

**Official Record**Recording requested By  
FIRST AMERICAN TITLE COMPANY

Lincoln County - NV

Leslie Boucher - Recorder

Fee: \$27.00

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RPTT:

Recorded By: AE

Book- 245 Page- 0479



0132858

WHEN RECORDED, PLEASE RETURN TO:  
John R. Erickson, Esquire  
WOODS ERICKSON WHITAKER & MAURICE LLP  
1349 Galleria Drive, Suite 200  
Henderson, NV 89014

**THIRD LOAN MODIFICATION AGREEMENT**

THIS THIRD LOAN MODIFICATION AGREEMENT (the "Agreement"), is entered into as of this 20<sup>th</sup> day of October, 2008, ("Modification Date") by and among Kerry Holt Farms, Ltd., a Utah limited partnership (hereinafter "Promisee"), and Tuffy Ranch Properties, LLC, a Nevada limited liability company, ("Promisor").

**RECITALS:**

A. On or about December 29, 2004, Promisor issued a Note Secured by Deed of Trust (the "Note") to Promisee in the original principal amount of \$28,000,000.00.

B. The Note is secured by a Deed of Trust (With Assignment of Rents) (the "Deed of Trust"), on certain property located in Lincoln County, Nevada which is more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"). The Deed of Trust is dated December 29, 2004 and executed by Promisor in favor of First American Title Insurance Company of Nevada, as Trustee, for the benefit of Promisee and encumbering the said property. The Deed of Trust was recorded on December 29, 2007, in Book 195, Page 124, as Document No. 123578, Official Records, Lincoln County, Nevada.

C. On December 1, 2007, Promisor and Promisee entered into that certain Loan Modification Agreement ("First Modification") wherein certain terms of the Loan were modified. Among other things, a principal payment of \$3,000,000 previously due December 29, 2007, was deferred until October 29, 2008.

D. On April 1, 2008, Promisor and Promisee entered into that certain Second Loan Modification Agreement ("Second Modification") wherein certain terms of the Loan were modified. Among other things, a principal payment of \$3,000,000 previously due December 29, 2008, was deferred until December 29, 2009.

E. Promisor has requested that Promisee further modify the terms of the Loan as set forth herein. Promisee is willing to do so on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and of the covenants set forth below, it is agreed as follows:



1. Outstanding Principal Balance of Note.

(a) Promisor acknowledges and agrees with Promisee that as of the Modification Date, the outstanding principal balance under the Note is TWENTY-TWO MILLION and 00/100 Dollars (\$22,000,000.00).

(b) Promisor hereby waives all claims against Promisee and all defenses to payment of the Note.

2. Amendment of Note (as amended by the First Modification and the Second Modification). The Note is hereby further amended as follows:

(a) Scheduled Principal Payments. The principal payment in the amount of \$3,000,000 due under the Note on October 29, 2008 provided for in Section 2(a) of the First Modification (the "October 2008 Payment") shall be further modified as follows: \$1,000,000 of said \$3,000,000 principal payment shall be paid to Promisee on or before October 29, 2008 in cash or other immediately available funds ("October 2008 Payment"). The remaining \$2,000,000 principal payment due under the Note on October 29, 2008 ("October 2008 Deferred Payment") shall be paid to Promisee on or before October 29, 2009.

The principal payment in the amount of \$3,000,000 due under the Note (as amended) on December 29, 2009 ("December 2008 Deferred Payment") provided for in Section 2(a) the Second Modification shall be due and payable to Promisee on or before October 29, 2009. The October 2008 Deferred Payment and the December 2008 Deferred Payment are collectively referred to herein as the "October 2009 Payment".

(b) Interest Payments. Notwithstanding the deferral of the principal payments referenced above, Promisor shall continue to make monthly interest payments to Promisee at a rate of 5% per annum in accordance with the opening paragraph of the Note on the entire outstanding principal amount (which is scheduled to be \$21,000,000, provided Promisor makes the \$1,000,000 principal payment referenced in Section 2(a) above. As additional consideration for the deferral of the principal payments referenced above, Promisor shall also pay to Promisee the sum of \$10,000 on November 29, 2008, the sum of \$0.00 on December 29, 2008 and the sum of \$17,000 per month commencing on January 29, 2009 and continuing on the 29th day of each month through and including October 29, 2009.

(c) Additional Late Fee. If the October 2009 Payment is not made on or before October 29, 2009, then, in addition to the late charge of 3% of the scheduled payment called for by the opening paragraph of the Note, Promisor agrees to pay to Promisee an additional late fee equal to \$150,000.

(d) Loan Maturity Date. The Maturity Date under the Note is hereby amended and shall be October 29, 2010.

3. Amendment of Deed of Trust. The Deed of Trust is hereby amended as follows:



(a) The first sentence of Section 3.15 of the Deed of Trust shall be revised to read as follows: "3.15 Partial Releases. Beneficiary shall release one percent (1%) of the Land and Water Rights upon Trustor paying to Beneficiary the principal amount of \$680,000 for each one percent (1%) being released.

(b) There shall be no release of the Land or Water Rights upon Trustor's \$1,000,000 principal payment as referenced in Section 2(a) of this Agreement.

4. Conditions to Effectiveness of this Agreement. This agreement shall not be effective unless and until each of the following conditions has been satisfied:

(a) Closing Costs. Promisor shall have paid certain costs associated with the execution of this Agreement as set forth in Section 11 below.

(b) No Other Default. Promisor shall be in full compliance with and not in breach of or default under any agreements between the parties, except as permitted by this Agreement, and specifically, Promisor shall be current in its obligations under that certain Note Secured by Deed of Trust dated December 30, 2005 in the original principal amount of \$2,048,000 made by Promisor in favor of Promisee;

(c) Payment of Property Taxes. All property taxes on the Property shall have been paid current, and Promisor shall furnish evidence of such payment in form satisfactory to Promisee;

(d) Title Endorsement. Promisor shall have obtained the title endorsement(s) or title insurance policy required by Section 9 of this Agreement;

(e) \$1,000,000 Principal Payment. Promisor shall have made to Promisee the \$1,000,000 principal payment referenced in Section 2(a) of this Agreement.

5. Representations and Warranties of Promisor. Promisor hereby represents and warrants to Promisee as follows:

(a) This Agreement has been duly executed and delivered by Promisor and constitutes the valid and legally binding obligation of Promisor, enforceable in accordance with its terms;

(b) No authorization, approval, or consent of any regulatory body is necessary or required in connection with the execution and delivery of this Agreement or in order that such actions be lawful;

(c) Consummation of the transaction contemplated by this Agreement and compliance by Promisor with the provisions of this Agreement, the First Modification, the Second Modification, the Note, the Deed of Trust, and all other documents executed in connection with the Loan (all of said documents being collectively referred to as the "Loan Documents") will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, any indenture, agreement, or other instrument to which Promisor is a party or by which Promisor or its property may be bound;



nor will such action result in any violation of any provision of any applicable law, judgment, order, rule, or regulation of any court or governmental authority;

(d) There are no suits filed or claims made or threatened against Promisor of any material nature that in any way jeopardize the ability of Promisor to perform its obligations hereunder or under the Note, the Deed of Trust, or the Loan Documents;

(e) The transactions contemplated by this Agreement do not violate any provision of any applicable law, judgment, order, rule, or regulation of any court or governmental authority; and

(f) Promisor is not the subject of any bankruptcy, reorganization, insolvency, or any other debtor/creditor proceedings.

6. Remedies for Breach of Representations and Warranties. Promisor hereby agrees to reimburse and indemnify Promisee for any damages suffered as a direct or indirect result of any of the representations and/or warranties made by them and contained in this Agreement being untrue when made or becoming untrue hereafter. The remedy set forth in this Section 6 is in addition to any other remedies available to Promisee in law or in equity and this Section shall not be construed to limit Promisee's remedies for a breach of the representations and warranties herein contained.

7. Loan Documents Remain in Force. This agreement shall not be construed to constitute, payment of the obligations evidenced by the Note. Except as herein specifically modified, all of the terms, covenants, and conditions of the Note and all other Loan Documents shall be and remain in full force and effect.

8. Payments to be Made by Promisor at Closing. At the Closing (as defined below), Promisor shall deliver to escrow agent funds in cash or by wire transfer of immediately available funds, the following amounts, each of which shall be for and applied to the purpose indicated in the following listing:

(a) The amount of the Attorneys' fees and costs incurred by Promisee in connection with this Agreement and the transaction to which it is related; and

(b) The total cost of all title reports, title policies, title policy endorsements, escrow charges, recording fees, and other such items of expense incurred or to be incurred in preparing for or in consummating the transaction to which this Agreement is related, which said costs shall be paid to the parties entitled thereto.

Failure by Promisor to pay any of such expenses at the Closing shall constitute a default hereunder.

The "Closing" shall mean the date that this Agreement is to be recorded in the Official Records, Lincoln County, Nevada, which is anticipated to occur on or before October 29, 2008.

9. Promisee's Title Insurance. In conjunction with the recordation of this Agreement in Lincoln County, Nevada, Promisor shall furnish Promisee with CLTA 110.5 Endorsement(s) to Promisee's existing Policy of Title Insurance (related to the Deed of Trust) providing such coverage,



assurances, and protections as Promisee may require (including, without limitation, assurances that Promisor is the owner of the Property at the time of such recordation and that the Deed of Trust, as affected by this Agreement, continues as and constitutes a first-position encumbrance against the Property, subject only to those exceptions to title theretofore shown by Promisee's Title Insurance Policy as being prior to the Deed of Trust and to such additional matters, if any, as may be acceptable to Promisee, and continues to furnish security for the obligations theretofore secured by the Deed of Trust [as such obligations are affected by this Agreement]). If, for any reason such Endorsement(s) to Promisee's existing Policy of Title Insurance cannot be obtained or are not available, then Promisor shall furnish Promisee with a new Policy of Title Insurance (related to the Deed of Trust) providing such coverage, assurances, and protections, issued by such title insurance underwriter through such (local) title company, and in such amount, as Promisee may require.

10. Method of Closing and Effective Date. The transaction provided for in this Agreement shall be closed, and in connection therewith the Instruments contemplated by this Agreement shall be delivered, through escrow with First American Title Insurance Company of Nevada (at its office in Ely Nevada) or another escrow agent acceptable to Promisee. In connection with such closing each party shall deposit into escrow all of the documents and funds required of such party by this Agreement or by documents contemplated hereby, for delivery when all conditions to closing have been met and all matters required to be accomplished in connection with the closing have been arranged for or accomplished.

(a) In connection with the closing, each of the parties or its attorney shall provide whatever instructions (not inconsistent with the provisions of this Agreement) to the closing escrow agent such party deems necessary to enable or facilitate closing of the transaction through escrow.

(b) The provisions of this Agreement shall be effective when (but not until) this Agreement is recorded in Lincoln County, Nevada pursuant to the closing arrangement contemplated by the foregoing provisions of this Section 10.

11. Attorneys' Fees. If any party hereto brings suit to enforce or interpret this Agreement or for damages on account of the breach of a covenant, representation or warranty contained herein, the prevailing party shall be entitled to recover from the opposing party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled.

12. Waiver or Modification. No waiver of any breach or default by any party hereto shall be considered to be a waiver of any other breach or default. A modification of or amendment to any provision contained herein shall be effective only if the modification or amendment is in writing and signed by the party or parties to be bound by such modification or amendment.

13. Severability. Each provision of this Agreement and every related document shall be interpreted in such manner as to be valid under applicable law; but, if any provision of any of the foregoing shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.



14. Authorization. Each individual executing this Agreement represents and warrants to each other so signing (and to all parties hereto) that he has been duly authorized to execute and deliver this Agreement for the entity for which he purports to act.

15. Miscellaneous. This Agreement is a final expression of the negotiations among Promisee and Promisor relating to Promisee's agreement to allow modification of the Loan and this Agreement may not be contradicted by evidence of any alleged oral agreement. The parties hereto shall execute and deliver all documents, provide all information and take such action as may be necessary or appropriate to achieve the purposes of this Agreement. This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Nevada. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and assigns. All section titles in this Agreement are for convenience of reference only, and shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. This Agreement may be executed in counterparts, all of which taken together shall constitute one Agreement binding on all of the parties notwithstanding that all the parties are not signatories to the original or the same counterpart. However, each party shall become bound by the Agreement only when all signatures called for by this Agreement have been obtained.

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

**PROMISEE:**

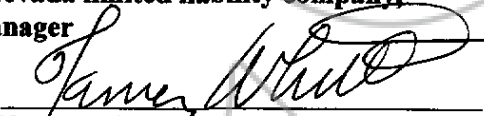
**KERRY HOLT FARMS, LTD.,**  
**a Utah limited partnership**

By: \_\_\_\_\_  
Kerry Holt, General Partner

**PROMISOR:**

**TUFFY RANCH PROPERTIES, LLC,**  
**a Nevada limited liability company**

By: **WINGFIELD NEVADA GROUP MANAGEMENT COMPANY, LLC,**  
**a Nevada limited liability company,**  
**Manager**

By:   
Harvey Whittenmore, Manager



14. Authorization. Each individual executing this Agreement represents and warrants to each other so signing (and to all parties hereto) that he has been duly authorized to execute and deliver this Agreement for the entity for which he purports to act.

15. Miscellaneous. This Agreement is a final expression of the negotiations among Promisee and Promisor relating to Promisee's agreement to allow modification of the Loan and this Agreement may not be contradicted by evidence of any alleged oral agreement. The parties hereto shall execute and deliver all documents, provide all information and take such action as may be necessary or appropriate to achieve the purposes of this Agreement. This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Nevada. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, legal representatives and assigns. All section titles in this Agreement are for convenience of reference only, and shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. This Agreement may be executed in counterparts, all of which taken together shall constitute one Agreement binding on all of the parties notwithstanding that all the parties are not signatories to the original or the same counterpart. However, each party shall become bound by the Agreement only when all signatures called for by this Agreement have been obtained.

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

**PROMISEE:**

**KERRY HOLT FARMS, LTD.,**  
a Utah limited partnership

By: Kerry Holt  
Kerry Holt, General Partner

**PROMISOR:**

**TUFFY RANCH PROPERTIES, LLC,**  
a Nevada limited liability company

By: **WINGFIELD NEVADA GROUP MANAGEMENT COMPANY, LLC,**  
a Nevada limited liability company,  
Manager

By: Harvey Whitterfore  
Harvey Whitterfore, Manager



STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on October \_\_\_\_, 2008, by KERRY HOLT as the General Partner of KERRY HOLT FARMS, LTD., a Utah limited partnership.

\_\_\_\_\_  
Notary Public

STATE OF NEVADA )  
: ss.  
COUNTY OF Washoe )

This instrument was acknowledged before me on October 13, 2008, by HARVEY WHITEMORE as Manager of WINGFIELD NEVADA GROUP MANAGEMENT COMPANY, LLC, a Nevada limited liability company, the Manager of TUFFY RANCH PROPERTIES, LLC, a Nevada limited liability company.



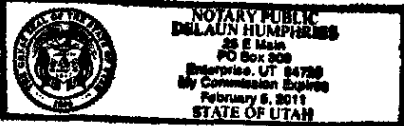
*Kellen Monick*  
\_\_\_\_\_  
Notary Public





STATE OF Utah )  
 : ss.  
COUNTY OF Washington )

This instrument was acknowledged before me on October 14, 2008, by KERRY HOLT as the General Partner of KERRY HOLT FARMS, LTD., a Utah limited partnership.



Delain Humphreys  
Notary Public

STATE OF NEVADA )  
 : ss.  
COUNTY OF Washoe )

This instrument was acknowledged before me on October 13, 2008, by HARVEY WHITEMORE as Manager of WINGFIELD NEVADA GROUP MANAGEMENT COMPANY, LLC, a Nevada limited liability company, the Manager of TUFFY RANCH PROPERTIES, LLC, a Nevada limited liability company.



Kellen Monick  
Notary Public

**EXHIBIT A**

to

**Third Loan Modification Agreement**

The real property referred to in said instrument consists of the following-described realty situated in Lincoln County, Nevada

APNs: 005-121-01

005-121-02

005-121-04

005-121-05

005-121-06

005-121-09

005-121-10

005-121-11

005-121-12

005-131-31

005-181-01

005-181-02

005-181-10

005-181-11

005-181-12

005-181-13

005-181-14

005-201-03

005-131-26

005-131-29

005-161-21

005-161-25

005-171-03

005-171-05

005-171-12

005-171-13

005-171-34

005-171-40

005-181-04

006-031-02

As more particularly described hereafter.



**Parcel 1:**

TOWNSHIP 5 NORTH, RANGE 66 EAST, M.D.M.:

Section 2: The West Half (W1/2);  
Lots 5 and 6;  
The South Half (S1/2) of the Northeast Quarter (NE1/4);  
The Southeast Quarter (SE1/4);

Section 3: The East Half (E1/2);  
The Southwest Quarter (SW1/4);

Section 4: The Southeast Quarter (SE1/4);

Sections 5 and 6: The Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4), now being known as Tract 38 in Sections 5 and 6, Township 5 North, Range 66 East, M.D.B. & M., according to the independent resurvey of said land accepted on February 19, 1959 by the Department of the Interior;

Section 10: All;

Section 11: The North Half (N1/2);

**Parcel 2:**

TOWNSHIP 6 NORTH, RANGE 66 EAST, M.D.M.:

Section 27: The West Half (W1/2);  
The Southeast Quarter (SE1/4);  
The Northeast Quarter (NE1/4);

Section 28: The Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4);  
The East Half (E1/2) of the Northeast Quarter (NE1/4);  
The South Half (S1/2) of the Southeast Quarter (SE1/4);  
The West Half (W1/2) of the Northwest Quarter (NW1/4);

Section 29: The Northeast Quarter (NE1/4);  
The East Half (E1/2) of the Northwest Quarter (NW1/4);  
The Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4);

Section 34: All;



Section 35: The West Half (W1/2);

Section 30: The North Half (N1/2) of the Northeast Quarter (NE1/4);

Section 19: The South Half (S1/2) of the Southeast Quarter (SE1/4);

Section 20: The South Half (S1/2) of the Southwest Quarter (SW1/4);  
The Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4);

Section 21 The East Half (E1/2) of the Southeast Quarter (SE1/4);  
The East Half (E1/2) of the Northeast Quarter (NE1/4);

Section 10: The Northwest Quarter (NW1/4);

Section 9: The East Half (E1/2) of the Northeast Quarter (NE1/4);

Section 4: The Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4);

Section 3: The South Half (S1/2) of the Southwest Quarter (SW1/4);

Section 15: The South Half (S1/2) of the Southwest Quarter (SW1/4);  
EXCEPTING THEREFROM a parcel of land 100 feet by 100 feet conveyed to Lincoln County Telephone System, Inc. by deed recorded February 16, 1970 in Book "O-1" of Real Estate Deeds, page 4, Lincoln County, Nevada. Located in the Northeast corner of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) of Section 15, Township 6 North, Range 66 East, M.D.B. & M, Lake Valley Lincoln County, Nevada, described as follows:  
Beginning at the Northeast corner of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4), and running thence South along the Quarter Section line 100 feet; thence at right angles 100 feet West; thence at right angles 100 feet North; thence at right angles 100 feet East to the point of beginning.

Section 22: The West Half (W1/2);  
The Southeast Quarter (SE1/4);  
The Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4);  
The West Half (W1/2) of the Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4) of the Northeast Quarter (NE1/4);

EXCEPTING FROM SECTIONS 15 AND 22 THE FOLLOWING PARCEL:  
Beginning at a point which bears North 53°25'40" West, for a distance of 198.5 feet from the Quarter corner of Sections 15-22, Township 6 North, Range 66 East, M.D.B. & M;  
thence due South for a distance of 90 feet to a point in the Northwest Quarter (NW1/4) of Section 22; thence due East for a distance of 90 feet to a point in the Northwest Quarter (NW1/4) of said Section 22; thence due North for a distance of 90 feet to a point in the Southwest Quarter (SW1/4) of Section 15; thence due West for a distance of 90 feet to said point of beginning, as conveyed to the Lincoln County Power District No. 1 by deed recorded February 2, 1970 in Book "N-1" of Real Estate Deeds, page 498, Lincoln County, Nevada.



Section 16: The Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4);

Section 33: The North Half (N1/2) of the North Half (N1/2);  
 The North Half (N1/2) of the South Half (S1/2) of the North Half (N1/2);  
 The Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) of the Southwest Quarter (SW1/4)  
 of the Northeast Quarter (NE1/4);  
 The South Half (S1/2) of the Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4);  
 The South Half (S1/2) of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4);  
 The Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4);

**Parcel 3:**

TOWNSHIP 4 NORTH, RANGE 68 EAST, M.D.M.:

Section 3: The Northwest Quarter (NW1/4) of the Southwest Quarter (SW1/4);

**Parcel 4:**

TOWNSHIP 5 NORTH, RANGE 68 EAST, M.D.M.:

Section 7: The Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4);

Section 9: The Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4);

Section 26: The Southwest Quarter (SW1/4) of the Northeast Quarter (NE1/4);  
 The Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4);

Section 27: The Southeast Quarter (SE1/4) of the Northeast Quarter (NE1/4);

Section 33: The Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4);

**Parcel 5:**

TOWNSHIP 5 NORTH, RANGE 69 EAST, M.D.M.:

Section 8: The Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4);  
 The Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4);

**Parcel 6:**

TOWNSHIP 6 NORTH, RANGE 68 EAST, M.D.M.:

Section 10: The Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4);



Section 12: The North Half (N1/2) of the Southwest Quarter (SW1/4) of the Northeast Quarter (NE1/4);

Section 15: The Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4);

Together with all water rights and ditch rights appurtenant to the land described above.

