

RESPONDENT FRANCHISE TAX BOARD'S EXHIBITS

Appeal of GERALD J. & CAROL L. MARCIL

Appeal Case ID No. 458832

Taxable Year 2001

Culver City Rehearing

October 23, 2012

David Gemmingen

Tax Counsel IV, Franchise Tax Board

STATE BOARD OF EQUALIZATION



Appeal Name: *Gerald J. Marcil and Carol L. Marcil*

Case ID: *458832* ITEM #: *B1*

Date: *Oct. 23, 2012* Exhibit No: *10.1*

TP **(FTB)** DEPT PUBLIC COMMENT

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Rev. Rul. 79-124, 1979-1 CB 224 -- IRC Sec(s). 743
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Revenue Rulings

Rev. Rul. 79-124, 1979-1 CB 224, IRC Sec(s). 743

Headnote:

Rev. Rul. 79-124, 1979-1 CB 224 -- IRC Sec. 743 (Also Sections  754,  1014;  1.754-1,  1.1014-1.)

Reference(s): Code Sec. 743; Reg § 1.743-1

Partnerships; optional adjustment to basis; death of partner; community property.

A married taxpayer domiciled in a community property state was a member of a partnership for which an election under  section 754 of the Code was in effect at the time of the taxpayer's death. One-half of the community property interest in the partnership was included in the taxpayer's gross estate. Adjustments to the basis of the partnership properties under  section 743(b) are to be made in respect of the portion of the properties allocable to the entire partnership interest that was held as community property by the taxpayer and the taxpayer's spouse. The result would be the same if the spouse predeceased the taxpayer.

Full Text:

ISSUE

What is the effect of  section 743(b) of the Internal Revenue Code of 1954 under the circumstances described below?

FACTS

A, a domiciliary of a community property state, was a member of a partnership at the time of A's death. Under state law the interest in the partnership was community property of A and A's spouse, B, but B was not a member of the partnership under state law. The election provided by  section 754 of the Code was in effect with respect to the partnership for 1976, the year in which A's death occurred.

One-half of the partnership interest that was owned by A and B as community property was transferred to A's estate at A's death and was included in A's gross estate for federal estate tax purposes. A's estate was substituted by the partnership as a successor partner for purposes of administering the estate. B was not substituted as a successor partner but continued to own one-half of the partnership interest without being considered a member of the partnership under state law.

LAW AND ANALYSIS

7-2

Section 754 of the Code provides, in part, that if a partnership files an election in accordance with regulations prescribed by the Secretary of Treasury, the basis of partnership property shall be adjusted in the case of a transfer of a partnership interest in the manner provided in section 743. Such election shall apply with respect to all transfers of interest in the partnership during the taxable year with respect to which such election was filed and for all subsequent years.

Section 743(b) of the Code provides that if the election under section 754 is in effect, in the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, the partnership shall (1) increase the adjusted basis of its property by the excess of the basis to the transferee partner of the partner's interest in the partnership over the partner's proportionate share of the adjusted basis of the partnership property, or (2) decrease the adjusted basis of its property by the excess of the transferee partner's proportionate share of the adjusted basis of partnership property over the basis of the partner's interest in the partnership. Such increase or decrease is an adjustment to the basis of partnership property with respect to the transferee partner only.

Section 1014(a) of the Code provides, in part, that the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(6) of the Code provides that property which represents the surviving spouse's one-half share of property held by the decedent and the surviving spouse under the community property laws of any state, or possession of the United States or of any foreign country, shall be considered to have been acquired from or to have passed from the decedent if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate for purposes of the federal estate tax.

Because one-half of the partnership interest owned by *A* and *B* as community property was included in *A*'s gross estate for federal estate tax purposes, *B*'s share of the partnership interest is considered, under section 1014(b)(6) of the Code, to have been acquired from *A* upon *A*'s death. *A*'s half of the partnership interest was actually transferred to *A*'s estate at *A*'s death. Therefore, the basis of the entire partnership interest in the hands of *A*'s estate and *B* is to be determined in accordance with section 1014(a). In addition, for purposes of section 743(b), both *A*'s community interest and *B*'s community interest in the partnership interest are considered to have been transferred, upon the death of *A*, to *A*'s estate and to *B* respectively.

HOLDING

Adjustments to the basis of partnership properties under section 743(b) of the Code are to be made in respect of the portion of such properties that is allocable to the entire interest in the partnership that was owned by *A* and *B* as community property immediately preceding the death of *A*. Furthermore, the same result would apply if *B* predeceased *A*.

END OF DOCUMENT -

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MANCHESTER DEVELOPMENT, LLC

Year End: December 31, 2001

Initial Balance

g:\tax\palos verdes develop (group)\manchester

Account	Prelim	Adj's	Reclass	Rep	Rep 12/00	%Chg
4000 Cash	565.14	0.00	0.00	565.14	4000	0
4000 CASH AND CASH EQUIVALENTS	565.14	0.00	0.00	565.14		0
4655 Loan Origination Fee	10,000.00	29,000.00	0.00	39,000.00	NOTE A	0
4400 OTHER CURRENT ASSETS	10,000.00	29,000.00	0.00	39,000.00		0
4500 Land - 60% Marcil	0.00	4,947,462.38	0.00	4,947,462.38	4600	0
4501 Land - Deferred Gain (Hollywood Vi	0.00	(3,048,644.00)	0.00	(3,048,644.00)	4600	0
4500 LAND - 60% MARCIL	0.00	1,898,818.38	0.00	1,898,818.38		0
4505 Land - 40% Walsh	0.00	3,298,308.25	0.00	3,298,308.25	4600	0
4501 LAND - 40% WALSH	0.00	3,298,308.25	0.00	3,298,308.25		0
4600 Investment in Manchester Property	305,010.65	(166,138.14)	0.00	138,872.51		0
4600 CAPITALIZED PROFESSIONAL F	305,010.65	(166,138.14)	0.00	138,872.51		0
4650 Organizational Costs	2,874.03	0.00	0.00	2,874.03		0
4650 INTANGIBLES	2,874.03	0.00	0.00	2,874.03		0
4660 Accumulated Amortization	0.00	(383.00)	0.00	(383.00)	NOTE B	0
4660 ACCUMULATED AMORTIZATION	0.00	(383.00)	0.00	(383.00)		0
4900 Loan Fee Deposit	10,000.00	0.00	0.00	10,000.00		0
4900 OTHER ASSETS	10,000.00	0.00	0.00	10,000.00		0
4950 Due to Gerald J. Marcil	(282,500.00)	(1,356,300.00)	1,356,300.00	(282,500.00)	6300	0
4955 Due to John P. Walsh	(78,750.00)	(1,570,500.00)	904,200.00	(745,050.00)	6300	0
5600 DUE TO MEMBERS	(381,250.00)	(2,926,800.00)	2,280,500.00	(1,027,550.00)		0
5700 Mortgage Payable	0.00	(5,200,000.00)	0.00	(5,200,000.00)	6700	0
5700 MORTGAGES	0.00	(5,200,000.00)	0.00	(5,200,000.00)		0
6301 Capital Contribution - 60% Marcil	0.00	0.00	(1,356,300.00)	(1,356,300.00)	6300	0
6302 Deferred Gain - Hollywood Vista (G.	0.00	3,048,644.00	0.00	3,048,644.00	4600	0
6305 Capital Contribution - 40% Walsh	0.00	0.00	(904,200.00)	(904,200.00)	6300	0
6300 MEMBERS' CAPITAL	0.00	3,048,644.00	(2,280,500.00)	788,144.00		0
6650 Refund	(519.82)	519.82	0.00	0.00		0
6650 OTHER INCOME	(519.82)	519.82	0.00	0.00		0
6705 Mortgage Interest Expense	32,500.00	9,750.00	0.00	42,250.00	6700	0
6720 INVESTMENT INTEREST EXPEN	32,500.00	9,750.00	0.00	42,250.00		0
6710 Property Taxes	0.00	5,604.15	0.00	5,604.15		0
6740 OTHER DEDUCTIONS - PROPEF	0.00	5,604.15	0.00	5,604.15		0
6715 Licenses and Permits	20.00	0.00	0.00	20.00		0
6735 Office Supplies and Expense	0.00	318.67	0.00	318.67		0
6740 Insurance Expense	0.00	1,879.44	0.00	1,879.44		0
6755 Postage and Delivery	0.00	95.43	0.00	95.43		0

PRINTED:

12/11/2006

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Prepared by	Reviewed by
KF	
9/26/2002	

EXH7B2 10

(MD LLC)

MD LLC FORMED

Operating Agreement for MD LLC confirms 50% ownership J. WALSH 50% ownership J. WALSH

MD LLC AMENDS MANCHESTER PURCHASE CONTRACT TWICE RE CLOSING DATE July 2001

HVA enters Agreement to sell VISM property

HVA exchange agreement w/ API 8/22/01

MD LLC 3rd Amendment to 100% purchase contract for MANCHESTER property closing date extended to OCT. 23, 01

5/19/01 MD LLC contracts to buy 100% MANCHESTER property \$8 MILLION

JUNE 11, 01 Hollywood Vista Prop (HVA) considers selling VISM property MARCIL letter to CAVINA TAYLOR DEARCTI

8/8/01 HVA enters Agreement to sell VISM property

9/24/01 API forms LAVA ROCK LLC LAVA ROCK'S 60% TIC DEED RECORDED 3/18/02

GRANT DEED DATED July 19, 2001 MANCHESTER property sellers grant to MD LLC the Manchester property, later this deed altered to insert LAVA ROCK LLC WHICH WAS NOT IN EXISTENCE IN July 2001

Ownership in MD LLC changed MARCIL 50% → 60%, WALSH 50% → 40%

11/14/01 VISM Property sold by API

11/23/01 HVA transfers LAVA Rock 60% TIC MANCHESTER Prop. to G. MARCIL

9/10/02 HVA files final 2001 tax return with FBG

10/18/01 DEED w/ MD LLC @ 40% TIC LAVA ROCK LLC @ 60% TIC MANCHESTER PROPERTY recorded (dated July 19, 2001)

11/20/01 API ASSIGNS LAVA ROCK LLC 60% TIC MANCH. Prop. to HVA

12/15/01 HVA conveys 60% TIC MANCH. property to MD LLC

12/26/01 HVA TERMINATES legal existence files with STATE CA certificates of cancellation of DISSOLUTION NO MERGER documents filed re HVA

LAVA ROCK merged with MD LLC
HVA files final 2001 tax return with FBG 10/02
LAVA ROCK merged with MD LLC
NO MERGER documents filed re HVA
DECEMBER 2001 MD LLC (MANCHESTER DEVEL, LLC) OWNS 100% MANCHESTER PROPERTY

Although MANCHESTER property under 100% contract with MD LLC HVA supports to convey right to buy 60% TIC in MANCH. Prop to LAVA ROCK LLC API

PURCHASE AGREEMENT

AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS

BY AND AMONG

HANNON REALTY CO., INC.,
WINIFRED S. COCKEY 1988 TRUSTS
AND PRINCIPIA COLLEGE COMMUNICATIONS

AS SELLER

AND

MANCHESTER DEVELOPMENT, LLC

AS BUYER

RELATING TO

CERTAIN REAL PROPERTY AND IMPROVEMENTS
LOCATED ON 8000-8060 W. MANCHESTER BOULEVARD,
LOS ANGELES, CALIFORNIA

DATED AS OF

May 16, 2001

EXHIBIT: 5/9
PAGE 1 OF 66

DEC 8 2004

Buyer: Manchester Development, LLC
c/o Palos Verdes Development Management Company
43 Malaga Cove Plaza, Suite D
Palos Verdes, California 90274-1360
Attention: Mr. Gerald J. Marcil
Telephone: (310) 791-2004
Facsimile No.: (310) 791-2003

with a copy to: Baker, Burton & Lundy
515 Pier Avenue
Hermosa Beach, California 90254
Attention: Kent S. Burton, Esq.
Telephone: (310) 376-9893
Facsimile No.: (310) 376-7483

Escrow Holder: Stewart Title Insurance Company
505 N. Brand Boulevard
Suite 400
Glendale, California 91203
Attention: Mr. Edward Neil
Telephone: (818) 500-5693
Facsimile No.: (818) 244-7637

(q) "Opening of Escrow": Opening Escrow shall have the meaning given thereto in Paragraph 4 hereof.

(r) "Permitted Exceptions": Permitted Exceptions shall have the meaning given thereto in Paragraph 7 hereof.

(s) "Property": The Property is that certain real property located in Los Angeles County, California, as described in Exhibit A attached hereto, and the improvements thereon.

(t) "Prorations": Prorations shall mean the prorations described in Paragraph 13 hereof.

(u) "Purchase Price": The Purchase Price for the Property is EIGHT MILLION AND NO/100 DOLLARS (\$8,000,000.00); provided, however, the Purchase Price may be reduced as set forth in Paragraph 28 of this Agreement.

(v) "Title Company": The Title Company is Stewart Title Insurance Company.

(w) "Title Policy": Title Policy shall have the meaning given thereto in Paragraph 11 hereof.

2. **Purchase and Sale:** Upon and subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property,

DEC 8 2004

**AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS ("**Agreement**") is made and entered into as of May 16, 2001, by and among HANNON REALTY CO., INC., a California corporation, WINIFRED S. COCKEY 1988 TRUSTS and PRINCIPIA COLLEGE COMMUNICATIONS (collectively, "**Seller**") and MANCHESTER DEVELOPMENT, LLC, a California limited liability company ("**Buyer**").

Buyer and Sellers agree as follows:

1. **Definitions:** For the purposes of this Agreement the following terms will be defined as follows:

(a) "**Actual Knowledge of Seller**": Actual Knowledge of Seller means and is limited to the actual knowledge of Ms. Elaine S. Ewen without having conducted any independent inquiry or inspection.

(b) "**Assignment**": Assignment shall have the meaning given thereto in Paragraph 6 hereof.

(c) "**Closing Date**": The Closing Date for the Property (as defined below) shall be no later than the first business day following the date which is sixty (60) days after the Effective Date (as defined below) and said Closing Date is the last date on which the Closing/Close of Escrow can occur.

(d) "**Closing**" and "**Close of Escrow**": Closing and Close of Escrow are terms used interchangeably in this Agreement. The Closing or the Close of Escrow with respect to the Property will be deemed to have occurred when a Grant Deed (as defined below) for the Property is recorded in the Official Records of Los Angeles County, California. If the Closing does not fall on a Tuesday, Wednesday or Thursday, Escrow shall close on the Tuesday following such date.

(e) "**Deposit**": The Buyer shall deliver to Escrow Holder (as defined below) a deposit of THREE HUNDRED THOUSAND AND 00/100THS DOLLARS (\$300,000.00) (the "**Deposit**"). The Deposit shall be in the form of wire transfer of federal funds or cash. The Deposit is nonrefundable unless otherwise provided herein. The Deposit shall be immediately released to Seller (without further written or verbal instructions from Seller and/or Buyer) one (1) business day after receipt by the Escrow Holder. The Deposit shall be applied to the Purchase Price if Escrow closes pursuant to the terms of this Agreement. If Escrow fails to close for any reason other than due to Seller's default or the failure of a condition precedent as set forth in Subparagraph 8.1 below, then the Deposit shall be retained by Seller as liquidated damages.

7 G/g Cole



One Hundred Forty Thousand and No/100 Dollars (\$140,000.00). The provisions of this Paragraph 29 shall survive the Close of Escrow.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year hereinabove written.

SELLER:

Hannon Realty Co., Inc.

By: _____
Name: Elaine S. Ewen
Its: President

BUYER:

Manchester Development, LLC

By: _____
Name: Gerald J. Marcil
Its: Managing Member

Winifred S. Cockey 1988 Trusts

By: _____
Winifred S. Cockey as trustee

Principia College Communications

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

39 9/9 666

One Hundred Forty Thousand and No/100 Dollars (\$140,000.00). The provisions of this Paragraph 29 shall survive the Close of Escrow.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year hereinabove written.

SELLER:

BUYER:

Hannon Realty Co., Inc.

Manchester Development, LLC

By: Elaine S Ewen
Name: Elaine S. Ewen
Its: President

By: _____
Name: Gerald J. Marcil
Its: Managing Member

Winifred S. Cockey 1988 Trusts

By: _____
Winifred S. Cockey as trustee

Principia College Communications

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

4/10/96

10/10/96

Exhibit B

Form of Grant Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:
same as above

(Above Space For Recorder's Use Only)

CORPORATION GRANT DEED

In accordance with Section 11932 of the California Revenue and Taxation Code, Grantor has declared the amount of transfer tax which is due by a separate statement which is not being recorded with this Grant Deed.

FOR A VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, HANNON REALTY CO., INC., a California corporation, WINIFRED S. COCKEY AS TRUSTEE OF WINIFRED S. COCKEY 1988 TRUSTS and PRINCIPIA COLLEGE COMMUNICATIONS, hereby grant to MANCHESTER DEVELOPMENT, LLC, a California limited liability company, the real property and improvements located in Los Angeles County, State of California, described in Exhibit A attached hereto and made a part hereof (the "Property").

This conveyance is subject to non-delinquent taxes and assessments, and all matters of record and off-record affecting the Property, including, without limitation, matters which could be ascertained by an inspection or survey of the Property. Grantor disclaims any and all express or implied warranties regarding the Property other than the implied warranty stated in subparagraph 1 of Section 1113 of the California Civil Code.

44 9/19 66

000 1 2006

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Manchester Development, LLC
c/o Palos Verdes Development Management Company
43 Malaga Cove Plaza, Suite D
Palos Verdes, CA 90274-1360
Attention: Mr Jerry Marcil

MAIL TAX STATEMENTS TO:
same as above

(Above Space For Recorder's Use Only)

CORPORATION GRANT DEED

In accordance with Section 11932 of the California Revenue and Taxation Code, Grantor has declared the amount of transfer tax which is due by a separate statement which is not being recorded with this Grant Deed.

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This conveyance is subject to non-delinquent taxes and assessments, and all matters of record and off-record affecting the Property, including, without limitation, matters which could be ascertained by an inspection or survey of the Property. Grantor disclaims any and all express or implied warranties regarding the Property other than the implied warranty stated in subparagraph 1 of Section 1113 of the California Civil Code.

DATED AS OF July 19, 2001

Hannon Realty Co., Inc.,
a California corporation

By: _____
Name: Elaine S. Ewen
Its: President

Principia College Communications

By: Howard EBERNER, Jr
Name: HOWARD EBERNER, JR
Its: VICE PRESIDENT

The Winifred S. Cockey 1988 Trusts

I
By: 3 9
Winifred s. Cockey as trustee

By: Michael T. Sharples
Name: Michael T. Sharples
Its: President

*as to an undivided 40% interest, and LAVA ROCK EIGHTY, LLC, A NEVADA LIMITED LIABILITY COMPANY, as to an undivided 60% interest, as Tenants in Common



4

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Manchester Development, LLC
c/o Palos Verdes Development Management Company
43 Malaga Cove Plaza, Suite D
Palos Verdes, CA 90274-1360
Attention: Mr Jerry Marcil

MAIL TAX STATEMENTS TO:
same as above

(Above Space For Recorder's Use Only)

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DATED AS OF: July 19, 2001

Hannon Realty Co., Inc.,
a California corporation

Principia College Communications

By: _____
Name: Elaine S. Ewen
Its: President

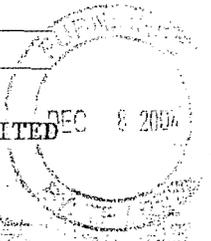
By: _____
Name: _____
Its: _____

The Winifred S. Cockey 1988 Trusts

By: _____
Name: _____
Its: _____

By: Winifred S. Cockey
Winifred S. Cockey as trustee

*as to an undivided 40% interest, and LAVA ROCK EIGHTY, LLC, A NEVADA LIMITED LIABILITY COMPANY, AS TO AN UNDIVIDED 60% INTEREST, AS TENANTS IN COMMON



INDIVIDUAL

STATE OF HAWAII,
City and County of Honolulu. } ss:

5

PO
NP

2001

On this 25th day of July, A.D. 19, before me personally appeared

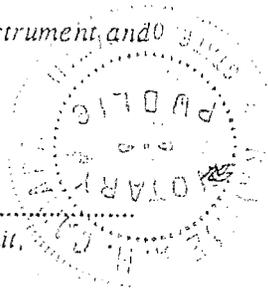
--Winifred S. Cockey**

to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

Witness my hand and seal.

Prima O. H. Comas

Notary Public, First Judicial Circuit,
State of Hawaii.



My Commission Expires 4-07-2002

AS-42 (2/93)

Handwritten initials: S, H, 9

01 2025424



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

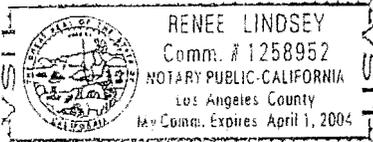
)
) ss.
)

COUNTY OF LOS ANGELES

On July 19, 2001, before me, Renee Lindsey, Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Elaine S. Ewen,
Name of Signer(s)

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.

Renee Lindsey
Signature of Notary Public

OPTIONAL

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

CAPACITY(IES) CLAIMED BY SIGNER(S)

DESCRIPTION OF ATTACHED DOCUMENT

Individual
 Corporate Officer
President
Title(s)

Grant Deed
Title or Type of Document

Partner(s) Limited
 General
 Attorney-In-Fact
 Trustee(s)
 Guardian/Conservator
 Other:

5
Number of Pages

July 19, 2001
Date of Document

Signer is Representing:
Name of Person(s) or Entity(ies)
Hannon Realty Co., Inc.

Winifred Cockey / Principia College
Signer(s) Other Than Named Above

1
6 OF 9



Document No. 01-2025424
Date Recorded OCT 24 2001

01 2025424

**STATEMENT OF TAX DUE AND REQUEST THAT TAX DECLARATION
NOT BE MADE A PART OF THE PERMANENT RECORD
IN THE OFFICE OF THE COUNTY RECORDER**

(Pursuant to Section 11932 R&T Code)

To Registrar-Recorder
County of Los Angeles

Request is hereby made in accordance with the provisions of the Documentary Transfer Tax Act that the amount of tax due not be shown on the original document which names:

Hannon Realty Co., Inc., a California corporation,
Winifred S. Cockey as trustee of the Winifred S. Cockey 1988 Trusts
and Principia College Communications

(collectively, the grantor)

and

Manchester Development, LLC, a California limited liability company

(as grantee)

Property described in the accompanying document is located in City of Los Angeles, California

The amount of tax due on the accompanying document is \$44,800.00.

<u> X </u>	Computed on full value of property conveyed, or	\$ 8,800 → <u>80</u>
<u> </u>	Computed on full value less liens and encumbrances remaining at time of sale.	\$ 36,000 → <u>44</u>

Signature of Declarant or Agent

Signature of Declarant or Agent

Winifred S. Cockey
Signature of Declarant or Agent





PALOS VERDES DEVELOPERS
MANAGEMENT COMPANY

TO: Vicki Dorfman
FROM: Jerry Marcil
RE: Change of Grand Deed, escrow #01398097

Dear Vicki,

This memo is your authorization to change the vesting on your grant deed from Manchester Development, LLC to Manchester Development LLC as to an undivided 40% interest and Lava Rock Eighty LLC as to an undivided 60% interest, as tenants-in-common.

The Seller would prefer if you just inserted this change unto the Grant Deed without getting it resigned. This is O.K. with me. Please contact the Seller to verify.

Thank you and Best Regards,

Gerald J. Marcil
Gerald J. Marcil

CC: Renee Lindsey
John Walsh

B-2

THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS

THIS THIRD AMENDMENT TO AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS ("Third Amendment") is dated as of the 28th day of September 2001, by and among HANNON REALTY CO., INC., a California corporation, the WINIFRED S. COCKEY TRUSTS and PRINCIPAL COLLEGE COMMUNICATIONS (collectively, the "Seller"), and MANCHESTER DEVELOPMENT, LLC a California limited liability company (the "Buyer") with respect to the following facts and circumstances

A. Seller and Buyer entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of May 16, 2001, by and between Seller and Buyer (the "Original Purchase Agreement"), as amended by that certain First Amendment to the Agreement of Purchase and Sale and Joint Escrow Instructions dated as of July 13, 2001, by and between Seller and Buyer (the "First Amendment"), as amended by that certain Second Amendment to the Agreement of Purchase and Sale and Joint Escrow Instructions dated as of July 20, 2001, by and between Seller and Buyer (the "Second Amendment") pursuant to which Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller that certain real property and improvements described in Exhibit A of the Original Purchase Agreement. The Original Purchase Agreement, the First Amendment, and the Second Amendment are referred to herein collectively as the "Purchase Agreement." All capitalized terms used herein shall have the same meaning as set forth in the Purchase Agreement, unless otherwise indicated.

B. Buyer has requested an extension of the Closing Date from October 2, 2001 until October 23, 2001 to allow Buyer more time to apply for certain variances related to the Property. Seller is ready, willing and able to close Escrow, provided, however, Seller has agreed to extend the Closing Date as provided herein in consideration of the agreements and promises made by Buyer herein.

C. Buyer and Seller now desire to modify the Purchase Agreement as set forth below

NOW, THEREFORE, in consideration of the above recitals and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, the parties agree to amend the Purchase Agreement as follows:

1. Buyer and Seller acknowledge and agree that the Closing Date shall be extended from October 2, 2001 to October 23, 2001 ("Second Extension Period")

2. Buyer and Seller acknowledge and agree that by October 3, 2001, Buyer shall deliver to Seller an additional deposit by wire transfer to the trust account described in Exhibit "A" hereto funds in the amount of One Hundred Sixty Thousand and No/100 Dollars (\$160,000.00)(the "Second Extension Deposit") which shall become non-refundable on the date that this Third Amendment is executed by both Buyer and Seller and which shall not be applied

C/18.1

CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1689 UPON EITHER (I) THE FAILURE OF BUYER TO CLOSE ESCROW FOR THE PROPERTY PURSUANT TO THE TERMS OF THIS AGREEMENT OR (II) THE DEFAULT BY BUYER OF THIS AGREEMENT, UPON THE ELECTION OF SELLER, IN SELLER'S SOLE AND ABSOLUTE DISCRETION. THIS AGREEMENT WILL BE TERMINATED AND, EXCEPT FOR BUYER'S INDEMNITY AND OTHER SPECIFIC OBLIGATIONS REFERRED TO HEREIN WHICH MAY BE ENFORCED BY SELLER (IN ADDITION TO COLLECTION AND RETENTION BY SELLER OF BUYER'S DEPOSIT, EXTENSION DEPOSIT AND SECOND EXTENSION DEPOSIT AS PROVIDED HEREUNDER), NEITHER PARTY WILL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER TO THE OTHER, EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER AND ESCROW HOLDER.

Seller's Initials Seller's Initials Seller's Initials DPA
Buyer's Initials

5 The Purchase Agreement is hereby modified by adding the following Paragraph 30 as follows

"30 Tax Deferred Exchange Seller agrees to reasonably cooperate with Purchaser in consummating the sale of the Property as part of a simultaneous or non-simultaneous tax-deferred exchange (the "Tax Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986 as amended, provided that (i) Seller shall not be required to take title to any property including the Property, (ii) the Closing Date shall not be delayed or extended thereby, (iii) all costs and expenses shall be paid by Purchaser and (iv) Purchaser shall indemnify, defend, protect and hold Seller harmless from any liability, damage, costs and expenses related to the Tax Exchange."

6 Sections 6 2(e), 6 2(g), 14 5, 28 and 29 of the Purchase Agreement are hereby deleted in their entirety

7 Section 26 of the Purchase Agreement is hereby amended by the addition of the following sentence at the end of Section 26 as follows

"Notwithstanding anything to the contrary that may be contained herein, Seller shall have the right to assign this Agreement without Buyer's consent."

C / 18.4

Assignment and Assumption of Intangible Property

THIS ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY ("Assignment") is made as of this 19th day of July, 2001, by and between HANNON REALTY CO., INC., a California corporation; WINIFRED S. COCKEY AS TRUSTEE OF THE WINIFRED S. COCKEY 1988 TRUSTS and PRINCIPIA COLLEGE COMMUNICATIONS (collectively, "Assignor") and MANCHESTER DEVELOPMENT, LLC, a California limited liability company ("Assignee"), with reference to the following facts:

A. Assignor owns the real property legally described on Exhibit "A" attached hereto, and the improvements constructed thereon ("Property").

B. Assignor has used or acquired (or may have acquired) certain intangible rights in connection with the Property (as defined in the Purchase Agreement which is defined below) including, but not limited to, any trade name used in connection with the Property, various easements, licenses, permits, all rights, certificates of occupancy, rights of way, sewer agreements, water line agreements, utility agreements, water rights and oil, gas and mineral rights, all licenses, permits and entitlements related to the operation of the Property in accordance with its current use, and any and all development rights, entitlements and other intangible rights, titles, interests, privileges and appurtenances owned by Seller and in any way relating to the Property (collectively, the "Intangibles") and has also acquired, or may have acquired, certain express and implied warranties, including, but not limited to, the warranties of Assignor's general contractor for the improvements constructed on the Property, and said general contractor's subcontractors (the "Warranties").

C. Pursuant to the terms of that certain Agreement of Purchase and Sale and Joint Escrow Instructions entered into by Assignor, as Seller, and Assignee, as Buyer (the "Agreement"), Assignor now desires to assign and transfer to Assignee all of its right, title and interest in and to the Intangibles and the Warranties, to the extent such right, title and interest may exist and is assignable by Assignor, and Assignee desires to accept any such Intangibles and Warranties to the extent they exist and are assignable.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinbelow set forth, it is agreed:

1. Effective as of the Close of Escrow, as that phrase is defined in the Agreement, Assignor assigns and transfers to Assignee and its successors and assigns, all of Assignor's right, title and interest in and to the Intangibles and the Warranties, to the extent such right, title and interest may exist and is assignable by Assignor.

2. Effective as of the Close of Escrow Assignee accepts the assignment of the Intangibles and the Warranties and shall be entitled to all rights and benefits accruing to the Assignor thereunder and hereby assumes all obligations thereunder from and after the Close of Escrow.

3 This Assignment may be executed in counterparts which taken together shall constitute one and the same instrument.

4 The provisions of this instrument shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

5 Assignor hereby covenants that it will, at any time and from time to time, execute any documents and take such additional actions as Assignee or its successors or assigns shall reasonably require in order to more completely or perfectly carry out the transfers intended to be accomplished by this Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Intangible Property as of the date set forth above.

"ASSIGNOR"

"ASSIGNEE"

HANNON REALTY CO., INC.,
a California corporation

MANCHESTER DEVELOPMENT, LLC,
a California limited liability company

By: _____
Name: Elaine S. Ewen
Its: President

By: _____
Name: Gerald J. Marcil
Its: Managing Member

THE WINIFRED S. COCKEY 1988 TRUSTS

By: _____
Name: Winifred S. Cockey as trustee

PRINCIPIA COLLEGE COMMUNICATIONS

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ASSIGNMENT OF REAL PROPERTY PURCHASE AGREEMENT

THIS ASSIGNMENT is entered into between Hollywood Vista Apartments, Ltd., a California Limited Partnership, herein called "Assignor" and LAVA ROCK EIGHTY LLC., a Nevada limited liability company, herein called "Assignee" for the acquisition of the property located in the County of Los Angeles, State of California, more commonly known as 60% Undivided Interest In 8000-8060 W. Manchester Blvd., Los Angeles, California herein called the "Subject Property".

WHEREAS, Assignor has entered into that certain Real Property Purchase Agreement "Real Property Purchase Agreement" dated _____, between Assignor as Purchaser and Hannon Realty Co., Inc.; Principia College Communications; And Winifred W. Cockey 1988 Trust as Seller; wherein Assignor agreed to acquire the Subject Property; and

WHEREAS, Assignor wishes to assign to Assignee the rights to purchase the Subject Property under the Real Property Purchase Agreement; and

WHEREAS, Assignee wishes to accept said Assignment and acquire the rights of Assignor to purchase the Subject Property under the Real Property Purchase Agreement; and

WHEREAS, this Assignment is being made pursuant to the Exchange Accommodation Agreement between Assignor and Assignee whereby Assignee is accepting this Assignment in order to acquire Replacement Property for Assignor, in furtherance of Assignor's IRC Section 1031 exchange transaction;

NOW, THEREFORE, Assignor hereby assigns to Assignee all of Assignor's rights and interest in the Real Property Purchase Agreement. Assignee hereby accepts assignment all of such rights and interest in the Real Property Purchase Agreement. The Real Property Purchase Agreement is hereby assigned in accordance with the terms hereof.

Assignor and Assignee further agree as follows:

1. As additional consideration to Assignee, Assignor hereby agrees to hold Assignee harmless, release, defend and indemnify Assignee from any and all liability, loss, damage or

8000-8060 B-3

injury in any manner arising out of or incident to Assignee's acquiring ownership interest in, holding, transferring or conveying the Subject Property, including, without limitation, any and all consequential damages arising therefrom.

2. Assignor and Assignee agree that this assignment is made for the purposes of facilitating the I.R.C. Section 1031 exchange pursuant to the Exchange Accommodation Agreement to which this Assignment relates. Therefore, pursuant to U.S. Treasury Regulation 1.1031(k)-1(g)(4)(iv), only the rights of Assignor under the Real Property Sale Agreement have been assigned to Assignee. For purposes of any dispute regarding any aspect of the Subject Property other than Assignee's holding or transferring the Subject Property pursuant to the Exchange Accommodation Agreement and this Assignment thereto, this transaction shall be deemed to have occurred only between Assignor and Seller, and Assignee shall not be made a party to any dispute, suit, claim, arbitration or other proceeding concerning the Subject Property without Assignee's prior written consent.

3. This Agreement shall be binding upon and shall inure to the benefit of their respective heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this assignment of the Real Property Sale Agreement.

ASSIGNOR: Hollywood Vista Apartments, Ltd., A California Limited Partnership

By: Gerald J. Marcil
Gerald J. Marcil, Managing Member

DATED: 10-18-06

ASSIGNEE: LAVA ROCK EIGHTY LLC,
A NEVADA LIMITED LIABILITY COMPANY

BY: API PROPERTIES CORPORATION, A CALIFORNIA CORPORATION
ITS SOLE MEMBER

BY: Thomas W. Ward DATED 10/18/06
Thomas W. Ward, Corporate Counsel

POE 0081 B-4

HOLLYWOOD VISTA APARTMENTS, LTD.
LIMITED PARTNER WITHDRAWAL

Carina Taylor DeMarti hereby withdraws from the California Limited Partnership known as Hollywood Vista Apartments, Ltd.. Carina Taylor DeMarti does hereby relinquish all of her rights, interest, and title to the entity known as Hollywood Vista Apartments, Ltd.. The remaining limited partners (Carol Marcil and Gerald J. Marcil) shall now each own 49.5% of the limited partner interest in Hollywood Vista Apartments, Ltd.

In exchange for Carina Taylor DeMarti's withdrawal herein, Hollywood Vista Apartments, Ltd., has deeded 33.33% of the fee title of the property commonly known as Hollywood Vista Apts., 1417 N. Vista St., Hollywood, California to Carina Taylor DeMarti and Charles DeMarti as husband and wife as of Nov. 14, 2001. The effective date of this withdrawal is Nov. 14, 2001.

This agreement shall inure to the benefit or detriment of the heirs, assigns, executors, and /or successors to the parties herein.

If litigation should be required to enforce this agreement, the prevailing party shall be entitled to attorney's fees and costs.

The parties whose signatures are listed below are hereby in agreement.

<u>Gerald J. Marcil</u> 11-12-01	<u>Carina Taylor DeMarti</u> 11-12-01
Woodglen Apts., LLC Date	Carina Taylor DeMarti Date
General Partner	Limited Partner
By Gerald J. Marcil	

<u>Charles De Marti</u> 11-12-01	<u>Carol Marcil</u> 11-12-01
Charles De Marti Date	Carol Marcil Date
	Limited Partner

<u>Gerald J. Marcil</u> 11-12-01	11-12-01
Gerald J. Marcil Date	Date
Limited Partner	

Carina & Chuck De Marti

June 14, 2001

[REDACTED]
Huntington Beach, CA 92646

Dear Carina and Chuck,

Good news. I think we can sell Vista for \$5,400,000. The rents have skyrocketed over the last 12 months. We just got \$1,350 for a 2 bedroom and \$1,000 for a one-bedroom. I'm enclosing the rent roll for your review.

I think we should ask \$5,650,000 and settle at \$5,400,000. I am not as motivated to sell as you and Peter, but I recognize this is good timing from a market standpoint. We will have the building paid off in 15 years and would be making cash flow in the mean time. However, a bird in the hand is worth 2 in the bush. We can finally make something.

I want to be sure we are in agreement as to the distribution of sales proceeds before we sell it. Below is my accounting of where we are at:

\$5,400,000.00	Sales Price
-\$2,850,000.00	Balance of the loan
-\$ 189,000.00	Commissions (3.5%)*
-\$ 35,640.00	Transfer Tax (.66%)
-\$ 8,000.00	Title & escrow
-\$ 37,640.00	Security Deposits
-\$ 18,000.00	Payables
<u>\$2,261,475.00</u>	NET SALES PROCEEDS
-\$ 136,430.78	Interest differential owed to Carina**
-\$ 12,238.69	loan owed to Carina ***
-\$ <u>135,295.30</u>	loan owed to Marci****
-\$1,977,510.40	Proceeds to Ownership%
<u>X 33.33%</u>	Carina's %
\$ 659,104.21	Carina's share
+\$ 136,430.78	Owed to Carina
+\$ <u>12,238.69</u>	Owed to Carina
<u>\$807,773.68</u>	CARINA'S TOTAL PROCEEDS *****

H
C/85.1

*Commission: John Walsh has agreed to list the property for 1.5% and 2% to any outside broker. If he sells it himself, he gets 3% (we save .5%). Even though our agreement allows me to make a commission, I'm not charging one—nor do I get any kind of a referral fee from John.

** Enclosed is the schedule of interest paid on the loan.

*** Carina loaned Vista \$8,000 from Canyon Crest which is now worth \$12,238.69.

**** Enclosed is an accounting of the year by year balance of the cash I put in to save the property. We used a 15% one time service fee and 10% interest (not 25% interest as previously requested)

***** You owe Peter Raducha 10% of your net proceeds on the \$659,104.21 and the \$136,430.78.

If you agree with the above distribution, please sign below and FAX back. This distribution is based on our agreement for distribution dated 11-15-00 and enclosed herein.

Please call me at 310-791-2000 if you have any questions.

Best Regards,

Jerry Marcil

I, Carina Taylor DeMarti, hereby approve of the above method of distribution, and hereby authorize Gerald Marcil to list the property at 1417 N. Vista, Hollywood for sale, and agree that he may negotiate any sale at or above \$5,000,000.

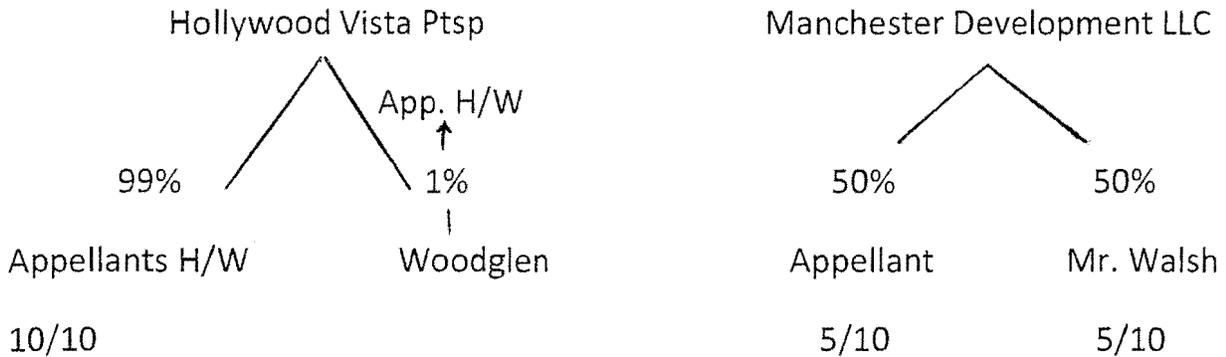
Carina Taylor DeMarti

Date

Q H 2

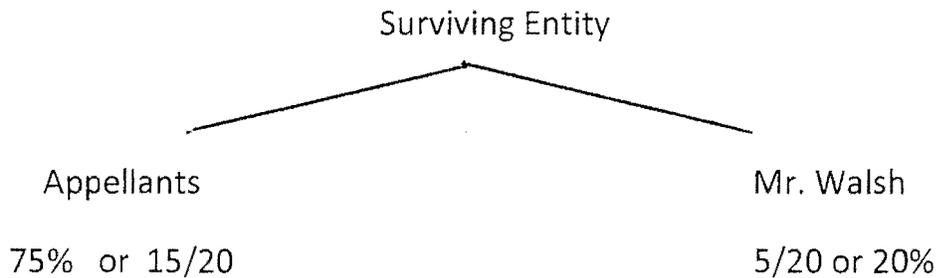
What should have happened if Hollywood Vista Partnership had merged into Manchester Development LLC. in 2001, as provided by Revenue Ruling 90-17, which clarified Rev. Rul. 77-458.

Ownership May through November 2001



Appellants effectively owned 100% (10/10 of HV)

Ownership Interest changes in surviving entity **that should have occurred, but did not** in 2001, per Revenue Ruling 90-17 and any true business arrangement. Mr. Walsh should have been diluted.



But actually Manchester Development LLC ownership interests remained 50% Appellant, 50% Mr. Walsh through August 31, 2002, proving no merger.



ACTUAL OWNERSHIP IN MANCHESTER DEVELOPMENT, LLC

May 2001

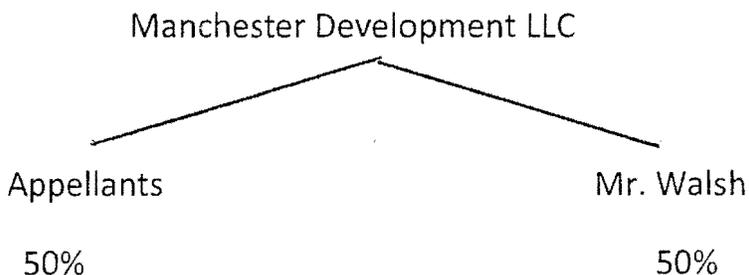


Then: Manchester Development LLC acquires 100% Manchester property.

Hollywood Vista Partnership Formally Dissolves with California Sec. Of State December 201 and files its final tax returns in 2001.

Manchester Development LLC continues to file tax returns and report utilizing its own unique FEIN tax identification number (acquired in 2001) for returns filed in 2002 +.

August 2002



Manchester Development LLC always treated as a separate business arrangement, independent from Hollywood Vista Apartments' affairs.

MANCHESTER DEVELOPMENT, LLC
WRITTEN CONSENT OF MEMBERS TO ACTION

The undersigned members of MANCHESTER DEVELOPMENT, LLC,
consent to the following action:

WHEREAS the effective date of the Operating Agreement be amended to
September 1, 2002.

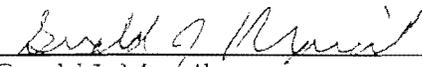
WHEREAS, the membership interest of GERALD J. MARCIL be changed
from 50.00% to 60.00%.

WHEREAS, the membership interest of JOHN P. WALSH be changed
from 50.00% to 40.00%.

WHEREAS, Exhibit B of the Operating Agreement be amended to reflect
the change in membership interests.

NOW, THEREFORE, the members hereby unanimously consent to the
change of membership interests as reflected in Exhibit B to the Operating
Agreement.

This action is taken effective September 1, 2002.



Gerald J. Marcil



John P. Walsh

1
1

CERTIFICATE OF INTEREST

Organized under the Beverly-Killea
Limited Liability Company Act of California
On May 9, 2001

NUMBER: 1

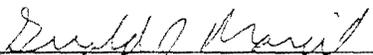
PERCENTAGE SHARE: 60.00%

MANCHESTER DEVELOPMENT, LLC
A California Limited Liability Company

THIS CERTIFIES THAT GERALD J. MARCIL, is the record holder of Sixty and 00/100 percent (60.00%) fully paid and nonassessable percentage share of MANCHESTER DEVELOPMENT, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY.

This certificate is transferable only on the books of the Company in person or by duly authorized attorney upon surrender of this certificate properly endorsed in accordance with the terms of the Article of Organization and Operating Agreement as amended to the dates of the transfer.

In witness whereof, the Company has caused this Certificate to be signed by its duly authorized officers and its Company Seal to be hereunto affixed this 9th day of May, 2001.



GERALD J. MARCIL, MANAGER

See the reverse of this certificate for a notice of the rights, preferences, privileges, and restrictions of the shares represented by this certificate.

CERTIFICATE OF INTEREST

Organized under the Beverly-Killea
Limited Liability Company Act of California
On May 9, 2001

NUMBER: 2

PERCENTAGE SHARE: 40.00%

MANCHESTER DEVELOPMENT, LLC A California Limited Liability Company

THIS CERTIFIES THAT JOHN WALSH is the record holder of Forty and 00/100 percent (40.00%). fully paid and nonassessable percentage share of MANCHESTER DEVELOPMENT, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY.

This certificate is transferable only on the books of the Company in person or by duly authorized attorney upon surrender of this certificate properly endorsed in accordance with the terms of the Article of Organization and Operating Agreement as amended to the dates of the transfer.

In witness whereof, the Company has caused this Certificate to be signed by its duly authorized officers and its Company Seal to be hereunto affixed this 9th day of May, 2001.



GERALD J. MARCIL, MANAGER

See the reverse of this certificate for a notice of the rights, preferences, privileges, and restrictions of the shares represented by this certificate.

C 163.3

state of California

Secretary of State

Bill Jones

EFFECTIVE DATE

DEC 26 2001

FILED

In the Office of the Secretary of State of the State of California

DEC 26 2001

Bill Jones

BILL JONES, Secretary of State This Space For Filing Use Only

LIMITED PARTNERSHIP CERTIFICATE OF DISSOLUTION

IMPORTANT - - Read instructions before completing this form

NOTE: THIS CERTIFICATE OF DISSOLUTION (LP-3) MUST BE FILED IN ORDER TO DISSOLVE YOUR LIMITED PARTNERSHIP. YOU MUST ALSO FILE A CERTIFICATE OF CANCELLATION (LP-417) IN ORDER TO CANCEL YOUR CERTIFICATE OF LIMITED PARTNERSHIP (LP-1) AND NOT INCUR FURTHER LIABILITY FOR TAX AS A LIMITED PARTNERSHIP

1. SECRETARY OF STATE FILE NUMBER 199825400010 2. NAME OF LIMITED PARTNERSHIP HOLLYWOOD VISTA APARTMENTS, LTD., A CALIFORNIA LIMITED PARTNERSHIP

3. EFFECTIVE DATE OF DISSOLUTION: DECEMBER 31, 2001 MONTH DAY YEAR

4. THE EVENT CAUSING THE DISSOLUTION OF THIS LIMITED PARTNERSHIP IS

- A. IT IS THE TIME SPECIFIED IN THE PARTNERSHIP AGREEMENT FOR DISSOLUTION.
B. X THE EVENTS FOR DISSOLUTION THAT ARE SPECIFIED IN THE PARTNERSHIP AGREEMENT HAVE OCCURRED.
C. WRITTEN CONSENT OF ALL GENERAL PARTNERS AND A MAJORITY IN INTEREST OF THE LIMITED PARTNER(S).
D. THERE ARE NO GENERAL PARTNERS TO CONTINUE THE BUSINESS OF THE LIMITED PARTNERSHIP.
E. ENTRY OF A DECREE OF JUDICIAL DISSOLUTION UNDER SECTION 15582

5. OTHER INFORMATION THE PARTNERS FILING THE CERTIFICATE OF DISSOLUTION DETERMINE TO INCLUDE (ATTACH ADDITIONAL PAGES IF NECESSARY)

6. NUMBER OF PAGES ATTACHED (IF ANY) NONE

7. I CERTIFY THAT THE STATEMENTS CONTAINED IN THIS DOCUMENT ARE TRUE AND CORRECT TO MY OWN KNOWLEDGE. I DECLARE THAT I AM THE PERSON WHO IS EXECUTING THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED. BY: WOODGLEN APTS., LLC

Gerald J. Marcil GENERAL PARTNER SIGNATURE POSITION OR TITLE

GERALD J. MARCIL (MNGNG MBR) 12-26-01 PRINT NAME DATE

SIGNATURE POSITION OR TITLE

PRINT NAME DATE

SIGNATURE E POSITION OR TITLE

PRINT NAME DATE

SIGNATURE POSITION OR TITLE

PRINT NAME DATE

this power of attorney is coupled with an interest and shall survive the delivery of an assignment of a limited partnership interest. In the event of any conflict between the provisions of this Agreement, or any amendment to it, and any document executed, acknowledged, sworn to or filed by the general partners under this power of attorney, this Agreement and any amendments thereto shall govern.

3.3 An amendment to the Certificate shall be signed by the general partner.

4. NAME. The partnership name shall be HOLLYWOOD VISTA APARTMENTS LTD., A CALIFORNIA LIMITED PARTNERSHIP.

5. PLACE OF BUSINESS. The Partnership's principal place of business shall be 43D Malaga Cove Plaza, Palos Verdes Estates, California 90274, or at such other place as the general partner determines in the future.

6. PURPOSE. The purpose of this partnership is to acquire that certain real property located in the city of Hollywood, California commonly known as 1417 N. Vista, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("Property"), to actively manage the Property, to offer the Property for sale and to do such other things as are incidental, proper or related thereto. The term "Property" as used herein shall mean the interest in the above real property and all private property owned by the Partnership. The specifications of these particular activities, however, shall not be deemed a limitation upon the general powers of the Partnership.

7. TERM. The partnership shall begin upon the filing of the Certificate and shall continue until March 1, 2050, at which time it shall dissolve. The Partnership may be dissolved and terminated at any time before that date upon the sale of substantially all of its real property or as more particularly described in Section 14.

8. CAPITAL AND LOANS.

8.1 Each partner shall make a cash contribution to the capital of the Partnership in the amount set forth opposite each respective partner's name in Exhibit "B" attached hereto and incorporated herein by reference. In addition, the partners (limited and general) shall contribute additional cash to the Partnership as may be needed from time to time to meet the needs of the Partnership.

8.2 Except as specifically provided herein, no partner may withdraw his capital from the Partnership without the approval of the general partner.

8.3 No interest shall be paid and no partner shall be entitled to interest on any of his capital contributions to the Partnership.

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Sqm CA

DEC 20 2014

0 102 0

State of California
Secretary of State
Bill Jones

EFFECTIVE
DATE
DEC 21 2001

LIMITED PARTNERSHIP
CERTIFICATE OF CANCELLATION

FILED
In the Office of the Secretary of State
of the State of California

DEC 26 2001

Bill Jones
BILL JONES, Secretary of State

This Space For Filing Use Only

IMPORTANT - - Read Instructions before completing this form.

THIS CERTIFICATE OF CANCELLATION (LP-4/7) MUST BE FILED IN ORDER TO
CANCEL YOUR CERTIFICATE OR REGISTRATION OF LIMITED PARTNERSHIP AND
YOUR LIABILITY FOR ANY TAX AS A LIMITED PARTNERSHIP.

1. SECRETARY OF STATE FILE NUMBER

199825400010

2. NAME OF LIMITED PARTNERSHIP

HOLLYWOOD VISTA APARTMENTS, LTD., A CALIFORNIA LIMITED PARTNERSHIP

3. THE LIMITED PARTNERSHIP HEREBY CANCELS ITS: (CHECK ONE)

CERTIFICATE OF LIMITED PARTNERSHIP (LP-1) PURSUANT TO SUBDIVISION (B)(1) OF SECTION 15623 OF THE CALIFORNIA
CORPORATIONS CODE.

REGISTRATION OF FOREIGN LIMITED PARTNERSHIP (LP-5) PURSUANT TO SECTION 15696 OF THE CALIFORNIA CORPORATIONS
CODE.

4. OTHER INFORMATION THE PARTNERS FILING THE CERTIFICATE OF CANCELLATION DETERMINE TO INCLUDE, IF ANY: (ATTACH
ADDITIONAL PAGES, IF NECESSARY)

5. NUMBER OF PAGES ATTACHED. (IF ANY)

NONE.

6. I CERTIFY THAT THE STATEMENTS CONTAINED IN THIS DOCUMENT ARE TRUE AND CORRECT TO MY OWN KNOWLEDGE. I DECLARE
THAT I AM THE PERSON WHO IS EXECUTING THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

BY: WOODGLEN APTS., LLC

Gerald J. Marcil GENRL. PARTNR.
SIGNATURE POSITION OR TITLE

GERALD J. MARCIL (MNGNG MBR) 12-20-01
PRINT NAME DATE

SIGNATURE POSITION OR TITLE

PRINT NAME DATE

SIGNATURE POSITION OR TITLE

PRINT NAME DATE

SIGNATURE POSITION OR TITLE

PRINT NAME DATE

66

COPY

OPERATING AGREEMENT FOR
MANCHESTER DEVELOPMENT, LLC

ALL PARTIES MUST READ THIS DOCUMENT CAREFULLY, THE
SECURITY NOTICE CONTAINED IN SECTION 8.10 AND NOTE EACH OF
THE FOLLOWING:

THIS AGREEMENT PROVIDES FOR MANDATORY ARBITRATION OF
ALL CLAIMS. SEE ARTICLE X HEREOF.

LEGAL COUNSEL FOR THE COMPANY HAS DRAFTED THIS
OPERATING AGREEMENT. EACH MEMBER MUST OBTAIN
INDEPENDENT LEGAL AND TAX ADVICE AS TO THE TERMS OF THE
AGREEMENT, AND WHETHER SUCH MEMBER'S INTEREST ARE BEST
SERVED BY THIS OPERATING AGREEMENT AND THE TERMS HEREOF.
NO MEMBER MAY RELY UPON ANY REPRESENTATION OR
STATEMENT BY LEGAL COUNSEL FOR THE COMPANY THAT IS NOT
SPECIFICALLY SET FORTH IN THIS OPERATING AGREEMENT. SEE
RECITALS C.2 AND C.8.

THIS AGREEMENT CONTAINS A COVENANT BY MEMBERS NOT TO
SUE OTHER MEMBERS EXCEPT IN CERTAIN LIMITED
CIRCUMSTANCES. SEE SECTION 2.8.

THIS AGREEMENT RESTRICTS THE ABILITY OF MEMBERS TO
TRANSFER THEIR INTERESTS IN THE COMPANY. MEMBERS AND
THEIR SPOUSES MUST CONSENT TO THIS RESTRICTION. SEE ARTICLE
VIII.

THIS AGREEMENT PROVIDES FOR THE APPOINTMENT OF MEMBER-
MANAGER FOR A PERIOD OF 35 YEARS WHO MAY NOT BE REMOVED
DURING THE INITIAL PERIOD EXCEPT FOR CAUSE BASED UPON
GROSS MISCONDUCT, GROSS NEGLIGENCE OR DISHONESTY. SEE
ARTICLE V AND SECTION 5.3.

THIS AGREEMENT PROVIDES FOR SPECIAL DISTRIBUTIONS AND
ALLOCATION OF CASH FLOW, PROFITS AND LOSSES WHICH MAY
RESULT IN PHANTOM INCOME FOR TAX PURPOSES. SEE ARTICLE IV.

THIS AGREEMENT PROVIDES FOR REQUIRED ADDITIONAL CAPITAL
CONTRIBUTIONS AND REDUCTION OF A MEMBER'S PERCENTAGE
INTEREST UNDER CERTAIN CIRCUMSTANCES. SEE ARTICLE III AND
SECTION 3.4 HEREOF.

THIS AGREEMENT ALLOWS FOR THE RETURN OF CERTAIN MEMBER'S
CAPITAL CONTRIBUTIONS WHILE THAT MEMBER RETAINS FULL
PERCENTAGE AND VOTING INTEREST. SEE ARTICLE IV.

IN THE EVENT A MEMBERSHIP UNIT IS ISSUED IN EXCHANGE FOR SERVICES RENDERED, OR TO BE RENDERED, THE FAIR MARKET VALUE OF SUCH INTEREST MAY BE REQUIRED TO BE INCLUDED IN THE GROSS INCOME OF THE MEMBER RECEIVING THE INTEREST. EACH PROPOSED MEMBER SHOULD CONSULT WITH THEIR OWN INDEPENDENT TAX ADVISOR AS TO THE APPLICATION AND IMPACT OF THIS MATTER. FAILURE TO PROVIDE THE SERVICES SHALL RESULT IN THE CANCELLATION OF SUCH MEMBERSHIP INTERESTS.

THIS AGREEMENT PROVIDES FOR CERTAIN PAYMENTS TO BE MADE TO ENTITIES WHICH ARE NOT MEMBERS AND IN WHICH SOME MEMBERS HAVE A FINANCIAL INTEREST. SEE ARTICLE IV AND SECTION 4.9 HEREOF.

THIS AGREEMENT PROVIDES AUTHORITY FOR THE MANAGER TO ENTER INTO TRANSACTIONS ON BEHALF OF THE COMPANY UP TO TWENTY-FIVE MILLION DOLLARS. SEE SECTION 5.4(G).

THE PERCENTAGE DISTRIBUTION OF PROFIT PROVIDED IN THIS AGREEMENT DIFFERS FROM THE ACTUAL PERCENTAGE OF CASH CONTRIBUTIONS. SEE SECTIONS 1.24 AND ARTICLE IV.

MEMBER'S VOTING INTERESTS ARE DIFFERENT THAN MEMBER'S PERCENTAGE INTERESTS DESPITE EQUAL CONTRIBUTIONS OF CAPITAL. SEE SECTION 1.23 HEREOF.

THERE ARE NO SUPER-MAJORITY VOTING REQUIREMENTS FOR ANY ACTION TO BE TAKEN. SEE ARTICLE V HEREOF.

THERE ARE SPECIAL QUORUM REQUIREMENTS FOR MEETINGS OF MEMBERS. SEE ARTICLE V

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NO ACTION MAY BE TAKEN WITHOUT MEMBER GERALD J. MARCIL'S SPECIFIC CONSENT. SEE SECTION 1.20, ARTICLE V AND ARTICLE VII. A MEMBER ACTING IN VIOLATION OF THIS SPECIAL CONSENT PROVISION SHALL BECOME PERSONALLY LIABLE FOR DAMAGES AND INDEMNIFICATION. SEE ARTICLE 5 AND SECTION 5.11.

THE MANAGER HAS THE RIGHT TO CAUSE THE COMPANY TO ELECT TO KEEP ITS BOOKS ON AN ACCRUAL BASIS. SEE ARTICLE VI AND SECTION 6.2.

Gerald J. Marcil and John Walsh (referred to individually as a Member and collectively as the Members) enter this Operating Agreement into effective as of May 29, 2001.

IT: A
 2 OF 9

1.25. "Profits and Losses" means, for each fiscal year or other period specified in this Agreement, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with IRC section 703(a)

1.26. The "Project" shall mean a parcel of approximately 2.33 acres located at 8000 and 8060 Manchester Avenue, in the City of Playa Del Rey, California (APN 4118-002-067 and 4118-002-101).

1.27. "Proxy" has the meaning set forth in the first paragraph of California Corporations code section 17001(ai). A Proxy may not be transmitted orally.

1.28. "Regulations" ("Reg") means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.29. "Substituted Member" is defined in Article VIII, Section 8.8.

1.30. "Successor in Interest" means an Assignee, a successor of a Person by merger or otherwise by operation of law, or a transferee of all or substantially all of the business or assets of a Person.

1.31. "Transfer" means, with respect to a Membership Interest, or any element of a Membership Interest, any sale, assignment, gift, Involuntary Transfer, or other disposition of a Membership Interest or any element of such a Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.32. "Triggering Event" is defined in Article VIII, Section 8.3.

1.33. "Vote" means a written consent or approval, a ballot cast at a Meeting, or a voice vote.

1.34. "Voting Interest" means, with respect to a Member, the right to Vote or participate in management and any right to information concerning the business and affairs of the Company provided under the Act, except as limited by the provisions of this Agreement. A Member's Voting Interest is set forth on Exhibit B, and is different than a Member's Percentage Interest despite equal Capital Contribution.

ARTICLE II: ARTICLES OF ORGANIZATION

2.1. The Articles of Organization, attached hereto as Exhibit A, have previously been filed. Nothing in this Operating Agreement requires an amendment to the Articles.

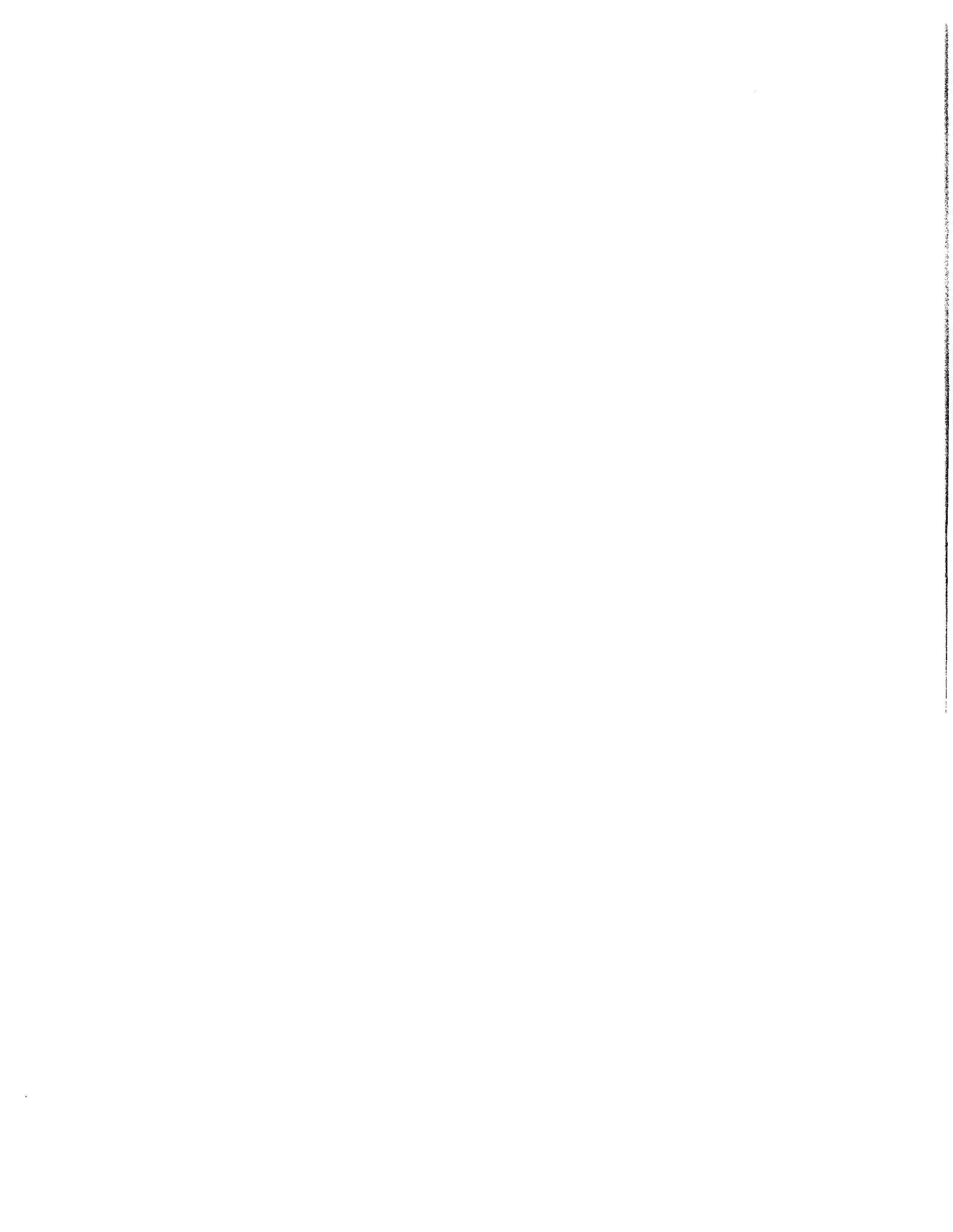
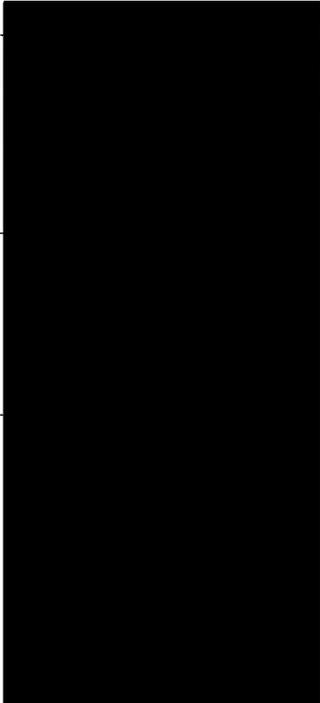
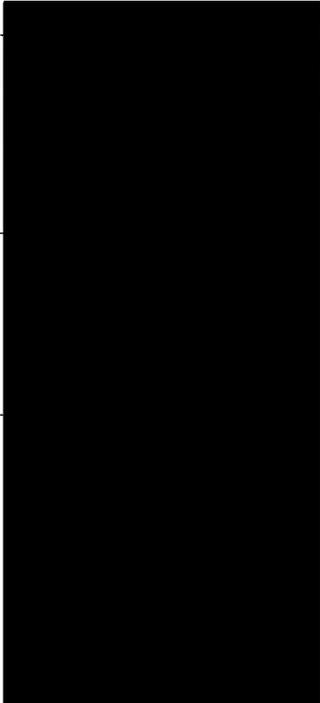


EXHIBIT B

CAPITAL CONTRIBUTION AND ADDRESSES OF MEMBERS
AS OF MAY, 2001

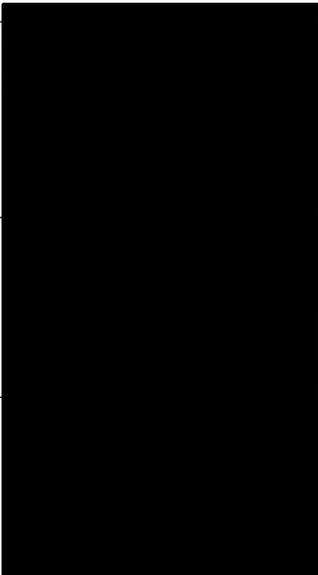
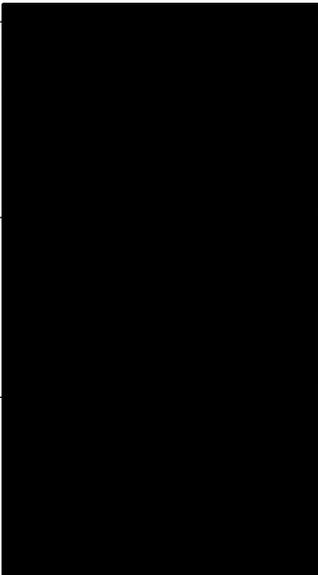
Member's Name	Member's Address	Member's Capital Contribution	Member Percent Interest	Member Voting Interest
Gerald J. Marcil		A sum up to \$1,650,000	50.00%	60.00%
John Walsh		A sum up to \$1,650,000	50.00%	40.00%

IT: A
 9 of 9

0 1 1 2 2

EXHIBIT B

CAPITAL CONTRIBUTION AND ADDRESSES OF MEMBERS
AS OF SEPTEMBER 1, 2002

<u>Member's Name</u>	<u>Member's Address</u>	<u>Member's Capital Contribution</u>	<u>Member Percent Interest</u>	<u>Member Voting Interest</u>
Gerald J. Marcil		A sum up to \$1,650,000	60.00%	60.00%
John P. Walsh		A sum up to \$1,650,000	40.00%	40.00%

9/2
27



State of California
 Bill Jones
 Secretary of State

ENDORSED - FILED
 in the office of the Secretary of State
 of the State of California

OCT 22 2002

BILL JONES, Secretary of State

**LIMITED LIABILITY COMPANY
 CERTIFICATE OF MERGER**

(Corporations Code Section 17552)

Filing Fee – Please see instructions.

IMPORTANT – Read instructions before completing this form.

This Space For Filing Use Only

1. Name of surviving entity: Manchester Development, LLC	2. Type of entity: LLC	3. Secretary of State File Number: 200113110043	4. Jurisdiction: CALIFORNIA
5. Name of disappearing entity: VA ROCK EIGHTY, LLC	6. Type of entity: LLC	7. Secretary of State File Number: 200129210071	8. Jurisdiction: NEVADA
Future effective date, if any:	Month	Day	Year

If a vote was required pursuant to Section 17551 or Section 1113, enter the outstanding interests of each class entitled to vote on the merger and the percentage of vote required:

Surviving Entity

Disappearing Entity

<u>Class entitled to vote</u>	<u>Percentage of vote required</u>	<u>Each class entitled to vote</u>	<u>Percentage of vote required</u>
Memberships	51 %	1 Memberships	51%

The principal terms of the agreement of merger were approved by a vote of the number of interests or shares of each class that equaled or exceeded the vote required.

SECTION 12 IS ONLY APPLICABLE IF THE SURVIVING ENTITY IS A DOMESTIC LIMITED LIABILITY COMPANY, COMPLETE ITEM 12 AND PROCEED TO ITEM 15.

Requisite changes to the information set forth in the Articles of Organization of the surviving limited liability company resulting from the merger. Attach additional pages if necessary. **None**

SECTIONS 13 AND 14 ARE APPLICABLE IF THE SURVIVING ENTITY IS A FOREIGN LIMITED LIABILITY COMPANY OR OTHER BUSINESS ENTITY. COMPLETE ITEMS 13 AND 14.

Principal business address of the surviving foreign limited liability company or other business entity:

Address:

City: State: Zip Code:

Other information required to be stated in the Certificate of Merger by the laws under which each constituent other business entity is organized. Attach additional pages if necessary.

Number of pages attached, if any:

I certify that the statements contained in this document are true and correct of my own knowledge. I declare that I am the person who is executing this instrument, which execution is my act and deed.

Gerald J. Marcil 9-22-02
 Signature of Authorized Person for the Surviving Entity Date

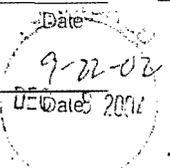
Gerald J. Marcil, Manager 9-22-02
 Type or Print Name and Title of Person Signing Date

Signature of Authorized Person for the Surviving Entity Date

Gerald J. Marcil 9-22-02
 Signature of Authorized Person for the Disappearing Entity Date

Type or Print Name and Title of Person Signing

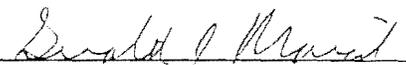
Gerald J. Marcil, Member
 Type or Print Name and Title of Person Signing



WRITTEN CONSENT OF MEMBERS TO MERGER

We, the undersigned, representing at least a majority in interest of LAVA ROCK EIGHTY, LLC, do hereby consent to the merger of LAVA ROCK EIGHTY, LLC, a Nevada Limited Liability Company and MANCHESTER DEVELOPMENT, LLC, a California Limited Liability Company, the surviving entity to be MANCHESTER DEVELOPMENT, LLC, upon the terms and provisions of the Agreement of Merger between said entities.

WITNESS our Signatures this 1st day of September, 2002.


GERALD J. MARCIL, MEMBER

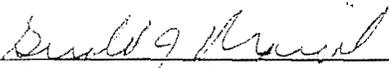
4
2 OF 4

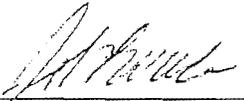
DEC 9 2002

WRITTEN CONSENT OF MEMBERS TO MERGER

We, the undersigned, representing at least a majority in interest of MANCHESTER DEVELOPMENT, LLC, do hereby consent to the merger of LAVA ROCK EIGHTY, LLC, a Nevada Limited Liability Company and MANCHESTER DEVELOPMENT, LLC, a California Limited Liability Company, the surviving entity to be MANCHESTER DEVELOPMENT, LLC, upon the terms and provisions of the Agreement of Merger between said entities.

WITNESS our Signatures this 1st day of September, 2002.


GERALD J. MARCIL


JOHN P. WALSH

3 4 4



LEAD SHEET

02-0638446

RECORDED/FILED IN OFFICIAL RECORDS
 RECORDER'S OFFICE
 LOS ANGELES COUNTY
 CALIFORNIA
 MAR 18 2002 AT 8 A.M.

SPACE ABOVE THIS LINE FOR RECORDERS USE

TITLE(S)

DEED

FEE

D.T.T.

FEE \$33	SS
A.F.N.F. 94	3

CODE

20

CODE

19

CODE

9

NOTIFICATION SENT-\$40

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown

4118 002 067

002

THIS FORM IS NOT TO BE DUPLICATED

Description: Los Angeles, CA Document-Year.DocID 2002.638446 Page: 1 of 4

LG-06-07-2006 04-52-44 PM Comment: 4118-2-101

REC 6002

Stewart Title

2

RECORDING REQUESTED BY

02 0638446

WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO

Gerald Marcil
43-D Malaga Cove Plaza
PVE., CA 90274

GRANT DEED

TITLE ORDER NO. 340117657 ESCROW NO. _____ APN NO. 4118-2-67-101
THE UNDERSIGNED GRANTOR(S) DECLARE(S) 0 CITY TAX \$ 0 R&T 11911 Value
& Consideration of this property at less than \$100.
City of _____ and _____

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
LAVA ROCK EIGHTY, LLC, a Nevada Limited Liability Company, as to an undivided 60%, as tenants
in common
hereby GRANT(s) to MANCHESTER DEVELOPMENT, LLC a California limited liability company

the following described real property in the County of LOS ANGELES State of California:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

THIS CONVEYANCE CHANGES THE MANNER IN WHICH
TITLE IS HELD, GRANTOR(S) AND GRANTEE(S)
REMAIN THE SAME AND CONTINUE TO HOLD
THE SAME PROPORTIONATE INTEREST
R & T 11911.
LAVA ROCK EIGHTY, LLC.,
A NEVADA LIMITED LIABILITY COMPANY
BY: HOLLYWOOD VISTA APARTMENTS, LTD.
a California Limited Partnership
BY: Gerald J. Marcil
Gerald J. Marcil, Managing Member
of Woodglen Apts, LLC
General Partner

Dated December 15th, 2001

STATE OF CALIFORNIA)
COUNTY OF _____) S.S.
On December 15th, 2001 before me, Connie J. Burleson
(here insert name and title of the officer), personally appeared Gerald J. Marcil

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

WITNESS my hand and official seal.

Signature Connie J. Burleson



DOCUMENT PROVIDED BY STEWART TITLE OF CALIFORNIA, INC. GRANTDEED.DOC

YEAR
2001

Member's Share of Income,
Deductions, Credits, etc.

CALIFORNIA SCHEDULE

K-1 (568)

For calendar year 2001 or fiscal year beginning month MAY day 9 year 2001, and ending month DEC day 31 year 2001
 Member's identifying number [redacted] LLC's FEIN [redacted]
 Member's name, address, state, and ZIP Code [redacted] Secretary of State file number 200113110043
 LLC's name, address, state, and ZIP Code [redacted]

- (1) Individual (5) General Partnership (8) LLC
 (2) S Corporation (6) Limited Partnership (9) IRA/KEOGH/SEP
 (3) Estate/Trust (7) LLP (10) Exempt Organization
 (4) C Corporation
- B Is this member a foreign member? Yes No
 C Enter member's percentage (without regard to special allocations) of:
 (i) Before decrease or termination (ii) End of year
 Profit sharing % 60.0000000 %
 Loss sharing % 60.0000000 %
 Ownership of capital % 60.0000000 %

D Member's share of liabilities:
 Nonrecourse * \$ _____
 Qualified nonrecourse financing * \$ 3,120,000.
 Other * \$ 0.

E Tax shelter registration number _____
 F (1) Check here if this is a publicly traded partnership as defined in IRC Section 469(k)(2)
 (2) Check here if this is an investment partnership (R&TC Sections 17955 and 23040.1)
 G Check here if this is: (1) A final Schedule K-1 (568) (2) An amended Schedule K-1 (568)
 H Is this member a nonresident of California? Yes No

I Analysis of member's capital account:

(a) Capital account at beginning of year	(b) Capital contributed during year	(c) Member's share of line 3, line 4, and line 7, Form 568, Schedule M-2	(d) Withdrawals and distributions	(e) Capital account at end of year (combine column (a) through column (d))
	<u>1,638,800.</u>	<u>-3,079,453.</u>		<u>-1,440,653.</u>

Refer to Member's Instructions for Schedule K-1 (568) before entering information from this schedule on your California return.

(a) Distributive share item	(b) Amount from federal Schedule K-1 (1065)	(c) California adjustments	(d) Total amounts using California law (Combine column (b) and column (c))	(e) California source amounts and credits
1 Ordinary income (loss) from trade or business activities				
2 Net income (loss) from rental real estate activities				
3 Net income (loss) from other rental activities				
4 Portfolio income (loss):				
a Interest				
b Dividends				
c Royalties				
d Net capital gain (loss)				
e Other portfolio income (loss)				
5 Guaranteed payments to members				
6 Net gain (loss) under IRC Section 1231 (other than due to casualty or theft)				
7 Other income (loss)				
8 Charitable contributions				
9 Expense deduction for recovery property (R&TC Sections 17267.2, 17267.6, 17268, and IRC Section 179)				
10 Deductions related to portfolio income	<u>2,097.</u>	<u>-480.</u>	<u>1,617.</u>	<u>1,617.</u>
11 Other deductions <u>STMT</u>	<u>3,362.</u>		<u>3,362.</u>	<u>3,362.</u>

3 Q 13

MANCHESTER DEVELOPMENT, LLC
43 MALAGA COVE PLAZA, SUITE D
PALOS VERDES ESTATES, CA 90274-1360

F.E.I.N. [REDACTED]
FORM 1065, F.Y.E. DECEMBER 31, 2001

ELECTION TO AMORTIZE LIMITED LIABILITY COMPANY
ORGANIZATION EXPENSES, UNDER IRC SECTION 709:

THE LIMITED LIABILITY COMPANY ELECTS, PURSUANT TO
IRC SECTION 709, TO AMORTIZE ITS ORGANIZATIONAL
EXPENSES OVER A 60-MONTH PERIOD. THE PERIOD IS TO
BEGIN ON MAY 9, 2001, THE DATE ON WHICH THE
LIMITED LIABILITY COMPANY COMMENCED DOING BUSINESS.

ELECTION TO AMORTIZE START-UP EXPENSES,
UNDER IRC SECTION 195:

THE LIMITED LIABILITY COMPANY ELECTS, PURSUANT TO
IRC SECTION 195, TO AMORTIZE ITS START-UP EXPENSES
A 60-MONTH PERIOD, FOR EXPENDITURES
INCURRED IN STARTING UP A BUSINESS WHICH
COMMENCED MAY 9, 2001.

ELECTION TO ADOPT THE RECURRING ITEM EXCEPTION,
UNDER IRC SECTION 461(H)(3):

THE LIMITED LIABILITY COMPANY ELECTS, PURSUANT TO
IRC SECTION 461(H)(3), TO ADOPT THE RECURRING ITEM
EXCEPTION WITH RESPECT TO ALL RECURRING ITEMS,
INCLUDING PROPERTY TAXES, FOR ALL RENTAL REAL
ESTATE ACTIVITIES.

5 Q 13



PALOS VERDES DEVELOPERS
MANAGEMENT COMPANY

TO: Vicki Dorfman
FROM: Jerry Marcil
RE: Change of Grand Deed, escrow #01398097

Dear Vicki,

This memo is your authorization to change the vesting on your grant deed from Manchester Development, LLC to Manchester Development LLC as to an undivided 40% interest and Lava Rock Eighty LLC as to an undivided 60% interest, as tenants-in-common.

The Seller would prefer if you just inserted this change unto the Grant Deed without getting it resigned. This is O.K. with me. Please contact the Seller to verify.

Thank you and Best Regards,

Gerald J. Marcil
Gerald J. Marcil

CC: Renee Lindsey
John Walsh

B-2

*Rev. Rul. 90-17; 1990-1 C.B. 119;
1990 IRB LEXIS 71, *; 1990-8 I.R.B. 13*

Revenue Ruling 90-17

Rev. Rul. 90-17; 1990-1 C.B. 119; 1990 IRB LEXIS 71; 1990-8 I.R.B. 13

January 1990

[*1]

SUBJECT MATTER: Continuation of Partnership

SUMMARY:

Three merging partnership contributed their assets to a resulting partnership in exchange for an interest in the resulting partnership. The interests in the resulting partnership were then distributed proportionately to the respective partners of the merging partnerships. Under I.R.C. § 708(b)(2)(A), the resulting partnership could be considered a continuation of two of the merging partnerships whose members owned an interest of 50 percent in the capital and profits of the resulting partnership. However, under Treas. Reg. § 1.708-1(b)(2)(i), the resulting partnership was considered to be a continuation of the partnership that contributed the greatest dollar value of assets to the resulting partnership. The IRS held that I.R.C. § 761(e) did not cause the termination of the resulting partnership. Because the resulting partnership was considered to be a continuation of one of the merging partnerships under I.R.C. § 708(b)(2)(A), liquidating distributions by the other merging partnerships of 50 percent or more of the capital and profits interest in the resulting partnership did not cause the resulting partnership to terminate under § 708(b)(1)(B).

APPLICABLE SECTIONS:

±Section 708.-Continuation of Partnership
±26 CFR 1.708-1: Continuation of partnership.
(Also Section 761.)

TEXT:

Continuation of partnership. Section 761 (e) of the Code does not cause the resulting partnership of a partnership merger to terminate under section 708. Rev. Ruls. 68-289, 1968-1 C.B. 314 and **77-458, 1977-2 C.B. 220** clarified.

ISSUE

If a partnership resulting from a partnership merger is considered a continuation of one of the merging partnerships under section 708 (b) (2) (A) of the Internal Revenue Code, do liquidating distributions by the other merging partnerships of 50 percent or more of the capital and profits interests in the resulting partnership cause the resulting partnership to terminate under section 708 (b) (1) (B) because of the application of section 761 (e)?

FACTS

A and B each owned a 50 percent interest in *RP*, a partnership having assets worth \$500x. B and C each owned a 50 percent interest in *MP1*, a partnership having assets worth \$400x. D

and *E* each owned a 50 percent interest in *MP2*, a partnership having assets worth \$100x. For business reasons independent of federal income tax consequences, the parties agreed to merge *RP*, *MP1*, and *MP2*. The merger was effected by each merging partnership contributing [*2] its assets to the resulting partnership in exchange for an interest in the resulting partnership. With respect to the interests in the resulting partnership *RP* received 50 percent, *MP1* received 40 percent, and *MP2* received 10 percent. The interests in the resulting partnership were then distributed proportionately to the respective partners of *RP*, *MP1* and *MP2*. After the merger transaction, the interests in the resulting partnership were held, 25 percent by *A*, 45 percent by *B*, 20 percent by *C*, and 5 percent each by *D* and by *E*.

LAW AND ANALYSIS

¶Section 708 (a) of the Code provides that an existing partnership shall be considered as continuing until such time as it is deemed terminated under section 708 (b).

Section 708 (b) (1) of the Code provides rules of general application governing the termination of partnerships. Section 708 (b) (1) (B) provides that a partnership shall be considered terminated if, within a 12-month period, there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 708 (b) (2) of the Code provides rules of special application governing the termination of partnerships involved in mergers, consolidations, and divisions. [*3] Section 708 (b) (2) (A) provides that, in the case of a merger or consolidation of two or more partnerships, the resulting partnership shall be a continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

¶Section 1.708-1 (b) (2) (i) of the Income Tax Regulations provide that, if a resulting partnership can, under section 708 (b) (2) (A) of the Code, be considered a continuation of more than one of the merging or consolidating partnerships, it shall be considered the continuation of the partnership that is credited with the contribution of the greatest dollar value of assets to the resulting partnership. Any other merging or consolidating partnership shall be considered as terminated.

Section 761 (e) of the Code, which was added by the Tax Reform Act of 1984, section 75 (b), 1984-3 C.B. (Vol. 1) 1, 102, provides that, except as otherwise provided in regulations, for purposes of section 708, any distribution of an interest in a partnership (not otherwise treated as an exchange) shall be treated as an exchange.

In Rev. Rul. 68-289, 1968-1 C.B. 314, three partnerships, *P1*, *P2*, and *P3* [*4] are merged. All three partnerships have the same partners and, therefore, under section 708 (b) (2) (A) of the Code, the partnership resulting from the merger could be treated as the continuations of either *P1*, *P2* or *P3*. However, because *P3* contributes the greatest dollar value of assets, the resulting partnership is considered the continuation of *P3*. *P1* and *P2* are treated as having first transferred their assets and liabilities to *P3* in exchange for partnership interests and then as having distributed the *P3* interests in liquidation.

Rev. Rul. 77-458, 1977-2 C.B. 220, considers the proposed merger of ten partnerships, *P1* - *P10*. These partnerships all have the same equal partners, *A* and *B*. Under the plan of merger *P2* - *P10* will transfer all of their assets and liabilities to *P1* (the largest partnership by dollar value of assets) in exchange for partnership interests in *P1*. *P2* - *P10* will then distribute their interests in *P1* to *A* and *B*. **Rev. Rul. 77-458, 1977-2 C.B. 220** concludes that the partnership resulting from the merger of *P1* - *P10* will be considered the continuation of *P1* because *P1* will contribute the greatest dollar value of assets to the resulting partnership.

Under section 708 (b) (2) (A) of the Code, [*5] the partnership resulting from the merger of

RP, *MP1*, and *MP2* can be considered the continuation of either *RP* or *MP1*. This is because both the members of *RP* (*A* and *B*) and the members of *MP1* (*B* and *C*) become the owners of more than 50 percent of the capital and profits interests in the resulting partnership. In accordance with section 1.708-1 (b) (2) (i) of the regulations, however, the resulting partnership is the continuation of *RP*, the partnership that contributes the greatest dollar value of assets (\$500x).

Consistent with the analysis in Rev. Rul. 68-289, 1968-1 C.B. 314, *MP1* and *MP2* are considered to have contributed their assets to *RP* in exchange for ownership interests in *RP*. *MP1* and *MP2* then liquidate and distribute their assets, the *RP* interests, to their partners. Because the *RP* partnership interests are received 40 percent by *MP1* and 10 percent by *MP2*, a total of 50 percent of the *RP* interests is distributed in the course of the merger. If section 761 (e) of the Code causes the distributions to be treated as exchanges to which section 708 (b) (1) (B) applies, *RP* will terminate.

The question thus presented is whether sections 761 (e) and 708 (b) (1) (B) of the Code have the effect of adding [*6] an additional requirement to section 708 (b) (2) (A), namely, that fewer than 50 percent of the interests in the resulting partnership are distributed in the merger.

Section 708 (b) (2) (A) of the Code applies only to mergers and consolidations. Together with section 1.708-1 (b) (2) (i) of the regulations, it provides the exclusive means for deciding whether a partnership involved in a merger will terminate. Section 708 (b) (2) (A) does not define the term "merger." However, as illustrated in Rev. Rul. 68-289, 1968-1 C.B. 314 and **Rev. Rul. 77-458, 1977-2 C.B. 220**, a merger includes the distribution by the terminating partnerships of interests in the resulting partnership. Thus, section 708 (b) (2) (A) is a statute that creates a specific rule for a particular transaction, a merger, and that transaction includes the distribution of resulting partnership interests.

Paragraphs (1) and (2) of section 708 (b) set forth, respectively, a general rule on the termination of partnerships and specific rules on partnership terminations where a partnership merger, consolidation, or division is involved. The specific rules are clearly exceptions to the general rule and intended to override the general rule in the limited circumstances [*7] to which they apply. Even if this relationship were not clear from the provisions themselves, a basic principle of statutory construction is that a specific statutory provision, like section 708 (b) (2), is not controlled or nullified by a more general one, like section 708 (b) (1), unless that result is clearly intended. *Bulova Watch Co. v. United States*, 365 U.S. 753, 6 L. Ed. 2d 72, 81 S. Ct. 864, 1961-1 C.B. 782 (1961). The legislative history of section 708 (b) (1) (B) neither states nor implies a congressional intent that the provisions of section 708 (b) (1) (B) take precedence over the partnership merger rules under section 708 (b) (2) (A). See S. Rep. No. 1622, 83d Cong., 2d Sess. 388 (1954), and H.R. Rep. No. 2543, 83d Cong., 2d Sess. 61 (1954). Nor does the legislative history of section 761 (e) state or imply a congressional intent to change the relationship between the provisions of sections 708 (b) (1) (B) and

708 (b) (2) (A). See H.R. Rep. No. 432, 98th Cong., 2d Sess. 1225-27 (1984), S. Prt. No. 169 (Vol. I), 98th Cong., 2d Sess. 236-38 (1984), and H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 863-65 (1984), 1984-3 C.B. (Vol. 2) 1, 117-19.

In other words, the purpose [*8] of the exception contained in section 708 (b) (2) (A) of the Code and section 1.708-1 (b) (2) (i) of the regulations is to provide for the continuation of one of the merging partnerships as the resulting partnership if the 50 percent test of those provisions is met, notwithstanding the provisions of the general rule of section 708 (b) (1). Consistent with this purpose, a resulting (continuing) partnership in a merger to which section 708 (b) (2) (A) applies is, as to the elements of the merger itself, excepted from the application of the termination provisions of section 708 (b) (1).

Since section 761 (e) of the Code cannot cause a termination of a partnership except through its effect on the term "exchange" in section 708 (b) (1) (B), and since a resulting partnership in a merger to which section 708 (b) (2) (A) applies is excepted from the application of section

708 (b) (1) as to the elements of the merger itself, section 761 (e) cannot cause the termination of the resulting partnership merely by virtue of its section 708 (b) (2) merger.

Thus, the distribution of a total of 50 percent of the *RP* interests by *MP1* and *MP2* during the course of the merger will not cause a termination of **[*9]** *RP* under section 708 (b) (1) (B) of the Code.

HOLDING

In a partnership merger, if the resulting partnership is considered a continuation of one of the merging partnerships under section 708 (b)-(2) (A) of the Code, liquidating distributions by the other merging partnerships of 50 percent or more of the capital and profits interest in the resulting partnership do not cause the resulting partnership to terminate under section 708 (b) (1) (B).

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 68-289, 1968-1 C.B. 314 and **Rev. Rul. 77-458, 1977-2 C.B. 220** are clarified.

Service: **Get by LEXSEE®**

Citation: **1990-1 C.B. 119**

View: Full

Date/Time: Friday, June 17, 2011 - 2:27 PM EDT

* Signal Legend:

-  - Warning: Negative treatment is indicated
-  - Questioned: Validity questioned by citing refs
-  - Caution: Possible negative treatment
-  - Positive treatment is indicated
-  - Citing Refs. With Analysis Available
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 Executive Director

No. 2009/041

September 14, 2009

TO COUNTY ASSESSORS:

APPLICATION OF THE STEP TRANSACTION DOCTRINE

Recently, we have received numerous inquiries regarding change in ownership transactions involving properties where the current market value is less than the factored base year value. Specifically, a property owner transfers his/her property to a second party, and then the second party transfers the property back to the original owner, often on the same day. The apparent intended consequence is to record a change in ownership that would establish a new base year value at a lower current market value, thereby reducing property tax obligations. County assessors have inquired as to whether the step transaction doctrine could be applied to these transactions. The answer is yes.

The step transaction doctrine is applied when a series of transfers are used to transfer real property in order to circumvent the change in ownership laws.¹ The general principle is that whether a transaction is a change in ownership depends upon the substance of a transaction rather than its form. That is, the doctrine focuses on whether each step of a transaction may stand alone or, rather, whether the transaction should be treated as a whole.

In *Shuwa Investments Corp. v. County of Los Angeles*, the California Court of Appeal set forth three tests for determining the application of the step transaction doctrine for property tax purposes:²

- *End result test.* Under the end result test, if it appears that a series of transfers were really component parts of a single transaction intended from the beginning to be taken for purposes of reaching the end result, the step transaction doctrine may apply and the intermediate steps may be disregarded.
- *Interdependence test.* Under the interdependence test, if the steps or transfers taken were so interdependent that the legal relations created by one transaction or transfer would have been fruitless (apart from the parties' intention to qualify for an exclusion) without completing the entire series of steps, then the step transaction doctrine may apply and the intermediate steps may be disregarded.
- *Binding commitment test.* Under the binding commitment test, if the structure of the transactions establishes that there is an agreement that once the first step or transfer is

¹ *Shuwa Investments Corp. v. County of Los Angeles* (1991) 1 Cal.App.4th 1635, 1648-1649.

² *Shuwa, supra*, at p. 1648.

taken that the parties are obligated to complete the remainder of the steps, the step transaction doctrine may apply and the intermediate steps may be disregarded.

While the same set of facts may meet the criteria for more than one of the three tests, only one test needs to be satisfied for the step transaction doctrine to apply.³ The existence of a business purpose for any of the transfers does not necessarily prevent the step transaction doctrine from being applied in a particular situation; however, it is a factor, along with all other facts and circumstances, that should be considered when analyzing the entire transaction to determine whether the step transaction doctrine should be applied.

When processing change in ownership transactions, county assessors should be particularly cognizant of multiple transactions involving the same parties. To ensure that these tax-avoidance transactions do not involve employee-owned property, we remind county assessors that they should have effective procedures for maintaining the integrity of assessments of employee-owned property (see Letter To Assessors 2008/058).

If you have further questions regarding the step transaction doctrine, please contact the Assessment Services Unit at 916-445-4982.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:sk

³ *McMillin-BCED/Miramar Ranch North v. County of San Diego* (1995) 31 Cal.App.4th 545, 556.

Like-Kind Exchanges (and section 1043 conflict-of-interest sales)

Department of the Treasury Internal Revenue Service

Attach to your tax return.

Name(s) shown on tax return

Identifying number

HOLLYWOOD VISTA APARTMENTS, LTD.

Part I Information on the Like-Kind Exchange FORM 8824 NO. 1

Note: If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.

- 1 Description of like-kind property given up REAL ESTATE: LOS ANGELES, CA
2 Description of like-kind property received REAL ESTATE: LOS ANGELES, CA
3 Date like-kind property given up was originally acquired 06/29/87
4 Date you actually transferred your property to other party 11/14/01
5 Date like-kind property you received was identified 10/24/01
6 Date you actually received the like-kind property from other party 10/24/01
7 Was the exchange made with a related party? No

Part II Related Party Exchange Information

8 Name of related party
Address (no., street, and apt., room, or suite no.)
City or town, state, and ZIP code
Relationship to you

- 9 During this tax year did the related party sell or dispose of the like-kind property received from you in the exchange?
10 During this tax year did you sell or dispose of the like-kind property you received?

- 11 If one of the exceptions below applies to the disposition, check the applicable box:
a The disposition was after the death of either of the related parties.
b The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.
c You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as its principal purpose.

Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received

Caution: If you transferred and received (a) more than one group of like-kind properties or (b) cash or other (not like-kind) property, see Reporting of multi-asset exchanges in the instructions.

Note: Complete lines 12 through 14 only if you gave up property that was not like-kind. Otherwise, go to line 15.

Table with 25 rows and 2 columns. Row 12: Fair market value (FMV) of other property given up. Row 13: Adjusted basis of other property given up. Row 14: Gain or (loss) recognized on other property given up. Row 15: Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred. Row 16: FMV of like-kind property you received. Row 17: Add lines 15 and 16. Row 18: Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15. Row 19: Realized gain or (loss). Subtract line 18 from line 17. Row 20: Enter the smaller of line 15 or line 19, but not less than zero. Row 21: Ordinary income under recapture rules. Row 22: Subtract line 21 from line 20. Row 23: Recognized gain. Add lines 21 and 22. Row 24: Deferred gain or (loss). Subtract line 23 from line 19. Row 25: Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23.

ASSIGNMENT OF MEMBER INTEREST IN LAVA ROCK EIGHTY, LLC,
A Nevada Limited Liability Company

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned HOLLYWOOD VISTA APARTMENTS, LTD., a California Limited Partnership, ("Assignor"), Sole Member of Lava Rock Eighty, LLC, a Nevada Limited Liability Company ("Company"), does hereby assign, transfer and warrant to GERALD J. MARCIL, an individual, the entire Membership Interest in and to the Company.

This assignment includes, without limitation, all of Assignee's rights to exercise all powers as a Member under the Operating Agreement of the Company, as well as all other rights of Assignee in and to the Company and the income, liabilities, profits, losses, deductions, credits or similar items which may accrue to the Company commencing on the date of this Assignment.

This assignment is subject to the terms of the Operating Agreement of the Company in effect as to the date of this Assignment. A copy of the Operating Agreement is attached hereby as Exhibit "A", for reference. Assignee hereby acknowledges receipt of a copy of said Operating Agreement. This Assignment is in accordance with Section 6.4 of the Operating Agreement of the Company concerning Transfer of Interests in the Company.

Upon execution of this Assignment, Assignor ceases to be a Member of the Company. Further, Assignee hereby relieves Assignor from any and all liability in connection with the Company, and in any matter relating to the operations or activities of the Company in the past, present or future.

IN WITNESS WHEREOF, the parties hereby have executed this Assignment of Member Interest in Lava Rock Eighty, LLC, A Nevada Limited Liability Company

ASSIGNOR: HOLLYWOOD VISTA APARTMENTS, LTD.,
A California Limited Partnership

By: Gerald J. Marcil
Hollywood Vista Apartments, Ltd., A California Limited Partnership, Gerald J. Marcil, Managing Member of Woodglens Apartments, LLC, General Partner

ASSIGNEE: GERALD J. MARCIL, an individual

By: Gerald J. Marcil
Gerald J. Marcil

Do not date

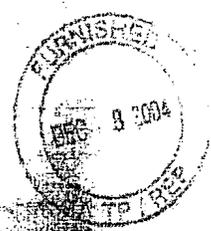


EXHIBIT: B
PAGE: 1 OF 1



DEAN HELLER
 Secretary of State
 202 North Carson Street
 Carson City, Nevada 89701-4201
 (775) 684 5708

**Amendment to
 Articles of
 Organization**
 (PURSUANT TO NRS 86.221)

Office Use Only:

FILED # LLC10077-01

OCT 23 2002

Important: Read attached instructions before completing form.

IN THE OFFICE OF
 DEAN HELLER, SECRETARY OF STATE

**Certificate of Amendment to Articles of Organization
 For a Nevada Limited Liability Company**
 (Pursuant to NRS 86.221)
 - Remit in Duplicate -

LAVA ROCK EIGHTY, LLC LLC 10077-2001

1. Name of limited-liability company: _____

2. The articles have been amended as follows (provide articles numbers, if available):*

Item 4.1 Transfer of Member interest in LLC From: Hollywood Vista Apartments, Ltd.,
 a California limited partnership

To: Gerald J. Marcil, an individual

3. Indicate whether the company is managed by managers or members: Member

4. Signature (must be signed by at least one manager or by a managing member).

Gerald J. Marcil
 Signature Gerald J. Marcil

* 1) If adding managers, provide names and addresses

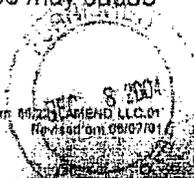
2) If amending company name, it must contain the words "Limited-Liability Company,"
 "Limited Company," or "Limited" or the abbreviations "Ltd.," "L.L.C.," or "L.C.," "LLC" or "LC."
 The word "Company" may be abbreviated as "Co."

FILING FEE: \$150.00

IMPORTANT: Failure to include any of the above information and remit the proper fees may cause this filing to be rejected.

EXHIBIT: C
 PAGE 1 OF 3

Nevada Secretary of State Form 61220 AMEND LLC.01
 Revised on 08/07/01



NAME: LAVA ROCK EIGHTY LLC
(MEMBERS)

FILE TYP/NR LLC 010077-2001 ST NEVADA

STATUS: DEFAULTED : 10-01-02

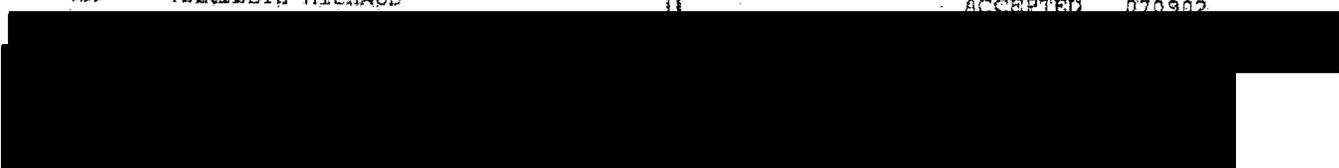
TYPE: LLC

PURPOSE: ALL LEGAL ACTIVITIES
AIR 2CC

ORG ON SEP 14, 2001 EXP 09-14-2501
NUMBER OF PAGES FILED: 1 AMC

RA NBR: 134768

LIST OF OFFICERS FOR 02 -- 03 FILED ON 07-09-02 AMENDED ON 07-09-02 CXE
RA MARIBETH MICHAUD ACCEPTED 070902



CMD?
PA1=MENU PF3=PAGE->

PF5=END INQ

EXHIBIT: C
PAGE: 2 OF 3



NAME: LAVA ROCK EIGHTY LLC
(MEMBERS)
FILE TYP/NR LLC 010077-2001 LLC PF4-PAGE<<
10-23-02 OTHER AMENDMENT
CERTIFICATE OF AMENDMENT FILED AMENDING MEMBER. (1) PG CHM
08-19-02 OTHER AMENDMENT
CERTIFICATE OF AMENDMENT TO ARTICLES OF ORGANIZATION FILED AMENDING MEMBER:
(1) PG. FXE
07-09-02 RA RESOLUTION
BRENT P. HOLDERMAN
111 W. PROCTOR STREET CARSON CITY NV 89703 RAA

CMD?
PA1=MENU

PFS=KND INQ

EXHIBIT: C
PAGE 3 OF 3



*231 F.3d 541, *; 2000 U.S. App. LEXIS 26829, **;
2000-2 U.S. Tax Cas. (CCH) P50,806; 86 A.F.T.R.2d (RIA) 6722*

ESTATE OF HILDA ASHMAN, Appellant, v. COMMISSIONER OF INTERNAL REVENUE, Appellee.

No. 99-70280

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

231 F.3d 541; 2000 U.S. App. LEXIS 26829; 2000-2 U.S. Tax Cas. (CCH) P50,806; 86 A.F.T.R.2d (RIA) 6722; 25 Employee Benefits Cas. (BNA) 1586; 2000 Cal. Daily Op. Service 8573; 2000 Daily Journal DAR 11431

October 3, 2000, Argued and Submitted, Pasadena, California

October 26, 2000, Filed

PRIOR HISTORY: **[**1]** Appeal from a Decision of the United States Tax Court. Tax Ct. No. 15578-96. Joel Gerber, Tax Court Judge, Presiding.

DISPOSITION: AFFIRMED.

CASE SUMMARY:

PROCEDURAL POSTURE: Appeal was taken by the taxpayer from the decision of the United States Tax Court affirming appellee Commissioner of Internal Revenue's assessment of an income tax deficiency for distributions of retirement plan benefits.

OVERVIEW: In 1990, appellant taxpayer received a distribution from a qualified pension plan, part of which was rolled over within 60 days, and part of which was not. Her 1990 income tax return reported the full amount of the distribution was rolled over. In 1993, appellant received distributions from the portion that had not been rolled over, but did not report them as income. Appellee Commissioner of Internal Revenue assessed a deficiency for 1993, and appellant petitioned the United States Tax Court to set aside the deficiency. On appeal from affirmance of the deficiency, the court affirmed, applying the doctrine of consistency to prevent appellant from avoiding tax altogether by taking inconsistent positions for 1990 (successful rollover) and 1993 (distribution in 1990 taxable, but statute of limitations barred enforcement). The tax court had equitable power to apply the doctrine.

OUTCOME: Decision of the United States Tax Court was affirmed. Tax court had equitable power to apply doctrine of consistency, which it correctly applied to uphold taxation of retirement plan distributions in later year, which had been incorrectly reported as nontaxable rollover in earlier year.

CORE TERMS: consistency, tax return, rolled, statute of limitations, citations omitted, equitable, equitable powers, estoppel, qualified plan, judicial estoppel, historical facts, deadline, missed, matter of fact, administration of justice, calculations, disability, equitably, rollover, dignity, honesty, roll, tax year

LEXISNEXIS(R) HEADNOTES

Civil Procedure > Trials > Bench Trials

Tax Law > Federal Tax Administration & Procedure > Tax Court (IRC secs. 7441-7491) > General Overview

Tax Law > State & Local Taxes > Administration & Proceedings > Judicial Review

HN1 ⚡ A court of appeals reviews decisions of the United States Tax Court on the same basis as decisions in civil bench trials in district court, with no special deference paid to the tax court's conclusions of law.

Civil Procedure > Judgments > Preclusion & Effect of Judgments > Estoppel > Judicial Estoppel

HN2 ⚡ In referring to judicial estoppel in a phrasing similar to the "duty of consistency" the United States Court of Appeals for the Ninth Circuit has stated that judicial estoppel is sometimes also known as the doctrine of preclusion of inconsistent positions. That court has further explained that judicial estoppel is a doctrine which precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position.

Criminal Law & Procedure > Criminal Offenses > Fraud > Fraud Against the Government > Tax Fraud > Elements

Tax Law > Federal Tax Administration & Procedure > Collateral Estoppel & Res Judicata > General Overview

Tax Law > Federal Tax Administration & Procedure > Duty of Consistency

HN3 ⚡ While it is true that income taxes are intended to be settled and paid annually each year standing to itself, and that omissions, mistakes and frauds are generally to be rectified as of the year they occurred, courts recognize that a taxpayer may not, after taking a position in one year to his advantage and after correction for that year is barred, shift to a contrary position touching the same fact or transaction. When such a fact or transaction is projected in its tax consequences into another year there is a duty of consistency on both the taxpayer and the Commissioner of Internal Revenue with regard to it, whether or not there be present all the technical elements of an estoppel.

Tax Law > Federal Tax Administration & Procedure > Collateral Estoppel & Res Judicata > General Overview

HN4 ⚡ In the context of federal taxation, a person, with full knowledge of the facts, shall not be permitted to act in a manner inconsistent with his former position.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > Limited Jurisdiction

Tax Law > Federal Tax Administration & Procedure > Tax Court (IRC secs. 7441-7491) > General Overview

HN5 ⚡ The United States Tax Court is a court of limited jurisdiction and lacks general equitable powers.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > Limited Jurisdiction

Tax Law > Federal Tax Administration & Procedure > Tax Court (IRC secs. 7441-7491) > General Overview

Tax Law > State & Local Taxes > Administration & Proceedings > Judicial Review

HN6 ⚡ That the United States Tax Court lacks "general equitable powers" means only that the tax court is not empowered to override statutory limits on its power by forgiving interest and penalties that the United States Congress has imposed for nonpayment of taxes - but then no court is, unless the imposition would be unconstitutional.

Civil Procedure > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Tax Law > Federal Tax Administration & Procedure > Tax Court (IRC secs. 7441-7491) > General Overview

HN7 ⚡ While the United States Tax Court cannot act, equitably or otherwise, in a case over which it lacks or has lost jurisdiction, the tax court can act equitably in a case in

which it has jurisdiction. Thus, it does have a limited equitable power to act in a case that is properly before it.

Tax Law > Federal Tax Administration & Procedure > Duty of Consistency
Tax Law > Federal Tax Administration & Procedure > Tax Court (IRC secs. 7441-7491) > General Overview

HN8 ↓ Even if the United States Tax Court does not have far-reaching general equitable powers, it can apply equitable principles and exercise equitable powers within its own jurisdictional competence. In particular, it can apply the duty of consistency doctrine.

Governments > Legislation > Statutes of Limitations > Equitable Estoppel
Governments > Legislation > Statutes of Limitations > Time Limitations
Tax Law > Federal Tax Administration & Procedure > Duty of Consistency

HN9 ↓ The duty of consistency has the following elements: (1) a representation or report by the taxpayer; (2) on which the Commissioner of Internal Revenue has relied; and (3) an attempt by the taxpayer after the statute of limitations has run to change the previous representation or to recharacterize the situation in such a way as to harm the commissioner. If this test is met, the commissioner may act as if the previous representation, on which he relied, continued to be true, even if it is not. The taxpayer is estopped to assert the contrary.

Tax Law > Federal Income Tax Computation > Retirement Plans > Distributions (IRC secs. 402-403)

Tax Law > Federal Income Tax Computation > Retirement Plans > Rollovers, Vesting & Mergers (IRC secs. 401, 408-409, 411)

HN10 ↓ 26 U.S.C.S. § 402(c)(3) states that for a rollover of retirement benefits to be effective, the transfer must be made within 60 days of the receipt of the distribution.

Tax Law > Federal Income Tax Computation > Retirement Plans > General Overview
Tax Law > Federal Tax Administration & Procedure > Collateral Estoppel & Res Judicata > General Overview

Tax Law > Federal Tax Administration & Procedure > Duty of Consistency

HN11 ↓ The United States Tax Court may apply the duty of consistency doctrine in cases which come before it. That means that once a taxpayer has transfigured the true facts, the power to change them back to their old form may well be lost. The taxpayer cannot reshape them at will.

COUNSEL: Steven R. Mather, Kajan Mather and Barish, Beverly Hills, California, for the appellant.

Carol Barthel, Tax Division Department of Justice, Washington, D.C., for the appellee.

JUDGES: Before: Diarmuid F. O'Scannlain, Ferdinand F. Fernandez, and Johnnie B. Rawlinson, Circuit Judges. Opinion by Judge Fernandez.

OPINION BY: Ferdinand F. Fernandez

OPINION

[*541] FERNANDEZ, Circuit Judge:

The Estate of Hilda Ashman ¹ appeals the tax court's decision that the Commissioner of Internal Revenue properly held Ashman to the duty of consistency and, therefore, properly assessed a

deficiency for Ashman's 1993 tax year. We affirm.

FOOTNOTES

¹ Hilda Ashman filed an income tax return for 1990 and an income tax return for 1993. This litigation arises out of those filings. She is since deceased, and her estate is maintaining this action. For convenience, we will simply refer to her and it as Ashman.

BACKGROUND

****2** On or before December 19, 1990, Ashman received a distribution of \$ 725,502 from a qualified defined benefit pension plan. See 26 U.S.C. § 401. In order to avoid income taxation of the distributed ***542** amount, she was required to roll it over into another qualified plan or account within 60 days. See 26 U.S.C. § 402(c)(3). She did manage to do that with the bulk of the money, but she missed the deadline as to \$ 100,502.21. Nonetheless, in her 1990 income tax return she reported that the full \$ 725,502 had been rolled over from her former plan to Merrill Lynch, as a result of which none of it was taxable.

Ashman did not explain that she had, in fact, missed a deadline as to a portion of the amount. She did not tell the Internal Revenue Service that it was not until February 27, 1991, that she opened an account with Great Northern Insured Annuity Corporation (GNA) with a deposit of \$ 101,127.85, which represented the amount she had not timely rolled over, plus interest. The Commissioner did not review or challenge the roll over, and there matters stood for awhile.

However, in 1993 Ashman obtained two distributions from GNA in the total ****3** amount of \$ 99,632. She did not report that as taxable income either. This time her failure to report was, at least in hindsight, on the theory that the amount had not been successfully rolled over for the 1990 tax year, so it was taxable then, but not now. By the time this all came to light, the statute of limitations had run on the 1990 tax return. That did not dissuade the Internal Revenue Service.

The Commissioner issued a deficiency notice on Ashman's 1993 income tax return and asserted that she did owe tax on that year's \$ 99,632 distribution. Ashman then filed a petition with the tax court in which she sought to have that deficiency set aside, and the Commissioner, in due course, defended on the basis that Ashman was bound by the duty of consistency. She could not, he said, now claim that the \$ 100,502.21 had actually missed the deadline and was, therefore, taxable in her 1990 tax return, when she had previously taken the position that it was properly rolled over. ²

FOOTNOTES

² Ashman complains that the tax court should not have allowed the Commissioner to amend his answer to assert that defense. We, however, are unable to say that the tax court abused its discretion when it allowed that amendment. See Tax Ct. R. 41(a); *LeFever v. Commissioner*, 100 F.3d 778, 784-85 n.2 (10th Cir. 1996) (Fed. R. Civ. P. 15(b) decisions are applicable to the Tax Ct. R. 41(a)); *Pisciotta v. Teledyne Indus., Inc.*, 91 F.3d 1326, 1331 (9th Cir. 1996) (abuse of discretion standard); *DCD Programs, LTD. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (same).

****4** The tax court accepted and applied the duty of consistency defense. Thus, it determined that Ashman was bound to her 1990 return representations, as a result of which she owed tax for the 1993 distribution. She appealed.

JURISDICTION AND STANDARD OF REVIEW

The tax court had jurisdiction pursuant to 26 U.S.C. §§ 6213, 6214 & 7442; we have jurisdiction pursuant to 26 U.S.C. § 7482.

HN1 "We review decisions of the tax court on the same basis as decisions in civil bench trials in district court, with no special deference paid to the tax court's conclusions of law." *Ball, Ball & Brosamer, Inc. v. Commissioner*, 964 F.2d 890, 891 (9th Cir. 1992) (citations omitted).

DISCUSSION

Ashman attacks the Commissioner's defense on three fronts. First, she says that there is no viable duty of consistency doctrine. Next, she asserts that even if the doctrine exists the tax court cannot apply it. Finally, she says that even if the doctrine exists and is available to the tax court, it was wrongly applied here. As we will explain, because the attacks on the center and both flanks fail, the Commissioner's revetment stands.

[*543] A. *The Doctrine*

[5]** Numerous cases have declared that there is a duty of consistency in the tax area. That is based on a fairly easily recognizable principle. In *R. H. Stearns Co. v. United States*, 291 U.S. 54, 61-62, 54 S. Ct. 325, 328, 78 L. Ed. 647 (1934), a taxpayer had signed a waiver of the period of assessment and collection of its taxes, and then asserted that the statute of limitations acted as a bar when the Commissioner finally acted. The Court responded:

The applicable principle is fundamental and unquestioned. "He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him, in effect: 'This is your own act, and therefore you are not damnified.'" Sometimes the resulting disability has been characterized as an estoppel, sometimes as a waiver. The label counts for little. Enough for present purposes that the disability has its roots in a principle more nearly ultimate than either waiver or estoppel, the principle that no one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong.

Id. at 61-62, 54 S. Ct. at 328 (citations omitted).

[6]** That equitable thought lies behind the duty of consistency, which is not unlike the perhaps more familiar doctrine of judicial estoppel. In fact, **HN2** in referring to the latter doctrine in a phrasing hauntingly similar to the "duty of consistency" we have stated that "judicial estoppel [is] sometimes also known as the doctrine of preclusion of inconsistent positions." *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597, 600 (9th Cir. 1996). We have further explained that judicial estoppel is a doctrine which "precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position." *Id.* It is a doctrine which is based upon policies that seek to foster "the orderly administration of justice and regard for the dignity of judicial proceedings," and to preclude parties from "playing fast and loose with the courts." *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990) (internal quotations and citations omitted). But it is not even necessary that the contrary positions be taken in court. An inconsistent position taken with an insurance carrier or an employer on the one hand and **[**7]** in a court on the other can result in judicial estoppel. See *Johnson v. Oregon*, 141 F.3d 1361, 1369 (9th Cir. 1998); see also *Helfand v. Gerson*, 105 F.3d 530, 534-36 (9th Cir. 1997). Thus, it is not surprising that a number of courts have expressly upheld the use of the duty of consistency doctrine in tax cases.

As the Fifth Circuit Court of Appeals explained it over 50 years ago:

HN3 "While it is true that income taxes are intended to be settled and paid annually

same year

each year standing to itself, and that omissions, mistakes and frauds are generally to be rectified as of the year they occurred, this and other courts have recognized that a taxpayer may not, after taking a position in one year to his advantage and after correction for that year is barred, shift to a contrary position touching the same fact or transaction. When such a fact or transaction is projected in its tax consequences into another year there is a duty of consistency on both the taxpayer and the Commissioner with regard to it, whether or not there be present all the technical elements of an estoppel.

Orange Sec. Corp. v. Commissioner, 131 F.2d 662, 663 (5th Cir. 1942); **[**8]** see also *Herrington v. Commissioner*, 854 F.2d 755, 757 (5th Cir. 1988); *Johnson v. Commissioner*, 162 F.2d 844, 846 (5th Cir. 1947). Other courts of appeals have adopted the same position. See *LeFever*, 100 F.3d at 786-88; *Lewis v. Commissioner*, 18 F.3d 20, 26 (1st Cir. 1994); *Kielmar v. Commissioner*, 884 F.2d 959, 965 (7th Cir. 1989); *Shook v. United States*, 713 F.2d 662, 666-67 (11th Cir. 1983); *Beltzer v. United States*, 495 F.2d 211, 212 (8th Cir. 1974). **[*544]** So has the tax court. See, e.g., *Estate of Letts v. Commissioner*, 109 T.C. 290, 296-97 (1997). We have not directly done so, although we have used language which is much the same.

In a case where a taxpayer had taken one position and thereby garnered tax benefits over an 18-year period, we held that it should not be able to change its position and thereby garner still another benefit. See *Building Syndicate Co. v. United States*, 292 F.2d 623, 626 (9th Cir. 1961). We cited *R. H. Stearns Co.*, 291 U.S. at 61-62, 54 S. Ct. at 328, and went on to emphasize that **HN4** "a **[**9]** person, with full knowledge of the facts, shall not be permitted to act in a manner inconsistent with his former position." *Id.* (citation omitted). We then quoted the following passage from *Alamo Nat'l Bank v. Commissioner*, 95 F.2d 622, 623 (5th Cir. 1938), with approval:

It is no more right to allow a party to blow hot and cold as suits his interests in tax matters than in other relationships. Whether it be called estoppel, or a duty of consistency, or the fixing of a fact by agreement, the fact fixed for one year ought to remain fixed in all its consequences, unless a more just general settlement is proposed and can be effected.

Bldg. Syndicate, 292 F.2d at 626; see also *Wentworth v. Commissioner*, 244 F.2d 874, 874-76 (9th Cir. 1957).

That is not to say that no federal case has refused to apply the doctrine. Some 57 years ago, the Second Circuit indicated that it was dubious about holding taxpayers to something that they had asserted in a prior return without calculating the tax differences, but making those calculations would be inappropriate. See *Bennet v. Helvering*, 137 F.2d 537, 538-39 (2d Cir. 1943). **[**10]** With all due respect, holding taxpayers to the facts that they represented in a prior year seems more appropriate and does not require the making of nice calculations. On occasion, the tax court has failed to apply the doctrine, but those occasions have been fact specific and the court did not reject it entirely. See, e.g., *Century Data Sys., Inc. v. Commissioner*, 86 T.C. 157, 168-71 (1986); *Kenosha Auto Transp. Corp. v. Commissioner*, 28 T.C. 421, 425 (1957). Finally, in a veriest dictum we expressed some discomfort with the general concept, although we did not reject the doctrine. See *Unvert v. Commissioner*, 656 F.2d 483, 486-87 n.2 (9th Cir. 1981).

When all is said and done, we are of the opinion that the duty of consistency not only reflects basic fairness, but also shows a proper regard for the administration of justice and the dignity of the law. The law should not be such a idiot ³ that it cannot prevent a taxpayer from changing the historical facts from year to year in order to escape a fair share of the burdens of maintaining our government. Our tax system depends upon self assessment and honesty, rather than upon hiding **[**11]** of the pea or forgetful tergiversation.

FOOTNOTES

3 Charles Dickens, *Oliver Twist* 439 (Pocket Library ed., Pocket Books, Inc. 1959) (1837).

Of course, we are aware of the fact that the Supreme Court has not allowed equitable considerations to toll the statute of limitations. *See United States v. Brockamp*, 519 U.S. 347, 348, 117 S. Ct. 849, 850, 136 L. Ed. 2d 818 (1997). The duty of consistency has nothing to do with tolling; it deals with the equitable insight that a person should be prevented from taking different positions about the same historical transactional facts in different years - for example, I deposited the funds in a timely fashion, versus I did not do so - and benefitting in each of those years. That does, however, lead to the further question of whether the tax court can have anything at all to do with equity.

B. Tax Court Application of the Doctrine

Ashman's next attack is based on the Supreme Court's holding that ^{HN5} "the Tax Court is a court of limited jurisdiction and lacks general **[**12]** equitable powers." *Commissioner v. McCoy*, 484 U.S. 3, 7, 108 S. Ct. 217, 219, 98 L. Ed. 2d 2 (1987). Nobody doubts either that proposition, or its specific application which prevented the setting aside of a penalty required by law on the general theory that fairness and justice would be fostered thereby. *See id.* at 5-6, 108 S. Ct. at 218. But that is far from saying that the tax court, and we as a reviewing court, must allow ourselves to be gulled by taxpayers who change the historical facts to suit the needs of the moment. Nor does it mean that no equitable concepts can operate within the boundaries of the tax court's limited jurisdiction. As the Seventh Circuit recently put it: ^{HN6} "that the Tax Court lacks 'general equitable powers' means only that the tax court is not empowered to override statutory limits on its power by forgiving interest and penalties that Congress has imposed for nonpayment of taxes - but then no court is, unless the imposition would be unconstitutional." *Flight Attendants Against UAL Offset v. Commissioner*, 165 F.3d 572, 578 (7th Cir. 1999) (citation omitted).

We have said much the same thing. We have said that **[**13]** ^{HN7} "while [the Tax Court] cannot act, equitably or otherwise, in a case over which it lacks or has lost jurisdiction, the Tax Court can act equitably in a case in which it has jurisdiction." *Kelley v. Commissioner*, 45 F.3d 348, 351 (9th Cir. 1995). Thus, "it does have a limited equitable power to act in a case that is properly before it." *Id.*; *see also Buchine v. Commissioner*, 20 F.3d 173, 177-78 (5th Cir. 1994); *Bokum v. Commissioner*, 992 F.2d 1136, 1140 (11th Cir. 1993); *Reynolds v. Commissioner*, 861 F.2d 469, 472 (6th Cir. 1988); *cf. Harrah v. United States*, 77 F.3d 1122, 1125 (9th Cir. 1996) (equitable recoupment doctrine is available in the tax area).

It is also notable that a number of the cases which have upheld the doctrine, or its equivalent, have been appeals from tax court decisions. *See, e.g., LeFever*, 100 F.3d at 782; *Kelley*, 45 F.3d at 349; *Lewis*, 18 F.3d at 21; *Kielmar*, 884 F.2d at 960; *Herrington*, 854 F.2d at 756.

In other words, to say that a doctrine is tinged with equity is not to utter **[**14]** an anathema which bans it from the environs of the tax court. ^{HN8} Even if the tax court does not have far-reaching general equitable powers, it can apply equitable principles and exercise equitable powers within its own jurisdictional competence. In particular, it can apply the duty of consistency doctrine. All of that being said, we must still consider whether the doctrine should apply to this case.

C. Application of the Doctrine

Ashman's weakest claim is that the doctrine should not apply to the facts of her case. The courts have stated that ^{HN9} the duty of consistency has the following elements:

- (1) A representation or report by the taxpayer; (2) on which the Commissioner has

relied; and (3) an attempt by the taxpayer after the statute of limitations has run to change the previous representation or to recharacterize the situation in such a way as to harm the Commissioner. If this test is met, the Commissioner may act as if the previous representation, on which he relied, continued to be true, even if it is not. The taxpayer is estopped to assert the contrary.

Herrington, 854 F.2d at 758 (citation omitted); see also *Eagan v. United States*, 80 F.3d 13, 17 (1st Cir. 1996); **[**15]** *Estate of Letts*, 109 T.C. at 297.

Ashman first rather disingenuously asserts that she made no representation of fact regarding the rollover in her 1990 tax return. She certainly did. She declared as a matter of fact that the amount of the rollover of the \$ 725,502 distribution was \$ 725,502, and that it went to Merrill Lynch. She did not set forth dates. That was a clear representation that she had complied with the requirements of **HN10** 26 U.S.C. § 402(c)(3), which, in language remarkably **[*546]** clear in the world of tax law, states that the transfer must be made within 60 days of the receipt of the distribution.

But, Ashman says, the Commissioner should have audited her return. We fail to see why. The Commissioner must, in general, rely upon taxpayers' honesty and accuracy, whether those virtues are grounded on the love of duty or the fear of discovery. The suggestion that he did not rely because he should have suspected her of wrongdoing is a wallydraigle. The mere fact that he did not take steps against her, but accepted the return and let the statute of limitations run, demonstrates that he did rely. See *Herrington*, 854 F.2d at 758; **[**16]** *Mayfair Minerals, Inc. v. Commissioner*, 456 F.2d 622, 623 (5th Cir. 1972).

Finally, Ashman argues, she has not really changed her representations. Rather, she simply made an incorrect legal statement in 1990 and then corrected it in 1993. We reject that argument. As we see it, her representation in 1990 was that, as a matter of fact, she had rolled over the amount within 60 days. She now wants to change that representation; she cannot. See *Kielmar*, 884 F.2d at 965. If she could, she would surely harm the Commissioner; she would have managed to obtain \$ 100,502.21 tax free by misleading him.

In fine, all elements of the duty of consistency doctrine have been established by the Commissioner.

CONCLUSION

To the extent that there has been any doubt in the past, we now make it clear that **HN11** the tax court may apply the duty of consistency doctrine in cases which come before it. That means that once a taxpayer has transfigured the true facts, the power to change them back to their old form may well be lost. The taxpayer cannot reshape them at will. Here Ashman swore that in 1990 she had rolled over the whole of her \$ 725,502 distribution from a qualified **[**17]** plan into another qualified plan or account and, therefore, no part of it was taxable. The tax court simply held her to that declaration after the Commissioner relied upon it and let the statute of limitations pass. It became *the* historical fact for this case. Thus, she had to face paying a tax in 1993 when a part of the rolled over 1990 distribution was paid out by GNA.

AFFIRMED.

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DECLARATION OF CAROL L. MARCIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, CAROL L. MARCIL, hereby declare under penalty of perjury of the State of California that:

1. I have personal knowledge of the matters set forth in this Declaration and if called as a witness in court or other legal proceeding, could and would competently testify thereto.

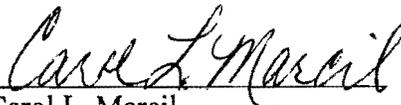
2. I owned a limited partnership interest in Hollywood Vista Apartments, Ltd. (HVA) in my own name and a general partnership interest through my ownership of Woodglen Apartments, LLC for a number of years.

3. In the summer of 2001, I agreed with my husband, Gerald, that we should sell the apartment building owned by HVA and complete a like-kind exchange to defer taxing the gain on the sale.

4. I was aware that Gerald intended to buy real property called the Manchester property with John Walsh. I agreed with him that HVA should buy our interest in the Manchester property with the sale proceeds from the HVA property. At no time, did I intend to give up any of my ownership in HVA or its assets.

5. I did not care if HVA later transferred its interest in the Manchester property to a new limited liability named Manchester Development, LLC since it saved costs and efforts. I also did not care if Gerald only was named a member of Manchester LLC, as long as I maintained my ownership with Gerald in the Manchester LLC, as community property, which we did and still do. He has proven to me over many years that I can trust him to make good decisions regarding our real estate investments.

DATED: December 12, 2011



Carol L. Marcil

EXHIBIT 6-1

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On December 13, 2011 before me, Esther Brunner, a notary public in and for the State of California, personally appeared Carol L. Marcil personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the within instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)

Notary Public



ASSUMPTION AND RELEASE AGREEMENT

THIS AGREEMENT is made as of this October 17, 2001 among LAVA ROCK EIGHTY LLC, A Nevada Limited Liability Company (hereafter "LLC"), Hollywood Vista Apartments, Ltd., a California Limited Partnership, (hereafter called "Purchaser") and Hawthorne Savings (hereafter called "Lender").

WHEREAS, LLC is, as of the date of this Agreement, the owner of the certain real property located at and commonly known as 60% Undivided Interest in 8000-8060 W. Manchester Blvd., in the City of Los Angeles, County of Los Angeles, State of California, more specifically described in Exhibit "A" attached hereto and made a part hereof; and

- A. WHEREAS, LLC has entered into a loan transaction with Lender evidenced by a Promissory Note in the amount of \$ _____, dated _____, (hereafter the "Note"), and secured by a (Mortgage/Deed of Trust) (hereafter "Security") dated _____, which encumbers the Property as security for the sums advanced under the Note, and further evidenced by the following agreements: _____; and
- B. WHEREAS, LLC and Purchaser have entered into a Qualified Exchange Accommodation Agreement, under the terms of which LLC may transfer all or any part of LLC's right, title and interest in and to the Property to Purchaser and under the terms of which Purchaser has agreed to assume all of LLC's obligations under the Note, the Security and all other documents executed by LLC in connection with this loan transaction; and
- C. WHEREAS, Purchaser's obligation to assume the Note is conditioned upon Lender's agreement not to exercise its option under the terms of the Note, the Security and any other agreement executed by LLC, to accelerate the unpaid balance of the Loan as a result of such a transfer from LLC to Purchaser:

NOW THEREFORE, the parties agree as follows:

- 1. Purchaser's Assumption of Liability. Purchaser hereby assumes and agrees to pay the obligation represented by the Note, and secured by the Security, provided however, that said assumption shall take effect upon transfer of all or any part of LLC's right, title and interest in and to the Property secured by the Security to Purchaser. Purchaser acknowledges that the Property described herein shall remain subject to the Security upon any transfer of the Property from LLC to Purchaser. Purchaser acknowledges that nothing in this Agreement shall affect the priority of the lien of the Security over other liens and encumbrances against the Property (if any). Purchaser agrees, upon transfer of all or any part of LLC's right, title and interest in and to the Property secured by the Security to Purchaser, to be bound by all of the terms, covenants and conditions contained in the Note, the Security, and any and all other documents executed by LLC in connection with the loan transaction. Purchaser further agrees that the Security shall secure any and all other sums that Purchaser may borrow in the future from Lender when such sums are secured by another note or notes stating that they are so secured.
- 2. Lender's Consent to Transfer. Lender hereby consents to the transfer by LLC to Purchaser of LLC's right title and interest in, and to the Property described herein, and Lender waives its right to accelerate the unpaid balance of the Note by reason of such transfer; provided however, that this consent by Lender shall not be deemed a waiver of Lender's right to require Lender's consent to any future assumption other than the one consented to herein.
- 3. Release from Liability. On the condition that LLC's right, title and interest in and to the Property is transferred to Purchaser and on the further condition that Purchaser executes this Agreement, Lender hereby releases LLC from any and all liability on or under the Note, the Security and under any other documents signed by LLC in connection with the loan transaction evidenced by the Note. This release of LLC shall be effective on the later to of: (1) the date record title to the Property is transferred to Purchaser, or (2) the date Purchaser executes this Agreement.

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4. Governing Law. All matters concerning the construction of this Agreement and the rights and duties of the parties to this Agreement shall be governed by the laws of the State of California.
5. Binding On Successors. This Agreement shall inure to the benefit of, and shall be binding on, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the parties hereto.
6. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any prior written or oral agreements between or among them concerning the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, among the parties, relating to the subject matter of this Agreement, that are not fully expressed in this Agreement.

LLC:

LAVA ROCK EIGHTY LLC, A NEVADA LIMITED LIABILITY COMPANY
BY: API PROPERTIES CORPORATION, A CALIFORNIA CORPORATION,
AS SOLE MEMBER

BY: Jane L. Mervine DATED: 10/18/01
Jane L. Mervine, Vice President

PURCHASER:

Hollywood Vista Apartments, Ltd., a California Limited Partnership

BY: Gerald J. Marcil DATED: 10-18-01
Gerald J. Marcil, Managing Member

LENDER:

Hawthorne Savings

By: _____

Its: _____