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FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 **BARBARA BARROS,**

12 Plaintiff,

13 v.

14 **AMERICAN SHOOTING CENTER, INC., a**
15 **California corporation; MARC HALCON, an**
16 **individual; and DOES 1 through 10 inclusive,**

17 Defendants.

Case No. 37-2017-00031100-CU-BC-CTL

COMPLAINT FOR:

BREACH OF CONTRACT;
BREACH OF PERSONAL GUARANTY;
POSSESSION OF PERSONAL PROPERTY
(CLAIM AND DELIVERY);
REFORMATION OF CONTRACT;
COMMON COUNTS

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20 COMES NOW Plaintiff, Barbara Barros ("Plaintiff"), and alleges as follows:

21 **GENERAL ALLEGATIONS**

22 1. Plaintiff is an individual residing in the County of Imperial, California.

23 2. Plaintiff is informed and believes and based thereon alleges that Defendant

24 **AMERICAN SHOOTING CENTER, INC. ("ASCI") is, and at all times herein mentioned was, a**
25 **corporation organized under the laws of California with its principal place of business located in the**
26 **County of San Diego, California.**

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1 3. Plaintiff is informed and believes and based thereon alleges that Defendant MARC
2 HALCON ("Halcon") is, and at all times herein mentioned was, an individual residing in the County
3 of San Diego, California.

4 4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
5 DOES 1 through 10, inclusive, and, therefore, sue those Defendants by such fictitious names.
6 Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.
7 Plaintiff is informed and believes and thereon alleges that each of such fictitiously named
8 Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's
9 damages as herein alleged were proximately caused by said Defendants' acts.

10 5. Plaintiff is informed and believes and upon such information and belief alleges, that
11 each Defendant is, and at all relevant times herein mentioned was, the agent, servant, employee
12 and/or joint venturer of each and every other Defendant, or in some manner allied in interest with
13 each other Defendant, such that each acted within the course, scope and authority of that
14 relationship in doing the acts herein alleged, so that Plaintiff alleges each Defendant is jointly and
15 severally liable.

FACTUAL ALLEGATIONS

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17 6. On or about August 1, 2012, Plaintiff extended a loan in the principal amount of
18 \$608,848.39 evidenced by a "Secured Promissory Note" attached as Exhibit "A" hereto (the "First
19 Loan"). The First Loan is also evidenced by a "Loan and Security Agreement" attached as Exhibit
20 "B" hereto (the "Loan Agreement") which sets forth certain additional terms and conditions
21 pertaining to the First Loan, including that the First Loan is secured by certain collateral described in
22 the Loan Agreement. The First Loan purports to be extended to Defendant Halcon as the borrower,
23 but the facts and circumstances surrounding the transaction make clear that the parties intended for
24 ASCI to be the borrower and primary obligor. Plaintiff's First Cause of Action seeks reformation of
25 the First Loan and the Loan Agreement to reflect ASCI as the borrower and primary obligor
26 thereunder.

27 7. The First Loan is payable in monthly installments of a minimum payment of interest
28 due no later than the 10th day each month bears interest at the rate of 6 percent per annum, except

1 in the event of a default, in which event the entire outstanding balance shall be immediately due
2 and payable, bearing interest at the maximum rate of interest, currently 10 percent per annum.
3 Only approximately 55 payments were made towards satisfaction of the First Loan, some of which
4 were made on irregular dates and in irregular amounts. The last payment received was dated on or
5 about February 11, 2017. Furthermore, the First Loan matured by its terms on July 31, 2017, at
6 which time all obligations arising under the First Loan and Loan Agreement became due and owing.

7 8. The First Loan was backed by a guaranty executed by Defendant Halcon on or about
8 August 1, 2012 attached as Exhibit "C" hereto, wherein Halcon personally guaranteed the full and
9 faithful performance of all obligations under the Loan and Loan Agreement.

10 9. On or about December 6, 2012, Plaintiff extended a loan to Defendant Halcon in the
11 principal amount of \$120,000.00 evidenced by a "Secured Promissory Note" attached as Exhibit "D"
12 hereto (the "Second Loan"). The Second Loan is payable in monthly installments of \$1,012.63
13 beginning January 6, 2013, and thereafter on the sixth day of each month until its maturity date on
14 January 6, 2019, at which time all remaining principal and interest would be due and owing. The
15 Second Loan bears interest at the rate of 6 percent per annum, except in the event of a default, in
16 which event the entire outstanding balance shall be immediately due and payable, bearing interest
17 at the rate of 10 percent per annum. Only approximately 21 payments were made towards
18 satisfaction of the Second Loan, and then Defendant Halcon stopped paying altogether in or about
19 March of 2015.

20 **FIRST CAUSE OF ACTION**

21 **Reformation of Contract**

22 10. Plaintiff realleges and incorporates herein by reference each and every allegation
23 contained in paragraphs 1 through 8, inclusive, as though set forth fully herein.

24 11. The First Loan and the Loan Agreement erroneously show Defendant Marc Halcon
25 as the borrower and primary obligor thereunder, when in fact the Plaintiff, on the one hand, and
26 Defendants ASCI and Halcon, on the other hand, intended for ASCI to be the borrower and primary
27 obligor under the First Loan and the Loan Agreement. As evidence of the parties' intent, Halcon
28 executed a personal guaranty of the obligations set forth in the First Loan and the Loan Agreement,

1 which he would not be required or requested to do if he were the true borrower and primary obligor.
2 Furthermore, the Guaranty states in its recitals, "American Shooting Center, Inc., a California
3 corporation ("Obligor") and Payee [Plaintiff] have entered into that certain Loan and Security
4 Agreement dated as of August 6, 2008 ("Loan Agreement") as amended, pursuant to which Obligor
5 borrowed \$608,848.39 from Payee and Obligor has executed and delivered that certain Secured
6 Promissory Note of even date herewith, pursuant to which it agreed to pay Payee the principal
7 amount of \$608,848.39, plus accrued interest thereon; (the 'Obligations')."

8 12. The failure of the First Loan and the Loan Agreement to show Defendant ASCI as
9 the borrower and primary obligor resulted from a mutual mistake of fact between the parties.
10 Alternatively, the failure of the First Loan and the Loan Agreement to show Defendant ASCI as the
11 borrower and primary obligor resulted from a unilateral mistake of fact by Plaintiff and Plaintiff
12 alleges on information and belief that Defendants ASCI and Halcon knew of the mistake or
13 suspected it at the time.

14 13. Plaintiff will suffer prejudice and/or pecuniary loss unless the First Loan and the Loan
15 Agreement are reformed to show ASCI as the borrower and primary obligor thereunder.

16 SECOND CAUSE OF ACTION

17 **Breach of Contract—The First Loan**

18 **(Against Defendant ASCI)**

19 14. Plaintiff realleges and incorporates herein by reference each and every allegation
20 contained in paragraphs 1 through 13, inclusive, as though set forth fully herein.

21 15. Plaintiff has performed all of the conditions, covenants and promises required by her
22 to be performed in accordance with the terms and conditions of the terms of the First Loan and
23 accompanying Loan Agreement and Guaranty.

24 16. ASCI is in default of and has breached the terms of the First Loan and the Loan
25 Agreement by failing to timely make all monthly payments to Barros. As a result, the entire principal
26 amount of no less than \$500,986.30 is immediately due and owing, plus charges and attorneys'
27 fees.
28

1 17. In addition, the First Loan matured on July 31, 2017, at which time the obligations
2 owing by ASCI to Plaintiff all became immediately due and payable, including all principal, interest,
3 and other charges owing under the terms of the First Loan and Loan Agreement. ASCI has failed
4 to pay all principal, interest, and other charges so owing, and is therefore in breach of the terms of
5 the First Loan for that reason as well.

6 18. The First Loan provides that in the event of a default, the entire outstanding balance
7 shall be immediately due and payable, and the rate of interest shall be increased to 10 percent per
8 annum. Failure to make all payments in full as they become due constitutes a default. Applying all
9 payments received to their earliest due dates, interest at the rate of 10 percent per annum is
10 calculated from and after April 1, 2016.

11 19. The terms of the First Loan provide that default interest may be deemed a part of the
12 principal balance. Thus, the total amount of no less than \$562,708.65 is presently due, owing, and
13 unpaid under the First Loan as of June of 2017 (the date of Plaintiff's demand), which does not
14 include interest accruing thereafter, and does not include late charges on each overdue and unpaid
15 monthly payment.

16 20. As a direct and proximate result of ASCI's breach, Plaintiff has been damaged in the
17 amount of no less than \$562,708.65, the exact amount to be proven at trial, together with additional
18 interest, late charges, and attorneys' fees according to proof.

19 **THIRD CAUSE OF ACTION**

20 **Breach of Contract—The First Loan**

21 **(Against Defendant Marc Halcon)**

22 21. Plaintiff realleges and incorporates herein by reference each and every allegation
23 contained in paragraphs 1 through 8, and 15 through 20, inclusive, as though set forth fully herein.

24 22. Defendant Halcon personally guaranteed all obligations of ASCI under the terms of
25 the First Loan and Loan Agreement. ASCI has failed to pay all amounts now due and owing in the
26 principal amount of no less than \$500,986.30 plus interest accruing at the compound rate of 10
27 percent per annum, and late charges and attorneys' fees according to proof. Defendant Halcon has
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1 also failed to pay all such amounts presently due and owing and is therefore in breach of the written
2 guaranty.

3 23. Alternatively, in the event that the First Loan and Loan Agreement are not reformed
4 to show ASCI as the true borrower and primary obligor thereunder, then Halcon is the primary
5 obligor of the First Loan and Loan Agreement, and is in default of and has breached his duties and
6 obligations thereunder.

7 24. As a direct and proximate result of Halcon's breach, Plaintiff has been damaged in
8 the amount of no less than \$562,708.65, the exact amount to be proven at trial, together with
9 additional interest, late charges, and attorneys' fees according to proof.

10 FOURTH CAUSE OF ACTION

11 **Possession of Personal Property - Claim and Delivery**

12 25. Plaintiff realleges and incorporates herein by reference each and every allegation
13 contained in paragraphs 1 through 24, inclusive, as though set forth fully herein.

14 26. Pursuant to the Loan Agreement, Plaintiff was granted a security interest in the
15 collateral described therein, to which Plaintiff would be entitled to resort in fulfillment of all present
16 and future obligations secured thereby, including all expenses reasonably incurred by Plaintiff in
17 any disposition thereof, should the borrower default under the terms of the First Loan and the Loan
18 Agreement.

19 27. Plaintiff has performed all the terms and conditions required on her part to be
20 performed pursuant to the First Loan and the Loan Agreement.

21 28. The borrower under the First Loan and the Loan Agreement defaulted on the terms
22 thereof by, among other things, failing to comply with the terms of the First Loan and the Loan
23 Agreement, as set forth in detail above.

24 29. Pursuant to the terms of the Loan Agreement and California Commercial Code
25 section 9609, Plaintiff is entitled to the immediate and exclusive possession of the collateral
26 described in the Loan Agreement. Pursuant to California Commercial Code section 9610, Plaintiff
27 may provide notice of sale and sell the collateral in a commercially reasonable manner. The
28 borrower shall remain liable for any deficiency remaining, plus interest and charges thereon.

FIFTH CAUSE OF ACTION

Breach of Contract—The Second Loan

(Against Defendant Marc Halcon)

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30. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 9, inclusive, as though set forth fully herein.

31. Plaintiff has performed all of the conditions, covenants and promises required by her to be performed in accordance with the terms and conditions of the terms of the Second Loan.

32. Defendant Halcon defaulted on and breached the terms of the Second Loan by failing to timely pay all amounts due and owing. As a result, the entire principal amount of no less than \$110,887.50 is now immediately due and owing, plus interest, charges, and attorneys' fees.

33. The Second Loan provides that in the event of a default, the entire outstanding balance shall be immediately due and payable, and the rate of interest shall be increased to 10 percent per annum. Failure to make all payments in full as they become due constitutes a default, and interest is calculated at the compound rate of 10 percent per annum on all principal outstanding. Applying all payments received to their earliest due dates, interest at the rate of 10 percent per annum is calculated from and after September 6, 2014.

34. The terms of the Second Loan provide that default interest may be deemed a part of the principal balance. Thus, the total principal amount of no less than \$145,820.54 is presently due, owing, and unpaid under the Second Loan as of June of 2017 (the date of Plaintiff's demand), which does not include additional interest accruing thereafter, and does not include late charges on each overdue and unpaid monthly payment.

35. As a direct and proximate result of Halcon's breach, Plaintiff has been damaged in the amount of no less than \$562,708.65, the exact amount to be proven at trial, together with interest, late charges, and attorneys' fees according to proof.

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1 **SIXTH CAUSE OF ACTION**

2 **Common Counts**

3 **(Against Defendants ASCI and Halcon, Jointly and Severally)**

4 36. Plaintiff realleges and incorporates herein by reference each and every allegation
5 contained in paragraphs 1 through 8, inclusive, as though set forth fully herein.

6 37. Plaintiff alleges that Defendants ASCI and Halcon, jointly and severally, became
7 indebted to Plaintiff within the last four years on an open book account for money due.

8 38. Plaintiff alleges that Defendants ASCI and Halcon, jointly and severally, became
9 indebted to Plaintiff within the last four years for money had and received by Defendant ASCI for
10 the use and benefit of Plaintiff, and guaranteed by Halcon.

11 39. Plaintiff alleges that Defendants ASCI and Halcon, jointly and severally, became
12 indebted to Plaintiff within the last four years for money lent by Plaintiff to Defendant ASCI at the
13 request of Defendants.

14 40. There is now due, owing, and unpaid to Plaintiff despite Plaintiff's demand the
15 principal amount of no less than \$500,986.30, plus accrued and accruing interest at the default
16 interest rate of 10 percent per annum from and after April 1, 2016, plus late charges and attorney's
17 fees and costs according to proof.

18 **SEVENTH CAUSE OF ACTION**

19 **Common Counts**

20 **(Against Defendant Marc Halcon)**

21 41. Plaintiff realleges and incorporates herein by reference each and every allegation
22 contained in paragraphs 1 through 9, inclusive, as though set forth fully herein.

23 42. Plaintiff alleges that Defendant Halcon became indebted to Plaintiff within the last
24 four years on an open book account for money due.

25 43. Plaintiff alleges that Defendant Halcon became indebted to Plaintiff within the last
26 four years for money had and received by Defendant for the use and benefit of Plaintiff.

27 44. Plaintiff alleges that Defendant Halcon became indebted to Plaintiff within the last
28 four years for money lent by Plaintiff to Defendant Halcon at Defendant's request.

1 45. There is now due, owing, and unpaid to Plaintiff despite Plaintiff's demand the
2 principal amount of no less than \$110,887.50, plus accrued and accruing interest at the default
3 interest rate of 10 percent per annum from and after September 6, 2014, plus late charges and
4 attorney's fees and costs according to proof.

5 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
6 follows:

7 ON THE FIRST CAUSE OF ACTION:

- 8 1. For reformation of the First Loan and Loan Agreement to show ASCI as the borrower
9 and primary obligor thereunder.
- 10 2. For costs of suit incurred herein; and
- 11 3. For such other and further relief as the Court may deem just and proper.

12 ON THE SECOND AND THIRD CAUSES OF ACTION:

- 13 1. Against Defendants ASCI and Halcon, jointly and severally, for damages according
14 to proof in the principal amount of no less than \$500,986.30, together with interest at the contract
15 default rate of 10 percent per annum from the date of default added as principal and late charges;
- 16 2. For attorneys' fees and costs of suit incurred herein; and
- 17 3. For such other and further relief as the Court may deem just and proper.

18 ON THE FOURTH CAUSE OF ACTION:

- 19 1. For possession of the collateral described in the Loan Agreement, plus damages for
20 loss of use of said collateral from the date of wrongful withholding, or, in the alternative, that one or
21 both of the Defendants be required to pay the actual value of the collateral according to proof, plus
22 damages for loss of use of said collateral from the date of withholding until paid or date of entry of
23 judgment; and
- 24 2. For judgment for possession of said property by Plaintiff and/or sale or liquidation of
25 the collateral described in the Loan Agreement, and if possession can be had, Plaintiff or the
26 levying officer shall sell said personal property in a commercially reasonable manner in accordance
27 with the California Commercial Code, and the net proceeds from said sale, after deduction of
28 reasonable expenses of retaking, holding, preparing for sale, selling and the like, shall be applied to

1 reduce the amount of the judgment herein; and that Lender or any other party to this action may
2 become a purchaser at the foreclosure sale, whether by public or by private sale.

- 3 3. For attorneys' fees and costs of suit incurred herein; and
- 4 4. For such other and further relief as the Court may deem just and proper.

5 ON THE FIFTH CAUSE OF ACTION:

6 1. Against Defendant Halcon for damages according to proof in the principal amount of
7 no less than \$110,887.50, together with interest at the contract default rate of 10 percent per annum
8 from the date of default added as principal and late charges;

- 9 2. For attorneys' fees and costs of suit incurred herein; and
- 10 3. For such other and further relief as the Court may deem just and proper.

11 ON THE SIXTH CAUSE OF ACTION:

12 1. Against Defendants ASCI and Halcon, jointly and severally, for damages according
13 to proof in the principal amount of no less than \$500,986.30, together with interest at the contract
14 default rate of 10 percent per annum from the date of default added as principal and late charges;


- 15 2. For attorneys' fees and costs of suit incurred herein; and
- 16 3. For such other and further relief as the Court may deem just and proper.

17 ON THE SEVENTH CAUSE OF ACTION:

18 1. Against Defendant Halcon for damages according to proof in the principal amount of
19 no less than \$110,887.50, together with interest at the contract default rate of 10 percent per annum
20 from the date of default added as principal and late charges;

- 21 2. For attorneys' fees and costs of suit incurred herein; and
- 22 3. For such other and further relief as the Court may deem just and proper.

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24 Dated: 8/23/17

LAW OFFICES OF KIT J. GARDNER
By: 
Kit James Gardner
Counsel for Plaintiff Barbara Barros

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EXHIBIT "A"

SECURED PROMISSORY NOTE

\$608,848.39

August 1, 2012

FOR VALUE RECEIVED, the undersigned (the "Borrower") promises to pay to the order of BARBARA BARROS ("BARROS"), at [REDACTED] or at such other address as the holder of this Secured Promissory Note ("Note") shall direct, the principal sum of SIX HUNDRED EIGHT THOUSAND EIGHT HUNDRED FORTY EIGHT AND 39/100 DOLLARS (\$608,848.39), as set forth in the Loan and Security Agreement between Borrower and BARROS of even date herewith (the "Loan Agreement").

The principal amount of this Note shall be payable on the date the Loan Agreement terminates by its terms or is terminated by either party in accordance with its terms.

This Note shall bear interest on the unpaid principal balance hereof from time to time outstanding at a rate equal to Six Percent (6%).

Accrued interest on this Note shall be payable monthly in accordance with the terms of the Loan Agreement.

To the extent permitted by law, a delinquency charge may be imposed in an amount not to exceed four percent (4%) of any payment that is more than ten (10) days late.

Principal of and interest on this Note shall be payable in lawful money of the United States of America. If a payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday, the due date thereof shall be extended to the next succeeding business day, and interest shall be payable thereon during such extension.

The following are events of default hereunder: (a) the failure to pay or perform any obligation, liability or indebtedness of any Borrower to BARROS, whether under this Note or any Loan Agreement, as and when due (whether upon demand, at maturity or by acceleration); (b) the failure to pay or perform any other obligation, liability or indebtedness of any Borrower to any other party; (c) the death of any Borrower or guarantor (if an individual); (d) the resignation or withdrawal of any partner or a material owner/guarantor of Borrower, as determined by BARROS in her sole discretion; (e) the commencement of a proceeding against any Borrower for dissolution or liquidation, the voluntary or involuntary termination or dissolution of any Borrower or the merger or consolidation of any Borrower with or into another entity; (f) the insolvency of, the business failure of, the appointment of a custodian, trustee, liquidator or receiver for or for any of the property of, the assignment for the benefit of creditors by, or the filing of a petition under bankruptcy, insolvency or debtor's relief law or the filing of a petition for any adjustment of indebtedness, composition or extension by or against any Borrower; (g) the determination by BARROS that any representation or warranty made to BARROS by any Borrower in any Loan Agreement or otherwise is or was, when it was made, untrue or materially misleading; (h) the failure of any Borrower to timely deliver such financial statements, including tax returns, other statements of condition or other information, as

BARROS shall request from time to time; (i) the entry of a judgment against any Borrower which BARROS deems to be of a material nature, in BARROS' sole discretion; (j) the seizure or forfeiture of, or the issuance of any writ of possession, garnishment or attachment, or any turnover order for any property of any Borrower; (k) the determination by BARROS that she is insecure for any reason; (l) the determination by BARROS that a material adverse change has occurred in the financial condition of any Borrower; or (m) the failure of Borrower's business to comply with any law or regulation controlling its operation.

Whenever there is a default under this Note (a) the entire balance outstanding hereunder and all other obligations of any Borrower to BARROS (however acquired or evidenced) shall, at the option of BARROS, become immediately due and payable, and/or (b) to the extent permitted by law, the Rate of interest on the unpaid principal shall be increased at BARROS' discretion up to the maximum rate allowed by law, or if none, 12% per annum (the "Default Rate"). The provisions herein for a Default Rate shall not be deemed to extend the time for any payment hereunder or to constitute a "grace period" giving Borrower a right to cure any default. At BARROS' option, any accrued and unpaid interest, fees or charges may, for purposes of computing and accruing interest on a daily basis after the due date of the Note or any installment thereof, be deemed to be a part of the principal balance, and interest shall accrue on a daily compounded basis after such date at the Default Rate provided in this Note until the entire outstanding balance of principal and interest is paid in full. Upon a default under this Note, BARROS is hereby authorized at any time, at its option and without notice or demand, to set off and charge against any deposit accounts of any Borrower (as well as any money, instruments, securities, documents, chattel paper, credits, claims, demands, income and any other property, rights and interests of any Borrower), which at any time shall come into the possession or custody or under the control of BARROS or any of its agents, affiliates or correspondents, any and all obligations due hereunder. Additionally, BARROS shall have all rights and remedies available under the Loan Agreement, as well as all rights and remedies available at law or in equity. Any judgment rendered on this Note shall bear interest at the highest rate of interest permitted by California law.

All payments hereunder are to be applied first to costs and fees referred to hereunder, second to the payment of accrued interest and the remaining balance to the payment of principal. BARROS shall have the continuing and exclusive right to apply or reverse and reapply any and all payments hereunder.

The Borrower agrees to pay all costs and expenses (including without limitation attorney's fees) incurred by BARROS in connection with or related to this Note, or its enforcement, whether or not suit be brought. The Borrower hereby waives presentment, demand for payment, notice of dishonor, notice of nonpayment, protest, notice of protest, and any and all other notices and demands in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and the Borrower hereby waives the benefits of any statute of limitations with respect to any action to enforce, or otherwise related to, this Note.

This Note is secured by the Loan Agreement and all other present and future security agreements between the Borrower and BARROS. Nothing herein shall be deemed to limit any of the terms or provisions of the Loan Agreement or any other present or future document,

instrument or agreement, between the Borrower and BARROS, and all of BARROS' rights and remedies hereunder and thereunder are cumulative.

In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, the same shall not affect any other provision of this Note and the remaining provisions of this Note shall remain in full force and effect.

No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by BARROS, and then only to the extent therein specifically set forth. If more than one person executes this Note, their obligations hereunder shall be joint and several.

BARROS AND BORROWER EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO: (i) THIS NOTE; OR (ii) ANY OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN BARROS AND BORROWER; OR (iii) ANY CONDUCT, ACTS OR OMISSIONS OF BARROS OR BORROWER OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH BARROS OR BORROWER; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

This Note is payable in, and shall be governed by the laws of, the State of California.

NOTICE OF FINAL AGREEMENT. THIS WRITTEN PROMISSORY NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

By: 

Marc Halcon

EXHIBIT "B"

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT ("Loan Agreement") is entered into on August 1, 2012, between BARBARA BARROS ("BARROS"), whose address is [REDACTED] and the Borrower MARC HALCON ("Borrower"), whose office is located at [REDACTED] ("Borrower's Address").

1. **Loan.** BARROS will make a loan to Borrower (the "Loan") in the amount of SIX HUNDRED EIGHT THOUSAND EIGHT HUNDRED FORTY EIGHT AND 39/100 DOLLARS (\$608,848.39) which shall be evidenced by a Secured Promissory Note ("the Promissory Note"). The Loan shall bear interest at the rate of Six Percent (6%) per year. The minimum payment of interest will be payable monthly, by the first of the month and late if not paid by the tenth of the month.

2. **Security Interest.** As security for all present and future indebtedness, guarantees, liabilities, and other obligations of Borrower to BARROS (collectively, the "Obligations"), Borrower hereby grants BARROS a continuing security interest in all of Borrower's interest in the following types of property, whether now owned or hereafter acquired, and wherever located (collectively, the "Collateral"): All "accounts," "property general intangibles," "contract rights," "chattel paper," "documents," "letters of credit," "instruments," "deposit accounts," "inventory," "products," investment property, "stocks," "shares," "firearms," "fixtures" and "equipment," as such terms are defined in Division 9 of the California Uniform Commercial Code in effect on the date hereof, and all products, proceeds and insurance proceeds of the foregoing.

3. **Representations And Agreements Of Borrower.** Borrower represents to BARROS as follows, and Borrower agrees that the following representations will continue to be true, and that Borrower will comply with all of the following agreements throughout the term of this Agreement:

3.1 **Corporate Existence and Authority.** Borrower, is and will continue to be, duly authorized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. The execution, delivery and performance by Borrower of this Agreement, and all other documents contemplated hereby have been duly and validly authorized, and do not violate any law or any provision of, and are not grounds for acceleration under, any agreement or instrument which is binding upon Borrower.

3.2 **Name; Places of Business.** The name of Borrower set forth in this Agreement is its correct name. Borrower shall give BARROS 15 days' prior written notice before changing its name. The address set forth in the heading to this Agreement is Borrower's chief executive office. Borrower will give BARROS at least 15 days prior written notice before changing its chief executive office or locating the Collateral at any other location.

3.3 **Collateral.** BARROS has and will at all times continue to have a first-priority perfected security interest in all of the Collateral other than specific equipment. Borrower will immediately advise BARROS in writing of any material loss or damage to the Collateral.

3.4 Financial Condition and Statements. All financial statements now or in the future delivered to **BARROS** have been, and will be, prepared in conformity with generally accepted accounting principles except for certain footnotes required by generally accepted accounting principles. Since the last date covered by any such statement, there has been no material adverse change in the financial condition or business of **Borrower**. **Borrower** will provide **BARROS**: (i) within 30 days after the end of each month, a monthly financial statement prepared by **Borrower**, and such other information as **BARROS** shall reasonably request; (ii) within 120 days following the end of **Borrower's** fiscal year, complete annual financial statements, certified by independent certified public accountants acceptable to **BARROS** and accompanied by the unqualified report thereon by said independent certified public accountants, if requested by **BARROS**; and (iii) other financial information reasonably requested by **BARROS** from time to time.

3.5 Taxes; Compliance with Law. **Borrower** has filed, and will file, when due, all tax returns and reports required by applicable law, and **Borrower** has paid, and will pay, when due, all taxes, assessments, deposits and contributions now or in the future owed by **Borrower**. **Borrower** has complied, and will comply, in all material respects, with all applicable laws, rules and regulations.

3.6 Insurance. **Borrower** shall at all times insure all of the tangible personal property Collateral and carry such other business insurance as is customary in **Borrower's** industry.

3.7 Access to Collateral and Books and Records. At reasonable times, on one business day notice, **BARROS**, or its agents, shall have the right to inspect the Collateral, and the right to audit and copy **Borrower's** books and records.

3.8 Operating Accounts. **Borrower** shall maintain its primary operating accounts with its current bank.

3.9 Additional Agreements. **Borrower** shall not, without **BARROS'** prior written consent, do any of the following: (i) enter into any transaction outside the ordinary course of business except for the sale of capital stock to venture or corporate investors, provided that **Borrower** promptly delivers written notification to **BARROS** of any such sale; (ii) sell or transfer any Collateral, except in the ordinary course of business; (iii) pay or declare any dividends on **Borrower's** stock (except for dividends payable solely in stock of **Borrower**); or (iv) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of **Borrower's** stock other than the repurchase of up to five percent (5%) of **Borrower's** then issued stock in any fiscal year from **Borrower's** employees or directors pursuant to written agreement with **Borrower**.

4. Term. This Agreement shall continue in effect until **July 31, 2017**. This Agreement may be terminated, without penalty, prior to the Maturity Date as follows: (i) by **Borrower**, effective thirty (30) business days after written notice of termination is given to **BARROS**; or (ii) by **BARROS** at any time after the occurrence of an Event of Default, without notice, effective immediately. On the Maturity Date or on any earlier effective date of termination, **Borrower** shall pay all Obligations in full, whether or not such Obligations are otherwise then due and

payable. No termination shall in any way affect or impair any security interest or other right or remedy of **BARROS**, nor shall any such termination relieve **Borrower** of any Obligation to **BARROS**, until all of the Obligations have been paid and performed in full.

5. Events of Default and Remedies. The following are events of default hereunder: (a) the failure to pay or perform any obligation, liability or indebtedness of any **Borrower** to **BARROS**, whether under Loan Agreement or the Promissory Note, as and when due (whether upon demand, at maturity or by acceleration); (b) the failure to pay or perform any other obligation, liability or indebtedness of any **Borrower** to any other party; (c) the death of any **Borrower** or guarantor (if an individual); (d) the resignation or withdrawal of any partner or a material owner/guarantor of **Borrower**, as determined by **BARROS** in her sole discretion; (e) the commencement of a proceeding against any **Borrower** for dissolution or liquidation, the voluntary or involuntary termination or dissolution of any **Borrower** or the merger or consolidation of any **Borrower** with or into another entity; (f) the insolvency of, the business failure of, the appointment of a custodian, trustee, liquidator or receiver for or for any of the property of, the assignment for the benefit of creditors by, or the filing of a petition under bankruptcy, insolvency or debtor's relief law or the filing of a petition for any adjustment of indebtedness, composition or extension by or against any **Borrower**; (g) the determination by **BARROS** that any representation or warranty made to **BARROS** by any **Borrower** in this Loan Agreement or otherwise is or was, when it was made, untrue or materially misleading; (h) the failure of any **Borrower** to timely deliver such financial statements, including tax returns, other statements of condition or other information, as **BARROS** shall request from time to time; (i) the entry of a judgment against any **Borrower** which **BARROS** deems to be of a material nature, in **BARROS**' sole discretion; (j) the seizure or forfeiture of, or the issuance of any writ of possession, garnishment or attachment, or any turnover order for any property of any **Borrower**; (k) the determination by **BARROS** that she is insecure for any reason; (l) the determination by **BARROS** that a material adverse change has occurred in the financial condition of any **Borrower**; or (m) the failure of **Borrower**'s business to comply with any law or regulation controlling its operation.

Whenever there is a default under this Loan Agreement or the Promissory Note (a) the entire balance outstanding hereunder and all other obligations of any **Borrower** to **BARROS** (however acquired or evidenced) shall, at the option of **BARROS**, become immediately due and payable, and/or (b) to the extent permitted by law, the Rate of interest on the unpaid principal shall be increased at **BARROS**' discretion up to the maximum rate allowed by law, or if none, 12% per annum (the "Default Rate"). The provisions herein for a Default Rate shall not be deemed to extend the time for any payment hereunder or to constitute a "grace period" giving **Borrower** a right to cure any default. At **BARROS**' option, any accrued and unpaid interest, fees or charges may, for purposes of computing and accruing interest on a daily basis after the due date of the Promissory Note or any installment thereof, be deemed to be a part of the principal balance, and interest shall accrue on a daily compounded basis after such date at the Default Rate provided in the Promissory Note until the entire outstanding balance of principal and interest is paid in full. Upon a default under this Loan Agreement or the Promissory Note, **BARROS** is hereby authorized at any time, at its option and without notice or demand, to set off and charge against any deposit accounts of any **Borrower** (as well as any money, instruments, securities, documents, chattel paper, credits, claims, demands, income and any other property, rights and interests of any **Borrower**), which at any time shall come into the possession or custody or under

the control of BARROS or any of its agents, affiliates or correspondents, any and all obligations due hereunder. Additionally, BARROS shall have all rights and remedies available under this Loan Agreement and the Promissory Note, as well as all rights and remedies available at law or in equity.

6. General. If any provision of this Loan Agreement is held to be unenforceable, the remainder of this Loan Agreement shall still continue in full force and effect. This Loan Agreement and any other written agreements, documents and instruments executed in connection herewith are the complete agreement between Borrower and BARROS and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Loan Agreement. There are no oral understandings, representations or agreements between the parties which are not in this Loan Agreement or in other written agreements signed by the parties in connection this Loan Agreement. The failure of BARROS at any time to require Borrower to comply strictly with any of the provisions of this Loan Agreement shall not waive BARROS' right later to demand and receive strict compliance. Any waiver of a default shall not waive any other default. None of the provisions of this Loan Agreement may be waived except by a specific written waiver signed by BARROS and delivered to Borrower. The provisions of this Loan Agreement may not be amended, except in a writing signed by Borrower and BARROS. Borrower shall reimburse BARROS for all reasonable attorneys' fees and all other reasonable costs incurred by BARROS, in connection with this Agreement (whether or not a lawsuit is filed). If BARROS or Borrower files any lawsuit against the other predicated on a breach of this Loan Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees from the non-prevailing party. Borrower may not assign any rights under this Loan Agreement without BARROS' prior written consent. This Loan Agreement shall be governed by the laws of the State of California.

7. Mutual Waiver of Jury Trial. BORROWER AND BARROS EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO, THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF BARROS OR BORROWER OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR AFFILIATES.

Borrower:

By 

Marc Halcon

By 

Barbara Barros

EXHIBIT "C"

GUARANTY

This Guaranty ("Guaranty") is made as of August 1, 2012, by Marc Halcon ("**Guarantor**") for the benefit of Barbara Barros ("**Barros**"), an individual, ("**Payee**").

RECITALS

A. American Shooting Center, Inc., a California corporation ("**Obligor**") and **Payee** have entered into that certain Loan and Security Agreement dated as of August 6, 2008 ("**Loan Agreement**"), as amended, pursuant to which **Obligor** borrowed \$608,848.39 from **Payee** and **Obligor** has executed and delivered that certain Secured Promissory Note of even date herewith, pursuant to which it agreed to pay **Payee** the principal amount of \$608,848.39, plus accrued interest thereon; (the "**Obligations**").

B. Guarantor agreed to deliver this Guaranty to **Payee** to guarantee the payment by **Obligor** of the **Obligations**.

C. **Payee** would not have agreed to accept the Loan Agreement, but for this Guaranty.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which Guarantor hereby acknowledges, Guarantor agrees as follows:

1. Indebtedness Guaranteed. Guarantor hereby guarantees to **Payee** the full and faithful payment and performance by **Obligor** of all **Obligations**. This Guaranty shall continue until the Indebtedness has been paid in full. If the term of the Loan Agreement or any other **Obligation** is amended or modified by agreement between **Obligor** and **Payee**, then this Guaranty shall thereupon and thereafter guarantee the performance of the obligations of **Obligor** thereunder as so amended or modified. This Guaranty shall not be released, modified or affected by failure or delay on the part of **Payee** to enforce any of the rights granted hereunder. Guarantor hereby waives: (a) notice of acceptance of this Guaranty; (b) diligence, demand for payment, presentation and protest; (c) all rights to assert or plead any statute of limitations as to or relating to this Guaranty; (d) any right to require **Payee** to first proceed against **Obligor**; (e) any right to require **Payee** to proceed under any other remedy **Payee** may have before proceeding against Guarantor; and (f) all provisions or principles of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty, and Guarantor agrees that its obligations shall not be affected by any circumstances which might otherwise constitute legal or equitable discharge of a guarantor or surety. Guarantor waives all presentments, demands for performance, notices of dishonor, and notices of acceptance of the Guaranty. The liability of Guarantor under this Guaranty shall be an

GUARANTY

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absolute, direct, immediate, continuing and unconditional guaranty of payment and performance and shall not be conditional or contingent upon the genuineness, validity, or enforceability of any other document or instrument relating to the Indebtedness or the pursuit by Payee or any successor or assign of Payee of any remedies it or they may have against Obligor or Guarantor.

2. Attorneys' Fees. Guarantor shall pay Payee's reasonable attorneys' fees and costs and other expenses incurred by Payee in any collection or attempted collection relative to the Obligations hereby guaranteed or to enforcing this Guaranty against the undersigned.

3. Miscellaneous. No provision of this Guaranty that is held to be inoperative, unenforceable or otherwise invalid shall affect the remaining provisions, and to this end all such provisions shall be severable shall be severable from the remainder hereof. The use of the singular herein shall include the plural. Time is of the essence of this Guaranty. This Guaranty shall be governed by and enforceable in accordance with the laws of the State of California. Electronic reproduction of the signature below (by fax, .pdf, or other means) shall have the same effect as an original, manual signature.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the date first written above.

GUARANTOR:


MARC HALCON

EXHIBIT "D"

SECURED PROMISSORY NOTE

\$120,000

December 6, 2012

FOR VALUE RECEIVED, the undersigned (the "Borrower") promises to pay to the order of BARBARA BARROS ("BARROS"), at [REDACTED], or at such other address as the holder of this Secured Promissory Note ("Note") shall direct, the principal sum of ONE HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$120,000.00), as set follows:

This Note shall bear interest at the rate of Six Percent (6%) per year beginning December 6, 2012, and shall accrue on the unpaid balance until paid in full. The first payment of One Thousand Twelve Dollars and 63/100's (\$1,012.63) shall be due on January 6, 2013, and thereafter on the sixth of each month until January 6, 2019 ("Maturity Date") when all remaining interest and principal shall be due and owing.

To the extent permitted by law, a delinquency charge may be imposed in an amount not to exceed five percent (5%) of any payment that is more than ten (10) days late.

Principal of and interest on this Note shall be payable in lawful money of the United States of America. If a payment hereunder becomes due and payable on a Saturday, Sunday or legal holiday, the due date thereof shall be extended to the next succeeding business day, and interest shall be payable thereon during such extension.

The following are events of default hereunder: (a) the failure to pay or perform any obligation, liability or indebtedness of any Borrower to BARROS, under this Note as and when due (whether upon demand, at maturity or by acceleration); (b) the failure to pay or perform any other obligation, liability or indebtedness of any Borrower to any other party; (c) the death of any Borrower or guarantor (if an individual); (d) the resignation or withdrawal of any partner or a material owner/guarantor of Borrower, as determined by BARROS in her sole discretion; (e) the commencement of a proceeding against any Borrower for dissolution or liquidation, the voluntary or involuntary termination or dissolution of any Borrower or the merger or consolidation of any Borrower with or into another entity; (f) the insolvency of, the business failure of, the appointment of a custodian, trustee, liquidator or receiver for or for any of the property of, the assignment for the benefit of creditors by, or the filing of a petition under bankruptcy, insolvency or debtor's relief law or the filing of a petition for any adjustment of indebtedness, composition or extension by or against any Borrower; (g) the seizure or forfeiture of, or the issuance of any writ of possession, garnishment or attachment, or any turnover order for any property of any Borrower.

Whenever there is a default under this Note (a) the entire balance outstanding hereunder and all other obligations of any Borrower to BARROS (however acquired or evidenced) shall, at the option of BARROS, become immediately due and payable, and/or (b) to the extent permitted by law, the Rate of interest on the unpaid principal shall be increased at BARROS's discretion up to the maximum rate allowed by law, or if none, 10% per annum (the "Default Rate"). The provisions herein for a Default Rate shall not be deemed to extend the time for any payment hereunder or to constitute a "grace period" giving Borrower a right to cure any default. At BARROS's option, any accrued and unpaid interest, fees or charges may, for purposes of computing and accruing interest on a daily basis after the due date of the Note or any installment thereof, be deemed to be a part of the principal balance, and interest shall accrue on a daily compounded basis after such date at the Default Rate provided in this Note until the entire outstanding balance of principal and interest is paid in full. Upon a default under this Note, BARROS is hereby authorized at any time, at its option and without notice or demand, to set off and charge against any deposit accounts of any Borrower (as well as any money, instruments, securities, documents, chattel paper, credits, claims, demands, income and any other property, rights and interests of any Borrower), which at any time shall come into the possession or custody or under the control of BARROS or any of its agents, affiliates or correspondents, any and all obligations due hereunder. Additionally, BARROS shall have all rights and remedies available at law or in equity. Any judgment rendered on this Note shall bear interest at the highest rate of interest permitted by California law.

All payments hereunder are to be applied first to costs and fees referred to hereunder, second to the payment of accrued interest and the remaining balance to the payment of principal. BARROS shall have the continuing and exclusive right to apply or reverse and reapply any and all payments hereunder.

The Borrower agrees to pay all costs and expenses (including without limitation attorney's fees) incurred by BARROS in connection with or related to this Note, or its enforcement, whether or not suit be brought. The Borrower hereby waives presentment, demand for payment, notice of dishonor, notice of nonpayment, protest, notice of protest, and any and all other notices and demands in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and the Borrower hereby waives the benefits of any statute of limitations with respect to any action to enforce, or otherwise related to, this Note.

This Note is secured by all assets of the Borrower. Nothing herein shall be deemed to limit any of the terms or provisions of the Note or any other present or future document,

instrument or agreement, between the Borrower and BARROS, and all of BARROS's rights and remedies hereunder and thereunder are cumulative.

In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, the same shall not affect any other provision of this Note and the remaining provisions of this Note shall remain in full force and effect.

No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by BARROS, and then only to the extent therein specifically set forth. If more than one person executes this Note, their obligations hereunder shall be joint and several.

BARROS AND BORROWER EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO: (i) THIS NOTE; OR (ii) ANY OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN BARROS AND BORROWER; OR (iii) ANY CONDUCT, ACTS OR OMISSIONS OF BARROS OR BORROWER OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH BARROS OR BORROWER; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

This Note is payable in, and shall be governed by the laws of, the State of California.

NOTICE OF FINAL AGREEMENT. THIS WRITTEN PROMISSORY NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

By: 

Marc Halcon