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NO. 66495-6-1

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION 1

MALBEC, INC., a Washington Corporation, M&D III, INC., a  
Washington Corporation, CHUNG K. CHOE and MICHELLE CHOE,  
husband and wife, and the marital community comprised thereof, and  
DANIEL K. YOO and JANE DOE YOO, husband and wife, and the  
marital community comprised thereof,

Respondent,

vs.

YOUNG S. OH & ASSOCIATES P.S.,

Appellant.

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BRIEF OF APPELLANT YOUNG S. OH & ASSOCIATES, P.S.

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## APPENDICES

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- 2 Ex. 5, Commercial Promissory Note for \$240,000 dated 4/17/06
- 3 Ex. 6, Security Agreement – Equipment, Fixtures, Inventory, and  
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- 5 Ex. 8, Security Agreement – Equipment, Fixtures, Inventory, and  
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- 6 Ex. 16, Business Opportunity Purchase and Sale Agreement dated  
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- 7 Ex. 48, Business Opportunity Escrow Instructions and Closing  
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- 8 Ex. 49, Addendum to Escrow Instructions date 1/3/08

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## INTRODUCTION

This action concerns a dispute involving two sales of the Buenos Aires Grill, a restaurant located at 220 Virginia Street, Seattle, Washington. Most of the details concerning the two sales are not dispositive to the issues presented by this appeal, which are more limited to claims involving the conduct of an escrow agent who was not involved in either sale and whose involvement occurred long after the sale transactions had occurred. Nevertheless, a brief overview of the events leading up to the engagement of the escrow agent is helpful.

In January 2006, Malbec, Inc., the former owner of the Buenos Aires Grill, and M&D III and Mr. and Mrs. Choe executed a Purchase and Sale Agreement for the sale of the restaurant. Following the sale, a number of disputes, involving the parties' continuing obligations, arose. Approximately 18 months following the sale, in July 2007, M&D III/Choe and Daniel Yoo executed a separate Purchase and Sale Agreement for the same restaurant. Mr. Yoo and M&D III/Choe hired Young S. Oh & Associates, P.S.<sup>1</sup> to serve

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<sup>1</sup> Young S. Oh & Associates, P.S. will be referred to in this Brief as Young S. Oh. Young Oh is the principal of Young S. Oh & Associates, P.S. and is the person who performed the substantive work, relative to this action, on behalf of Young S. Oh & Associates, P.S. There are no allegations that Mr. Oh can or should be personally liable for any of the matters at issue in this action—nor should there be, as he was acting on behalf of Young S. Oh & Associates, P.S.

as the closing agent for their transaction in February 2008, more than six months after they had signed their Purchase and Sale Agreement.

The two sales of the restaurant—the first, by Malbec to M&D III/Choe, and the second, by M&D III/Choe to Mr. Yoo—were both fraught with difficulty. Both were the subject of various agreements (some written, some verbal) which, at times, seemed to be contradictory; both suffered from inartful and incomplete drafting, unnecessary complexity, inadequate and confusing documentation drafting, as well as tardy filing or recording of documents.<sup>2</sup>

This appeal arises from the litigation initiated by Malbec against M&D III/Choe. Later, Daniel Yoo was added as an additional defendant. Mr. Yoo, in turn, filed a Third Party Complaint against Young S. Oh, based on its role as the closing agent for the sale of a restaurant by M&D III/Choe to Mr. Yoo.

Following a trial to the Court, Findings of Fact and Conclusions of Law and Judgment were entered.<sup>3</sup>

#### **ASSIGNMENTS OF ERROR**

The trial court erred when it (1) accepted the claims Daniel Yoo asserted against Young S. Oh, (2) failed to find that the value of the security

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<sup>2</sup> It bears repeating that Young S. Oh was not involved in negotiating, nor in drafting the documents relevant to, either sale.

<sup>3</sup> CP 1208, 1233, respectively.

subject to the April 2006 sale transaction was \$10, (3) failed to provide Young S. Oh with the opportunity to present a closing argument following the presentation of the evidence and at the conclusion of the trial, and (4) failed to adopt the proposed Findings of Fact and Conclusions of Law submitted by Young S. Oh.

## **STATEMENT OF THE CASE**

### ***Procedural History***

Malbec filed this action in August 2007, asserting that M&D III/Choe had defaulted on their agreements to pay the full, agreed upon purchase price of the Buenos Aires Grill. Malbec's claims against M&D III/Choe included breach of contract, claiming monies due on two promissory notes; foreclosure on a security agreement; and attorney fees. M&D III/Choe denied Malbec's claims, and asserted several affirmative defenses.

In May 2008, M&D III/Choe amended their answer and asserted a counterclaim against Malbec, alleging fraudulent concealment and material misrepresentation.

In October 2008, Malbec amended its complaint and added additional claims against M&D III/Choe, and named Mr. Yoo as a party.<sup>4</sup>

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<sup>4</sup> CP 1.

Malbec's claims against Mr. Yoo included breach of a security agreement, conversion, replevin, an effort to foreclose on the security agreement, and attorney fees. Malbec also asserted these claims against M&D III/Choe (in addition to the claims it initially asserted against them).

Mr. Yoo denied Malbec's claims, asserted affirmative defenses, and alleged a cross claim against M&D III/Choe—for breach of contract, breach of a duty to defend and indemnify, and a request that the Court “pierce the corporate veil” of M&D III and hold Mr. and Mrs. Choe personally liable. In addition, Mr. Yoo added a third party complaint against Young S. Oh.<sup>5</sup> Mr. Yoo's claims against Young S. Oh were for breach of contract—the “Business Opportunity Escrow Instructions and Closing Agreement” (executed February 6, 2008)—and for breach of fiduciary duty, apparently based on Young S. Oh's role as the “closing agent” for the transaction between M&D III/Choe and Mr. Yoo.<sup>6</sup>

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<sup>5</sup> CP 39. Young S. Oh was added as a party to this action, in December 2008, 14 months after it had initially been filed. In January 2009, Mr. Yoo filed a motion to continue the trial date and amend the case schedule. Mr. Yoo's motion was granted before Young S. Oh appeared. Young S. Oh's motion to continue the trial date, which was filed less than 4 months after he had first appeared, was denied.

<sup>6</sup> Ex. 48 (Appendix 7). The documents which were admitted into evidence at trial are referred to by their designated trial exhibit number. Although the Exhibit List was designated, the trial exhibits were not included in the Superior Court's transmittal of Clerk's Papers, an oversight which will be remedied before the parties' briefing is concluded. Copies of the trial exhibits which are referred to in this Brief are attached in Appendices 1-8.

Although acknowledging that it had served as the closing agent, pursuant to the Business Opportunity Escrow Instructions and Closing Agreement and the Addendum<sup>7</sup>, Young S. Oh denied breaching the contract or a fiduciary duty.

The trial occurred on July 20, 21, 22, and August 5, 21, 2009, and was tried before the Honorable John Erlick. At the end of Malbec's case, Young S. Oh filed a Motion for Directed Verdict, based on evidence concerning the value of certain property. That Motion was denied. Following the presentation of the evidence, the denial of Young S. Oh's Motion for Directed Verdict, and the closing arguments of counsel (with the exception of Young S. Oh, whose attorney was not allowed to do so), the Court entered Findings of Fact and Conclusions of Law, and Judgment.<sup>8</sup>

***Factual Discussion***

As noted, the claims at issue in this appeal primarily involve Mr. Yoo's allegations against Young S. Oh and its role as the closing agent for the transaction between Mr. Yoo and M&D III/Choe, one that Young S. Oh had no involvement in or connection with at the time it was negotiated and concluded.

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<sup>7</sup> Ex. 49 (Appendix 8).

<sup>8</sup> CP 1208, 1233, respectively.

Mr. Yoo alleged, and Young S. Oh admitted, that “[o]n or about February 6, 2008, Yoo and M&D retained the services of [Young S. Oh] to perform a number of task [sic] related to the closing of the Contract.”<sup>9</sup> As noted, Mr. Yoo’s claims against Young S. Oh are for breach of contract and breach of fiduciary duty.<sup>10</sup> Mr. Yoo made no claim against Young S. Oh based on its status as an attorney.<sup>11</sup>

Before being retained as the closing agent on February 6, 2008, there was a meeting between Young S. Oh, Mr. Yoo, and Mr. Choe on January 3, 2008. During this meeting, Mr. Yoo and Mr. Choe were presented with and, after discussions concerning, signed off on the “Addendum to Escrow Instructions”.<sup>12</sup> Mr. Yoo and Mr. Choe were also presented with, but did not sign, the Escrow Instructions and Closing Agreement, which was identical in form to the one that was signed on February 6, 2008.<sup>13</sup>

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<sup>9</sup> RP 959:14-20. CP 54. Mr. Yoo’s use of the term “the Contract” was in reference to the July 26, 2007 Purchase and Sale Agreement between him and M&D III/Choe.

<sup>10</sup> CP 54-55.

<sup>11</sup> Young Oh, the principal of Young S. Oh & Associates, P.S., is an attorney licensed to practice in Washington.

<sup>12</sup> Ex. 49 (Appendix 8).

<sup>13</sup> RP 960:18-962:20. When the parties met again on February 6, 2008, Young S. Oh reprinted the Escrow Instructions and Closing Agreement and, again, presented it for signature. When this document was reprinted, the February 6, 2008 typewritten date, on page 1, was automatically changed (from January 3, 2008, the date which had appeared in the form of this document when it was presented at the first meeting).

The Addendum is significant for a number of reasons—not the least of which is that Mr. Yoo and M&D III/Choe were expressly notified that Young S. Oh

has not made and will not make any representation as to list of and as to actual payoff balances for all of the actual and/or potential lien holders of the [Buenos Aires Grill].<sup>14</sup>

Moreover, Mr. Yoo and M&DIII/Choe agreed to

hold [Young S. Oh] harmless and promise to indemnify for any loss, cost, expenses and claim arising out of this matter. We [Mr. Yoo and M&D III/Choe] also acknowledge that [Young S. Oh] recommended to seek independent legal counsel as to this matter. We understand that we shall not rely on [Young S. Oh] as to existence of any encumbrance against the business and we are relying solely on our own independent counsel.<sup>15</sup>

Finally, it is worth noting that Mr. Yoo, M&D III/Choe, and UniBank (the lending institution which funded a substantial portion of Mr. Yoo's purchase)

acknowledge[d] that [Young S. Oh] stated that it is not qualified to give any opinion . . . as to existence of ay [sic] further lien against the business.<sup>16</sup>

The Escrow Instructions and Closing Agreement was signed on

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<sup>14</sup> Ex. 49 (Appendix 8).

<sup>15</sup> Ex. 49 (Appendix 8). The Addendum identified one exception to these disclaimers, a judgment by Coldwell Banker against Mr. Choe, which is not relevant to this action.

<sup>16</sup> Ex. 49 (Appendix 8). The Addendum was signed by Mr. Yoo and Mr. Choe on January 3, 2008; by UniBank on January 29, 2008; and by Young S. Oh on February 6, 2008.

February 6, 2008.<sup>17</sup> The Escrow Instructions and Closing Agreement did not specify any particular UCC search Young S. Oh was to perform.<sup>18</sup> This fact is important, in part, because Mr. Yoo's claims are limited to his allegation that Young S. Oh failed to identify "the August 23, 2007 UCC filing related to the Buenos Aires Grill."<sup>19</sup> The contract between the parties, the Escrow Instructions and Closing Agreement, upon which Mr. Yoo's two claims against Young S. Oh were based made no reference to, nor gave any instruction regarding, "the August 23, 2007 UCC filing related to the Buenos Aires Grill."

Young S. Oh, before being retained by Mr. Yoo and M&D III/Choe, conducted two UCC searches and, although the searches involved persons and entities relevant to the transaction between M&D III/Choe and Mr. Yoo, these parties did not order the searches and Young S. Oh was not aware that the searches were relevant to this transaction. The first UCC search was in September 2007 and the second search was in December 2007.<sup>20</sup> The requests for the UCC searches were made by Chong Lee, who is not a party

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<sup>17</sup> RP 963:24-964:15. Ex. 48 (Appendix 7).

<sup>18</sup> CP 973.

<sup>19</sup> CP 54-55.

<sup>20</sup> RP 992:23-994:20. The first search, in September 2007 was limited to "Buenos Aires Grill"; Choe, Chung Ki"; "MD Corporation"; and MD III Corporation". The second search, in December 2007, was limited to "Buenos Aires Grill" and "Choe, Chung Ki". These two searches were based upon the information provided and the request made by Mr. Lee to Young S. Oh.

to this action but is affiliated with Mr. Yoo and Mr. Choe.<sup>21</sup> When Mr. Lee made his requests, he made no reference to the fact that this request was relevant to the pending transaction between Mr. Yoo and M&D III/Choe.

Young S. Oh's first knowledge of the transaction, which has resulted in this litigation, was in December 2007, when the July 26, 2007 Business Opportunity and Purchase and Sale Agreement, between Mr. Yoo and M&D III/Choe, was sent to Young S. Oh by facsimile transmittal. The document was sent by Chong Lee, and not Mr. Yoo or M&D III/Choe.<sup>22</sup> Young S. Oh's receipt of the Business Opportunity and Purchase and Sale Agreement, December 13, 2007, was after it had been asked by Mr. Lee to conduct, and after it received the results of, the UCC searches.<sup>23</sup>

The full results of both searches were shared with Mr. Yoo and M&D III/Choe no later than the January 3, 2008 meeting.<sup>24</sup>

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<sup>21</sup> RP 975:19-976:25. Chong Lee is the principal of WBIC, which was listed as the "Selling Agent" on the July 26, 2007 Business Opportunity Purchase and Sale Agreement.

<sup>22</sup> Ex. 16 (Appendix 6). Unfortunately, this copy is incomplete (as it is missing the signature page (page 6) and does not appear to be the appropriate version of the agreement between Mr. Yoo and M&D III/Choe (the proposed purchase price is listed at \$550,000, not the apparently and eventually agreed upon amount of \$700,000). Moreover, Ex. 16 does not have the facsimile number used by WBIC, Mr. Lee's business, on the top of the pages. This version (with the executed page 6, the \$700,000 purchase price, and WBIC's facsimile number) was the one received by Young S. Oh.

<sup>23</sup> RP 1008:1-17.

<sup>24</sup> RP 1009:8-24.

Following its engagement on February 6, 2008, Young S. Oh performed its role as the closing agent as requested—a fact which does not appear to be in dispute. Mr. Yoo’s only claim against Young S. Oh is that he relied on a UCC search (which was requested by Chong Lee, who is not a party to this action and was not a party to the transaction between Mr. Yoo and M&D III/Choe or the Escrow Instructions and Closing Agreement) that was conducted before he engaged Young S. Oh.

Further undermining the legitimacy of Mr. Yoo’s claims against Young S. Oh was the fact that the transaction between M&D III/Choe and Mr. Yoo was plagued with seemingly ad hoc changes to the terms. The purchase price reflected in the July 26, 2007 Purchase and Sale Agreement for the sale of the restaurant, which Mr. Yoo initialed on July 28, 2007, was \$550,000.<sup>25</sup> That same day, however, instead of preparing an addendum, a new version of the Purchase and Sale Agreement was prepared and signed by Mr. Yoo, now reflecting a purchase price of \$700,000.<sup>26</sup> Apparently, the difference between the two Purchase and Sale Agreements was that the latter included a \$150,000 down payment. The down payment came in the form of a check from Mr. Yoo, which was never cashed, and was then turned into a promissory note for \$150,000.<sup>27</sup> During a lunch meeting between Mr.

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<sup>25</sup> RP 842: 7-843:10.

<sup>26</sup> Ex. 16 (Appendix 6).

<sup>27</sup> RP 845: 18-846:15.

Yoo's mother and Mrs. Choe, that Mr. Yoo neither attended nor knew would involve discussion of the note, the value of the promissory note was negotiated to \$100,000.<sup>28</sup>

Finally, there was a particular feature of the transaction between Malbec and M&DIII/Choe which is of significance in this appeal—that these parties had agreed that the value of the security was \$10.

## **ARGUMENT**

### ***Introduction***

The problems Mr. Yoo claims to have encountered from his dealings with M&D III/Choe are of his own making. Mr. Yoo's efforts to blame Young S. Oh are misguided and must be rejected.

Young S. Oh was not involved in negotiating the sale of the restaurant; it did not draft the purchase and sale, and related, documents; and it did not provide advice to Mr. Yoo (other than to recommend, several times, that Mr. Yoo seek independent legal counsel or expertise from others). Rather, Young S. Oh performed its duties as the closing agent, as instructed—holding and then distributing the sales proceeds.

There are several reasons why Mr. Yoo's claims against Young S. Oh must fail. Although Mr. Yoo's claims are simply wrong for several

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<sup>28</sup> RP 847: 1-4, 848: 2-9.

reasons, it is worth noting that any single reason is sufficient to mandate dismissal of Mr. Yoo's third party claims.

Young S. Oh fully performed its duties as the closing agent, which were set forth in the Escrow Instructions and Closing Agreement. It is likely that many, if not all, of the problems which Mr. Yoo was complaining about would have been avoided if he had heeded Young S. Oh's repeated warnings and urgings to seek independent legal counsel and other expert assistance.

***Mr. Yoo Was Provided with the Results of Young S. Oh's UCC Searches***

Mr. Yoo's claims against Young S. Oh were predicated upon the notion that he did not know of "the August 23, 2007 UCC filing related to the Buenos Aires Grill." The evidence in this case, however, established that Mr. Yoo was aware of this UCC filing, from Young S. Oh and other sources, *before* he closed his transaction with M&D III/Choe.<sup>29</sup>

The consequences of Mr. Yoo's decision to go forward with his transaction, knowing of the existence of this encumbrance, cannot be shifted to others—particularly to Young S. Oh.<sup>30</sup>

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<sup>29</sup> RP 992:23-993:8.

<sup>30</sup> Although Young S. Oh has not been privy to full extent of the dealings between Mr. Yoo and M&D III/Choe, it is apparent that Mr. Yoo made a number of decisions during this deal—any one of which may have led, or at least contributed, to his current claimed problems.

***Young S. Oh Cannot Breach a Contract or Duty Before Either Exists***

Mr. Yoo engaged Young S. Oh on February 6, 2008.<sup>31</sup> The UCC search(es) upon which Mr. Yoo claimed to have relied (but which he did not request) when he purchased the Buenos Aires Grill were conducted in September 2007 and December 2007, long before he engaged Young S. Oh.

It is axiomatic that Young S. Oh cannot breach a contract or breach a fiduciary duty until either exists—and, here, neither existed until February 6, 2008.<sup>32</sup> *Nat'l Bank of Washington v. Equity Investors*, 81 Wn.2d 886, 908, 506 P.2d 20, 34 (1973) (the escrow agent's duties and limitations are defined by the escrow instructions); *see also Denaxas v. Sandstone Court of Bellevue, L.L.C.*, 148 Wn.2d 654, 63 P.3d 125 (2003) (escrow agent, absent instructions to do so, is not obligated to affirmatively identify differences between closing documents and those drafted by others).

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<sup>31</sup> As noted earlier, Mr. Yoo has alleged, and Young S. Oh has admitted, that Mr. Yoo and M&D III/Choe retained Young S. Oh “on or about February 6, 2008.” The fact and date of the engagement are, therefore, no longer at issue. *See Hogenson v. Serv. Armament Co.*, 77 Wn.2d 209, 214, 461 P.2d 311, 314 (1969) (admissions of an attorney are binding on the client (citations omitted)).

<sup>32</sup> Mr. Yoo, M&D III/Choe, and Young S. Oh met on January 3, 2008—before the Escrow Instructions and Closing Agreement was signed and Young S. Oh was, therefore, engaged. It was during this meeting that Mr. Yoo and M&D III/Choe signed the “Addendum to Escrow Instruction” (proposed Trial Exhibit 49). Mr. Yoo and M&D III/Choe were presented with a copy of the Business Opportunity Escrow Instructions and Closing Agreement on January 3, 2008—which is why the “Addendum to Closing Instructions” is dated January 3, 2008. Mr. Yoo and M&D III/Choe did not sign the Escrow Instructions and Closing Agreement, however, until February 6, 2008. The terms, conditions, and promises set forth, and agreed to, in the Addendum to Escrow Instruction, are, nevertheless, binding.

Because Young S. Oh's conduct complained of by Mr. Yoo occurred before he engaged Young S. Oh, his claims against Young S. Oh should have been dismissed.<sup>33</sup>

***Mr. Yoo's Claims Are Barred by His Written Promises***

As noted earlier, the Addendum to Escrow Instructions contains several provisions whereby Mr. Yoo was expressly notified that Young S. Oh was making no representations concerning the list of, or payoff figures to, "all of the actual and/or potential line holders of the subject business."<sup>34</sup> Moreover, Young S. Oh expressly recommended that Mr. Yoo "seek independent legal counsel" and that he should "have an expert review the UCC search results."

This contractual language bars the claims that Mr. Yoo made against Young S. Oh.

In an effort to avoid this consequence, Mr. Yoo raised several excuses why he should not be held to his prior promise to hold Young S. Oh harmless, or to escape the warnings that he was not to rely solely on Young

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<sup>33</sup> It is also noteworthy that Mr. Yoo's Third Party complaint against Young S. Oh failed to allege that its alleged breach of contract was a proximate cause of Mr. Yoo's claimed damages and fails to allege that he relied on the UCC search(es) conducted by Young S. Oh, or that its breach of fiduciary duty was a proximate cause of his claimed damages. As a consequence, Mr. Yoo's Third Party Complaint should be dismissed as it has omitted several necessary allegations. CP 81.

<sup>34</sup> Ex. 49 (Appendix 8).

S. Oh regarding the existence of actual or potential encumbrances. Mr. Yoo asserted that there were misrepresentations, that the hold harmless language did not apply or was contrary to a statutory duty, and that he made a unilateral mistake. These arguments should have been rejected.

Aside from the fact that Young S. Oh made the necessary and complete disclosures to Mr. Yoo, his claimed defenses were contrary to the fundamental basis of the hold harmless provision—that Young S. Oh should not, and cannot, be held liable for any claim based on the adequacy of its search for “actual and/or potential lien holders of the subject business.”

Indeed, Mr. Yoo was expressly warned by Young S. Oh that it was making no representations regarding the UCC searches, or other potential encumbrances on the Buenos Aires Grill—a warning which should have precluded Mr. Yoo from claiming that Young S. Oh’s performance was inadequate.

***Young S. Oh Did Not Serve As an Attorney in Its Dealings with Mr. Yoo***

Mr. Yoo claims that Young S. Oh was an “attorney escrow agent” and, as a consequence, had a “duty to exercise that degree of skill, care and learning expected of a reasonably prudent attorney”.<sup>35</sup> This allegation is not supported.

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<sup>35</sup> CP 976. In addition, Mr. Yoo claims that two provisions of the Rules of Professional Conduct, RPC 1.1 and RPC 1.3, apply to this case. CP 977.

As an initial matter, it should be noted that the Escrow Instructions and Closing Agreement expressly provided that Young S. Oh was “acting as a closing agent on this transaction, which means that Young Oh is not an Attorney of any party in this transaction. Young Oh has not and does not give legal advice on this transaction other than performing customary mutual and neutral escrow function.”<sup>36</sup>

The effect of Mr. Yoo’s argument is an expansion of Young S. Oh’s duties, making them greater than, and contrary to, those provided for by the escrow instructions. Such a result is contrary to Washington law. *Nat’l Bank of Washington v. Equity Investors*, 81 Wn.2d at 908.

Reliance on *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983) was misplaced. *Bowers* recognized that even lay escrow agents can be held to the standard of care of an attorney when they engage in the practice of law. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d at 590. However, an escrow agent who does not engage in the practice of law cannot be held to the standard of care of an attorney. *Denaxas v. Sandstone Court of Bellevue, L.L.C.*, 148 Wn.2d at 665. This

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<sup>36</sup> Ex. 48 (Appendix 7). In addition, this document again “strongly advise[d Mr. Yoo] to seek independent legal counsel.” *Id.*

axiom is true, even if the escrow agent is an attorney—the critical fact is the conduct, not the status.<sup>37</sup>

***The Value of Malbec's Security Was Limited to Ten Dollars***

At the close of Malbec's case, Young S. Oh filed a Motion for Directed Verdict, based on the certain portions of the documentation relevant to the first sale, which occurred in April 2006.<sup>38</sup>

In 2006, and while it was still the owner of the Buenos Aires Grill, Malbec agreed to sell the restaurant to M&D III/Choe. After extended negotiations, these parties agreed on a purchase price of \$470,000. The parties agreed that M&D III/Choe would pay \$100,000 at the time of closing and that the remaining \$370,000 would be financed by two Promissory Notes—one in the amount of \$240,000 and the other in the amount of \$130,000. The two Promissory Notes were accompanied by two Security Agreements.

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<sup>37</sup> Two final points are worth noting. *First*, Mr. Yoo's Third Party Complaint did not allege a breach of an attorney's standard of care. This allegation, therefore, was beyond the scope of the pleadings and not properly before the Court. *Second*, Mr. Yoo did not present expert testimony on the issue of the standard of care an attorney should exercise while serving as an escrow and whether that duty was breached. This omission, by itself, should have been fatal. *Geer v. Tonnon*, 137 Wn. App. 838, 850-51, 155 P.3d 163, 169 (2007), *rev. den.*, 162 Wn.2d 1018 (2008).

<sup>38</sup> Ex. 2 (there are four other related documents, Ex. 5 (Appendix 2), Ex. 6 (Appendix 3), Ex. 7 (Appendix 4), and Ex. 8 (Appendix 5)).

Except for the amounts, the two Security Agreements were identical. Both provided, in part, that M&D III/Choe granted Malbec a security interest in

All of Debtor's [M&D III and Mr. and Mrs. Choe] fixtures, equipment, inventory and accounts, together with all cash and non-cash proceeds thereof, including without limitation, accounts, general intangibles, chattel paper and instruments owned by Debtor and all such property hereafter acquired. All of the property is hereinafter referred to as the ('Property') [sic].<sup>39</sup>

These Security Agreements were "to secure the payment" of the two Promissory Notes.

The parties executed a number of other documents as part of this transaction. One of these documents was a "Bill of Sale".<sup>40</sup> The Bill of Sale confirmed that Malbec sold M&D III the "Furniture, fixtures and equipment inventory and other intangible assets" of the Buenos Aires Grill for \$10.

After Malbec and M&D III/Choe concluded their respective presentations to the Court, it is clear that the Bill of Sale was the only evidence regarding the value of the "Property" secured by the two Security Agreements.<sup>41</sup>

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<sup>39</sup> Ex. 6 (Appendix 3), Ex. 8 (Appendix 5).

<sup>40</sup> Ex. 2 (Appendix 5).

<sup>41</sup> It is worth noting that the present "value" of the furniture, fixtures, and equipment of the Restaurant, as testified to by Mr. Casas-Beaux, would now be less, given the "wear and tear", breakage, replacement, and general transitory nature of this property. RP 410: 3-8.

Reliance on the Bill of Sale, for the purpose of determining the economic value of the secured property, is appropriate because neither Malbec nor M&D III/Choe provided any evidence of the specific property secured. Although there were some references to an inventory or some type of list of the specific items which were transferred at the time of the April 2006 sale, or subject to the two Security Agreements, no such inventory or list was produced—and there has been no verbal testimony on this topic.

The only basis to determine what would have been on any inventory or list regarding the nature, or quantity, of the property transferred in April 2006 is speculation. There was evidence, however, of the value of this property—the April 17, 2006 Bill of Sale.

By virtue of the two Promissory Notes, M&D III/Choe became indebted to Malbec in the amount of \$370,000. Although these parties had a number of disputes concerning the amount and validity of this indebtedness—the only evidence concerning the value of the security for these two Promissory Notes is the April 2006 Bill of Sale, which set the value of this secured property at \$10.

It is worth noting that this fact had no affect on the validity of either of the two April 2006 Promissory Notes, or the amount due under either. Rather, the importance of this fact was limited to the value of the security

Malbec received, and M&D III/Choe gave, when the two Promissory Notes were negotiated and executed.

The evidence was undisputed—the value of the secured property was no greater than \$10. As a consequence, the trial court should have declared that the secured property was worth no more than \$10.

The only available evidence of the economic value of the property which secured two promissory notes executed by M&D III/Choe was the April 2006 Bill of Sale. That document, which was drafted on behalf of and signed by Malbec, controls the issue of the economic value of the secured property.

***The Trial Court Erred by Denying Young S. Oh a Closing Argument***

At the conclusion of the trial all of the parties, except Young S. Oh, were allowed to make a closing argument. The failure to allow Young S. Oh this fundamental opportunity and the different way Young S. Oh was treated was error. This decision, by itself, constitutes reversible error.<sup>42</sup>

**CONCLUSION**

It is respectfully requested that this Court reverse the trial court's Findings of Fact and Conclusions of Law which were entered in favor of Daniel Yoo and against Young S. Oh and vacate the judgment entered

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<sup>42</sup> RP 1108: 2-13.

against Young S. Oh. In addition, this court should declare that the value of the security subject to the April 2006 sale transaction was limited to \$10.

DATED this 29<sup>th</sup> day of July, 2011.

SKELLENGER BENDER, P.S.

By s/ Jeffrey C. Grant

Jeffrey C. Grant, WSBA #11046

1301 Fifth Avenue, Suite 3401

Seattle, WA 98101-2605

Telephone: 206-623-6501

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E-mail: [jgrant@skellengerbender.com](mailto:jgrant@skellengerbender.com)

Attorneys for Appellant Young S. Oh &  
Associates, P.S.

# **APPENDIX 1**

ORIGINAL

COMMERCIAL PROMISSORY NOTE

1. **PROMISE TO PAY:** FOR VALUE RECEIVED, M & D III, Inc., a Washington corporation (hereinafter "Maker"), promises to pay to Malbec, Inc., a Washington corporation (hereinafter "Holder/Payee") or to order, or such place as Holder hereof may from time to time designate, the principal sum of Two Hundred Forty Thousand and 00/100 Dollars (\$240,000.00) with interest from the date of this note, on the terms and conditions set forth herein.

2. **TERM AND INTEREST:** Interest on this Promissory Note shall be at the rate of Seven and a quarter percent (7.25%) per annum for a term of One Hundred Twenty (120) months with a Five (5) year balloon payment. Balloon payments in the amount of \$20,000.00 shall be paid every two years (4/17/2008 & 4/17/2010) in addition to the monthly payments. An amortization schedule is attached hereto as Exhibit "A."

3. **PREPAYMENT PENALTY:** There shall be no prepayment penalty on this note.

4. **PAYMENTS, DUE DATE and LATE CHARGE:** Monthly installment payments in the amount of Two Thousand Eight Hundred Seventeen and 62/100 Dollars (\$2,817.62), beginning with first payment due on May 17, 2006 and on or before the 17th of each succeeding month thereafter until April 17, 2011 in which all accrued interest and principal shall become due. Any payment not received by the Holder/Payee within five (5) days of its due date shall be considered late, and a \$125.00 late charge shall be assessed.

All Payments received hereunder shall be applied first toward any late charges or other amounts due hereunder, then to the interest on the principal balance.

5. **DEFAULT INTEREST:** If payment is not made on due date, the default rate of interest set forth below will automatically apply from the payment due date, until the date on which the delinquent payment has been received by Holder.

a. This Commercial Promissory Note shall bear interest at the rate of twelve percent (12%) per annum after maturity or on the event of default. The default rate shall apply to the total balance due including cost, attorney fees, late charges, accumulated interest and principal.

b. An event of default shall be the failure to make the monthly payments due and such default continues for a period of (7) calendar days following notice thereof from Holder.

c. Maturity shall be deemed to be the date on which full payment of this Commercial Promissory Note is due under Paragraph 4, regardless of whether or not Holder accepts further payments after such date and regardless of whether or not Holder promptly place this Commercial Promissory Note in the hands of an attorney for collection.

6. **ACCELERATION:** In the event the payment by the Maker, including interests, required by this Commercial Promissory Note is not paid on or before the due date and/or in the event of a sale, lease, exchange, transfer, encumbrance, assignment, conveyance or other disposition of the property or any portion thereof then the whole sum of both principal and interest shall become due and payable at once by the Maker without further notice at the option of the Holder thereof.

7. **ATTORNEY'S FEES:** In the event this Commercial Promissory Note is placed in the hands of any attorney for collection, or if suit shall be brought to collect any of the principal or interest of this Commercial Promissory Note, Maker promises to pay a reasonable attorney's fee plus all costs of collection, including court costs, whether such fees are incurred in federal or state court, if Holder is considered by the court to be the prevailing party.

a. Maker further promises to pay to Holder, any actual attorney's fees on appeal and actual attorney's fees incurred in collecting on any judgment rendered by a court have jurisdiction over this matter, whether such fees are incurred before or after final judgment, if Holder is considered the prevailing party by the court.

b. Any costs of collection, including attorney's fees and court costs, shall be added to the principal balance of this Commercial Promissory Note and shall thereafter be deemed to be part of the principal sum due and shall bear interest under the terms and conditions of this Commercial Promissory Note. Said costs of collection, court costs and attorney's fees shall be accumulated during the month of occurrence and shall be added to the principal balance on the payment date.

8. **WAIVER OF PRESENTMENT:** Presentation of payment, notice of dishonor and notice of protest are hereby waived.

9. **NON-WAIVER:** Failure to exercise any right or portion of Holder shall not constitute a waiver of the right to exercise such right or option if Maker is in default hereunder.

10. **SECURITY FOR NOTE:** This Commercial Promissory Note is secured by a UCC-1 filing on the assets of the commercial business commonly known as Buenos Aires Grill located at 220 Virginia St, Seattle, WA 98101. Maker acknowledges that Holder shall not be required to exercise Holder's rights against any of the collateral now or at any future time provided to secure payment hereof, and that recovery of partial payment by Holder against one form of collateral given as security for this Note shall not exhaust or be deemed satisfaction or waiver of Holder's right to receive full payment of the balance due under this Note. All security filings will be terminated upon timely repayment of principal and interest.

11. **EXECUTION AS PRINCIPAL:** Each Maker of this Commercial Promissory Note executes the same as a principal and not as surety.

12. **APPLICABLE LAW:** This Commercial Promissory Note shall be given and construed and enforced in accordance with the laws of the State of Washington.

13. **NOTICES:** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Commercial Promissory Note shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail, postage prepaid, return receipt requested, to the address set forth below:

MAKER: M & D III, Inc.  
220 Virginia St.  
Seattle, WA 98121

HOLDER: Malbec, Inc.  
2318 McGilvra Blvd E.  
Seattle, WA 98112

14. **BUSINESS PURPOSE OF LOAN:** Maker expressly represents and covenants that funds advanced by Holder/Payee pursuant to this Commercial Promissory Note be used exclusively for business or commercial purposes only and NOT for personal, family, or household purposes. Notwithstanding anything in this Note to the contrary, Maker shall not be required to make, and shall not make, any interest payment or collection charge which violates any usury laws applicable to this Note, and all interest and other charges referred to in this Note shall be deemed to be reduced to the maximum rate which may be charged pursuant to this Note without being in violation of such applicable usury laws.

15. **MAKER'S RIGHT TO COUNSEL:** Maker acknowledges that he/she has had the opportunity to consult with an attorney of his/her own choice and at his/her own expense for advice concerning this Note and the other documents required to close this transaction, and has either done so and requested the reviewing attorney to indicate such by signature below, or knowingly, voluntarily and willingly waived the opportunity of doing.

16. **NOT CONSUMER LOAN:** Maker knows and agrees that this Commercial Note transaction is not a consumer loan or credit transaction.

17. **NOTICE:** Pursuant to RCW 19.36 et seq., oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

18. **DUE ON SALE:** This note shall be paid in full in the event the Buenos Aires Grill is sold by the Maker before the maturity date of the note.

Time is of the essence with respect to all payments to be made to Maker and the performance of all obligations of Maker.

DATED this 17th day of April 2006.

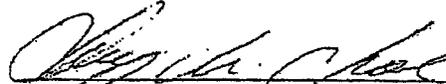
MAKER:

M & D III, Inc.



By: Chung K. Choe  
Its: President

MAKER:



Chung K. Choe, Individually

Business: Buenos Aires Grill  
 Maker: M & D III, Inc.  
 Holder: Malbec, Inc.

Compound Period .....: Monthly

Nominal Annual Rate ....: 7.250 %

### CASH FLOW DATA

Event	Start Date	Amount	Number Period	End Date
1 Loan	04/17/2006	240,000.00	1	
2 Payment	05/17/2006	2,817.62	24 Monthly	04/17/2008
3 Payment	04/17/2008	50,000.00	1	
4 Payment	05/17/2008	2,817.62	24 Monthly	04/17/2010
5 Payment	04/17/2010	50,000.00	1	
6 Payment	05/17/2010	2,817.62	71 Monthly	03/17/2016
7 Payment	04/17/2016	163,474.84-	1	

### AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
Loan 04/17/2006				240,000.00
1 05/17/2006	2,817.62	1,450.00	1,367.62	238,632.38
2 06/17/2006	2,817.62	1,441.74	1,375.88	237,256.50
3 07/17/2006	2,817.62	1,433.42	1,384.20	235,872.30
4 08/17/2006	2,817.62	1,425.06	1,392.56	234,479.74
5 09/17/2006	2,817.62	1,416.65	1,400.97	233,078.77
6 10/17/2006	2,817.62	1,408.18	1,409.44	231,669.33
7 11/17/2006	2,817.62	1,399.67	1,417.95	230,251.38
8 12/17/2006	2,817.62	1,391.10	1,426.52	228,824.86
2006 Totals	22,540.96	11,365.82	11,175.14	
9 01/17/2007	2,817.62	1,382.48	1,435.14	227,389.72
10 02/17/2007	2,817.62	1,373.81	1,443.81	225,945.91
11 03/17/2007	2,817.62	1,365.09	1,452.53	224,493.38
12 04/17/2007	2,817.62	1,356.31	1,461.31	223,032.07
13 05/17/2007	2,817.62	1,347.49	1,470.13	221,561.94
14 06/17/2007	2,817.62	1,338.60	1,479.02	220,082.92
15 07/17/2007	2,817.62	1,329.67	1,487.95	218,594.97
16 08/17/2007	2,817.62	1,320.68	1,496.94	217,098.03
17 09/17/2007	2,817.62	1,311.63	1,505.99	215,592.04
18 10/17/2007	2,817.62	1,302.54	1,515.08	214,076.96
19 11/17/2007	2,817.62	1,293.38	1,524.24	212,552.72
20 12/17/2007	2,817.62	1,284.17	1,533.45	211,019.27
2007 Totals	33,811.44	16,005.85	17,805.59	
21 01/17/2008	2,817.62	1,274.91	1,542.71	209,476.56
22 02/17/2008	2,817.62	1,265.59	1,552.03	207,924.53
23 03/17/2008	2,817.62	1,256.21	1,561.41	206,363.12
24 04/17/2008	2,817.62	1,246.78	1,570.84	204,792.28

Business: Buenos Aires Grill  
 Maker: M & D III, Inc.  
 Holder: Malbec, Inc.

Date	Payment	Interest	Principal	Balance
25 04/17/2008	50,000.00	0.00	50,000.00	154,792.28
26 05/17/2008	2,817.62	935.20	1,882.42	152,909.86
27 06/17/2008	2,817.62	923.83	1,893.79	151,016.07
28 07/17/2008	2,817.62	912.39	1,905.23	149,110.84
29 08/17/2008	2,817.62	900.88	1,916.74	147,194.10
30 09/17/2008	2,817.62	889.30	1,928.32	145,265.78
31 10/17/2008	2,817.62	877.65	1,939.97	143,325.81
32 11/17/2008	2,817.62	865.93	1,951.69	141,374.12
33 12/17/2008	2,817.62	854.14	1,963.48	139,410.64
2008 Totals	83,811.44	12,202.81	71,608.63	
34 01/17/2009	2,817.62	842.27	1,975.35	137,435.29
35 02/17/2009	2,817.62	830.34	1,987.28	135,448.01
36 03/17/2009	2,817.62	818.33	1,999.29	133,448.72
37 04/17/2009	2,817.62	806.25	2,011.37	131,437.35
38 05/17/2009	2,817.62	794.10	2,023.52	129,413.83
39 06/17/2009	2,817.62	781.88	2,035.74	127,378.09
40 07/17/2009	2,817.62	769.58	2,048.04	125,330.05
41 08/17/2009	2,817.62	757.20	2,060.42	123,269.63
42 09/17/2009	2,817.62	744.75	2,072.87	121,196.76
43 10/17/2009	2,817.62	732.23	2,085.39	119,111.37
44 11/17/2009	2,817.62	719.63	2,097.99	117,013.38
45 12/17/2009	2,817.62	706.96	2,110.66	114,902.72
2009 Totals	33,811.44	9,303.52	24,507.92	
46 01/17/2010	2,817.62	694.20	2,123.42	112,779.30
47 02/17/2010	2,817.62	681.37	2,136.25	110,643.05
48 03/17/2010	2,817.62	668.47	2,149.15	108,493.90
49 04/17/2010	2,817.62	655.48	2,162.14	106,331.76
50 04/17/2010	50,000.00	0.00	50,000.00	56,331.76
51 05/17/2010	2,817.62	340.34	2,477.28	53,854.48
52 06/17/2010	2,817.62	325.37	2,492.25	51,362.23
53 07/17/2010	2,817.62	310.31	2,507.31	48,854.92
54 08/17/2010	2,817.62	295.17	2,522.45	46,332.47
55 09/17/2010	2,817.62	279.93	2,537.69	43,794.78
56 10/17/2010	2,817.62	264.59	2,553.03	41,241.75
57 11/17/2010	2,817.62	249.17	2,568.45	38,673.30
58 12/17/2010	2,817.62	233.65	2,583.97	36,089.33
2010 Totals	83,811.44	4,998.05	78,813.39	
59 01/17/2011	2,817.62	218.04	2,599.58	33,489.75
60 02/17/2011	2,817.62	202.33	2,615.29	30,874.46
61 03/17/2011	2,817.62	186.53	2,631.09	28,243.37
62 04/17/2011	2,817.62	170.64	2,646.98	25,596.39
63 05/17/2011	2,817.62	154.64	2,662.98	22,933.41
64 06/17/2011	2,817.62	138.56	2,679.06	20,254.35
65 07/17/2011	2,817.62	122.37	2,695.25	17,559.10

Business: Buenos Alres Grill  
 Maker: M & D III, Inc.  
 Holder: Malbec, Inc.

Date	Payment	Interest	Principal	Balance
66 08/17/2011	2,817.62	106.09	2,711.53	14,847.57
67 09/17/2011	2,817.62	89.70	2,727.92	12,119.65
68 10/17/2011	2,817.62	73.22	2,744.40	9,375.25
69 11/17/2011	2,817.62	56.64	2,760.98	6,614.27
70 12/17/2011	2,817.62	39.96	2,777.66	3,836.61
2011 Totals	33,811.44	1,558.72	32,252.72	
71 01/17/2012	2,817.62	23.18	2,794.44	1,042.17
72 02/17/2012	2,817.62	6.30	2,811.32	1,769.15-
73 03/17/2012	2,817.62	10.69-	2,828.31	4,597.46-
74 04/17/2012	2,817.62	27.78-	2,845.40	7,442.86-
75 05/17/2012	2,817.62	44.97-	2,862.59	10,305.45-
76 06/17/2012	2,817.62	62.26-	2,879.88	13,185.33-
77 07/17/2012	2,817.62	79.66-	2,897.28	16,082.61-
78 08/17/2012	2,817.62	97.17-	2,914.79	18,997.40-
79 09/17/2012	2,817.62	114.78-	2,932.40	21,929.80-
80 10/17/2012	2,817.62	132.49-	2,950.11	24,879.91-
81 11/17/2012	2,817.62	150.32-	2,967.94	27,847.85-
82 12/17/2012	2,817.62	168.25-	2,985.87	30,833.72-
2012 Totals	33,811.44	858.89-	34,670.33	
83 01/17/2013	2,817.62	186.29-	3,003.91	33,837.63-
84 02/17/2013	2,817.62	204.44-	3,022.06	36,859.69-
85 03/17/2013	2,817.62	222.69-	3,040.31	39,900.00-
86 04/17/2013	2,817.62	241.06-	3,058.68	42,958.68-
87 05/17/2013	2,817.62	259.54-	3,077.16	46,035.84-
88 06/17/2013	2,817.62	278.13-	3,095.75	49,131.59-
89 07/17/2013	2,817.62	296.84-	3,114.46	52,246.05-
90 08/17/2013	2,817.62	315.65-	3,133.27	55,379.32-
91 09/17/2013	2,817.62	334.58-	3,152.20	58,531.52-
92 10/17/2013	2,817.62	353.63-	3,171.25	61,702.77-
93 11/17/2013	2,817.62	372.79-	3,190.41	64,893.18-
94 12/17/2013	2,817.62	392.06-	3,209.68	68,102.86-
2013 Totals	33,811.44	3,457.70-	37,269.14	
95 01/17/2014	2,817.62	411.45-	3,229.07	71,331.93-
96 02/17/2014	2,817.62	430.96-	3,248.58	74,580.51-
97 03/17/2014	2,817.62	450.59-	3,268.21	77,848.72-
98 04/17/2014	2,817.62	470.34-	3,287.96	81,136.68-
99 05/17/2014	2,817.62	490.20-	3,307.82	84,444.50-
100 06/17/2014	2,817.62	510.19-	3,327.81	87,772.31-
101 07/17/2014	2,817.62	530.29-	3,347.91	91,120.22-
102 08/17/2014	2,817.62	550.52-	3,368.14	94,488.36-
103 09/17/2014	2,817.62	570.87-	3,388.49	97,876.85-
104 10/17/2014	2,817.62	591.34-	3,408.96	101,285.81-
105 11/17/2014	2,817.62	611.94-	3,429.56	104,715.37-
106 12/17/2014	2,817.62	632.66-	3,450.28	108,165.65-

Business: Buenos Aires Grill  
 Maker: M & D III, Inc.  
 Holder: Malbec, Inc.

Date	Payment	Interest	Principal	Balance
2014 Totals	33,811.44	6,251.35-	40,062.79	
107 01/17/2015	2,817.62	653.50-	3,471.12	111,636.77-
108 02/17/2015	2,817.62	674.47-	3,492.09	115,128.86-
109 03/17/2015	2,817.62	695.57-	3,513.19	118,642.05-
110 04/17/2015	2,817.62	716.80-	3,534.42	122,176.47-
111 05/17/2015	2,817.62	738.15-	3,555.77	125,732.24-
112 06/17/2015	2,817.62	759.63-	3,577.25	129,309.49-
113 07/17/2015	2,817.62	781.24-	3,598.86	132,908.35-
114 08/17/2015	2,817.62	802.99-	3,620.61	136,528.96-
115 09/17/2015	2,817.62	824.86-	3,642.48	140,171.44-
116 10/17/2015	2,817.62	846.87-	3,664.49	143,835.93-
117 11/17/2015	2,817.62	869.01-	3,686.63	147,522.56-
118 12/17/2015	2,817.62	891.28-	3,708.90	151,231.46-
2015 Totals	33,811.44	9,254.37-	43,065.81	
119 01/17/2016	2,817.62	913.69-	3,731.31	154,962.77-
120 02/17/2016	2,817.62	936.23-	3,753.85	158,716.62-
121 03/17/2016	2,817.62	958.91-	3,776.53	162,493.15-
122 04/17/2016	163,474.84-	981.69-	162,493.15-	0.00
2016 Totals	155,021.98-	3,790.52-	151,231.46-	
Grand Totals	271,821.94	31,821.94	240,000.00	

# **APPENDIX 2**

**SECURITY AGREEMENT  
EQUIPMENT, FIXTURES, INVENTORY AND ACCOUNTS**

M & D III, Inc., a Washington corporation, ("Debtor") hereby grant to Malbec, Inc., a Washington corporation ("Secured Party") a security interest in the following described property:

All of Debtor's fixtures, equipment, inventory and accounts, together with all cash and non-cash proceeds thereof, including without limitation, accounts, general intangibles, chattel paper and instruments owned by Debtor and all such property hereafter acquired. All of the property is hereinafter referred to as the ("Property").

This Security Agreement is given to secure the payment and performance of all indebtedness and obligations of Debtor to Secured Party presently existing and hereafter arising, including, without limitation, Debtor's secured Promissory Note dated April 17, 2006 in the amount of One Hundred Thirty Thousand and 00/100 Dollars (\$130,000.00) in favor of Secured Party, all extensions, modifications or renewals thereof, and all interest thereon. When more than one person is the debtor, they will be jointly and severally liable.

DEBTOR HEREBY REPRESENTS, COVENANTS, AND AGREES WITH SECURED PARTY AS FOLLOWS:

1. Use of Property. Debtor agrees to comply with any governmental regulation affecting the use of the property and will not waste, injure nor destroy the property, nor use nor permit the use of the property in any unlawful manner. Debtor represents and agrees that the primary use of the property is and will be business use.
2. Debtor and Collateral Location. The address appearing below Debtor's signature contained hereon is the address of Debtor's chief executive office, or, if Debtor has no place of business, his residence. If the collateral is not located at the Debtor's address appearing hereon, it will be located at \_\_\_\_\_ Debtor will give Secured Party prior written notice of any change in either the Debtor's place of business or, if he had no place of business, his residence and of any change in collateral location.
3. Ownership and Liens. Debtor is over eighteen (18) years of age and owns the property and the same is free and clear of all security interests and encumbrances of every nature. Debtor will not create nor permit the existence of any lien or security interest, other than that created hereby, on the property without the written consent of Secured Party. Any certificate of title now or hereafter existing on any of the property will be delivered to Secured Party and will recite the interest of Secured Party.
4. Taxes. Debtor will pay before delinquency all taxes or other governmental charges that are or may become a lien or charge on the property and will pay any tax which may be levied on any obligation secured hereby.
5. Repairs and Inspection. Debtor will keep the property in good repair. Secured Party may inspect the property at reasonable times and intervals and may for this purpose enter the premises upon which the property is located.
6. Insurance. Debtor will keep the property continuously insured by an insurer approved by Secured Party against fire, theft and other hazards designated at any time by Secured Party, in an amount equal to the full insurable value thereof or to all sums secured hereby, with such form of loss-payable clause as designated by and in favor of Secured Party, and will deliver the policies and receipts showing payment of premiums to the Secured Party. In the event of loss, Secured Party shall have full power to collect any and all insurance upon the property and to apply the same at its option to any obligation secured hereby, whether or not matured, or to the restoration or repair of the property. Secured Party shall have no liability whatsoever for any loss that may occur by reason of the omission or lack of coverage of any such insurance.
7. Removal or Sale. Without the prior written consent of Secured Party, Debtor will not remove the property from the State of Washington, and Debtor will not sell nor lease the property or any interest therein.

8. Expenses Incurred by Secured Party. Secured Party is not required to, but may at its option, pay any tax or other charge or expense payable by Debtor and any filing or recording fees and any amounts so paid shall be repayable by Debtor upon demand. Debtor will also repay upon demand all of Secured Party's expenses incurred in collecting, insuring, conserving or protecting the collateral or in any inventories, audits, inspections or other examination by Secured Party in respect of the collateral. All such sums shall bear interest at the lesser of rate of two percent (2%) per month or the maximum rate permitted by law from the date of payment by the Secured Party until repaid by Debtor and such sums and interests thereon shall be secured hereby. The rights granted by this Paragraph are not a waiver of any other rights of Secured Party arising from breach of any of Debtor's covenants.

9. Accounting and Inspection of Books.

9.1 Debtor agrees to maintain full and accurate books of account covering the accounts assigned hereby and to deliver to Secured Party such of the books as relate to the collateral hereunder if so requested by Secured Party after to in connection with the termination of Debtor's authority to collect as herein provided;

9.2 Debtor agrees to deliver to Secured Party on demand, or upon the termination of the Debtor's authority to collect by Secured Party, all of the papers in Debtor's possession relating to the accounts covered by this Agreement which will facilitate collection or enforcement thereof by Secured Party, including, but not limited to, correspondence, invoices, shipping documents and records, sales slips, orders and order acknowledgements, contracts and all other instruments relating thereto; and

9.3 Secured Party or his authorized agent shall at all reasonable times have free access to Debtor's ledgers, books of account and other written records evidencing the accounts receivable assigned hereunder, and such agent or agents shall at all reasonable times have the right to be present at Debtor's place of business to receive all communications and remittances relating to the collateral.

10. Waivers. This Security Agreement shall not be qualified or supplemented by course of dealing. No waiver or modification by Secured Party of any of the terms or conditions hereof shall be effective unless in writing signed by Secured Party. No waiver nor indulgence by Secured Party as to any required performance by Debtor shall constitute a waiver as to any subsequent required performance or other obligations of Debtor hereunder. Debtor hereby waives any counterclaims or defense hereunder against any assignees for value.

11. Default. Time is of the essence in this Security Agreement, and any of the following events shall be an "Event of Default":

11.1 Any failure to pay, when due, the full amount of any payment of principal, interest, taxes, insurance premiums or other charges which are or may be secured hereby;

11.2 Any failure to perform as required by any covenant or agreement herein;

11.3 The falsity of any representation by Debtor herein or in any credit application or financial statement given by Debtor to Secured Party as a basis for any extension of credit secured hereby;

11.4 If the property should be seized or levied upon under any legal or governmental process against Debtor or against the property;

11.5 If Debtor becomes insolvent or is the subject of a petition in bankruptcy, either voluntary or involuntary, or in any other processing under the federal bankruptcy laws; or makes an assignment for the benefit of creditors; or if Debtor is named or the property is subject to a suit for the appointment of a receiver;

11.6 Loss, substantial damage to, or destruction of any portion of the collateral;

11.7 Entry of any judgment against Debtor;

11.8 Dissolution or liquidation of Debtor; or

11.9 The Secured Party deems itself insecure.

12. **Remedies.** In any such Event of Default, the entire amount of indebtedness secured hereby shall then or at any time thereafter, at the option of Secured Party, become immediately due and payable without notice or demand, and Secured Party shall have all remedies provided by law and an immediate right to pursue the remedies set forth in this Security Agreement as follows:

12.1 Debtor agrees to put Secured Party in possession of the property on demand;

12.2 Secured Party is authorized to enter any premises where the property is situated and take possession of the property without notice or demand and without legal proceedings;

12.3 At the request of Secured Party, Debtor will assemble the property and make it available to Secured Party at a place designated by Secured Party which is reasonably convenient to both parties;

12.4 Debtor agrees that a period of five (5) days from the time notice is sent, by first-class mail or otherwise, shall be a reasonable period of notification of a sale or other disposition of the property;

12.5 Debtor agrees that any notice or other communication by Secured Party to Debtor shall be sent to the mailing address of the Debtor stated herein;

12.6 Secured Party is authorized to notify the account debtors and to effect direct collection of the accounts. At the request of Secured Party, Debtor agrees to enter into appropriate notices to the account debtors.

12.7 Debtor agrees to pay, on demand, the amount of all expenses reasonable incurred by Secured Party in protection for realizing on the property. In the event that this Security Agreement or any obligation secured by it is referred to any attorney for protecting or defending the priority of Secured Party's interest or for collection or realization procedures, Debtor agrees to pay a reasonable attorney's fee, including costs incurred in both trial and appellate courts, or fees incurred without suit, and expenses of title search and all court costs and costs of public officials. The sums agreed to be paid in this subparagraph shall be secured hereby; and

12.8 If Secured Party disposes of the property, Debtor agrees to pay any deficiency remaining after application of the net proceeds to any indebtedness secured hereby.

13. **Applicable Law.** This Security Agreement shall be governed by the laws of the State of Washington.

Dated this 17th day of April 2006.

DEBTOR: M & D III, Inc.

  
By: Chung K. Choe

Its: President

# **APPENDIX 3**

# AGREEMENT

THIS AGREEMENT dated this 19<sup>th</sup> day of June 2006, by and between Malbec Inc., a Washington corporation, Seller and M 7 D III Inc, a Washington Corporation, Buyer regarding the \$ 130,000.00 promissory note dated April 12, 2006 executed by Buyer in favor of the Seller for the purchase and sale of Buenos Aires Grill located at 220 Virginia St., Seattle, Wa. 98121.

The parties hereto agree as follows:

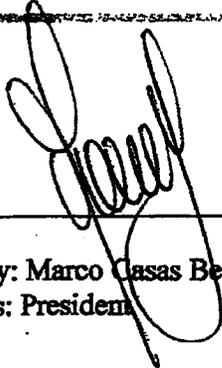
Seller hereby assigns to the Department of Revenue (DOR), the sum of \$ 70,878.00 from the \$ 130,000.00 note from the Buyer and authorizes the Buyer to make payments to the DOR, from the monies due to seller under the note in the amount of \$ 1,526.21 per month beginning May 17<sup>th</sup>, 2006 and on or before the 17<sup>th</sup> day of each month until \$ to the DOR is paid in full. The Buyer shall resume normal payments to the seller in the amount of \$ 1,526.21 after the DOR is paid in full.

Seller:

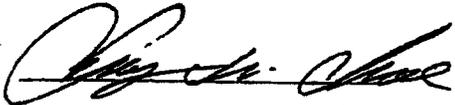
Buyer:

Malbec Inc.

M & D III, Inc.



By: Marco Casas Beaux  
Its: President



BY: Chung K. Choe  
Its: President

# **APPENDIX 4**

PROMISSORY NOTE

1) M & D Promises to pay Malbec Inc (Marco Casas Beaux ) \$ 120,000.00 dollars in exchange for two notes signed on April 17, 2005 for a total amount of \$ 370,000.00 ,this is the final and complete settlement between the parties regarding any outstanding balances owed to Malbec Inc his officers and assignors arising from the sale of the Buenos Aires Grill restaurant to M&D Inc.

2) Form Of Payment ;

\$ 30,000.00 on or before November 15 th 2006  
the rest \$ 90,000.00 in ( two ? three ? ) payments of beginning ...?/?/? and ?/?/?

Not included in this settlement are amounts previously assigned to:

\$10,000 to Barry Conahim (Landlord)  
\$79,000 to DOR

Malbec Inc and Marco.Casas Beaux will hold M & D Inc and his officers harmless of any claims arising from the ownership of Malbec Inc of the Buenos Aires Grill .

If M&D fails to make scheduled payments all the original remedies for cure agreed in the original notes will remain in place .

CK this is the overall agreement that we discussed today

# **APPENDIX 5**

CK here's the deal as I see it unless there is another version"

Buenos Aires Grill'	Credits	Balance
Notes		370.000.00
Assigned balance Landlord	5.000.00 paid	
"    "    Taxes    1.526.00 x 6	9.156.00 paid	
Miscellaneous payments (included captured credit card receipts)	14.000.00 (aprox) paid	
Total Credits as today 11/9/06	28.156.00	
		341.844.00
To be Paid directly by CK		
Landlord	5.000.00 to be	
Taxes	69.844.00 to be paid	
Remain unpaid balance after all deductions (paid & to be)		267.000.00
30 % discount for prompt payment	80.100.00	
Final balance owed		186.900.00

CK, the discount can only be applied to the **unpaid** balance on the note, not from the principal obviously because that's what is owed, even if I agree to include the assigned unpaid balances to the Landlord & taxes ,Now we had been talking about this for a long time now ,so if you'll decide to take the discount this what needs to happen between now and tomorrow;

We sign a simple agreement that reflects the facts, with time frames, you'll need to make an earnest money payment of \$ 10.000.00 at the signing ,and I'll wait up to four weeks to be paid. I think is very fair.

Ipanema:

We had agreed in terms we can sign when ever you're ready also here you'll need to make a payment that I'll deposit on the Ipanema account .

Marco

# **APPENDIX 6**

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BUSINESS OPPORTUNITY  
PURCHASE AND SALE AGREEMENT

Date: July 26, 2007

The undersigned Buyer, Dan K. Yoo and/or assigns, agrees to buy and  
and Seller agrees to sell on the following terms, a business commonly known as Buenos Aires Grill  
located at 2000 2nd Ave. #103 In the City of Seattle  
County of King, State of Washington, Zip 98121.

1. PURCHASE PRICE. The purchase price, including the earnest money, is Seven Hundred Thousand Dollars and None  
Dollars ( \$700,000.00 ), plus the amount paid for inventory as determined in Section 8 below, payable as follows:

- all cash at closing, including the earnest money, with no financing contingency.
- all cash at closing, including the earnest money, contingent on new financing under Section 4a below.
- \_\_\_\_\_ / \_\_\_\_\_ % of the purchase price in cash at closing, including the earnest money, with the balance of the purchase price paid as follows (check one or both, as applicable):  Buyer's assumption of any underlying note and security agreements, under Section 4b below;  Buyer's delivery at closing of a promissory note for the balance of the purchase price, secured by the security agreement encumbering the Property, as described in Section 4c below.
- Other: \_\_\_\_\_

2. EARNEST MONEY. Buyer agrees to deliver the earnest money of \_\_\_\_\_ in the form of \_\_\_\_\_

- Cash  Personal check  Promissory note  Other: \_\_\_\_\_
- If the earnest money is in the form of a promissory note, it shall be due no later than:
  - \_\_\_\_\_ days after mutual acceptance.
  - Upon removal of the inspection contingencies in Section 8 below.
  - Other: \_\_\_\_\_
- Buyer shall deliver the earnest money to and it shall be held by  Selling Licensee  Closing Agent, no later than \_\_\_\_\_ days after mutual acceptance.
- Upon removal of the inspection contingencies in Section 8 below.
- Other: \_\_\_\_\_

Selling Licensee may, however, transfer the earnest money to Closing Agent.  
If the earnest money is to be held by Selling Licensee and is over \$10,000, it shall be deposited to:  Selling Licensee's pooled trust account (with interest paid to the State Treasurer)  A separate interest bearing trust account in Selling Licensee's name. The interest, if any, shall be credited at closing to Buyer whose Social Security or taxpayer ID Number is: \_\_\_\_\_ . If this sale fails to close, whoever is entitled to the earnest money is entitled to interest.

Selling Licensee shall deposit any check to be held by the Selling Licensee within 3 days after receipt or mutual acceptance, whichever occurs later. Buyer agrees to pay financing and purchase costs incurred by Buyer. If all or part of the earnest money is to be returned to Buyer and any such costs remain unpaid, Selling Licensee or Closing Agent may deduct and pay them therefrom. Unless otherwise provided in this Agreement, the earnest money shall be applicable to the purchase price and shall be non-refundable except where a condition to Buyer's obligation under this Agreement is not satisfied through no fault of Buyer.

3. ASSETS PURCHASED. This sale shall include all assets of Seller's business other than accounts receivable, cash, and the following other assets which are not included:

In addition to the leases, contracts and agreements assumed by Buyer pursuant to Section 8a below, this sale includes all right, title and interest of Seller to the following intangible property now or hereafter existing with the respect to the business including without limitation: all drawings, plans, specifications and other architectural or engineering work product; all governmental permits, certificates, licenses, authorizations and approvals; all utility, security and other deposits and reserve accounts made as security for the fulfillment of any of Seller's obligations; any name of, or telephone numbers for the business, related trademarks, service marks or trade dress; and guarantees, warranties or other assurances of performance received. Notwithstanding the foregoing, if Seller uses the trademarks, service marks, or trade dress for Seller's other businesses, then the Buyer's and Seller's obligations under this Agreement shall be conditioned on their agreement to an irrevocable, royalty-free license (excluding any portion of the purchase price allocated to the license) for the Buyer to use the marks and trade dress for the business purchased under this Agreement.

The purchase price shall be allocated among the assets purchased in the following amounts: Real property \_\_\_\_\_  
equipment \_\_\_\_\_; leasehold improvements \_\_\_\_\_; supplies \_\_\_\_\_;  
noncomplete \_\_\_\_\_; agreement \_\_\_\_\_; consulting agreement \_\_\_\_\_;  
goodwill \_\_\_\_\_; other (identify) \_\_\_\_\_.

INITIALS: Buyer: DY Date: 7/28/07 Seller: ck Date: 7/29/07  
Buyer: \_\_\_\_\_ Date: \_\_\_\_\_ Seller: \_\_\_\_\_ Date: \_\_\_\_\_

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**BUSINESS OPPORTUNITY  
PURCHASE AND SALE AGREEMENT  
(CONTINUED)**

**4. PAYMENT TERMS AND SECURITY.**

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a. Application for New Financing. If payment of the purchase price is contingent on Buyer obtaining new financing, then Buyer's obligation to close is conditioned upon Buyer accepting a written commitment for financing. Buyer will not reject those terms of a commitment which provide for a loan amount of at least \_\_\_\_\_ percent (\_\_\_\_\_% ) of the purchase price, interest not to exceed \_\_\_\_\_ percent (\_\_\_\_\_% ) per annum, a payment schedule calling for monthly payments amortized over not less than \_\_\_\_\_ years, and total placement fees and points not more than \_\_\_\_\_ percent (\_\_\_\_\_% ) of the loan amount. Buyer shall make immediate application for the commitment, pay required costs and make a good faith effort to procure such financing. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives Seller written notice that this condition is satisfied or waived on or before \_\_\_\_\_ days (60 days, if not completed) following mutual acceptance of this Agreement.

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b. Assumption of Existing Financing. If payment of the purchase price includes Buyer's assumption of a note and security instruments, including without limitation a UCC Fixture Filing, UCC Financing Statement, mortgage, deed of trust, or real estate contract, Seller shall promptly deliver to Buyer a copy of the underlying debt instrument(s) to be assumed, and Buyer shall be deemed to have approved all of the terms of the debt instrument(s), unless Buyer gives notice of disapproval within five (5) days after receiving such instrument(s). If any of the debt instrument(s) requires the consent of a third party to the assumption by Buyer, then Buyer shall apply for such consent within seven (7) days after receiving the debt instrument(s); upon Buyer's request, Seller shall assist Buyer by requesting the third party's consent to the assumption on Buyer's behalf. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives Seller written notice within \_\_\_\_\_ days (30 days, if not completed) of receiving the debt instrument(s) stating that such consent is available. Buyer shall pay any assumption fees or other out-of-pocket expenses attributable to the assumption of the underlying indebtedness.

c. Seller Financing. If Seller is financing a portion of the purchase price, unless different terms of debt and security instruments are attached to this Agreement, Buyer shall execute and deliver to Seller at closing: (i) LPB Form No. 28A Promissory Note and the DUE ON SALE and COMMERCIAL PROPERTY optional clauses in that form shall apply; (ii) UCC-1 Financing Statement covering the personal property subject to Seller's security interest and UCC-2 Fixture filing if fixtures are included in the sale (iii) LPB Form No. 20 Short Form Deed of Trust and CBA Form No. DTR Deed of Trust Rider (if real property is included in the sale); and (iv) Washington Legal Blank, Inc., Form (WBA) UCC-1B (rev. 8/99) form security agreement. The promissory note shall bear interest at the rate of \_\_\_\_\_ % per annum, and shall be payable as follows (choose one):  monthly installments of interest only;  monthly installments of \_\_\_\_\_ equal monthly installments of principal and interest in an amount sufficient to fully amortize the outstanding principal balance at the stated interest rate over \_\_\_\_\_ years;  other \_\_\_\_\_ . Payments shall commence on the first day of the first month following the month in which closing occurs and shall continue on the same day of each succeeding month, until (choose one):  \_\_\_\_\_ months from the date of closing;  other \_\_\_\_\_ , on which date all outstanding principal and interest shall be due. The principal shall, at Seller's option, bear all interest at the rate of \_\_\_\_\_ % per annum (18% or the maximum rate allowed by law, whichever is less, if not filed in) during any period of Buyer's default. If Seller receives any monthly payment more than \_\_\_\_\_ days (15 days if not filed in) after its due date, then a late payment charge of \_\_\_\_\_ % of the delinquent amount (8% of the delinquent amount if not filed in) shall be added to the scheduled payment. Buyer shall have \_\_\_\_\_ (8 days if not filed in) after written notice to cure a default before Seller may declare all outstanding sums to be immediately due and payable. If the Form (WBA) UCC-1B is used, except as otherwise provided in this Agreement, it shall be completed as follows: (i) the property subject to the security agreement shall be all of the property purchased hereunder, together with all replacements, additions, and proceeds; (ii) the primary use of the property specified in Section 1 shall be "business;" (iii) the address for the location of the collateral for Section 2 shall be the address where Buyer will conduct business after closing; and (iv) Section 3 shall be completed with the legal description of the real property where Buyer will operate the business after closing.

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6. ADDENDA. The following addenda are attached hereto and included in this Agreement:  None  \_\_\_\_\_

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8. PURCHASE OF BUSINESS REAL PROPERTY. If this sale includes the sale of commercial real estate to Buyer, the parties have attached and completed the CBA Form No. PS-2A Real Property Addendum or NWMLS Form No. 30A, or some other addendum regarding the sale of commercial real estate.

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7. LIQUOR/GAMING LICENSES. This sale  does  does not (does not, if not filled in) involve the transfer of a State Liquor or Gaming License. If a State Liquor License and/or Gaming License is to be transferred as part of this sale, Buyer shall apply for such transfer(s) within 7 days of mutual acceptance of this Agreement and Seller shall cooperate with Buyer's efforts. If the transfer of either of those licenses is denied or not granted prior to closing, at Buyer's option, Buyer may terminate this Agreement prior to closing and the earnest money shall be returned to Buyer.

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8. INSPECTION CONTINGENCY. This Agreement shall terminate and Buyer shall receive a refund of the earnest money unless Buyer gives written notice to Seller within \_\_\_\_\_ days (20 days if not filled in) of mutual acceptance of this Agreement (the "Contingency Period") stating that Buyer is satisfied with the following items a through e. If such notice is timely given, the inspection contingencies stated in this Section 8 shall be deemed to be satisfied.

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a. Books, Records, Leases, Agreements. Seller shall make available for inspection by Buyer or its agents as soon as possible but no later than ten (10) days after mutual acceptance of this Agreement all documents available to Seller relating to the ownership and operation of the business, including without limitation: (i) statements for utilities and personal property taxes; (ii) service contracts, franchise agreements, employment contracts, and leases or conditional sales agreements for equipment, fixtures, or other personal property; (iii) plans, specifications, permits, applications, drawings, surveys, studies, warranties and maintenance records regarding Seller's business or the property sold hereunder; (iv) books and records regarding the past performance and current financial condition of the business, including state and federal tax returns, financial statements, balance sheets, accounting records and audit reports; and (v) any lease or other agreement for use and occupancy of any premises on which all or a portion of the business is located or conducted.

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INITIALS: Buyer: DY Date: 7/28/07 Seller: [Signature] Date: 7/29/07  
Buyer: \_\_\_\_\_ Date: \_\_\_\_\_ Seller: \_\_\_\_\_ Date: \_\_\_\_\_

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**BUSINESS OPPORTUNITY  
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Buyer shall determine within the Contingency Period whether it wishes and is able to assume, as of closing, all of the foregoing leases, contracts, 114  
and agreements which have terms extending beyond closing, and to determine which leases, contracts and agreements that Buyer does not wish 115  
to assume or take subject to. Buyer shall be solely responsible for obtaining any required consents to each assumption. Seller, however, shall 116  
cooperate with Buyer in securing any necessary consents. Seller shall transfer the leases, contracts and agreements as provided in Section 13 of 117  
this Agreement. 118

If, at or prior to the end of the Contingency Period, Buyer notifies Seller that there are certain leases, contracts or agreements that Buyer wants 119  
terminated as a condition to Buyer's purchase, Seller shall have 10 days from the date of Buyer's notice to attempt to terminate each such 120  
lease, contract or agreement on terms satisfactory to Seller. Buyer shall incur no liability for any such termination. Unless Seller notifies Buyer by 121  
the end of the 10-day period that Seller has been able to terminate each such lease, contract or agreement on terms satisfactory to Seller, this 122  
Agreement shall terminate and the earnest money shall be returned to Buyer, unless Buyer on or before the end of the 10-day period waives the 123  
termination requirement and proceeds to close. 124

b. **Lease of Premises by Seller.** If Seller is the owner of the premises on which all or a part of the business is located, and Buyer is not pur- 125  
chasing the premises as part of this Agreement, Seller shall deliver to Buyer within 10 days after mutual acceptance a proposed form of lease for 126  
the premises. Buyer and Seller shall then have until the end of the Contingency Period to agree upon a final form of lease. If Buyer and Seller 127  
cannot agree on a final form of lease by the end of the Contingency Period, then Buyer or Seller may thereafter terminate this Agreement and the 128  
earnest money shall be returned to Buyer. 129

c. **Employment of Key Personnel.** Buyer shall determine within the Contingency Period whether it wishes to attempt to negotiate acceptable 130  
employment contracts with any employees of Seller that Buyer wishes to hire after closing. Buyer shall not contact any employees of Seller with- 131  
out Seller's permission to do so. If Buyer's purchase is made contingent on hiring any employees, and Seller refuses Buyer permission to contact 132  
those employees or if Buyer cannot negotiate a mutually satisfactory agreement at least ten (10) days prior to closing with any employee that 133  
Buyer identifies during the Contingency Period, then Buyer may terminate this Agreement and receive a refund of the earnest money. 134

d. **Physical Inspection.** Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter the premises at reasonable times 135  
to conduct inspections concerning the business and premises including without limitation, the structural condition of the leasehold improvements, 136  
all mechanical, electrical and plumbing systems, equipment, hazardous materials (limited to a Phase 1 audit only), pest infestation, or other 137  
matters affecting the feasibility of the business and premises for Buyer's intended use. Buyer shall schedule any entry onto the premises with 138  
Seller in advance. Buyer shall not perform any invasive testing without obtaining the Seller's prior written consent, which shall not be unreasonably 139  
withheld. Buyer shall restore the personal property, premises and leasehold improvements to the same condition they were in prior to inspection. 140  
Buyer agrees to indemnify and defend Seller from all liens, costs, claims, and expenses, including attorneys' and experts' fees, arising from or 141  
relating to entry onto or inspection of the premises by Buyer and its agents. This agreement to indemnify and defend Seller shall survive closing. 142  
Buyer may continue to enter the premises in accordance with the foregoing terms and conditions after removal or satisfaction of the inspection 143  
contingency only for the purpose of re-sale or to satisfy conditions of financing. 144

e. **Schedule of Assets.** Within 10 days after mutual acceptance of this Agreement, Seller shall prepare a schedule setting forth all property to 145  
be transferred to Buyer at closing, whether real, personal, tangible, or intangible. Within 10 days after receipt of this schedule, Buyer shall 146  
approve or disapprove the schedule. If Buyer approves the schedule and Buyer and Seller have not agreed on an allocation of the purchase price 147  
in Section 3 above, then Buyer and Seller shall agree on an allocation of the purchase price among the various assets (equipment, furnishings 148  
and fixtures, goodwill, etc.). If they are unable to agree in good faith within 10 days after Buyer's written approval of the schedule, or if Buyer fails 149  
to give Seller written approval of the schedule within the 10 day period, either party may terminate this Agreement. Except as otherwise provided 150  
in this Agreement, Seller is not transferring and Buyer is not assuming any accounts payable or other liabilities of Seller, and Seller shall 151  
indemnify and hold Buyer harmless from all liabilities of Seller related to Seller's operation of the business. This agreement to indemnify and 152  
defend Seller shall survive closing. 153

9. **INVENTORY.** Within 10 days after mutual acceptance of this Agreement, Seller and Buyer shall agree in writing on a preliminary inventory setting 154  
forth the count and assigned unit values for all of Seller's inventory. If Seller and Buyer cannot agree on a preliminary inventory, then this Agree- 155  
ment shall terminate and the earnest money shall be refunded to Buyer. The inventory shall be valued at the lower of Seller's cost for any such 156  
item or the fair market value of such item. The inventory to be sold should consist only of items of quality or quantity commercially useable and 157  
saleable in the ordinary course of business. At the close of the last business day prior to closing, Seller and Buyer shall conduct a final inventory 158  
for the purpose of adjusting the inventory count (but not the assigned unit values). The final inventory count shall not exceed or be exceeded by 159  
the preliminary count by more than \_\_\_\_\_% percent (ten percent if not filled in), and the final inventory value (the final inventory 160  
count per item times the assigned unit values per item) shall be added to the purchase price described in Section 1 above. 161

10. **EMPLOYMENT MATTERS.** Seller shall be responsible for all employment obligations of the business prior to closing, including wages, taxes, 162  
accrued vacation and sick pay, and benefits for all employees and/or contractors engaged by Seller for the business prior to closing. Unless 163  
otherwise agreed, all employees shall be terminated as of closing and Buyer shall be responsible at and after closing for only those employees or 164  
contractors that Buyer hires. 165

11. **OPERATIONS PRIOR TO CLOSING.** After mutual acceptance of this Agreement and until closing, Seller shall continue to operate the business 166  
in the ordinary course; shall not sell, pledge, encumber or otherwise transfer any of the property (except for inventory in the ordinary course); shall 167  
maintain the assets of the business in at least the same condition existing on the date of mutual acceptance of this Agreement, damage by cas- 168  
ualty excluded; shall not enter into, modify, or terminate any contracts, leases or other agreements (except in the ordinary course of business); 169  
or make capital expenditures in excess of \$5,000 without first obtaining Buyer's consent, which shall not be unreasonably withheld; shall not increase 170  
the compensation, benefits or distributions of any of the employees or principals of the business; and shall pay before delinquency all taxes, 171  
assessments, and other government charges regarding the business, its operations and property. 172

INITIALS: Buyer: BY Date: 7/28/07 Seller: OK Date: 7/29/07 173  
Buyer: \_\_\_\_\_ Date: \_\_\_\_\_ Seller: \_\_\_\_\_ Date: \_\_\_\_\_ 174

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**BUSINESS OPPORTUNITY  
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- 12. POSSESSION. Buyer shall be entitled to possession  on closing  \_\_\_\_\_ (on closing, if not filled in). 175
- 13. CONVEYANCE. Title to the tangible property shall be transferred by bill of sale unless some different method of transfer is dictated by law. Seller warrants that the title to the property shall be free of all liens and claims of any kind, except as otherwise provided in this Agreement. At closing, Seller and Buyer shall execute and deliver to Closing Agent CBA Form No. PS-AS Assignment and Assumption Agreement transferring all leases, contracts and agreements assumed by Buyer pursuant to Section 8a and all intangible property transferred pursuant to Section 3. 176-179
- 14. CLOSING OF SALE. This sale shall be closed on or before 5:00PM o'clock on 10/25/07 ("closing") by Young S. Oh Attorney ("Closing Agent"). Buyer and Seller shall, immediately on demand, deposit with Closing Agent all instruments and monies required to complete the purchase and sale in accordance with this Agreement. "Closing" shall be deemed to have occurred when all documents required to close are delivered to Closing Agent and the sale proceeds are available to Seller. Time is of the essence in the performance of this Agreement. 180-184
- 15. CLOSING COSTS. Seller and Buyer shall each pay one-half of the escrow fees. Personal property taxes payable in the year of closing, rents and other payments under assumed contracts or leases, license fees for Liquor or Gaming Licenses if closing occurs within ninety (90) days of the start of the license year, utilities, phone company charges, advertising fees, and other operating expenses shall be pro-rated as of closing. Unless otherwise agreed in writing, Buyer shall pay all costs of assuming contracts, leases and other agreements. Buyer shall reimburse Seller for lease, utility and other business-related deposits not returned to Seller at closing. Buyer shall pay all sales and/or use tax (other than real estate excise tax) arising from the transfer of the property. The commission is due on closing or upon Seller's default under this Agreement, whichever occurs first, and neither the amount nor due date thereof can be changed without the Listing Broker's written consent. 185-191
- 16. RISK OF LOSS. The risk of loss or damage to the property sold hereunder shall be Seller's until closing. Buyer may terminate this Agreement and obtain a refund of the earnest money, less any costs advanced or committed for Buyer, if improvements on the premises or the assets of the business are destroyed or materially damaged by casualty before closing, or if condemnation proceedings are commenced against all or a portion of the premises before closing. 192-193
- 17. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer that (i) it has the authority to sign this Agreement and complete the sale to Buyer; (ii) all books, records, leases, agreements, and other items delivered to Buyer under this Agreement are accurate, and complete; (iii) Seller has complied with all local, state and federal laws, and any restrictions in its Liquor and/or Gaming Licenses in operating its business, and Seller has all required licenses, permits, certificates and authorizations needed for the conduct of its business and the use of its properties and premises; (iv) there are no liens or claims to the property to be transferred to Buyer under this Agreement; (v) Seller knows of no litigation (pending or threatened), contract provisions, or other matters that could restrict its ability to perform hereunder or which could adversely affect Buyer's operation of the business after closing; (vi) Seller has not made any untrue statements of material fact, or omitted to state any material fact, the omission of which would be misleading to Buyer, and Seller has as of the date of this Agreement disclosed all material events, conditions and facts affecting the business, affairs and prospects of Seller and its business; (vii) Seller has title to all personal property sold to Buyer pursuant to this Agreement; and (viii) Seller has paid (except to the extent prorated at closing) all local, state, and federal taxes applicable to the business or the property sold under this Agreement, including without limitation, business and occupation taxes, social security and unemployment taxes, and worker's compensation contributions. Seller's representations and warranties shall survive closing. Seller makes no representation or warranties regarding the business or property other than those specified in this Agreement. Buyer otherwise takes the business and personal property AS IS and Buyer shall otherwise rely on its own pre-closing inspections and investigations. The continued accuracy of these representations and warranties as of the closing date shall be a condition to Buyer's obligation to close this transaction, and Seller shall deliver to Buyer at closing a certificate that such representations and warranties continue to be accurate as if restated on the date of closing. 194-211
- 18. HAZARDOUS SUBSTANCES. Except as disclosed to or known by Buyer prior to the satisfaction or waiver of the inspection contingency stated in Section 8 above, Seller represents and warrants to Buyer that, to the best of its knowledge: (i) there are no Hazardous Substances (as defined below) currently located in, on, or under the premises or used in the business in a manner or quantity that presently violates any Environmental Law (as defined below); and (ii) there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the premises or by the business. As used herein, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos. 212-220
- 19. INDEMNIFICATION. Seller hereby agrees to defend and indemnify Buyer from any liability, loss, or damage (including attorneys' fees and costs of litigation) arising from or relating to Seller's breach of the foregoing representations and warranties or any of its other obligations in this Agreement. This agreement to indemnify and defend Buyer shall survive closing. 221-223
- 20. COVENANT NOT TO COMPETE. Seller, and all partners, members, shareholders, officers and directors of Seller, agree that for a period of 60 months following the closing of this transaction, neither Seller nor its partners, members, shareholders, officers or directors will participate in the ownership or operation of any business that competes directly with the business sold to Buyer that is located within a radius of One miles of any business location sold to Buyer under this Agreement. If Seller breaches this covenant, Buyer will be entitled to obtain an injunction to prevent the competitive activity, as well as to recover any money damages to which Buyer may be entitled. 224-228
- 21. NOTICES AND COMPUTATION OF TIME. Unless otherwise specified, any notice required or permitted in, or related to, this Agreement (including revocations of offers and counteroffers) must be in writing. Notices to Seller must be signed by at least one Buyer and must be delivered to Seller and Listing Agent. A notice to Seller shall be deemed delivered only when received by Seller, Listing Agent, or the licensed office of Listing Agent. Notices to Buyer must be signed by at least one Seller and must be delivered to Buyer and Selling Licensee. A notice to Buyer shall be deemed delivered only when received by Buyer, Selling Licensee, or the licensed office of Selling Licensee. Selling Licensee, Listing Agent and their Brokers have no responsibility to advise of receipt of a notice beyond either phoning the party or causing a copy of the notice to be delivered to the party's address on this Agreement. Buyer and Seller must keep Selling Licensee and Listing Agent advised of their whereabouts to receive prompt notification of receipt of a notice. 229-238

INITIALS: Buyer: DY Date: 7/28/07 Seller: PK Date: 7/29/07 237

Buyer: \_\_\_\_\_ Date: \_\_\_\_\_ Seller: \_\_\_\_\_ Date: \_\_\_\_\_ 238

NWML6 Form 30  
CBA Form PS-2  
Business Opportunity P & S  
Rev. 12/06  
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BUSINESS OPPORTUNITY  
PURCHASE AND SALE AGREEMENT  
(CONTINUED)

Unless otherwise specified in this Agreement, any period of time in this Agreement shall begin the day after the event starting the period and shall expire at 5:00 pm Pacific time of the last calendar day of the specified period of time. If the last day is a Saturday, Sunday or legal holiday as defined in RCW 4.18.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or a legal holiday. Any specified period of five (5) days or less shall not include Saturdays, Sundays or legal holidays.

22. MISCELLANEOUS PROVISIONS. 243

a. Complete Agreement. The Agreement and any addenda and exhibits to it state the entire understanding of Buyer and Seller regarding the sale of the business. There are no verbal or written agreements which modify or affect the Agreement. 244

b. Counterpart Signatures. The Agreement may be signed in counterpart, each signed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same agreement. 248

c. Facsimile and E-mail Transmission. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing an original document. E-mail transmission of any document or notice shall not be effective unless the parties to the Agreement otherwise agree in writing. 249

23. AGENCY DISCLOSURE. At the signing of this Agreement, 262

Selling Licensee Chong Lee WBIC  
(Insert names of Licensee and the Company name as licensed) 253

represented Seller  
(Insert Seller, Buyer, both Seller and Buyer or Neither Seller nor Buyer) 255

and the Listing Agent Chong Lee WBIC  
(Insert names of Licensee and the Company name as licensed) 257

represented Seller  
(Insert names of Licensee and the Company name as licensed) 269

If Selling Licensee and Listing Agent are different salespersons affiliated with the same Broker, then Seller and Buyer confirm their consent to Broker acting as a dual agent. If Selling Licensee and Listing Agent are the same person representing both parties, then Seller and Buyer confirm their consent to that person and his/her Broker acting as dual agents. If Selling Licensee, Listing Agent, or their Broker are dual agents then Seller and Buyer consent to Selling Licensee, Listing Agent and their Broker being compensated based on a percentage of the purchase price or as otherwise disclosed on an attached addendum. In addition, Seller and Buyer hereby consent to Listing Broker or Selling Broker receiving compensation from more than one party. Buyer and Seller confirm receipt of the pamphlet entitled "The Law of Real Estate Agency." 261

24. ASSIGNMENT. Buyer  may  may not (may not, if not completed) assign this Agreement, or Buyer's rights hereunder, without Seller's prior written consent, unless provided otherwise in this Agreement. 267

25. DEFAULT AND ATTORNEY'S FEE. In the event Buyer fails, without legal excuse, to complete the purchase of the business, then (check one): 268

that portion of the earnest money which does not exceed five percent (5%) of the purchase price shall be kept by Seller as liquidated damages (subject to Seller's obligation to pay certain costs or a commission, if any) as the sole and exclusive remedy available to Seller for such failure; or 270

Seller may, at its option, (a) keep the earnest money as liquidated damages (subject to Seller's obligation to pay certain costs or a commission, if any) as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity. 273

If Buyer or Seller institutes suit concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. In the event of trial, the amount of the attorneys' fees shall be fixed by the court. The venue of any suit shall be the county in which the business is located as identified in the first paragraph of page 1 of this Agreement, and this Agreement shall be governed by the law of that state. 277

26. ACCEPTANCE; COUNTEROFFERS. Seller has until midnight of \_\_\_\_\_ unless sooner withdrawn (if not 280

filled in, the third business day following the last Buyer signature date below) to accept this offer. If this offer is not timely accepted, it shall lapse and the earnest money shall be refunded to Buyer. If either party makes a future counteroffer, the other party shall have until 5:00 P.M. on the \_\_\_\_\_ business day (if not filled in, the second business day) following its receipt to accept the counteroffer, unless sooner withdrawn. If the counteroffer is not timely accepted or countered, this Agreement shall lapse and the earnest money shall be refunded to the Buyer. No acceptance, offer or counteroffer from the Buyer is effective until a signed copy is received by the Seller, Listing Agent or the licensed office of the Listing Agent. No acceptance, offer or counteroffer from the Seller is effective until a signed copy is received by the Buyer, Selling Licensee or the licensed office of the Selling Licensee. 281

INITIALS: Buyer: DY Date: 1/28/07 Seller: OK Date: 1/29/07 288  
Buyer: \_\_\_\_\_ Date: \_\_\_\_\_ Seller: \_\_\_\_\_ Date: \_\_\_\_\_ 289

MWML6 Form 30  
CBA Form PS-2  
Business Opportunity P & S  
Rev. 12/88  
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BUSINESS OPPORTUNITY  
PURCHASE AND SALE AGREEMENT  
(CONTINUED)

Unless otherwise specified in this Agreement, any period of time in this Agreement shall begin the day after the event starting the period and shall expire at 5:00 pm Pacific time of the last calendar day of the specified period of time. If the last day is a Saturday, Sunday or legal holiday as defined in RCW 1.18.050, the specified period of time shall expire on the next day that is not a Saturday, Sunday or a legal holiday. Any specified period of five (5) days or less shall not include Saturdays, Sundays or legal holidays.

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- c. Facsimile and E-mail Transmission. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, or the Closing Agent, the parties will confirm facsimile transmitted signatures by signing an original document. E-mail transmission of any document or notice shall not be effective unless the parties to the Agreement otherwise agree in writing. 251

23. AGENCY DISCLOSURE. At the signing of this Agreement,

Selling Licensee Chong Lee WBIC 253  
 (Insert name of Licensee and the Company name as licensed) 254

represented Seller 255  
 (Insert Seller, Buyer, both Seller and Buyer or Neither Seller nor Buyer) 256

and the Listing Agent Chong Lee WBIC 257  
 (Insert names of Licensee and the Company name as licensed) 268

represented Seller 269  
 (Insert names of Licensee and the Company name as licensed) 280

If Selling Licensee and Listing Agent are different salespersons affiliated with the same Broker, then Seller and Buyer confirm their consent to Broker acting as a dual agent. If Selling Licensee and Listing Agent are the same person representing both parties, then Seller and Buyer confirm their consent to that person and his/her Broker acting as dual agents. If Selling Licensee, Listing Agent, or their Broker are dual agents then Seller and Buyer consent to Selling Licensee, Listing Agent and their Broker being compensated based on a percentage of the purchase price or as otherwise disclosed on an attached addendum. In addition, Seller and Buyer hereby consent to Listing Broker or Selling Broker receiving compensation from more than one party. Buyer and Seller confirm receipt of the pamphlet entitled "The Law of Real Estate Agency." 281

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25. DEFAULT AND ATTORNEY'S FEE. In the event Buyer fails, without legal excuse, to complete the purchase of the business, then (check one): 288

- that portion of the earnest money which does not exceed five percent (5%) of the purchase price shall be kept by Seller as liquidated damages (subject to Seller's obligation to pay certain costs or a commission, if any) as the sole and exclusive remedy available to Seller for such failure; or 270
  - Seller may, at its option, (a) keep the earnest money as liquidated damages (subject to Seller's obligation to pay certain costs or a commission, if any) as the sole and exclusive remedy available to Seller for such failure, (b) bring suit against Buyer for Seller's actual damages, (c) bring suit to specifically enforce this Agreement and recover any incidental damages, or (d) pursue any other rights or remedies available at law or equity. 271
- If Buyer or Seller institutes suit concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses. In the event of trial, the amount of the attorneys' fees shall be fixed by the court. The venue of any suit shall be the county in which the business is located as identified in the first paragraph of page 1 of this Agreement, and this Agreement shall be governed by the laws of that state. 272

26. ACCEPTANCE; COUNTEROFFERS. Seller has until midnight of \_\_\_\_\_ unless sooner withdrawn (if not filled in, the third business day following the last Buyer signature date below) to accept this offer. If this offer is not timely accepted, it shall lapse and the earnest money shall be refunded to Buyer. If either party makes a future counteroffer, the other party shall have until 5:00 P.M. on the \_\_\_\_\_ business day (if not filled in, the second business day) following its receipt to accept the counteroffer, unless sooner withdrawn. If the counteroffer is not timely accepted or countered, this Agreement shall lapse and the earnest money shall be refunded to the Buyer. No acceptance, offer or counteroffer from the Buyer is effective until a signed copy is received by the Seller, Listing Agent or the licensed office of the Listing Agent. No acceptance, offer or counteroffer from the Seller is effective until a signed copy is received by the Buyer, Selling Licensee or the licensed office of the Selling Licensee. 281

INITIALS: Buyer: DY Date: 7/28/07 Seller: OK Date: 7/29/07 288  
 Buyer: \_\_\_\_\_ Date: \_\_\_\_\_ Seller: \_\_\_\_\_ Date: \_\_\_\_\_ 289



Mar 11 2008 10:08 AM - 260M WBIC  
Mar 11 08 09:20a YOUNG OH  
Feb 13 2008 12:30 PM 4297784639  
Mar 13 2007 11:52 AM WBIC

No. 6179 P. 2  
425-637-4049 p.2  
14257784639 p.2  
YOUNG S OH No. 6036 P. 2, page 02/02  
E-597-4049 P. 2

Form 34  
Additional Amendments to P & S  
Rev. 5/99  
Page 1 of 1

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ADDENDUM AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated November 26th 2007  
between Don K. Young and/or estate (Buyer)  
and M&J III (Seller)  
concerning Buena Vista Grill - Seattle, WA (P&S Property)

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS:

1. The closing date shall be extended to December 31st 2008 or sooner

~~FEBRUARY 2008 OR SOONER~~  
~~FEB 22nd 2008 or sooner~~  
DY 2/12/08 / CK 2/13/08  
MARCH 20th OR SOONER  
DY 3/11/08  
CK 3/11/08

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged.

AGENT (COMPANY) Washington Business Investment Company  
BY: [Signature]

INITIALS: BUYER: DY DATE: 11/21/07 SELLER: CK DATE: 11/21/07  
BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_

Feb. 13. 2000 12:30PM 0251/184689  
Dec 13 2007 11:53AM WDJC

YOUNG S OH

No. 6036 P. 2 PAGE 82/82

5-697-4049

P. 2

Form 34  
Addendum/Amendment to P & S  
Rev. 5/06  
Page 1 of 1

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**ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT**

The following is part of the Purchase and Sale Agreement dated November 26th 2007 1  
between Dan K. Yoo and/or assigns ("Buyer") 2  
and M&D III ("Seller") 3  
concerning Buenos Aires Grill - Seattle, WA ("the Property") 4

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

1. The closing date shall be extended to December 31st 2007 or sooner. 6

*FEBRUARY 10th 2008 OR SOONER.* 7

*FEB 22nd 2008 OR SOONER* 8

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*DY 2/6/08*

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 41

AGENT (COMPANY) Washington Business Investment Company 42

BY: *[Signature]* 43

Initials: BUYER: *DY* DATE: *11/26/07*  
BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

SELLER: *[Signature]* DATE: *11/27/07*  
SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_ 45

Form 34  
Addendum/Amendment to P & S  
Rev. 5/88  
Page 1 of 1

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**ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT**

The following is part of the Purchase and Sale Agreement dated November 26th 2007 1  
between Dan K. Yeo and/or assigns ("Buyer") 2  
and M&D III ("Seller") 3  
concerning Buenos Aires Grill - Seattle, WA ("the Property") 4

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

1. The closing date shall be extended to December 31st 2007 or sooner. 6

*FEBRUARY 10<sup>th</sup> 2008 OR SOONER.* 7

*FEB 22<sup>nd</sup> 2008 OR SOONER* 8

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ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 41

AGENT (COMPANY) Washington Business Investment Company 42

BY: *[Signature]* 43

Initials: BUYER: *DY* DATE: *11/26/07* SELLER: *[Signature]* DATE: *11/27*  
BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_

Form 34  
Addendum/Amendment to P & S  
Rev. 6/96  
Page 1 of 1

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**ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT**

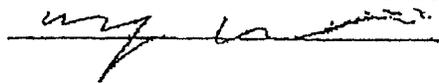
The following is part of the Purchase and Sale Agreement dated July 26, 2007 1  
between Dan K. Yoo And/Or Assigns ("Buyer") 2  
and M & D III ("Seller") 3  
concerning Buenos Aires Grill- Seattle ("the Property") 4

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

1. M & D III hereby acknowledges receipt of \$150,000.00 (One Hundred Fifty Thousand Dollars) from Dan K. 6  
Yoo (Buyer) For the purchase of Buenos Aires Grill. 7  
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ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 41

AGENT (COMPANY) Washington Business Investment Co. 42

BY:  43

Initials: BUYER: D.Y. DATE: 11/19/07 SELLER:  DATE: 11/19/07 44

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_ 45

# **APPENDIX 7**

**Young S. Oh & Associates, P.S., Attorney at Law**

6608 216th Street SW #200  
Mountlake Terrace WA 98043  
(425) 778-8746 • FAX (425) 778-4639

**BUSINESS OPPORTUNITY ESCROW INSTRUCTIONS AND CLOSING AGREEMENT**

TO: Young S. Oh & Associates, P.S.

Escrow File No.: 2353

RE: Buyer: DANIEL K YOO

Seller: M&D III

Property Address: 2000 2nd Ave #103, Seattle, WA 98121

Escrow No.: 2353

Date: February 6, 2008

BUYER AND SELLER HEREIN APPOINT AND APPROVE Young S. Oh & Associates, P.S. (hereinafter referred to as "Closing Agent") TO ACT AS CLOSING AGENT and TO ACT AS QUALIFIED INTERMEDIARY FOR THIS TRANSACTION.

Closing Agent is to be concerned only with the provisions specifically set forth in these Instructions, which incorporate the terms of the Purchase and Sale Agreement and Addenda executed by the parties and are not intended to amend, modify or supersede the terms and conditions set forth therein.

1. **HANDED YOU HEREWITH** (or previously delivered) are the following:

- a. Copy of Business Purchase and Sale Agreement dated February 6, 2008, between the undersigned Seller and Buyer. Said Agreement, and legal description therein (including any future corrections or changes thereto), are incorporated herein by reference. To the extent that any terms of said Agreement are inconsistent herewith, they are amended to conform to the terms of these Escrow Instructions.
- b. A Buyer's check in the amount of \$0.00, representing the earnest money.
  - i.  The earnest money is to be held for a substantial period of time in a separate trust savings account for which Buyer will be credited with the interest for such time as the funds are in said account. The Employer Identification Number or Social Security Number that such interest should be reported under is . We understand that a \$75.00 fee shall be charged by you for establishing and administering said account.

2. **ORDER UCC SEARCH.** You are instructed to, on behalf of Seller, order from the Department of Licensing a UCC-11R search under the Seller's name and trade name. YOU ARE ENTITLED TO MAKE ANY INDEPENDENT SEARCH of public records, or inquire of any persons, including Buyer and Seller.

The undersigned Buyer and Seller have received, reviewed and approved for use in this escrow the results of the UCC-11R search (copy provided herein), including any supplementals thereto and have reviewed and object to the special encumbrances affecting said business, except that/those held by: .

You are instructed not to order updated legal searches through date of closing; the undersigned acknowledges that the legal searches ordered prior to the closing date only reflect items appearing of record through the most recent date available to the record search company, which date was approximately two to three weeks prior to the search date, and, in the event that any items have come of record between the effective date of the search and the closing date, the Closing Agent is to be held harmless from any liability therefore.

3. **PREPARE SALE DOCUMENTS.** You are authorized to prepare for signature such contracts, deed and/or other instruments as are necessary to comply with the terms of the Purchase Agreement. WE RECOGNIZE THAT IN DRAFTING SAID INSTRUMENTS YOU ARE NOT ACTING AS THE ATTORNEY FOR EITHER PARTY. YOU HAVE ADVISED US TO HAVE THESE REVIEWED BY OUR ATTORNEY OR OTHER ADVISOR, regarding these documents and our rights or liabilities created by them.

Both parties certify that they have deposited into this escrow all addenda to the Purchase and Sale Agreement. You are further advised that all conditions and contingencies of the earnest money agreement and any addenda thereto have been satisfied or waived prior to closing, unless specified otherwise.

4. **DELIVERY AND RECORDING.** You are authorized and directed to deliver and/or record all of such instruments, and to apply funds received by you as is necessary to close this sale. No instruments shall be recorded until: (i) you hold for the account of the Seller sufficient funds to meet the terms of this sale; and (ii) until such time as the preliminary commitment for title insurance shows title is insurable under the terms of the Purchase and Sale Agreement, subject to only those exceptions acceptable to Buyer.

5. **CLOSING COSTS.** From monies provided you, you are authorized to pay all amounts set forth in the attached estimated closing statement and any adjustment, corrections or changes thereto which you deem appropriate and necessary to close the transaction.

**ESCROW FEE.** We agree to pay the following in addition to the above:

- a. Escrow fee as indicated on the closing statement, said fees are one-half and are to be split evenly by the parties and any applicable sales tax; filing fees as required; costs of mailing by certified and/or express mail and copies; license fee if required, and other necessary costs as determined by you in your discretion. We expect to be charged and agree to pay additional fees for services rendered by you beyond those required in a normal escrow closing. We further understand that you are charging a fee to both Buyer and Seller and agree to pay our fee regardless of the closing of this sale.
- b. Buyer agrees that, in the event the transaction does not close for any reason, Young S. Oh & Associates, P.S. will be reimbursed first from the earnest money in escrow for any costs advanced in anticipation of closing and its fees for services performed in anticipation of closing, at the rate of \$180.00 per hour, to a maximum of the Buyer's portion of the escrow fee.
- c. Any services other than those included in the escrow fee will be billed at the hourly rate of \$160.00 for Closing Agent, to the party requesting services and payment will be due in full at closing, or upon completion of the work, whichever occurs first. Young S. Oh & Associates, P.S. is authorized to pay for work requested by Seller from Seller's proceeds held in escrow. Upon request, Closing Agent will provide an itemized statement of work performed and costs advanced.

IF WE REQUIRE ADDITIONAL COPIES OF THE CLOSING DOCUMENTS IN THE FUTURE, WE AGREE TO PAY 25 CENTS PER COPY AND ANY MAILING OR OTHER COSTS INVOLVED.

7. **YOU HAVE NO LIABILITY OR RESPONSIBILITY IN REGARD TO ANY OF THE FOLLOWING MATTERS:**

- a. **UTILITY CHARGES:** Water, electric, sewer and other UTILITY CHARGES WILL BE ADJUSTED BETWEEN THE BUYER AND SELLER OUTSIDE OF THIS ESCROW, unless the same appear as liens in the preliminary commitment for title insurance. Also, the Buyer and Seller will handle the transfer of these accounts to the Buyer's name, following closing. Buyer and Seller, therefore, waive the right to have the Closing Agent disburse closing funds necessary to satisfy unpaid utility charges affecting the business pursuant to RCW 60.80.
- b. **FUEL OIL.** You have no responsibility for fuel or furnace oil, if any. This will be adjusted by the parties outside escrow, unless Seller and Buyer give you a statement, signed by both, instructing otherwise.
- c. **CONDITION OF THE PROPERTY/POSSESSION.** You have NO RESPONSIBILITY FOR THE CONDITION OF THE PROPERTY or to inspect the same.
- d. **FORGERIES.** You are not responsible to verify the signatures of the Buyer, Seller, or any other person in connection with this Escrow and YOU ARE NOT LIABLE FOR FORGERIES OR FALSE IMPERSONATIONS.
- e. **UTILITY CONNECTION CHARGES/UNASSESSED LOCAL IMPROVEMENTS.** You have no responsibility with regard to any water, sewer or other utility ("hook-up") charges or assessments unless they appear in the preliminary commitment for title insurance. Seller warrants to Buyer that, to the best of his knowledge, there are no recently completed, or pending, local improvements for streets, underground wiring, sewer, etc., which will be assessed to the property, except as are shown on the preliminary commitment of title insurance.
- f. **INSURANCE.** THE BUYER WILL ACQUIRE, PRIOR TO CLOSING, AN INSURANCE POLICY on the property. If any part of the purchase price is to be paid after closing, then Buyer will deliver a copy or certificate of said insurance to the closing agent for transmittal to the Seller at closing. Also, in case there is an unpaid balance of the purchase price after closing, the Seller shall be named as "loss-payee" or co-insured on said policy until such time as the balance owed the Seller is paid in full. SELLER WILL MAINTAIN ANY PRESENT INSURANCE ON THE PROPERTY UNTIL THIS SALE CLOSES and will, thereafter, be responsible for cancellation thereof, and any premium refund.
- g. **RENTS AND DEPOSITS.** The property will have been rented or leased on the date of closing. If it will, then rent(s) will be pro-rated and advance rents and security deposits will be transferred:
  - [ ] by the closing agent with funds provided by the Seller or from the down payment
  - [ ] by Buyer and Seller outside Escrow.
- h. **TRUTH IN LENDING DISCLOSURE STATEMENT.** Closing Agent is to assume no responsibility nor liability for preparation of a Truth in Lending Disclosure Statement, if any.

8. **AUTHORITY TO GIVE COPIES OF CLOSING DOCUMENTS.** The closing agent is authorized to give copies of the closing statement and other documents to any Broker involved in this transaction, existing or potential

mortgagees or other encumbrances; attorneys representing either of the parties; appraisers; or government agencies guaranteeing or otherwise involved in the financing of the transaction.

**NOTICE TO EXISTING ENCUMBRANCE HOLDERS.** If any real estate contract, mortgage or deed of trust presently on the property is to remain on the following closing, then you are authorized, but not required, to notify the record holder of this sale, so that the Buyer will receive notice of any future foreclosure thereof.

10. **DOCUMENTS WILL BE FURNISHED BY BUYER OR SELLER.** All monies and documents required by you in order to close this transaction, or to assure you of any matters related to closing, will be furnished by the Buyer or Seller, as appropriate, immediately upon your request.
11. **IRREVOCABLE FOR NINETY DAYS.** These Escrow Instructions shall be irrevocable by the Buyer or Seller for a period of ninety (90) days from the date hereof, unless you are presented with contrary instructions signed by both parties. After the ninety (90) days, these instructions shall remain in force and effect until either party gives you written notice of cancellation.
12. **COMMISSION.** If a broker(s) is involved in this sale, then you are not permitted to change the amount or terms of the broker's commission without the broker's written consent.
13. **ERRORS OR OMISSIONS.** It is understood and agreed that the execution of any document will be considered approval thereof. You are instructed and authorized to select, prepare and complete, prior to closing, any instrument or document or correct any errors thereon in accordance with these closing instructions. It is further understood that our settlement statement is subject to audit and should there be any errors or omissions, they are to be corrected, and if monetary error is discovered, it is to be assessed and immediately collected from, or refunded by, the party or parties liable therefor.
14. **CONFLICTING DEMANDS.** In the event of conflicting demands or notices for the Buyer, Seller or Broker concerning any matter covered by these instructions, or in the event that problems occur which prevent you from closing this sale, then you may hold all instruments and monies in their existing status until same is resolved. Alternatively, you may, in such cases, interplead all monies you hold with the Superior Court, at the expense of the parties. In the event you elect to interplead, you will have no liability for property disbursements from escrow prior to that time, and you may withhold your escrow fee and any interpleader court costs therefrom. Upon so interpleading said funds, you shall have no further liability in respect thereof. All parties further agree to pay Closing Agent his normal hourly fee for time spent as a witness, in court or in deposition, in any lawsuit, or in any legal proceeding in connection with this escrow.
15. **ASSUMPTION OF UNDERLYING MORTGAGE.** If applicable, Seller warrants that the underlying mortgage can be assumed by Buyer without acceleration or penalty. Buyer acknowledges that there is an assumption fee of \$0.00 and that Buyer is responsible for completing the assumption process. Buyer hereby agrees to assume and make all the payments required under said mortgage and to abide by all covenants, conditions, terms, stipulations and agreements contained in said mortgage and further warrants to save Seller harmless from any and all liability arising from this assignment.
16. **LOAN PAYOFFS.** If applicable, Seller and Buyer acknowledge that the payoff figures on the existing loans accrue daily interest and are not considered to be paid in full until received by Lender. Closing Agent is authorized to rely on written statements from Lender. Seller and Buyer further authorize Closing Agent to transmit all documents, payoffs, checks, letters and all communications by regular service through the United States mail. If Closing Agent deposits those documents, payoffs, checks, letters or communications in the U.S. mail a minimum of five working day before any deadline, Closing Agent shall be relieved and discharged of all liability, and the parties shall indemnify Closing Agent against all claims resulting from late delivery or loss of those documents, payoffs, checks, letters or communications.
17. **INSPECTION.** Buyer hereby acknowledges that Buyer, or Buyer's agent, has inspected or will have inspected the property prior to the closing date, to the extent that Buyer deems necessary. Buyer understands and agrees that Broker or his agents have no knowledge as to the condition of the property and are not responsible for the accuracy of the information provided by Seller to Buyer concerning any wood-destroying organisms, heating, plumbing, roof, electrical and septic system, or any other material facts relating to the property.
18. **PRO-RATIONS. THERE ARE TO BE NO PRORATIONS IN THIS ESCROW.**  
  
If on closing, Closing Agent has not received advance tax statements for the calendar year during which closing occurs, estimated tax figures for that year based upon tax bills for the immediately preceding calendar year shall be used for the purpose of prorating personal/real property taxes at closing, and it is mutually agreed as a covenant to expressly survive closing that upon receipt of tax bills for such calendar year an accurate adjustment in such tax proration shall be made by cash settlement between Seller and Buyer within 10 days of demand by either party.
19. **SUCCESSOR STATUTE.** Buyer(s) and Seller(s) signature(s) acknowledge that they have been informed by Closing Agent that Washington Administrative Code 458-20-216 mandates any buyer of a business to withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the Department of Revenue showing payment in full of any tax due or a certificate that no tax is due and that, if the tax is not paid by the taxpayer within ten days from the date of sale, Buyer may become liable for the payment of the full amount of tax. Both parties agree that escrow may withhold

§0.00 from the purchase price, to be released to Seller only upon Buyer's notification that satisfactory proof has been made that the taxes are paid in full.

**ALLOCATION OF THE PURCHASE PRICE.** Both parties are urged to consult their own accountant regarding the allocation of the purchase price. Both parties must agree upon the allocation. The parties acknowledge and agree that Closing Agent has made no representations concerning the appropriateness of said allocation or the proposal thereof. The parties agree to waive any claims against and agree to hold Young S. Oh & Associates, P.S. from any claims or demands resulting from said allocation.

21. **USE TAX.** Buyer has been advised that use tax (sales tax) is due on the purchase of equipment and furniture. Buyer agrees to pay use tax outside of escrow  after closing  through Escrow at closing.
22. **AMORTIZATION TABLES.** Amortization tables are provided for the convenience of the parties, but the exact numbers are not to be relied upon unless payments are recorded on exactly the same dates as the schedule shows. Parties understand that payoff figures may differ if payments are not made exactly on the dates shown.
23. **SUPPLEMENTAL INSTRUCTIONS.** Buyer and Seller understand that contemporaneously with these escrow instructions there may be instructions by third parties which are necessary for completion of this transaction and are, therefore, made a part of these instructions; namely, such instructions as may be received from mortgagee, mortgagor, grantee, grantor, vendee, vendor for the property which is the subject of this escrow.
24. **UCC-3 CONTINUATION STATEMENT.**  Applicable  Not Applicable
25. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts. The signatures to this Agreement may be executed on separate pages and when attached to this Agreement shall constitute one complete document.
26. AS A MATTER OF CONVENIENCE TO BUYER AND SELLER, ESCROW HAS PROVIDED FORM DOCUMENTS AND/OR AGREEMENTS FOR THE CONTEMPLATED TRANSACTION. THESE ARE ONLY SUGGESTED FORMS, NOT DRAFTER FOR THE PARTICULAR BENEFIT AND USE OF EITHER PARTY. LIKewise, ESCROW HAS MADE NO REPRESENTATIONS OR RECOMMENDATIONS, WHATSOEVER, REGARDING THE TERMS OF THIS TRANSACTION NOR HAVE THEY PARTICIPATED IN OR SUPPLIED ANY OTHER INFORMATION REGARDING THE VALUE OR PERFORMANCE OF THIS BUSINESS. YOU HAVE BEEN SPECIFICALLY INFORMED OF THE ADVISABILITY OF SEEKING INDEPENDENT LEGAL COUNSEL REGARDING THE TERMS OF THIS TRANSACTION AND THE CONTENT AND LEGAL CONSEQUENCES OF THE DOCUMENTS, AND ARE NOT RELYING ON CLOSING AGENT FOR LEGAL OPINIONS OR ADVICE.
27. BY SIGNING BELOW, PARTIES HEREIN ACKNOWLEDGE ANY CHANGE REFERENCED OR MADE IN THE FINAL CLOSING DOCUMENTS AS BEING AUTHORIZED AND UNDERSTOOD BY THEM. TO THE EXTENT THAT THE LANGUAGE CONTAINED IN THE FINAL DRAFT CLOSING DOCUMENTS DIFFERS FROM THE EARNEST MONEY RECEIPT AND AGREEMENT, EARLIER SALE AND PURCHASE AGREEMENT AND/OR ANY RELATED ADDENDUM, SIGNATURES OF THE PARTIES HEREIN RATIFY SAID CHANGES AND THEY SPECIFICALLY WAIVE ANY AND ALL CLAIMS OR LIABILITY AGAINST Young S. Oh & Associates, P.S., THEIR EMPLOYEES, AND OFFICERS BASED UPON DISCREPANCIES BETWEEN THE FINAL DOCUMENTS AND THE EARLIER STATED AGREEMENTS OR ADDENDA.
28. THE PARTIES ACKNOWLEDGE THAT ESCROW HAS MADE NO REPRESENTATIONS AS TO THE ISSUANCE OR EXISTENCE OF ANY INSURANCE OF ANY KIND COVERING ANY BUSINESS ASSETS OR ACTIVITIES. THE PARTIES ACKNOWLEDGE THAT THEY HAVE BEEN CAUTIONED AS TO THE ADVISABILITY OF SECURING INSURANCE COVERAGE AND THAT SAID COVERAGE SHOULD BE EFFECTIVE AS OF THE DATE AND TIME OF CLOSING. THE PARTIES AGREE THAT THE TRANSFER OF EXISTING POLICIES OR OBTAINING COVERAGE SHALL BE STRICTLY THE RESPONSIBILITY OF THE PARTIES OUTSIDE OF ESCROW.

**MISCELLANEOUS INSTRUCTIONS:**

29. All contingencies and/or conditions as set forth in the Purchase and Sale Agreement and Addenda have been fully met to the satisfaction of the parties. Closing Agent is hereby removed from any responsibility and/or liability for same and is instructed to proceed with closing.
30. IN COMPLIANCE with the Tax Reform Act of 1986, Seller shall provide all information necessary, including a Taxpayer Identification Number (TIN), for the preparation of a Form 1099-S as required by the Internal Revenue Service in connection with the closing and completion of the transaction. Closing Agent retains the option of not closing the escrow if adequate information is not provided.
32. Escrow has not verified whether lease/supply contract/franchisee is approved by lessor/supplier/franchisor. Nevertheless, it is the parties' intention to proceed this closing. Therefore, the undersigned, unconditionally and irrevocably, hereby covenant and agree to hold harmless and to indemnify Young S. Oh & Associates P.S. for any and all claims, liability, expense, costs and/or obligations whatsoever arising out of the

Young Oh strongly advises to seek independent legal counsel. Young Oh is acting as a closing agent on this transaction, which means that Young Oh is not an Attorney of any party in this transaction. Young Oh has

not and does not give legal advice on this transaction other than performing customary mutual and neutral escrow function.

In the course of closing, Escrow may prepare certain documents such as promissory note, deed of trust, UCC, lease agreement, business plan, projections, letter of request to supplier, assignment of lease and/or sublease or any other document upon parties' request. It is not really function of Escrow to prepare such documents, rather, it is the parties responsibilities to prepare those documents and submit to Escrow before closing if necessary. Nonetheless, Escrow sometimes prepares those documents to facilitate escrow closing upon parties' request AS A SCRIVENER. Escrow does not represent appropriateness of the contents of such documents, does not guaranty if there will be sufficient security, does not guaranty any security instrument will be filed (unless such representation is clearly made in writing), does not guaranty future performance of the business/investment, does not guaranty that the landlord will approve the lease, does not guaranty supplier is going to approve contract, and does not guaranty a lender is going to lend money. If the party is under impression that Escrow is making certain representation pertaining to such documents that Escrow prepared as a scrivener, such understanding is incorrect. In case there is seller-financing and parties sign promissory note and any security instrument, then Escrow guaranty that such security instrument that was signed at closing will be filed duly.

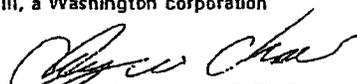
In the event Escrow is required to spend additional time before or after closing, other than time spent on customary and standard jobs including but not limited to making additional copies, answering questions, taking care of follow up legal actions, then additional fees of \$200.00 per hour shall be charged and by signing below.

33. Young S. Oh represented Buyer and/or Seller in accounting, tax, and legal matters and Buyer and Seller waive conflict of interest by signing below.

I HAVE BEEN AFFORDED ADEQUATE TIME AND OPPORTUNITY TO READ AND UNDERSTAND THESE ESCROW INSTRUCTIONS AND ALL OTHER DOCUMENTS REFERRED TO HEREIN.

Dated 2/6/10, and signed in Snohomish County, Washington.

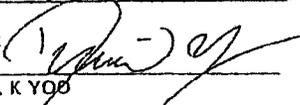
SELLER:  
M&D III, a Washington corporation

  
CHUNG KI CHOE

SSN: \_\_\_\_\_

SSN: \_\_\_\_\_

Dated 2/6/10, and signed in Snohomish County, Washington.

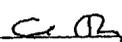
BUYER: 

DANIEL K YOO

SSN: \_\_\_\_\_

SSN: \_\_\_\_\_

CLOSING AGENT:

BY: , Young S. Oh

# **APPENDIX 8**

### ADDENDUM TO ESCROW INSTRUCTION

January 3, 2008

Our Escrow No: 2332  
Business: Buenos Aires Grill - Seattle, WA

We, Buyer, Seller and Lender, hereby instruct Escrow to close the transaction by holding for and/or paying the following lien holders as further instructed below. We understand that Escrow has not made and will not make any representation as to list of and as to actual payoff balances for all of the actual and/or potential lien holders of the subject business. We will hold Escrow harmless and promise to indemnify for any loss, cost, expenses and claim arising out of this matter. We also acknowledge that Escrow recommended to seek independent legal counsel as to this matter. We understand that we shall not rely on Escrow as to existence of any encumbrance against the business and we are relying solely on our own independent counsel. There is one exception from the above instruction: Escrow guarantees that the judgment against Mr. Chung Choe by Coldwell Banker is fully paid and released.

- |     |  |   |  |
|-----|--|---|--|
| 1.  | Division of child support instruction by all parties | - | Hold \$3,000 until further mutual                                      |
| 2.  | WA Employment Security                               | - | Hold \$17,000 and pay after confirming the balance after closing       |
| 3.  | Triple Corporation                                   | - | Hold \$5,949.89 until further mutual instruction by all parties        |
| 4.  | FSI  | - | hold \$1,313.36 until further mutual instruction by all parties        |
| 5.  | DOR  | - | pay \$86,000.00  |
| 6.  | L & I  | - | Zero   |
| 7.  | Biz Exchange   | - | Hold \$3,913.76 until further mutual instruction by all parties        |
| 8.  | Coldwell Banker                                      | - | Zero   |
| 9.  | Malbec v. M & D                                      | - | Zero   |
| 10. | Samsur v. Chung Choe                                 | - | Zero   |
| 11. | Advance mo   | - | Pay per written payoff demand by the bank <i>with</i>                  |
| 12. | Innovative bank                                      | - | Pay per written payoff demand by the bank or Hold <i>per Bank Inst</i> |
| 13. | Additional Holdback                                  | - | \$10,000.00  |

We, Buyer, Seller and Lender, acknowledge that Escrow stated that it is not qualified to give any opinion as to the appropriateness of the above amount and as to existence of any further lien against the business (except that Escrow represents that the judgment for Coldwell Banker is fully paid). Escrow shall pay or hold according to the above instruction. The amount to be held shall be held from seller's proceeds and be kept in a non interest bearing pulled trust account and shall be released only upon unanimous written instruction

*to be pd per adjust 1/20/08*

*Handwritten initials and signature*

by Buyer, Seller and Lender. It is noted that Escrow strongly recommended all parties to have an expert review the UCC search results.

By: Buyer  
Date

*[Handwritten signature]*

By: Seller  
Date

*[Handwritten signature]*

By: Lender  
Date 1-29-08

*[Handwritten signature]*

Received by Escrow  
Date 2/6/2008

*[Handwritten signature]*