

Weiland, Golden,
 Smiley, Wang Ekvall & Strok, LLP
 850 Town Center Drive, Suite 950
 Costa Mesa, California 92626
 Tel 714-966-1000 Fax 714-966-1002

1 **WEILAND, GOLDEN,**
 2 **SMILEY, WANG EKVALL & STROK, LLP**
 3 Evan D. Smiley, State Bar No. 161812
 esmiley@wgllp.com
 4 Robert S. Marticello, State Bar No. 244256
 rmarticello@wgllp.com
 5 650 Town Center Drive, Suite 950
 Costa Mesa, California 92626
 Telephone: (714) 966-1000
 Facsimile: (714) 966-1002
 6
 7 Counsel for Chapter 7 Trustee
 Thomas H. Casey

8 **UNITED STATES BANKRUPTCY COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**
 10 **SANTA ANA DIVISION**

11 In re 12 PPA HOLDINGS, LLC, a California limited liability company, 13 Debtor and 14 Debtor-in-Possession.	Case No. 8:09-bk-16353-ES Chapter 7 (Jointly Administered with Case Nos. 8:09-bk-16355-ES; 8:09-bk-16358-ES; 8:09-bk-16361-ES; 8:09-bk-16363-ES; 8:09-bk-16367-ES; 8:09-bk-16369-ES; 8:09-bk-16371-ES; 8:09-bk-16372-ES; 8:09-bk-16378-ES; 8:09-bk-16380-ES; 8:09-bk-16383-ES; 8:09-bk-16385-ES; 8:09-bk-16386-ES; 8:09-bk-16388-ES; 8:09-bk-16390-ES; 8:09-bk-16393-ES; 8:09-bk-16395-ES; 8:09-bk-16396-ES; 8:09-bk-16399-ES; 8:09-bk-16402-ES; and 8:09-bk-16404-ES)
15 <input checked="" type="checkbox"/> Affects All Debtors 16 17 _____ Affects PPA HOLDINGS, LLC, a California limited liability company 18 _____ Affects PACIFIC PROPERTY ASSETS, LLC, a California limited 19 liability company 20 _____ Affects PPA RIVERSIDE APARTMENTS, a California limited 21 liability company 22 _____ Affects PACIFIC PROPERTY ASSETS II, LLC, a California 23 limited liability company 24 _____ Affects BELL COVE, LLC, a California limited liability company 25 _____ Affects COUNTRY CLUB GREENS, LLC, a California limited 26 liability company 27 _____ Affects SYCAMORE SHADOWS, LLC, a California limited liability 28 company	CHAPTER 7 TRUSTEE'S MOTION FOR ORDER AUTHORIZING AND APPROVING SETTLEMENT WITH MORGAN LEWIS & BOCKIUS LLP PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF THOMAS H. CASEY IN SUPPORT DATE: September 20, 2011 TIME: 10:30 a.m. PLACE: Courtroom 5A 411 W. Fourth St. Santa Ana, CA 92701

**Weiland, Golden,
Smiley, Wang, Ekvall & Strok, LLP**
850 New Center Drive, Suite 250
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

- 1 — Affects PPA ARIZONA I, LLC, a
2 Delaware limited liability company
- 3 — Affects PPA ARIZONA II, LLC, a
4 Delaware limited liability company
- 5 — Affects PPA VISTA VILLAGE, LLC,
6 an Arizona limited liability company
- 7 — Affects PPA TOWNE CENTER,
8 LLC, a California limited liability
9 company
- 10 — Affects SUNDANCER
11 APARTMENTS, LLC, a California
12 limited liability company
- 13 — Affects DOBSON SPRINGS, LLC,
14 an Arizona limited liability company
- 15 — Affects VILLA ROSE AVENUE,
16 LLC, a California limited liability
17 company
- 18 — Affects HARBOR VIEW
19 CONDOMINIUMS, LLC, a
20 California limited liability company
- 21 — Affects PPA OPPORTUNITY
22 FUND, LLC, a California limited
23 liability company
- 24 — Affects PPA EQUITIES, LLC, a
25 California limited liability company
- 26 — Affects PPA DESERT VIEW, LLC,
27 a California limited liability
28 company
- Affects RIDGEMONT
CONDOMINIUMS, LLC, a
California limited liability company
- Affects VILLA LAS BRISAS
CONDOMINIUMS, LLC, a
California limited liability company
- Affects 2130 GROUP
PARTNERSHIP, LLC; an Arizona
limited liability company
- Affects AAA INVESTMENT
PROPERTIES, LLC, an Arizona
limited liability company

1 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE:**

2 Thomas H. Casey (the "Trustee"), the chapter 7 trustee for the jointly administered
3 estates (collectively, the "Estates") of the above-captioned debtors (each a "Debtor" and
4 collectively, the "Debtors"), hereby moves the Court pursuant to Federal Rule of
5 Bankruptcy Procedure 9019 for an order authorizing and approving a settlement with
6 Morgan Lewis & Bockius, LLP ("Morgan Lewis"), on the terms set forth in the *Stipulation*
7 *Resolving Objection of Thomas H. Casey, Chapter 7 Trustee, to the Final Fee Application*
8 *of Morgan Lewis & Bockius LLP* (the "Stipulation") attached to the Declaration of Thomas
9 H. Casey (the "Casey Declaration") as Exhibit "1." This Motion is based on the Notice of
10 Motion, the following Memorandum of Points and Authorities and the attached Casey
11 Declaration.

12
13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 By this Motion, the Trustee requests approval of a settlement with Morgan Lewis
16 that resolves the Trustee's objection to Morgan Lewis' final fee application, which was
17 initially heard by the Court on January 20, 2011. Pursuant to the Stipulation, Morgan
18 Lewis' administrative expense claim will be allowed in the sum of \$800,000.00, and
19 Morgan Lewis will not oppose the Trustee's separately-filed motion for an order of the
20 Court authorizing the substantive consolidation of the Debtors' estates. Morgan Lewis'
21 allowed final fee award will be paid by September 30, 2011, which date is Morgan Lewis'
22 fiscal year end. The proposed settlement results in an approximately 17% (\$166,648.86)
23 reduction in Morgan Lewis' requested compensation without further litigation or
24 administrative expense, and resolves a potential costly dispute between Morgan Lewis
25 and the Trustee concerning the substantive consolidation of the Estates. As a result, the
26 Trustee believes the proposed settlement is fair and reasonable and is in the best
27 interests of creditors. Accordingly, the Trustee requests that the Court grant the Motion.

28

1 **II. BACKGROUND**

2 **A. General Background**

3 The Debtors each filed a voluntary petition under chapter 11 of the Bankruptcy
4 Code on June 26, 2009. By order entered on June 29, 2009, the Court authorized the
5 joint administration of the Debtors' chapter 11 cases, with PPA Holdings, LLC, Case No.
6 8:09-bk-16353-ES, as the lead case.

7 The Official Committee of Unsecured Creditors (the "Committee") was appointed by
8 the Office of the United States Trustee (the "OUST") on July 16, 2009 [Docket No. 54].
9 On May 28, 2010, the OUST appointed five new members to the Committee [Docket
10 No. 858]. On September 17, 2009, the Court entered the order authorizing the Committee
11 to employ Morgan Lewis as its bankruptcy counsel *nunc pro tunc* to July 22, 2009 [Docket
12 No. 174].

13 By orders entered on April 6, 2010, and May 14, 2010, Thomas H. Casey was
14 appointed as chapter 11 trustee in the Debtors' cases. On August 5, 2010, the Trustee
15 filed a motion for order authorizing the conversion of each of the Debtors' cases to chapter
16 7 of the Bankruptcy Code. By order entered September 13, 2010, the cases were
17 converted to chapter 7, and on September 17, 2010, Thomas H. Casey was appointed as
18 chapter 7 trustee in the Debtors' cases.

19 **B. Morgan Lewis' Fee Applications**

20 On January 19, 2010, Morgan Lewis filed the *First Interim Fee Application for*
21 *Allowance of Fees and Reimbursement of Expenses for Morgan, Lewis & Bockius LLP as*
22 *Counsel for the Official Committee of Unsecured Creditors for the Period From July 22,*
23 *2009 Through November 30, 2009* [Docket No. 551] (the "Interim Application"). On
24 March 17, 2010, the Court entered the order granting the Interim Application [Docket
25 No. 668] and allowing interim fees to Morgan Lewis in the sum of \$522,895.00 (reflecting
26 a \$80,000 reduction in fees as agreed between Morgan Lewis and the Committee) and
27 expense reimbursement in the sum of \$7,174.44, for a total of \$530,069.44, none of which
28 has been paid by the Debtors' estates.

Welland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 550
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

1 On December 8, 2010, Morgan Lewis filed the *Final Application for Allowance of*
2 *Fees and Reimbursement of Expenses of Morgan, Lewis & Bockius LLP as Counsel for*
3 *the Official Committee of Unsecured Creditors* [Docket No. 1094] (the "Final Application").
4 By the Final Application, Morgan Lewis requests allowance of \$906,882.50 in final fees,
5 which amount reflects a voluntary fee reduction of \$30,000.00 (as opposed to the
6 \$80,000.00 reduction agreed to in connection with the Interim Application), the addition of
7 \$10,000.00 in anticipated fees, and \$12,260.92 in final expenses, for a grand total of
8 \$929,143.42 in allowed fees and costs for the entire case. (See Ex. 2.)

9 At that time, the Trustee believed the allowance and payment of any chapter 11
10 professional fees and costs would have been premature due to the Debtors' cases having
11 not been fully administered and the existence of unresolved issues, including the
12 substantive consolidation of the Debtors' estates. The Trustee believed no prejudice or
13 harm would result if the allowance and payment of chapter 11 professional fees were
14 delayed until the administration of the Debtors' cases was closer to completion, at which
15 time the Trustee and this Court would have a more complete picture of the total assets
16 and liabilities of each bankruptcy estate and the overall results of the cases. Accordingly,
17 on January 6, 2011, the Trustee filed the *Chapter 7 Trustee's Objection to the Final*
18 *Application for Allowance of Fees and Reimbursement of Expenses of Morgan, Lewis &*
19 *Bockius LLP as Counsel for the Official Committee of Unsecured Creditors* [Docket
20 No. 1112] (the "Objection"). (See Ex. 3.)

21 By the Objection, the Trustee requested that the Final Application be denied
22 without prejudice at the time as premature. In the event the Court decided to consider the
23 Final Application, the Trustee also made a number of substantive objections to the Final
24 Application, and the Trustee requested a significant reduction to the final fee award
25 sought by Morgan Lewis. In particular, the Trustee requested that the Court deny any
26 compensation for the time Morgan Lewis spent preparing disclosure statements and plans
27 of reorganization, and the Trustee sought further reductions based on what the Trustee
28 asserted were inefficient and/or improper billing practices by Morgan Lewis.

**Weiland, Golden,
Wang, Ekvall & Strok, LLP**
850 Wilshire Blvd., Suite 2050
Covina, California 91724
Tel 714-968-1000 Fax 714-968-1002

1 Morgan Lewis filed its reply [Docket No. 1120] (the "Reply") to the Opposition on
2 January 13, 2011. In the Reply, Morgan Lewis responded to the Trustee's substantive
3 objections, but reduced the total amount requested by \$60,000.00, from \$929,143.42 to
4 \$869,143.42, based on a \$50,000.00 fee reduction to fully account for the \$80,000.00
5 reduction to which Morgan Lewis agreed in the Interim Application,¹ and the elimination of
6 the \$10,000.00 in additional anticipated fees. Notwithstanding the foregoing reduction,
7 Morgan Lewis disclosed in the Reply that it had incurred fees of \$15,415.50 in reviewing
8 and responding to the Opposition. (See Ex. 4.)

9 At the hearing on the Final Application held on January 20, 2011, the Court ordered
10 that the Final Application be taken off calendar, and that notice of hearing on any future
11 applications for compensation shall include the Final Application. The Court's order was
12 entered February 16, 2011 [Docket No. 1135] (the "Order"). (See Ex. 5.) During the
13 hearing on the Final Application, Morgan Lewis made clear its intention to oppose any
14 motion by the Trustee to substantively consolidate the Estates in order to protect the
15 payments of its fees and costs.

16 Morgan Lewis has incurred additional amounts in connection with the Final
17 Application, as reflected in the Declaration of Richard W. Esterkin re Morgan Lewis Fees
18 filed concurrently herewith. Based on such declaration, Morgan Lewis asserts that,
19 without taking into consideration any voluntary reductions, it is owed total fees and costs
20 in the amount of \$966,648.86.

21 To avoid and minimize expenses in connection with their disputes, the Trustee and
22 Morgan Lewis have negotiated a settlement that resolves the Trustee's Opposition to the
23 Final Application. Although the Final Application currently is not on the Court's calendar,
24 the parties prefer to seek approval of their agreement at this time rather than wait until the
25 end of the cases, especially in light of the time-sensitive nature of the settlement's terms.

26
27 ¹ The Final Application accounted for only \$30,000.00 of the \$80,000.00 fee reduction to which Morgan
28 Lewis agreed in the Interim Application.

Weiland, Golden,
Wang Ekvall & Strok, LLP
650 Third Street, Suite 550
Costa Mesa, California 92626
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1 **III. THE PROPOSED SETTLEMENT**

2 For the reasons set forth in the Opposition, the Trustee desires to reduce the
3 amount of Morgan Lewis' compensation in the cases. Morgan Lewis desires to receive
4 payment prior to September 30, 2011, for its work in the cases. As a result of settlement
5 negotiations, the Trustee and Morgan Lewis (together, the "Parties") were able to reach
6 an agreement, as set forth in the Stipulation. (See Ex. 1.) The terms of the Stipulation
7 are summarized as follows:

- 8 1. Subject to allowance by the Court, fees and costs in the total amount of
9 \$800,000.00 shall be allowed and awarded to Morgan Lewis on a final basis
10 (the "Final Fee Award").
- 11 2. Upon the entry of the order approving the Stipulation (the "Effective Date"),
12 and in no event later than September 30, 2011,² the Trustee is authorized
13 and directed to pay the Final Fee Award to Morgan Lewis in full and final
14 payment, settlement and satisfaction of Morgan Lewis' administrative
15 expense claim(s) and/or any other Claims (defined in the Stipulation) against
16 the Estates.
- 17 3. On the Effective Date, Morgan Lewis, on behalf of itself, its successors and
18 assigns, waives and releases any and all Claims against the Trustee and the
19 Estates.
- 20 4. Provided the Stipulation is approved by the Court, Morgan Lewis shall not
21 oppose the Trustee's motion for an order of the Court authorizing the
22 substantive consolidation of the Estates. In the event the Stipulation is not
23 approved by the Court, the Trustee has agreed to continue the hearing on
24 his motion to substantively consolidate the Estates so as to provide Morgan
25 Lewis with a reasonable opportunity to respond to that motion.

26
27 ² This date is Morgan Lewis' fiscal year end.

1 5. In the absence of the Court (i) approving the Stipulation, and (ii) ordering the
2 substantive consolidation of the Estates upon separate motion by the
3 Trustee, this Stipulation shall be null, void and of no force, effect or probative
4 value.

5
6 **IV. LEGAL STANDARD FOR APPROVAL OF THE SETTLEMENT**

7 Rule 9019 of the Federal Rules of Bankruptcy Procedure provides that "[o]n motion
8 by the trustee and after notice and a hearing, the court may approve a compromise or
9 settlement." Settlement of time-consuming and burdensome litigation, especially in the
10 bankruptcy context, is encouraged. *See Protective Comm. for Indep. Stockholders of*
11 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) ("[I]n administering
12 reorganization proceedings in an economical and practical manner it will often be wise to
13 arrange the settlement of claims as to which there are substantial and reasonable
14 doubts"). For a compromise to be approved, the proposed compromise must be fair and
15 equitable. *See TMT Trailer*, 390 U.S. at 424. Significantly, the court stated that "[b]asic to
16 this process in every instance, of course, is the need to compare the terms of the
17 compromise with the likely rewards of litigation." *Id.* at 424-25.

18 According to the Ninth Circuit, a court must consider the following criteria to
19 determine whether the settlement agreement is fair and equitable:

20 (a) the probability of success in the litigation; (b) the difficulties,
21 if any, to be encountered in the matter of collection; (c) the
22 complexity of the litigation involved, and the expense,
23 inconvenience and delay necessarily attending it; (d) the
24 paramount interest of the creditors and a proper deference to
25 their reasonable views in the premises.

26 *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986).

27 In ruling on a proposed compromise, however, a bankruptcy court should give
28 substantial weight to the trustee's views as to the merits of the compromise and
settlement, and should not substitute its own judgment for that of the trustee. *See In re*
Blair, 538 F.2d 849, 851 (9th Cir. 1976); *see also In re Calra Leather, Inc.*, 44 B.R. 457,

1 466 (Bankr. S.D.N.Y. 1984). The court need not conduct an extensive investigation into
2 the merits of the claims that the parties seek to settle. See *In re Walsh Const., Inc.*, 669
3 F.2d 1325, 1328 (9th Cir. 1982). It need only determine that the outcome of litigating the
4 claims is open to reasonable doubt. See *id.* Nor is the court required to determine
5 whether the settlement was the best that the trustee could have obtained. See *In re W.T.*
6 *Grant*, 699 F. 2d 599, 608, 613 (2d Cir. 1982). Rather, the court should "canvass the
7 issues and see whether the settlement 'fall[s] below the lowest point in the range of
8 reasonableness.'" *Id.* at 608; see also *In re Bell & Beckwith*, 87 B.R. 472, 474 (N.D. Ohio
9 1987). A bankruptcy court should approve a compromise, despite any objections, if it is in
10 the best interests of the estate and creditors. See *In re A&C Prop.*, 784 F.2d at 1382.

11
12 **V. THE SETTLEMENT IS FAIR AND EQUITABLE**

13 Here, the proposed settlement is fair and equitable and should be approved.

14 First, the Stipulation reduces the amount of Morgan Lewis' administrative expense
15 claim(s) for fees and costs and/or any other claims against the Estates to \$800,000.00.
16 This amount represents a substantial reduction of approximately 17% (\$166,648.86) to
17 the total amount Morgan Lewis asserts that it is owed. It also avoids the costs associated
18 with the Trustee continuing to oppose the Final Application. The Trustee believes his
19 objections to the Final Application have merit and that continued pursuit of such objections
20 in the absence of a settlement could result in a greater reduction to Morgan Lewis' fees.
21 However, Morgan Lewis disputes the Trustee's contentions, and Morgan Lewis could
22 prevail on its Final Application, resulting in a significantly larger final fee award. After
23 taking into consideration the risks and additional administrative expense associated with
24 further litigating the Final Application, the Trustee believes the proposed reduction is
25 reasonable.

26 Second, the Stipulation resolves the parties' disputes concerning substantive
27 consolidation of the Estates. Provided the Stipulation is approved, Morgan Lewis shall not
28 oppose the Trustee's separately-filed motion substantively consolidate the Estates.

1 During the hearing on the Final Application, Morgan Lewis made clear its intentions to
2 oppose any motion by the Trustee to substantively consolidate the Estates in order to
3 protect its fees. While the Trustee believes that he can obtain a court order substantively
4 consolidating the Estates over Morgan Lewis objection, the Trustee would likely incur
5 significant administrative expense in doing so, which would further erode any potential
6 value for unsecured creditors. Finally, the Stipulation preserves the parties' rights, if the
7 Court does not approve both the Stipulation and Trustee's motion to substantively
8 consolidate the Estates.

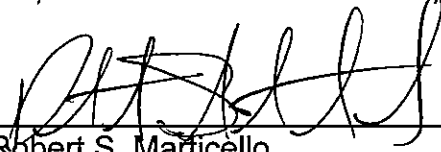
9 For all these reasons, the Trustee believes that the proposed settlement is fair and
10 reasonable, and requests that the Motion be granted.

11
12 **VI. CONCLUSION**

13 Based upon the foregoing, the Trustee respectfully requests that this Court enter
14 an order approving the Stipulation, and finding the Stipulation is fair, reasonable,
15 adequate, and therefore is in the best interest of the Estates.

16 Dated: August 30, 2011

WEILAND, GOLDEN,
SMILEY, WANG EKVALL & STROK, LLP

17
18 By: 
19 Robert S. Marticello
20 Counsel for Chapter 7 Trustee,
21 Thomas H. Casey
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Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

DECLARATION OF THOMAS H. CASEY

I, Thomas H. Casey, declare as follows:

1. I am the chapter 7 trustee (the "Trustee") for the jointly administered estates of the above-captioned debtors (collectively, the "Debtors"). I am submitting this declaration in support of the *Chapter 7 Trustee's Motion for Order Authorizing and Approving Settlement with Morgan Lewis & Bockius LLP Pursuant to Federal Rule of Bankruptcy Procedure 9019* (the "Motion"). All terms not defined herein shall have the meaning ascribed to them in the Motion. I know each of the following facts to be true of my own personal knowledge and if called as a witness, I could and would competently testify with respect thereto.

2. A true and correct copy of the Stipulation is attached hereto as Exhibit "1." True and correct copies of the Final Application, Opposition, Reply and Order are attached hereto as Exhibits "2" through "5," respectively.

3. I believe that the Stipulation is fair and equitable and is in the best interests of creditors.

4. The Stipulation reduces the amount of Morgan Lewis' administrative expense claim(s) for fees and costs and/or any other claims against the Estates to \$800,000.00. This amount represents a substantial reduction of 17% (\$166,648.86) to the total amount Morgan Lewis asserts that it is owed. The Stipulation also avoids the costs associated with the continued litigation of the Final Application. I believe my objections to the Final Application have merit and that continued pursuit of such objections in the absence of a settlement could result in a greater reduction to Morgan Lewis' fees. However, Morgan Lewis disputes my contentions, and Morgan Lewis could prevail on its Final Application, resulting in a significantly larger final fee award. After taking into consideration the risk and the additional administrative expense associated with further litigating the Final Application, I believe that the proposed reduction is reasonable.

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Smiley, Wang, Ekvall & Strok, LLP
650 Town Center Drive, Suite 550
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

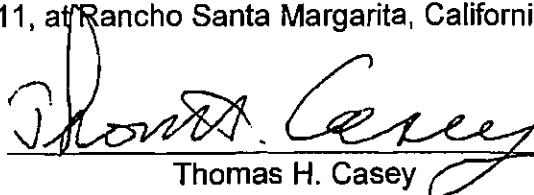
Weiland, Golden,
Smiley, Wang, Ekvall & Strok, LLP
550 West Center Street, Suite 200
Costa Mesa, California 92626
Tel 714-966-1000 Fax 714-966-1002

1 5. The Stipulation resolves the parties disputes concerning substantive
2 consolidation of the Estates. Provided the Stipulation is approved, Morgan Lewis shall not
3 oppose my separately-filed motion to substantively consolidate the Estates. During the
4 hearing on the Final Application, Morgan Lewis made clear its intentions to oppose any
5 motion to substantively consolidate the Estates in order to protect its fees. I believe that I
6 can obtain a court order substantively consolidating the Estates over Morgan Lewis'
7 objection, but I would likely incur significant administrative expense in doing so, which
8 would further erode any potential value for unsecured creditors. Finally, the Stipulation
9 preserves the parties' rights if the Court does not approve both the Stipulation and
10 Trustee's motion to substantively consolidate the Estates.

11 6. The Stipulation is the product of good-faith, arm's-length negotiations
12 between the parties and their respective counsel.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on this 30th day of August, 2011, at Rancho Santa Margarita, California.

15
16 
17 Thomas H. Casey