AS SHOWN ON THE MAP ABOVE MENTIONED, DISTANT THEREON SOUTH 47° 14' EAST 301.95 FEET FROM ITS INTERSECTION WITH THE CENTER LINE OF THE FORMER REDWOOD CITY-PESCADERO ROAD, AS SAID ROAD IS SHOWN ON THE AFORESAID MAP; THENCE ALONG THE DIVIDING LINE BETWEEN LOTS 1 AND 2, SOUTH 47° 14' EAST 206.66 FEET; THENCE SOUTH 64° 30' EAST 308.38 FEET; THENCE LEAVING SAID DIVIDING LINE NORTH 71° 42' WEST 343.75 FEET; THENCE SOUTH 56° 18' WEST 149.00 FEET; THENCE NORTH 12° 49' EAST 119.98 FEET; THENCE NORTH 2° 47' 131.07 FEET TO THE POINT OF BEGINNING.

PARCEL IV:

PORTION OF LOT 9, BLOCK 5, AS DELINEATED UPON THAT CERTAIN MAP ENTITLED "WOODSIDE HEIGHTS SAN MATEO COUNTY, CALIFORNIA", FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON NOVEMBER 14, 1925 IN BOOK 13 OF MAPS, AT PAGE 7, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT MARKED BY STAKE; SAID POINT BEING THE SOUTHWESTERLY CORNER OF LOT 9, BLOCK 5 WOODSIDE HEIGHT; THENCE SOUTH 70° 08' EAST 264.67 FEET TO A STAKE; THENCE NORTH 67° 15' EAST 42.32 FEET TO A POINT ON THE WESTERLY BOUNDARY LINE OF LAKEVIEW DRIVE; THENCE SOUTH 2° 41' WEST 100 FEET ON AND ALONG SAID WESTERLY BOUNDARY LINE OF LAKEVIEW DRIVE TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF ABOVE MENTIONED LOT 9, WHICH POINT IS THE SOUTHEASTERLY CORNER OF SAID LOT 9; THENCE NORTH 58° 35' 40" WEST 331.88 FEET, MORE OR LESS, ON AND ALONG THE SOUTHERLY BOUNDARY LINE OF LOT 9, TO THE POINT OF BEGINNING.

PARCEL V:

ALL THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN THE DEED FROM GEORGE A. MERRILL AND SARAH E. MERRILL, HIS WIFE TO PENINSULA FOOTHILL LAND COMPANY, A CORPORATION, DATED DECEMBER 23, 1909 AND RECORDED DECEMBER 24, 1909 IN BOOK 176 OF DEEDS AT PAGE 14, WHICH LIES EASTERLY OF THE EASTERLY RIGHT OF WAY OF STATE HIGHWAY NO. IV S.M. 107-A, FORMERLY KNOWN AS THE REDWOOD CITY TO PESCADERO COUNTY ROAD, BETWEEN ENGINEERS STATIONS 150+48.77 B.C. AND 163+44.24 E.C. OF SAID HIGHWAY.



2002-11882  
06/20/2002 08:08A  
M Page: 16 of 16

EXCEPTING THEREFROM SO MUCH THEREOF AS LIES WITHIN THE LANDS DESCRIBED IN PARCEL I OF THE DEED FROM PENINSULA FOOTHILL LAND COMPANY, A CORPORATION, TO THE COUNTY OF SAN MATEO, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, DATED DECEMBER 17, 1934 AND RECORDED JANUARY 11, 1935 IN BOOK 639 OF OFFICIAL RECORDS OF SAN MATEO COUNTY, AT PAGE 366 (53297-C).

ALSO EXCEPTING THOSE PORTIONS CONVEYED BY R.K. DAVIES AND WIFE TO THE STATE OF CALIFORNIA, BY DEED DATED MAY 26, 1966 AND RECORDED JULY 13, 1966 IN BOOK 5189 OFFICIAL RECORDS OF SAN MATEO COUNTY PAGE 124 (81039-Z).

AP No.: 069-221-110, 073-131-020, 073-132-130, 073-132-180, 073-132-190 JPN 069-022-221-11, 073-013-131-02, 073-013-132-13, 073-013-132-18, 073-013-132-19



2002-118882  
08/28/2002 08:00A  
M Page: 16 of 16

Accommodation Only  
- Not Insured

DOC # 2002-173270

09/03/2002 02:43P AT Fee:10.00

Page 1 of 2

Recorded in Official Records

County of San Mateo

Warren Slocum

Assessor-County Clerk-Recorder

Recorded By FIRST AMERICAN TITLE COMPANY



When Recorded Mail to:

BAR-K, INC.  
201 LAFAYETTE CIRCLE  
LAFAYETTE, CA 94549

Loan No.: E0045

TB 164

**ASSIGNMENT OF DEED OF TRUST**

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to See Attached, all beneficial interest under that deed of trust dated June 12, 2002, executed by End Real Estate Development, a California Limited Liability Company as trustor, to Bar-K, Inc., a California Corporation, Trustee, which recorded in San Mateo County Records, State of California, on 06/20/2002, as Instrument Number 2002-119882.

zp

Together with the note or notes described or referred to, the money due and to become due thereunder with interest, and all rights accrued or to accrue under said Deed of trust.

DATED: August 20, 2002

Gold Mountain Financial Institution, Inc.

*Walter Ng*

Walter Ng, Secretary

State of California  
County of Contra Costa

On August 20, 2002 before me, Vincent Hua personally appeared Walter Ng ( x ) personally known to me -or- ( ) proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged to me that he executed this instrument in his authorized capacity, and that by his signature on this instrument the person, or the entity upon behalf of which the person acted, executed this instrument.

WITNESS my hand and official seal.

*Vincent Hua*  
Notary's Signature

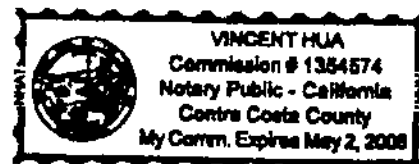


EXHIBIT C

Exhibit

Dean Nicholas Delis, as to .505% interest; Kenneth P. Marinai, as to 3.8% interest; Mario Marinai, Mario Marinai Trust, as to 3.8% interest; Dalma Marinai, Dalma Marinai Trust, as to 3.8% interest; Kenneth & Laura Marinai, as to 3.8% interest; Barney J. Ng, Sole Trustee, Barney J. Ng Living Trust, as to 1.010% interest; Pensco P.S., Inc. - M. TARKOFF, MD fbo Mitchell P. Tarkoff, IRA, as to 2.28% interest; Pensco P.S., Inc. - BRUCE HORWITZ fbo Bruce Horwitz, Rollover, as to 8.79% interest; Pensco P.S., Inc. - S.W. KRAN #1 fbo S. Walter Kran, IRA, as to 9.1% interest; Pensco P.S., Inc. - M. LEVY fbo Mitchell Levy, IRA, as to 4.57% interest; Pensco P.S., Inc. - P. SIMMONS fbo Patrick Simmons, IRA, as to 3.032% interest; R. E. Loans 2000, a California limited partnership, as to 23.513% interest; R. E. Loans 02, a California limited partnership, as to 32% interest



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FIRST AMERICAN TITLE COMPANY  
08:00am 03/03/04 AT Fee: 7.00  
Count of pages 1  
Recorded in Official Records  
County of San Mateo  
Warren Slocum  
Assessor-County Clerk-Recorder

When Recorded Mail to:

BAR-K, INC.  
201 LAFAYETTE CIRCLE  
LAFAYETTE, CA 94549



Loan No.: E0045

**ASSIGNMENT OF DEED OF TRUST**

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to R.E. Loans, LLC, a California limited liability company, as to an undivided .505% interest, all beneficial interest under that deed of trust dated June 12, 2002, executed by End Real Estate Development, a California Limited Liability Company as trustor, to Bar-K, Inc., a California Corporation, Trustee, which recorded in San Mateo County Records, State of California, on 06/20/2002, as Instrument Number 2002-119882.

Together with the note or notes described or referred to, the money due and to become due thereunder with interest, and all rights accrued or to accrue under said Deed of trust.

DATED: September 12, 2003

Dean Delis

State of California

County of SAN MATEO

On SEPTEMBER 27, 2003 before me, KRISTIN E. HANLEY, Notary Public, personally appeared DEAN DELIS (X) personally known to me -or- ( ) proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged to me that he executed this instrument in his authorized capacity, and that by his signature on this instrument the person, or the entity upon behalf of which the person acted, executed this instrument.

WITNESS my hand and official seal.

Kristin E. Hanley  
Notary's Signature



EXHIBIT

1 DONGELL LAWRENCE FINNEY LLP  
MATTHEW CLARK BURES, SBN 143361  
2 MOLLY T. SHIELDS, SBN 225815  
EDWARD K. KIM, SBN 227604  
3 707 Wilshire Boulevard, 27th Floor  
Los Angeles, CA 90017-3609  
4 Telephone: (213) 943-6100  
Facsimile: (213) 943-6101  
5

6 Attorneys for creditors,  
MATHON FUND I, LLC and  
INTEGRITY 701, LLC  
7

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 In re:

12 JAMES PAULETT CHARLTON,  
13

14 Debtor.  
15  
16

Case No.: 04-32400 TEC11

Judge: Hon. Thomas E. Carlson

Chapter 11

**MATHON FUND I, LLC AND  
INTEGRITY 701, LLC'S JOINDER TO  
BAR-K, INC.'S MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

Date: February 28, 2005

Time: 1:00 p.m.

Place: 235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94104  
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21 Mathon Fund I, LLC ("Mathon") and Integrity 701, LLC ("Integrity") hereby join  
22 in and support Bar-K, Inc.'s Motion For Relief From Automatic Stay And To Annul Automatic  
23 Stay ("the Motion"), and all related exhibits, filed in this action on January 31, 2005. This  
24 Motion is brought pursuant to 11 U.S.C. section 362(d)(1).

25 Specifically, Mathon and Integrity join in the following bases for Bar-K, Inc.'s  
26 motion:

27 ///

28 ///

1           1. Debtor has failed to pay property taxes related to the Woodside Property<sup>1</sup>  
2 which is the subject of the Motion. Real estate taxes are approximately \$70,000 per year and  
3 there are over \$150,000 in delinquent taxes for the years 2003-2004. See Exhibit to Declaration  
4 of Appraiser George Miller (“Miller Decl.”), page 36, attached to Bar-K’s motion, and Schedule  
5 D of Debtor.

6           2. Debtor has failed to file a Plan of Reorganization and it has been over four  
7 months since the filing of this bankruptcy.

8           3. The Woodside Property which is the subject of the Motion is not property of  
9 the estate, as defined in 11 U.S.C. § 541, and is the property of Integrity, due to the following:

10           A. In January or February 1999, End Real Estate Development, LLC  
11 (“ERED”) acquired the Woodside Property. Declaration of Kevin Kellis (“Kellis Decl.”) ¶ 8,  
12 previously filed on January 21, 2005, in support of Mathon and Integrity’s Objection to Debtor’s  
13 Application to Compromise Controversy.

14           B. On or about September 19, 2003, Beacon Research, LLC acquired  
15 ERED, including the Woodside Property. Kellis Decl. ¶ 11.

16           C. On or about May 14, 2004, ERED, owned by Beacon since  
17 September 19, 2003, was in default under the First Trust Deed in the amount of \$774,800 in past  
18 due interest, and a trustee’s foreclosure sale for the Woodside Property was scheduled for May  
19 17, 2004. Kellis Decl. ¶ 12. ERED was also in default under the Second Trust Deed, which had  
20 become due on or about December 31, 2003. Kellis Decl. ¶ 13.

21           D. ERED, in order to avoid a foreclosure sale, entered into an  
22 agreement with Mathon whereby Mathon agreed to cure ERED’s default under the First Trust  
23 Deed in exchange for selling the Woodside Property to Mathon’s affiliate, Integrity, along with  
24 other consideration. Kellis Decl. ¶ 14.

25           E. Pursuant to that agreement, on or about May 14, 2004, Integrity  
26 purchased the Woodside Property from ERED for \$1.3 million, subject to liens of approximately  
27

28 <sup>1</sup> The property located at 122 Lakeview Drive, Woodside, California 94062

1 \$9.3 million, and paid Bar-K, Inc. \$774,800.24 to cure ERED's default under the First Trust  
2 Deed. In addition, Integrity executed a promissory note and deed of trust in favor of ERED in  
3 the amount of \$1,023,001.28. Kellis Decl. ¶¶ 15-16.

4 F. On June 16, 2004, ERED delivered to Integrity a Grant Deed  
5 conveying the Woodside Property to Integrity, which was recorded on July 1, 2004. Kellis Decl.  
6 ¶¶ 17, 20.

7 G. Pursuant to the above-stated events, Integrity is currently the owner  
8 of the Woodside Property.

9 4. Prior to Integrity's recordation of the Grant Deed from ERED, the Debtor  
10 executed a quitclaim deed on behalf of ERED, without ERED's consent, conveying the  
11 Woodside Property to himself. Kellis Decl. ¶ 18. At the time Debtor executed this quitclaim  
12 deed, he had actual knowledge of ERED's prior conveyance of the Woodside Property to  
13 Integrity. Mathon and Integrity have filed an adversary proceeding, case number 04-3328,  
14 seeking declaratory judgment that neither the Debtor nor the bankruptcy estate has any interest in  
15 the Woodside Property.

16 5. Two living units on the Woodside Property have been condemned and the  
17 main house and guesthouse have incomplete repairs. See pages 1, 13, 30 of Exhibits attached to  
18 Miller Decl.

19 6. Mathon and Integrity also join in the Motion pursuant to 11 U.S.C.  
20 § 362(d)(2). There is insufficient equity in the Property to benefit Debtor or the estate of Debtor,  
21 and given the dispute concerning the right and title to the Property, the Property may not be  
22 necessary to an effective reorganization of Debtor's estate. The Property has an "As Is"  
23 valuation of \$8.8 million dollars. Miller Decl. ¶ 7; Kellis Decl. ¶ 26. If required entitlements  
24 and regulatory approval of the Property were obtained, the Property could be worth as much as  
25 \$11 million dollars. Miller Decl. ¶ 7; Kellis Decl. ¶¶ 26-27. The liens on the Property exceed  
26 \$10.5 million dollars. Kellis Decl. ¶ 34. Given the time it would take to obtain such permits and  
27 approval and the pending litigation relating to Debtor's right and title to the Property, it will take  
28 a prohibitively long period of time to sell and market the Property for its highest and best use and

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there is insufficient equity to allow an indefinite time period for these issues to be resolved.

Mathon and Integrity therefore support Bar-K, Inc.'s Motion for Relief From Automatic Stay. This motion is based on these moving papers, Bar-K, Inc.'s Motion, and all related exhibits.

DATED: February 14, 2005

DONGELL LAWRENCE FINNEY LLP

By: /s/ Molly T. Shields  
Attorneys for INTEGRITY 701, LLC and  
MATHON FUND I, LLC

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Prolaw Doc. No.: 6221

1 DONGELL LAWRENCE FINNEY LLP  
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5 707 Wilshire Boulevard, 45th Floor  
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7 Telephone: (213) 943-6100  
8 Facsimile: (213) 943-6101

9 Attorneys for creditors,  
10 MATHON FUND I, LLC and  
11 INTEGRITY 701, LLC

12 UNITED STATES BANKRUPTCY COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

14 In re:

15 JAMES PAULETT CHARLTON,

16 Debtor.

17 Case No.: 04-32400 TEC11

18 Judge: Hon. Thomas E. Carlson

19 Chapter 11

20 **MATHON'S AND INTEGRITY'S  
21 OPPOSITION TO MOTION FOR  
22 RELIEF FROM THE AUTOMATIC  
23 STAY**

24 Date: September 16, 2005

25 Time: 11:00 a.m.

26 Place: 235 Pine Street, 22<sup>nd</sup> Floor  
27 San Francisco, CA 94104

28 TO THE DEBTOR, THE CREDITORS, AND OTHER PARTIES IN INTEREST:

Mathon Fund I, LLC ("Mathon") and Integrity 701, LLC ("Integrity"), parties in interest, hereby respond to the Motion by Gold Mountain Financial Institutions and/or successors and assigns ("Gold Mountain").

Mathon and Integrity oppose the Gold Mountain Motion. Even prior to the appointment of the Trustee, there has been a buyer for the Woodside Property which is the subject of the Gold Mountain Motion. That buyer has offered \$10.2 million. Counsel for Mathon and Integrity have confirmed that the buyer is still interested in the Woodside Property.

1 Mathon and Integrity believe that the Trustee should be given the opportunity to negotiate a sale  
2 with the buyer.

3 Mathon and Integrity are subject to a receivership proceeding. A copy of the  
4 Order and Stipulation regarding the receivership are attached as Exhibits A and B respectively.  
5 Some parties have questioned whether these bankruptcy court proceedings violate the Order. It  
6 is the position of the Conservator for Mathon and Integrity that the hearing on Gold Mountain's  
7 motion for relief from the stay does not violate that Order; however, the Conservator does  
8 reserve all of his rights under that Order.

9 WHEREFORE, Mathon and Integrity oppose Gold Mountain' motion and request  
10 that the Court deny that motion.

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DATED: September 15, 2005

DONGELL LAWRENCE FINNEY LLP

By: /s/ Molly T. Shields  
Attorneys for INTEGRITY 701, LLC and  
MATHON FUND I, LLC

CALCULATION OF DEFAULT AND COMPOUND INTEREST

DEFAULT INTEREST CALCULATION  
 FILE NAME: End Real Estate  
 NOTE DATE: 6/12/2002  
 LOAN AMOUNT: \$6,600,000.00 10.00%  
 ADJUST: ADJUST: AMOUNT PAID  
 DATE RATE INTEREST DUE INTEREST PAID INTEREST PAID PRINCIPAL PAID NEW PRINCIPAL TOTAL INTEREST ACCRUED PORTION APPLIED PORTION APPLIED FILL IN: FILL IN: DATE

DATE	RATE	INTEREST PAID	INTEREST DUE	INTEREST PAID	INTEREST PAID	PRINCIPAL PAID	NEW PRINCIPAL	TOTAL INTEREST ACCRUED	PORTION APPLIED REGULAR INTEREST	PORTION APPLIED DEFAULT INTEREST	REGULAR INTEREST ACCRUED	DEFAULT INTEREST ACCRUED	REGULAR INTEREST PAID	DEFAULT INTEREST PAID	REGULAR INTEREST DUE	DEFAULT INTEREST DUE	DATE
6/12/2002	10.00%	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$6,600,000.00	\$0.00									6/12/2002
7/1/2004	10.00%	\$65,266.67	\$65,266.67	\$0.00	\$0.00	\$6,665,266.67	\$6,665,266.67	\$65,266.67	\$65,266.67	\$0.00	\$65,266.67	\$27,771.94	\$0.00	\$0.00	\$131,919.34	\$27,771.94	7/1/2004
8/1/2004	10.00%	\$67,596.91	\$67,596.91	\$0.00	\$0.00	\$6,732,863.58	\$6,732,863.58	\$132,863.58	\$67,596.91	\$0.00	\$132,863.58	\$55,937.32	\$0.00	\$0.00	\$198,800.90	\$55,937.32	8/1/2004
9/1/2004	10.00%	\$69,933.33	\$69,933.33	\$0.00	\$0.00	\$6,802,796.91	\$6,802,796.91	\$198,800.90	\$69,933.33	\$0.00	\$198,800.90	\$84,501.71	\$0.00	\$0.00	\$268,302.63	\$84,501.71	9/1/2004
10/1/2004	10.00%	\$72,270.00	\$72,270.00	\$0.00	\$0.00	\$6,875,066.91	\$6,875,066.91	\$268,302.63	\$72,270.00	\$0.00	\$268,302.63	\$113,470.77	\$0.00	\$0.00	\$340,773.40	\$113,470.77	10/1/2004
11/1/2004	10.00%	\$74,606.67	\$74,606.67	\$0.00	\$0.00	\$6,950,673.58	\$6,950,673.58	\$340,773.40	\$74,606.67	\$0.00	\$340,773.40	\$142,850.21	\$0.00	\$0.00	\$415,380.07	\$142,850.21	11/1/2004
12/1/2004	10.00%	\$76,943.33	\$76,943.33	\$0.00	\$0.00	\$7,029,616.91	\$7,029,616.91	\$415,380.07	\$76,943.33	\$0.00	\$415,380.07	\$172,645.87	\$0.00	\$0.00	\$492,323.40	\$172,645.87	12/1/2004
1/1/2005	10.00%	\$79,280.00	\$79,280.00	\$0.00	\$0.00	\$7,111,896.91	\$7,111,896.91	\$492,323.40	\$79,280.00	\$0.00	\$492,323.40	\$202,863.63	\$0.00	\$0.00	\$571,603.40	\$202,863.63	1/1/2005
2/1/2005	10.00%	\$81,616.67	\$81,616.67	\$0.00	\$0.00	\$7,203,513.58	\$7,203,513.58	\$571,603.40	\$81,616.67	\$0.00	\$571,603.40	\$233,508.48	\$0.00	\$0.00	\$653,220.07	\$233,508.48	2/1/2005
3/1/2005	10.00%	\$83,953.33	\$83,953.33	\$0.00	\$0.00	\$7,305,466.91	\$7,305,466.91	\$653,220.07	\$83,953.33	\$0.00	\$653,220.07	\$264,589.41	\$0.00	\$0.00	\$737,173.40	\$264,589.41	3/1/2005
4/1/2005	10.00%	\$86,290.00	\$86,290.00	\$0.00	\$0.00	\$7,418,756.91	\$7,418,756.91	\$737,173.40	\$86,290.00	\$0.00	\$737,173.40	\$295,598.41	\$0.00	\$0.00	\$823,463.40	\$295,598.41	4/1/2005
5/1/2005	10.00%	\$88,626.67	\$88,626.67	\$0.00	\$0.00	\$7,543,383.58	\$7,543,383.58	\$823,463.40	\$88,626.67	\$0.00	\$823,463.40	\$326,876.60	\$0.00	\$0.00	\$914,340.07	\$326,876.60	5/1/2005
6/1/2005	10.00%	\$90,963.33	\$90,963.33	\$0.00	\$0.00	\$7,679,346.91	\$7,679,346.91	\$914,340.07	\$90,963.33	\$0.00	\$914,340.07	\$358,497.78	\$0.00	\$0.00	\$1,003,803.40	\$358,497.78	6/1/2005
7/1/2005	10.00%	\$93,300.00	\$93,300.00	\$0.00	\$0.00	\$7,826,646.91	\$7,826,646.91	\$1,003,803.40	\$93,300.00	\$0.00	\$1,003,803.40	\$390,496.30	\$0.00	\$0.00	\$1,100,300.00	\$390,496.30	7/1/2005

\*\* 7/1/2004 Payment consists of Interest from 6/17/2004 to 8/19/2004 (2 days) @ 10% and 8/19/2004 to 7/17/2004 (28 days) @ 12% = \$65,266.67

Payoff Breakdown as follows:

Unpaid Principal Balance	\$6,600,000.00
Total Interest Accrued (6/17/04 to 8/17/05)	\$1,402,742.59
Late Charges @ \$6,600.00ea. (7/17/04, 8/17/04, 9/17/04)	
10/17/04, 11/17/04, 12/17/04, 1/17/05, 2/17/05	
3/17/05, 4/17/05, 5/17/05, 6/17/05 and 7/17/05	
Appraisal Fee to George Miller	\$85,600.00
Appraisal Fee to Mark Adams	\$700.00
Attorney's Fees to Scheer & Imfeld	\$13,854.76
<b>SUB TOTAL</b>	<b>\$8,115,987.35</b>
<b>Foreclosure Fees:</b>	
Trustee's Sale Guarantee	\$6,700.00
Trustee's Fees	\$9,240.00
Record Notice of Default	\$13.00
10-Day Mailings	\$24.32
1-Month Mailings	\$21.28
Est. Record Rescission	\$10.00
Est. Record Reconveyance	\$45.00
<b>SUB TOTAL</b>	<b>\$16,953.60</b>

1 Heather van de Velde, Certified Public Accountant  
2 Bachecki, Crom & Co., LLP  
3 180 Montgomery St. Ste 2340  
4 San Francisco, California 94104  
5 Telephone No.: (415) 398-3534  
6 Fax No.: (415) 788-0855

7 Examiner

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 In re	Case No. 04 32400 TEC11
11 James Paulett Charlton	Chapter 11
12 Debtor.	

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16 **REPORT OF HEATHER VAN DE VELDE, EXAMINER**

17  
18 The Examiner's report is attached herewith. The Examiner is available to address any  
19 questions with respect to this report. Respectfully submitted this 9th day of March, 2005.

20  
21  
22  
23 /s/ Heather van de Velde  
24 Heather van de Velde, Examiner

1 continues to have legal problems by June or July 2005, he will cut all sales and only continue to  
2 service existing contracts. According to a prior statement made by Anderson, existing contracts  
3 could generate \$1-2 million over two years.

4 Both the Debtor and Anderson claim that the Zangle software is outdated and it will take  
5 approximately \$1 million to rewrite and update the software and that such process could take a year  
6 or more.

7 Anderson believes that the Software Companies are valuable and worth keeping. One  
8 indication of value was given by Anderson is in the Gary Loyd Settlement Agreement which states:  
9 "Anderson has represented to Loyd and Sicorp that Anderson received three months ago an offer of  
10 \$5,000,000 for CII [Charlton Innovations], which Anderson rejected." The Gary Loyd Settlement  
11 Agreement was signed in July 2004. Therefore based on the above statement, it is possible that as of  
12 July 2004 the company was worth approximately \$5,000,000. However, because incomplete  
13 documentation has been provided, it is not possible for me to make any reliable representations  
14 regarding the value of the Software Companies.

15 I therefore recommend that a trustee investigate the value of the Software Companies and  
16 weigh the probable success of an avoidance action to recover these assets versus the proposed  
17 Settlement Agreement.

#### 18 **B. Woodside Property**

19 On February 20, 2005, Mark Benson ("Benson") with Cashin Company and I physically  
20 examined the Woodside Property. At my request, Benson has provided me with a written estimate of  
21 value for the Woodside Property of \$18 million (**Exhibit 40**). The secured lenders, Bar-K and  
22 Mathon, claim that the value of the Woodside Property is somewhere between \$8 million to \$10.2  
23 million – an amount roughly equal to the amount of the secured liens against the property.

24 As of January 15, 2005, the amount due under the First Trust Deed was approximately  
25 \$7,035,000, which includes the initial principal balance of \$6.6 million plus accrued interest and late  
26 fees due Bar-K. As of January 15, 2005, the amount due under the Second Trust Deed is  
27 approximately \$3,389,000, which includes the initial principal balance of \$1.55 million plus amounts  
28 Mathon disbursed to Bar-K, accrued interest and penalties/late fees. As of January 15, 2005, the total

1 indebtedness of the Woodside Property was approximately \$10,574,000.

2 This total consists of the original principal balance and accrued interest under the First and  
3 Second Trust Deeds and unpaid real estate taxes of approximately \$150,000. The loans under the  
4 First and Second Trust Deeds are currently in default as no payments have been made since 2004.

5 I prepared an analysis to estimate the potential tax effects and cash flow from the sale of the  
6 Woodside Property based on a sales price assumption of \$18 million (Exhibit 41). The Debtor  
7 asserts that there will be NOL carryovers available from ERED totaling approximately \$19,742,085  
8 available to offset any tax due. Income tax returns have not been filed reflecting ERED activity,  
9 therefore I cannot determine the accuracy of this amount. I have prepared this analysis using two  
10 assumptions, one with no NOL carryovers and one with all NOL carryovers as estimated by the  
11 Debtor. With no NOL carryovers, I determined that the potential federal and State income tax  
12 liability may be approximately \$1,563,343. If all the NOL carryovers are available as the Debtor  
13 asserts, there would be no tax due on the sale of the Woodside Property.

14 I've used the same assumptions stated above to determine what the potential cash flow might  
15 be to the estate. With no NOL carryovers, the available cash flow is approximately \$3,826,438; with  
16 all NOL carryovers the available cash flow is approximately \$5,389,781. I've made numerous  
17 assumptions to determine these amounts as indicated on the analysis.

18  
19

## 20 XII. INABILITY TO EFFECTUATE A PLAN OF REORGANIZATION

21 On February 25, 2005, I met with the Debtor and his counsel to discuss the Debtor's prospects  
22 of reorganization and the status of developing such a plan.

### 23 A. Funding of Plan

24 The Debtor informed me that he intends to fund a plan solely from the proceeds from  
25 the sale of the Woodside Property. This, of course, assumes that the Bankruptcy Court approves the  
26 compromise of controversy and that all title disputes between the Debtor, ERED and Integrity are  
27 resolved in the Debtor's favor.

28 The Debtor believes that if the Woodside Property is properly marketed, it could sell for

1 It would appear that the Debtor cannot participate in this stipulation because of problems with  
2 the title and race notice issues. And, as noted above, a title company would likely prefer an  
3 independent fiduciary.

4 The Software Companies: The Trustee should also fully investigate the value of the Software  
5 Companies and related entities. As noted, limited financial records have been produced. If the trustee  
6 determines that the companies are valuable, the trustee may avoid the Prism Agreement as a  
7 fraudulent transfer and may decide to operate the companies as a going concern.

8 Because a Trustee may be able to recover these and other assets to pay creditor claims, it is  
9 my recommendation that a trustee be appointed to further investigate the estate's ability to recover  
10 the transferred assets as well as to facilitate the sale of the Woodside Property and evaluate the  
11 potential value and recoverability of the Software Companies in light of the proposed settlement  
12 agreement with the Anderson Parties.

13 Respectfully Submitted,

14 Dated: March 9, 2005

EXAMINER

15 By: /s/ Heather van de Velde

1 FOLGER LEVIN & KAHN LLP  
Thomas F. Koegel (CSB No. 125852, [tkoegel@flk.com](mailto:tkoegel@flk.com))  
2 Janine L. Scancarelli (CSB No. 197202, [jscancarelli@flk.com](mailto:jscancarelli@flk.com))  
Marie-Louise Radimsky (CSB No. 227252, [mradimsky@flk.com](mailto:mradimsky@flk.com))  
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4 San Francisco, CA 94111  
Telephone: +1-415-986-2800  
5 Facsimile: +1-415-986-2827

6 Attorneys for Chapter 11 Trustee  
E. Lynn Schoenmann  
7

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

11 James Paulett Charlton,  
12 Debtor.

Chapter 11  
Case No. 04-32400 TEC 11

**STIPULATION FOR LIMITED RELIEF  
FROM AUTOMATIC STAY**

15 WHEREAS Bar-K, Inc., ("Bar-K") has moved for annulment of the Automatic Stay  
16 provided by 11 U.S.C. § 362 so as to validate its Notice of Default recorded on or about  
17 September 29, 2004, and all actions taken to effect the Notice of Default; and

18 WHEREAS Bar-K has also moved for relief from the Automatic Stay provided by 11  
19 U.S.C. § 362 as to it in order to take steps necessary to complete its foreclosure under its Deed of  
20 Trust on the real property at 122 Lakeview Drive, Woodside, California, 94062 (the "Property");  
21 and

22 WHEREAS Bar-K contends that Debtor James Paulett Charlton ("Debtor") has failed to  
23 pay required payments on debt on the Property and has also failed to pay property taxes related to  
24 the Property; and

25 WHEREAS Bar-K contends that interest accrues on the debt on the Property at the rate of  
26 approximately \$150,000 per month; and

27 WHEREAS Bar-K contends that property tax obligations accrue on the Property at the  
28

1 rate of approximately \$70,000 per year; and

2 WHEREAS over the past several years, various individuals have appraised the Property at  
3 values ranging from \$8.75 million to \$24.2 million; and

4 WHEREAS Chapter 11 Trustee E. Lynn Schoenmann (“Trustee”) contends that the  
5 appropriate listing price to maximize the return to the estate for sale of the Property should be \$18  
6 million;

7 WHEREAS the Trustee contends that the Property may require marketing for as much as  
8 one year in order to maximize the return to the estate by sale; and

9 WHEREAS Bar-K and the Trustee agree that clean-up of the Property as outlined in the  
10 Declaration of Mark A. Benson in Opposition to Bar-K, Inc., Motion for Relief from Automatic  
11 Stay, filed on April 27, 2005, may attract additional offers to buy the Property.

12 NOW THEREFORE, IT IS HEREBY STIPULATED between Bar-K and the Trustee (the  
13 “Parties”) as follows:

14 1. The Automatic Stay is annulled to validate all actions taken by Bar-K to bring into  
15 effect its Notice of Default concerning the Property recorded on or about September 29, 2004. No  
16 further steps need to be taken to validate the notice of default. No further relief from stay is  
17 granted at this time.

18 2. The Trustee shall be permitted to market the property for sale. The Trustee shall  
19 submit copies of all offers for sale to counsel for Bar-K promptly after receipt. The Trustee shall  
20 mark such offers “Confidential Material from *In re Charlton*, Bankr. Case No. 04-32400-TEC  
21 (U.S.B.C. N.D. Cal.)” The Parties shall hold such offers as confidential and shall not  
22 disseminate them other than among outside counsel and authorized client representatives, which  
23 shall not include any other offerors on the property.

24 3. The Trustee shall file with the court, on or before five court days before the  
25 conference set pursuant to paragraph 4 below, a statement showing the Trustee’s good faith  
26 estimate of tax consequences of a sale of the Property by the estate, so as to determine the  
27 approximate net amount that the Property would need to be sold for in order for the estate to  
28 obtain funds for the estate, after payment of all valid liens and commissions.

1           4.       The Parties will schedule a conference with the Court at the Court's convenience  
2 on or about June 7, 2005, for the purpose of reviewing the Trustee's progress in the clean-up and  
3 marketing of the Property, by which time the Parties expect the Property to be ready for showing  
4 to prospective buyers. Upon providing 72 hours written notice to counsel for the Trustee, Bar-K  
5 will be entitled to inspect the Property with the Trustee's broker at a mutually agreeable time

6           5.       The Parties will schedule subsequent conferences with the Court at the Court's  
7 convenience at intervals established by the Court for the purpose of reviewing the Trustee's  
8 progress in the clean-up and marketing of the Property.

9           6.       Provided that the Trustee complies with the conditions specified in Paragraph 3,  
10 above, then no earlier than July 1, Bar-K may set this matter for a continued final hearing upon  
11 providing the Trustee and her counsel 20 days advance written notice. All documents previously  
12 filed in this case are applicable to any final hearing. The parties may submit further evidence by  
13 declaration and any supporting memoranda as follows: Bar-K: at the time it restores its motion to  
14 calendar; the Trustee: by serving and filing any response, within five court days of the hearing.  
15 All documents shall be transmitted to the Trustee's counsel and to counsel for Bar-K facsimile, as  
16 well as by regular mail. Bar-K and the Trustee anticipate, with the Court's permission, that direct  
17 examination will proceed by declaration with subject to cross examination at the Final Hearing.

18           7. This order is without prejudice to the rights of Bar-K and the Trustee to present  
19 testimony regarding the valuation or proposed marketing of the Property at the hearing scheduled  
20 for May 5, 2005, at 9:30; however, it is agreed that the testimony is for the benefit of providing  
21 the Court with a more detailed indication of the issues relating to the sale of the Property, and that  
22 the presentation of such testimony will not result in a final ruling on the Motion for Relief from

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Stay on May 5, 2005, and that the matter will be set for a restored Final Hearing, as provide in Paragraph 5 above, if so requested by Bar-K.

Dated: May 5, 2005

FOLGER LEVIN & KAHN LLP

/s/ Thomas F. Koegel  
Attorneys for E. Lynn Schoenmann, Chapter 11  
Trustee

Dated: May 5, 2005

SCHEER & IMFELD, LLP

/s/ Spencer P. Scheer  
Attorneys for Bar-K, Inc.

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In re MATHON FUND, LLC

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B. PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		COMPASS BANK OPERATING # 2501237518 2850 E. CAMELBACK ROAD, SUITE 140 PHOENIX, AZ 85016	-	37,451.36
		COMPASS BANK TREASURY # 2501237526 2850 E. CAMELBACK ROAD, SUITE 140 PHOENIX, AZ 85016	-	58,390.40
3. Security deposits with public utilities, telephone companies, landlords, and others.		ELECTRICITY DEPOSIT WITH BGE (BIDDLE ASHLAND)	-	25,000.00
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
			Sub-Total >	120,841.76
			(Total of this page)	

4 continuation sheets attached to the Schedule of Personal Property



In re MATHON FUND, LLC  
Debtor

Case No. \_\_\_\_\_

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(e); Rule 1007(b)).	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		10,762,050 SHARES IN TEXEN OIL @ \$.14/SHARE PRINCIPAL \$1,506,687.00	-	0.00
14. Interests in partnerships or joint ventures. Itemize.		INVESTMENT IS ASPEN GROVE RUSSELL SEWELL, MANAGING DIRECTOR 4128 N. BOULDER CANYON MESA, AZ 85207  PRINCIPAL \$5,690,256.20	-	0.00
		INVESTMENT IN LVRD PROPERTIES KEVIN SMITH HOLLAND & KNIGHT, LLP W. 5TH STREET, 21ST FLOOR LOS ANGELES, CA 90071-2040  (PRINCIPAL \$6,934,859.50)	-	1,250,000.00
		SMARTPAPER WARRANTS (48,000) 262 CORONET DRIVE GATOS, CA 95032	-	48,000.00
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.		4 ENERGY LOAN 7733 BELLE POINT DRIVE GREENBELT, MD 20770  (PRINCIPAL \$ 6,040,932.00) ACCRUED INTEREST (\$4,901,121.78)	-	Unknown
			Sub-Total >	1,298,000.00
			(Total of this page)	

Sheet 1 of 4 continuation sheets attached to the Schedule of Personal Property

In re MATHON FUND, LLC

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
		LOAN PAUL CHARLTON 122 LAKEVIEW DRIVE WOODSIDE, CA 94062  (PRINCIPAL \$1,000,000) (ACCRUED INTEREST \$344,756.82)	-	1,000,000.00
		INTEGRITY 701 (PAYMENTS MADE TO CURE DEFAULT ON 2ND MORTGAGE ON END REAL ESTATE LOAN) 2222 E. CAMELBACK ROAD, SUITE 110 PHOENIX, AZ 85016  (PRINCIPAL \$918,510.94)	-	0.00
		TMC PARTNERS (CONNECTICUT) LOAN 641 FORTH AVENUE CORAOPOLIS, PA 15108  (PRINCIPAL \$15,750,000.00) (ACCRUED INTEREST \$1,924,087.51)	-	7,000,000.00
		NEW STANSBURY LOAN RANDALL PETERSON 11602 COLCHESTER DRIVE SANDY, UTAH 84092  (PRINCIPAL \$3,846,154.00) (ACCRUED INTEREST \$217,818.98)	-	3,050,000.00
		AMERICAN ASTRONAUTICS LOAN BILLY STRAGUE 2141 S. MISSION ROAD FALLBROOK, CA 92088  (PRINCIPAL \$1,167,000.00)	-	100,000.00
		GREENCLOUD INVESTMENTS LOAN MARK LARSON 7503 ELK CREEK LAND GIG HARBOR, WA 98335  (PRINCIPAL \$416,667.00)	-	500,000.00

Sub-Total > 11,650,000.00  
(Total of this page)

Sheet 2 of 4 continuation sheets attached  
to the Schedule of Personal Property

In re MATHON FUND, LLC  
Debtor

Case No. \_\_\_\_\_

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
		BGD ASSETS ALBERT DAVIS 55 FREDERICK STREET P.O. BOX CB 13039 NASSAU, BAHAMAS  (PRINCIPAL \$3,562,500.00) (ACCRUED INTEREST \$127,520.54)	-	0.00
		RESERVE FROM MATHON MANAGEMENT  (PRINCIPAL \$5,000,000.00)	-	0.00
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
			Sub-Total >	0.00
			(Total of this page)	

Sheet 3 of 4 continuation sheets attached to the Schedule of Personal Property

In re MATHON FUND, LLC  
Debtor

Case No. \_\_\_\_\_

**SCHEDULE B. PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	NONE	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.		SOFTWARE AND HARDWARE 2222 E. CAMELBACK ROAD, SUITE 110 PHOENIX, AZ 85016	-	37,879.07
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			

Sub-Total > 37,879.07  
(Total of this page)  
Total > 13,106,720.83

Sheet 4 of 4 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)