

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2                   \*\*\*\*\*

3 NOLA HARBER, as Distribution Trustee  
4 of the ERIC L. NELSON NEVADA  
5 TRUST dated May 30, 2001

6                   Petitioners,

7 vs.

8 EIGHTH JUDICIAL DISTRICT COURT  
9 OF THE STATE OF NEVADA, CLARK  
10 COUNTY, and THE HONORABLE  
11 FRANK P. SULLIVAN, DISTRICT  
12 JUDGE

13                   Respondents,

14 and

15 ERIC L. NELSON and LYNITA S.  
16 NELSON, individually, and LSN  
17 NEVADA TRUST dated May 30, 2001.

18                   Real Parties in Interest.

Electronically Filed  
Jul 09 2013 12:55 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**CASE NO.**

19                   **PETITION FOR WRIT OF PROHIBITION**

20                   **APPENDIX VOLUME 1**

21  
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Distribution Trustee of the ELN Nevada Trust

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*Alvin L. Sullivan*

CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as  
Distribution Trustee of the ERIC L. NELSON  
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

LANA MARTIN, Distribution Trustee of the  
ERIC L. NELSON NEVADA TRUST dated  
May 30, 2001,

Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

CASE NO.: D-09-411537-D  
DEPT. NO.: O

NOTICE OF ENTRY OF ORDER

Non-Trial Dispositions:

- |  |   |
|--|---|
| <input type="checkbox"/> Other                             | <input type="checkbox"/> Settled/Withdrawn                    |
| <input type="checkbox"/> Dismissed - Want of Prosecution   | <input type="checkbox"/> Without Judicial Conf/Hg             |
| <input type="checkbox"/> Involuntary (Statutory) Dismissal | <input type="checkbox"/> With Judicial Conf/Hg                |
| <input type="checkbox"/> Default Judgment                  | <input type="checkbox"/> By ADR                               |
| <input type="checkbox"/> Transferred                       | <input type="checkbox"/> Trial Disposition:                   |
| <input type="checkbox"/> Disposed After Trial              | <input checked="" type="checkbox"/> Judgment Reached by Trial |

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101


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TO:

Rhonda Forsberg, Esq.  
Robert Dickerson, Esq.  
Mark Solomon, Esq.  
Jeffrey Luszeck, Esq.

PLEASE TAKE NOTICE that DECREE OF DIVORCE was duly entered in the above-  
referenced case on the 3rd day of June, 2013.

DATED this 3 day of June, 2013.

  
Lori Parr  
Judicial Executive Assistant  
Dept. O

DISTRICT COURT  
CLARK COUNTY, NEVADA

ERIC L. NELSON,  
Plaintiff/Counterdefendant,

vs.

LYNITA SUE NELSON, LANA MARTIN, as  
Distribution Trustee of the ERIC L. NELSON  
NEVADA TRUST dated May 30, 2001,

Defendant/Counterclaimants.

LANA MARTIN, Distribution Trustee of the  
ERIC L. NELSON NEVADA TRUST dated  
May 30, 2001,

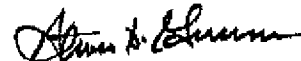
Crossclaimant,

vs.

LYNITA SUE NELSON,

Crossdefendant.

CASE NO.: D-09-411537-D  
DEPT. NO.: 0  
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CLERK OF THE COURT

DECREE OF DIVORCE

This matter having come before this Honorable Court for a Non-Jury Trial in October 2010, November 2010, July 2012 and August 2012, with Plaintiff, Eric Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson, appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq., and Josef Karacsonyi, Esq., and Counter-defendant, Cross-defendant, Third Party Defendant Lana Martin, Distribution

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DISTRICT JUDGE

FAMILY DIVISION, DEPT. 0  
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1  
2 Trustee of the Eric L. Nelson Nevada Trust, being represented by Mark Solomon, Esq., and  
3 Jeffrey Luszeck, Esq., good cause being shown:

4 THE COURT HEREBY FINDS that it has jurisdiction in the premises, both as to the  
5 subject matter thereof and as the parties thereto, pursuant to NRS 125.010 et seq.

6  
7 THE COURT FURTHER FINDS the Eric Nelson, Plaintiff, has been, and is now, an  
8 actual and bona fide resident of the County of Clark, State of Nevada, and has been actually  
9 domiciled therein for more than six (6) weeks immediately preceding to the commencement of  
10 this action.

11 THE COURT FURTHER FINDS that the parties were married September 17, 1983.

12 THE COURT FURTHER FINDS that 5 children were born the issue of this marriage;  
13 two of which are minors, namely, Garrett Nelson born on September 13, 1994, and Carl  
14 Nelson born on October 17, 1997; and to the best of her knowledge, Lynita Nelson, is not now  
15 pregnant.  
16

17 THE COURT FURTHER FINDS that the Plaintiff filed for divorce on May 6, 2009.

18 THE COURT FURTHER FINDS that the parties entered into a Stipulated Parenting  
19 Agreement as to the care and custody of said minor children on October 15, 2008, which was  
20 affirmed, ratified and made an Order of this Court on February 8, 2010.

21 THE COURT FURTHER FINDS that on August 9, 2011, both parties stipulated and  
22 agreed that the Eric L. Nelson Nevada (ELN) Trust should be joined as a necessary party to this  
23 matter.  
24

25 THE COURT FURTHER FINDS that Eric Nelson is entitled to an absolute Decree of  
26 Divorce on the grounds of incompatibility.  
27  
28

1  
2 THE COURT FURTHER FINDS that during the couple's nearly thirty (30) years of  
3 marriage, the parties have amassed a substantial amount of wealth.

4 THE COURT FURTHER FINDS that the parties entered into a Separate Property  
5 Agreement on July 13, 1993, with Mr. Nelson being advised and counseled with respect to the  
6 legal effects of the Agreement by attorney Jeffrey L. Burr and Mrs. Nelson being advised and  
7 counseled as its legal effects by attorney Richard Koch.  
8

9 THE COURT FURTHER FINDS that, pursuant to NRS 123.080 and NRS 123.220(1),  
10 the Separate Property Agreement entered into by the parties on July 13, 1993, was a valid  
11 Agreement.  
12

13 THE COURT FURTHER FINDS that Schedule A of the Separate Property Agreement  
14 contemporaneously established the Eric L. Nelson Separate Property Trust and named Mr.  
15 Nelson as trustor. The trust included interest in:

16 A First Interstate Bank account;  
17 A Bank of America account;  
18 4021 East Portland Street, Phoenix, Arizona;  
19 304 Ramsey Street, Las Vegas, Nevada;  
20 Twelve (12) acres located on Cheyenne Avenue, Las Vegas, Nevada;  
21 Ten (10) acres located on Cheyenne Avenue, Las Vegas, Nevada;  
22 1098 Evergreen Street, Phoenix, Arizona;  
23 Forty nine (49) lots, notes and vacant land in Queens Creek, Arizona;  
24 Forty one (41) lots, notes and vacant land in Sunland Park, New Mexico;  
25 Sport of Kings located at 365 Convention Center Drive, Las Vegas, Nevada;  
26 A 1988 Mercedes;  
27 Forty percent (40%) interest in Eric Nelson Auctioneering, 4285 South Polaris Avenue,  
28 Las Vegas, Nevada;  
One hundred percent (100%) interest in Casino Gaming International, LTD., 4285  
South Polaris Avenue, Las Vegas, Nevada; and  
Twenty five percent (25%) interest in Polk Landing.

THE COURT FURTHER FINDS that Schedule B of the Separate Property Agreement  
contemporaneously established the Lynita S. Nelson Separate Property Trust and named Mrs.  
Nelson as trustor. The trust included interest in:

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1  
2 A Continental National Bank account;  
3 Six (6) Silver State Schools Federal Credit Union accounts;  
4 An American Bank of Commerce account;  
5 7065 Palmyra Avenue, Las Vegas, Nevada;  
6 8558 East Indian School Road, Number J, Scottsdale, Arizona;  
7 Ten (10) acres on West Flamingo Road, Las Vegas, Nevada;  
8 1167 Pine Ridge Drive, Panguitch, Utah;  
9 749 West Main Street, Mesa, Arizona;  
10 1618 East Bell Road, Phoenix, Arizona;  
11 727 Hartford Avenue, Number 178, Phoenix, Arizona;  
12 4285 Polaris Avenue, Las Vegas, Nevada;  
13 Metropolitan Mortgage & Security Co., Inc., West 929 Sprague Avenue Spokane,  
14 Washington;  
15 Apirade Bumpus, 5215 South 39th Street, Phoenix, Arizona;  
16 Pool Hall Sycamore, 749 West Main Street, Mesa, Arizona;  
17 A Beneficial Life Insurance policy; and  
18 A 1992 van

19  
20 THE COURT FURTHER FINDS that on May 30, 2001, the Eric L. Nelson Nevada  
21 Trust (hereinafter "ELN Trust") was created under the advice and counsel of Jeffrey L. Burr,  
22 Esq., who prepared the trust documents.

23  
24 THE COURT FURTHER FINDS that the ELN Trust was established as a self-settled  
25 spendthrift trust in accordance with NRS 166.020.<sup>1</sup>

26  
27 THE COURT FURTHER FINDS that all of the assets and interest held by the Eric L.  
28 Nelson Separate Property Trust were transferred or assigned to the ELN Trust.

THE COURT FURTHER FINDS that on May 30, 2001, the Lynita S. Nelson Nevada  
Trust (hereinafter "LSN Trust") was created under the advice and counsel of Jeffrey L. Burr,  
Esq., who prepared the trust documents.

THE COURT FURTHER FINDS that the LSN Trust was established as a self-settled  
spendthrift trust in accordance with NRS 166.020.

<sup>1</sup> NRS 166.020 defines a spendthrift trust as "at trust in which by the terms thereof a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed. See, NRS 166.020.

1  
2 THE COURT FURTHER FINDS that all of the assets and interest held by the Lynita S.  
3 Nelson Separate Property Trust were transferred or assigned to the LSN Trust.

4 THE COURT FURTHER FINDS that while the parties may differ as to the reason why  
5 the trusts were created, the effect of a spendthrift trust is to prevent creditors from reaching the  
6 principle or corpus of the trust unless said creditor is known at the time in which an asset is  
7 transferred to the trust and the creditor brings an action no more than two years after the  
8 transfer occurs or no more than 6 months after the creditor discovers or reasonably should have  
9 discovered the transfer, whichever occurs latest.<sup>2</sup>

10  
11 THE COURT FURTHER FINDS that while spendthrift trusts have been utilized for  
12 decades; Nevada is one of the few states that recognize self-settled spendthrift trusts. The  
13 legislature approved the creation of spendthrift trusts in 1999 and it is certainly not the purpose  
14 of this Court to challenge the merits of spendthrift trusts.

15  
16 THE COURT FURTHER FINDS that the testimony of the parties clearly established  
17 that the intent of creating the spendthrift trusts was to provide maximum protection from  
18 creditors and was not intended to be a property settlement in the event that the parties divorced.

19 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were  
20 significant transfers of property and loans primarily from the LSN Trust to the ELN Trust. Such  
21 evidence corroborates Mrs. Nelson's testimony that the purpose of the two Trusts was to allow  
22 for the ELN Trust to invest in gaming and other risky ventures, while the LSN Trust would  
23 maintain the unencumbered assets free and clear from the reach of creditors in order to provide  
24 the family with stable and reliable support should the risky ventures fail.  
25

26 ...  
27  
28

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<sup>2</sup> NRS 166.170(1)

1  
2 THE COURT FURTHER FINDS that, due to Mrs. Nelson's complete faith in and total  
3 support of her husband, Mr. Nelson had unfettered access to the LSN Trust to regularly transfer  
4 assets from the LSN Trust to the ELN Trust to infuse cash and other assets to fund its gaming  
5 and other risky investment ventures.  
6

7 THE COURT FURTHER FINDS that on numerous occasions during these proceedings,  
8 Mr. Nelson indicated that the ELN Trust and LSN Trust both held assets that were indeed  
9 considered by the parties to be community property.

10 THE COURT FURTHER FINDS that during the first phase of trial held in August  
11 2010, Mr. Nelson was questioned ad nauseam by both his former attorney, Mr. James  
12 Jimmerson, and by Mrs. Nelson's attorney, Mr. Dickerson, about his role as the primary wage  
13 earner for the family.  
14

15 THE COURT FURTHER FINDS that on direct examination, when asked what he had  
16 done to earn a living following obtaining his real estate license in 1990, Mr. Nelson's lengthy  
17 response included:

18 "So that's my primary focus is managing all my assets and Lynita's assets so we  
19 manage our *community assets*, and that's where our primary revenue is driven  
(emphasis added)."

20 THE COURT FURTHER FINDS that upon further direct examination, when asked why  
21 the ELN and LSN Trusts were created, Mr. Nelson responded:

22  
23 "In the event that something happened to me, I didn't have to carry life insurance. I  
24 would put safe assets into her property in her assets for her and the kids. My assets  
25 were much more volatile, much more -- I would say daring; casino properties, zoning  
26 properties, partners properties, so we maintained this and these — all these trusts  
27 were designed and set up by Jeff Burr. Jeff Burr is an excellent attorney and so I felt  
28 comfortable. This protected Lynita and her children and it gave me the flexibility  
because I do a lot of tax scenarios, to protect her and the kids and me and we could  
level off yearly by putting assets in her trust or my trust depending on the  
transaction and protect -- the basic bottom line is to protect her (emphasis added)."

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DISTRICT JUDGE

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1  
2 THE COURT FURTHER FINDS that upon further examination by Attorney Jimmerson  
3 inquiring about the status of a rental property located on Lindell Road, Mr. Nelson's response  
4 was:

5 "Well, we don't pay rent because we're managing all the assets, so I don't pay  
6 myself to pay Lynita because we --- it's all *community* (emphasis added)."

7 THE COURT FURTHER FINDS that during cross-examination on October 19, 2010,  
8 Mr. Nelson was questioned as to why he closed his auctioning company and his response was:

9 "I was under water these businesses. And for business purposes and to -- to set -- to  
10 save as much in our *community* estate, I was forced to lay people off, generate cash flow so  
11 Lynita would have the cash flow from these properties in the future (emphasis added)."

12 THE COURT FURTHER FINDS that throughout Mr. Nelson's aforementioned  
13 testimony, he either expressly stated that his actions were intended to benefit his and Mrs.  
14 Nelson's community estate or made reference to the community.

15 THE COURT FURTHER FINDS that it heard testimony from Mr. Nelson over several  
16 days during the months of August 2010, September 2010 and October 2010, in which Mr.  
17 Nelson's testimony clearly categorized the ELN Trust and LSN Trust's property as community  
18 property.

19 THE COURT FURTHER FINDS that Mr. Nelson's sworn testimony corroborates Mrs.  
20 Nelson's claim that Mr. Nelson informed her throughout the marriage that the assets  
21 accumulated in both the ELN Trust and LSN Trust were for the betterment of their family unit,  
22 and, thus, the community.

23 THE COURT FURTHER FINDS Attorney Burr's testimony corroborated the fact that  
24 the purpose of creating the spendthrift trusts was to "supercharge" the protection afforded  
25 against creditors and was not intended to be a property settlement.  
26  
27

28 ...

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DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
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1  
2 THE COURT FURTHER FINDS that Attorney Burr testified that he discussed and  
3 suggested that the Nelsons periodically transfer properties between the two trusts to ensure that  
4 their respective values remained equal.

5 THE COURT FURTHER FINDS that Attorney Burr further testified that the values of  
6 the respective trust could be equalized through gifting and even created a gifting form for the  
7 parties to use to make gifts between the trusts.

8  
9 THE COURT FURTHER FINDS that the Minutes from a Trust Meeting, dated  
10 November 20, 2004, reflected that all Mississippi property and Las Vegas property owned by  
11 the ELN Trust was transferred to the LSN trust as final payment on the 2002 loans from the  
12 LSN to the ELN Trust and to "*level off the trusts*" (emphasis added).

13 THE COURT FURTHER FINDS that the evidence adduced at trial clearly established  
14 the parties intended to maintain an equitable allocation of the assets between the ELN Trust and  
15 the LSN Trust.

16 *Fiduciary Duty*

17  
18 THE COURT FURTHER FINDS that the Nevada Supreme Court has articulated that a  
19 fiduciary relationship exists between husbands and wives, and that includes a duty to "disclose  
20 pertinent assets and factors relating to those assets." *Williams v. Waldman*, 108 Nev. 466, 472  
21 (1992).

22 THE COURT FURTHER FINDS that Mr. Nelson owed a duty to his spouse, Mrs.  
23 Nelson, to disclose all pertinent factors relating to the numerous transfers of the assets from the  
24 LSN Trust to the ELN Trust.  
25

26 ...

27 ...

1  
2 THE COURT FURTHER FINDS that Mrs. Nelson credibly testified that on numerous  
3 occasions, Mr. Nelson requested that she sign documentation relating to the transfer of LSN  
4 Trust assets to the ELN Trust. Mrs. Nelson further stated that she rarely questioned Mr. Nelson  
5 regarding these matters for two reasons: (1) Mr. Nelson would become upset if she asked  
6 questions due to his controlling nature concerning business and property transactions; and (2)  
7 she trusted him as her husband and adviser.  
8

9 THE COURT FURTHER FINDS that Mr. Nelson's behavior during the course of these  
10 extended proceedings, as discussed in detail hereinafter, corroborates Mrs. Nelson's assertions  
11 that Mr. Nelson exercises unquestioned authority over property and other business ventures and  
12 loses control of his emotions when someone questions his authority.  
13

14 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson  
15 did not regularly discuss the factors relating to the numerous transfers of the assets from the  
16 LSN Trust to the ELN Trust with Mrs. Nelson, and, therefore, violated his fiduciary duty to his  
17 spouse.  
18

19 THE COURT FURTHER FINDS that NRS 163.554 defines a fiduciary as a trustee...or  
20 any other person, including an investment trust adviser, which is acting in a *fiduciary capacity*  
21 for any person, trust or estate. See, NRS 163.554 (emphasis added).  
22

23 THE COURT FURTHER FINDS that NRS 163.5557 defines an investment trust  
24 adviser as a person, appointed by an instrument, to act in regard to investment decisions. NRS  
25 163.5557 further states:  
26

27 2. An investment trust adviser may exercise the powers provided  
28 to the investment trust adviser in the instrument in the best interests of the  
trust. **The powers exercised by an investment trust adviser are at the  
sole discretion of the investment trust adviser and are binding on all other  
persons.** The powers granted to an investment trust adviser may include,  
without limitation, the power to:

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D  
LAS VEGAS NV 89101



- 1  
2 (a) Direct the trustee with respect to the retention, purchase,  
3 sale or encumbrance of trust property and the investment and  
4 reinvestment of principal and income of the trust.  
5 (b) Vote proxies for securities held in trust.  
6 (c) Select one or more investment advisers, managers or counselors,  
7 including the trustee, and delegate to such persons any of the powers  
8 of the investment trust adviser.

9 See, NRS 163.5557 (emphasis added).

10 THE COURT FURTHER FINDS that Mr. Nelson continuously testified as to his role  
11 as the investment trustee for both trusts, specifically testifying during cross examination on  
12 September 1, 2010, as follows:

13 Q. Now you're the one that put title to those parcels  
14 that we've talked about in the name of Dynasty, Bal Harbor,  
15 Emerald Bay, Bay Harbor Beach Resorts and (indiscernible)  
16 Financial Partnerships. Is that correct?

17 A. I believe so, yes.

18 Q. And you're the one that also put title in the name  
19 of -- all the remaining lots in the name of LSN Nevada Trust.  
20 Is that true?

21 A. Yes, sir.

22 THE COURT FURTHER FINDS that during his September 1<sup>st</sup> cross-examination, Mr.  
23 Nelson also testified as to the assets located in Mississippi as follows:

24 Q. The height of the market was 18 months ago according  
25 to your testimony?

26 A. No, no. But I'm just saying we could have -- the  
27 this lawsuit's been pending for a while, sir. We did these  
28 deeds mistake -- if you can -- if you reference back to it, it  
shows -- shows Dynas -- it's my --

Q. Exhibit -- the Exhibit for the --

A. -- company. It shows Eric Nelson. That's my  
company. We put them into Lynita's for community protection,  
and she would not cooperate.

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D  
LAS VEGAS NV 89101

1  
2  
3 Q. You put them --

4 A. Yes, sir.

5 Q. -- into Lynita's?

6 A. Yes, sir --

7 Q. All right. Sir --

8 A. -- for *co -- unity wealth* (emphasis added).

9  
10 THE COURT FURTHER FINDS that while the LSN Trust documents expressly named  
11 Mrs. Nelson as investment trust adviser, the evidence clearly established that Mr. Nelson  
12 exercised a pattern of continuous, unchallenged investment and property-transfer decisions for  
13 both the ELN and the LSN Trusts, thereby illustrating that Mr. Nelson acted as the investment  
14 trust adviser of the LSN Trust from its inception.

15 THE COURT FURTHER FINDS that the testimony of both parties clearly shows that,  
16 pursuant to NRS 163.5557(2)(c), Mrs. Nelson delegated the duties of investment trustee to her  
17 husband, Mr. Nelson.

18  
19 THE COURT FURTHER FINDS that as the delegated investment trustee for the LSN  
20 Trust, Mr. Nelson acted in a fiduciary capacity for Mrs. Nelson.<sup>3</sup> Therefore, Mr. Nelson had a  
21 duty to "disclose pertinent assets and factors relating to those assets".<sup>4</sup>

22 THE COURT FURTHER FINDS that, despite serving as the delegated investment  
23 trustee for the LSN Trust, Mr. Nelson did not regularly discuss the pertinent factors relating to  
24 the transfer of the assets from the LSN Trust to the ELN Trust, and, as such, violated the  
25 fiduciary duty he owed to Mrs. Nelson and to the LSN Trust as the delegated investment trustee  
26 to the LSN Trust.

27  
28 <sup>3</sup> NRS 163.554.

<sup>4</sup> *Williams v. Waldman*, 108 Nev. 466, 472 (1992).

1  
2 THE COURT FURTHER FINDS that Mr. Nelson, in his dual role as a spouse and as  
3 the delegated investment trustee for the LSN Trust, violated the fiduciary duties owed to Mrs.  
4 Nelson and the LSN Trust.

5 *Constructive Trust*  
6

7 THE COURT FURTHER FINDS that Mr. Nelson's activities as the delegated  
8 investment trustee for the LSN Trust in which he transferred numerous properties and assets  
9 from the LSN Trust to the ELN Trust, unjustly resulted in the ELN Trust obtaining title to  
10 certain properties that the LSN Trust formerly held.

11 THE COURT FURTHER FINDS that a legal remedy available to rectify this unjust  
12 result is the Court's imposition of a constructive trust. The basic objective of a constructive  
13 trust is to recognize and protect an innocent party's property rights. Constructive trusts are  
14 grounded in the concept of equity. *Cummings v. Tinkle*, 91 Nev. 548, 550 (1975).

15 THE COURT FURTHER FINDS that the Nevada Supreme Court has held that a  
16 constructive trust is proper when "(1) a confidential relationship exists between the parties; (2)  
17 retention of legal title by the holder thereof against another would be inequitable; and (3) the  
18 existence of such a trust is essential to the effectuation of justice." *Locken v. Locken*, 98 Nev.  
19 369, 372 (1982).

20 THE COURT FURTHER FINDS that in *Locken*, the Nevada Supreme Court found that  
21 an oral agreement bound a son to convey land to his father, as the father was to make certain  
22 improvements to the land. The Court found that even though the father completed an affidavit  
23 claiming no interest in the land, this act did not preclude him from enforcing the oral  
24 agreement. *Id.*, at 373.  
25  
26  
27  
28

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

1  
2 THE COURT FURTHER FINDS that the *Locken* court found that the imposition of a  
3 constructive trust does not violate the statute of frauds as NRS 111.025 states:

4 1. No estate or interest in lands...nor any trust or power over or  
5 concerning lands, or in any manner relating thereto, shall be created,  
6 granted, assigned, surrendered or declared after December 2, 1861,  
7 unless by act or operation of law, or by deed or conveyance, in writing, subscribed by  
8 the party creating, granting, assigning, surrendering or  
9 declaring the same, or by the party's lawful agent thereunto authorized  
10 in writing.

11 2. Subsection 1 shall not be construed to affect in any manner the power  
12 of a testator in the disposition of the testator's real property by a last will  
13 and testament, nor to prevent any trust from arising or being extinguished  
14 by implication or operation of law.

15 See, NRS 111.025 (Emphasis added).

16 THE COURT FURTHER FINDS that NRS 111.025(2) creates an exception to the  
17 statute of frauds that allows for the creation of a constructive trust to remedy or prevent the  
18 type of injustice that the statute seeks to prevent.

19 THE COURT FURTHER FINDS that in this case, we clearly have a confidential  
20 relationship as the two parties were married at the time of the transfers. In addition, Mr. Nelson  
21 acted as the investment trustee for the LSN Trust, which effectively created another  
22 confidential relationship between him and Mrs. Nelson as she is the beneficiary of the LSN  
23 Trust.

24 THE COURT FURTHER FINDS that while Mr. Nelson argues that no confidential  
25 relationship existed between Mrs. Nelson and the ELN Trust, a confidential relationship clearly  
26 existed between Mrs. Nelson and Mr. Nelson, who, as the beneficiary of the ELN Trust,  
27 benefits greatly from the ELN Trust's acquisition and accumulation of properties.  
28

1  
2 THE COURT FURTHER FINDS that the ELN Trust's retention of title to properties  
3 that the LSN Trust previously held would be inequitable and would result in an unjust  
4 enrichment of the ELN Trust to the financial benefit of Mr. Nelson and to the financial  
5 detriment of the LSN Trust and Mrs. Nelson.

6 THE COURT FURTHER FINDS that Mrs. Nelson, as a faithful and supporting spouse  
7 of thirty years, had no reason to question Mr. Nelson regarding the true nature of the assets that  
8 he transferred from the LSN Trust to the ELN Trust.

9  
10 THE COURT FURTHER FINDS that Mr. Nelson argues that the imposition of a  
11 constructive trust is barred in this instance because Mrs. Nelson benefitted from the creation  
12 and implementation of the trust and cites the Nevada Supreme Court ruling in *DeLee v.*  
13 *Roggen*, to support his argument. 111 Nev. 1453 (1995).

14 THE COURT FURTHER FINDS that in *DeLee*, the party seeking the imposition of the  
15 constructive trust made no immediate demands because he knew that his debtors would lay  
16 claim to the property. The court found that a constructive trust was not warranted because the  
17 creation of the trust was not necessary to effectuate justice. *Id.*, at 1457.

18  
19 THE COURT FURTHER FINDS that unlike *DeLee*, Mrs. Nelson made no demand for  
20 the property because Mr. Nelson assured her that he managed the assets in the trusts for the  
21 benefit of the community. Consequently, Mrs. Nelson did not have notice that the LSN Trust  
22 should reclaim the property.

23 THE COURT FURTHER FINDS that while Mr. Nelson acted as the investment trustee  
24 for both the ELN and LSN Trust respectively, the properties never effectively left the  
25 community. Consequently, Mrs. Nelson never thought that she needed to recover the  
26 properties on behalf of the LSN Trust. Mrs. Nelson was not advised that she was not entitled to  
27  
28

1  
2 the benefit of the assets transferred from the LSN Trust to the ELN Trust under the direction of  
3 Mr. Nelson until the ELN Trust joined the case as a necessary party.

4 THE COURT FURTHER FINDS that allowing the ELN Trust to acquire property from  
5 the LSN Trust under the guise that these property transfers benefitted the community,  
6 effectively deprives Mrs. Nelson of the benefit of those assets as beneficiary under the LSN  
7 Trust, and will ultimately result in Mr. Nelson, as beneficiary of the ELN Trust, being unjustly  
8 enriched at the expense of Mrs. Nelson.  
9

10 THE COURT FURTHER FINDS that, as addressed in detail below, the Court will  
11 impose a constructive trust on the following assets: (1) 5220 East Russell Road Property; (2)  
12 3611 Lindell Road.

13 THE COURT FURTHER FINDS that as to the Russell Road property, according to the  
14 report prepared by Larry Bertsch, the court-appointed forensic accountant, Mr. Nelson, as the  
15 investment trustee for the LSN Trust, purchased the property at 5220 E. Russell Road on  
16 November 11, 1999, for \$855,945. Mr. Nelson's brother, Cal Nelson, made a down payment of  
17 \$20,000 and became a 50% owner of the Russell Road Property despite this paltry  
18 contribution.<sup>5</sup> Cal Nelson and Mrs. Nelson later formed CJE&L, LLC, which rented this  
19 property to Cal's Blue Water Marine. Shortly thereafter, CJE&L, LLC obtained a \$3,100,000  
20 loan for the purpose of constructing a building for Cal's Blue Water Marine.<sup>6</sup>  
21  
22

23 THE COURT FURTHER FINDS that in 2004, Mrs. Nelson signed a guarantee on the  
24 flooring contract for Cal's Blue Water Marine. She subsequently withdrew her guarantee and  
25 the LSN Trust forfeited its interest in the property to Cal Nelson. While Mr. Nelson argues that  
26 the release of Mrs. Nelson as guarantor could be consideration, the flooring contract was never  
27

28 <sup>5</sup> Mr. Nelson testified that Cal Nelson also assumed a \$160,000 liability arising from a transaction by Mr. Nelson involving a Las Vegas Casino.

<sup>6</sup> Defendant's Exhibit GGGGG

1  
2 produced at trial and no value was ever assigned as to Mrs. Nelson's liability. Furthermore, the  
3 Declaration of Value for Tax Purposes indicates that it was exempted from taxation due to  
4 being a "transfer without consideration for being transferred to or from a trust."<sup>7</sup> As such, the  
5 alleged consideration was never established and appears to be illusory, and, accordingly, the  
6 LSN Trust received no compensation from the Russell Road transaction.<sup>8</sup>

7  
8 THE COURT FURTHER FINDS that in February 2010, Mr. Nelson purchased a 65%  
9 interest in the Russell Road property, with Cal Nelson retaining a 35% interest in the property.

10 THE COURT FURTHER FINDS that on May 27, 2011, the Russell Road property was  
11 sold for \$6,500,000. As part of the sale, Mr. Nelson testified that the ELN Trust made a  
12 \$300,000 loan to the purchaser for improvements to the property, however, a first note/deed  
13 was placed in the name of Julie Brown in the amount \$300,000 for such property improvement  
14 loan. Due to the ambiguity as to who is entitled to repayment of the \$300,000 loan (ELN Trust  
15 or Julie Brown), the Court is not inclined at this time to include such loan into the calculation  
16 as to the ELN Trust's interest in the property.  
17

18 THE COURT FURTHER FINDS that a second note/deed was placed on the Russell  
19 Road property in the amount of \$295,000 to recapture all back rents and taxes,

20 THE COURT FURTHER FINDS that through a series of notes/deeds, the ELN Trust is  
21 currently entitled to 66.67% of the \$6,500,000 purchase price and 66.67% of the \$295,000  
22 note/deed for rents and taxes. Therefore, the ELN Trust and Mr. Nelson are entitled to  
23 proceeds in the amount of \$4,530,227 (\$4,333,550 + \$196,677) from the Russell Road property  
24 transaction.<sup>9</sup>  
25  
26

27 <sup>7</sup> Defendant's Exhibit UUUU

28 <sup>8</sup> Id.

<sup>9</sup> Defendant's Exhibit GGGG.

1  
2 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for  
3 transferring its interest in Russell Road, under the advice and direction of Mr. Nelson, it would  
4 be inequitable to allow the ELN Trust to retain its full 66.67% interest in the property to the  
5 detriment of the LSN Trust. Therefore, the Court hereby imposes a constructive trust over half  
6 of the ELN Trust 66.67% ownership interest in the Russell Road property on behalf of the LSN  
7 Trust. As such, the LSN Trust is entitled to a 50% interest of the ELN Trust's 66.67%  
8 ownership interest, resulting in the LSN Trust effectively receiving an overall one-third interest  
9 in the Russell Road property with a value of \$2,265,113.50 ( $\$4,333,550 + \$196,677 \times 1/2$ ).  
10

11 THE COURT FURTHER FINDS that as to the 3611 Lindell property, on August 22,  
12 2001, the entire interest in the property was transferred to the LSN trust from Mrs. Nelson's  
13 1993 revocable trust.

14 THE COURT FURTHER FINDS that on March 22, 2007, a 50% interest in the Lindell  
15 property was transferred to the ELN Trust at the direction of Mr. Nelson without any  
16 compensation to the LSN Trust. Review of the Grant, Bargain, Sale Deed allegedly executed  
17 by Mrs. Nelson on said date clearly reflects a signature not consistent with Mrs. Nelson's  
18 signature when compared to the numerous documents signed by Mrs. Nelson and submitted to  
19 this Court. As such, the validity of the transfer of the 50% interest of the LSN Trust to the ELN  
20 Trust is seriously questioned.<sup>10</sup>  
21

22 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for  
23 the 50% interest being transferred to the ELN Trust was the transfer of the Mississippi property  
24 to the LSN, the court did not find such testimony credible as it appears that the transfer of the  
25 Mississippi property occurred in 2004, whereas, the Lindell transfer to the ELN Trust was in  
26 2007. In addition, the testimony was not clear as to which Mississippi properties were involved  
27

28 <sup>10</sup> Defendant's Exhibit PPPP.



1  
2 in the alleged transfer and no credible testimony as to the value of the Mississippi property was  
3 presented. Accordingly, any alleged consideration for the transfer of the 50% interest in the  
4 Lindell property from the LSN Trust to the ELN Trust is illusory.

5  
6 THE COURT FURTHER FINDS that because the LSN Trust was not compensated for  
7 transferring a 50% interest in the Lindell property to the ELN Trust, under the advice and  
8 direction of Mr. Nelson, it would inequitable to allow the ELN Trust to retain a 50% interest in  
9 the property.

10 THE COURT FURTHER FINDS that the Court imposes a constructive trust over the  
11 ELN Trust's 50% interest in the Lindell property; therefore, the LSN Trust is entitled to 100%  
12 interest in the Lindell property, with an appraised value of \$1,145,000.

13 *Unjust Enrichment*

14  
15 THE COURT FURTHER FINDS that to allow the ELN Trust to retain the benefits  
16 from the sale of the High Country Inn, which will be addressed hereinafter, to the detriment of  
17 the LSN Trust, would result in the unjust enrichment of the ELN Trust at the expense of the  
18 LSN Trust.

19 THE COURT FURTHER FINDS that on January 11, 2000, the High Country Inn was  
20 initially purchased by Mrs. Nelson's Revocable 1993 Trust.<sup>11</sup> While multiple transfer deeds  
21 were executed with related parties (e.g. Grotta Financial Partnership, Frank Soris) at the  
22 direction of Mr. Nelson, the LSN Trust owned the High Country Inn. On January 18, 2007, Mr.  
23 Nelson, as investment trustee for both the ELN Trust and the LSN Trust, was the sole  
24 orchestrator of the transfer of the High Country Inn from the LSN Trust to the ELN Trust.  
25  
26 ...  
27 ...

28  
<sup>11</sup> The Nelson Trust would later transfer its interest in the High Country Inn to the LSN Trust on 5/30/01.

1  
2 THE COURT FURTHER FINDS that on January 19, 2007, the ELN Trust sold the  
3 High Country Inn for \$1,240,000 to Wyoming Lodging, LLC, with the proceeds from the sale  
4 being placed directly into the bank account of ELN Trust,<sup>12</sup> without any compensation being  
5 paid to the LSN Trust.  
6

7 THE COURT FURTHER FINDS that in a fashion similar to the Russell Road  
8 transaction, the ELN Trust provided no consideration to the LSN Trust. Further, it is quite  
9 apparent that Mr. Nelson never intended to compensate the LSN Trust as evidenced by Mr.  
10 Nelson's 2007 Tax Return Form, which listed both the sale of "Wyoming Hotel" (High  
11 Country Inn) and "Wyoming OTB" (Off Track Betting) on his Form 1040 Schedule D,<sup>13</sup>  
12

13 THE COURT FURTHER FINDS that allowing the ELN Trust to retain the benefit of  
14 the proceeds from the sale of the High Country Inn would be unjust, and, accordingly, the LSN  
15 Trust is entitled to just compensation. As such, an amount equal to the proceeds from the sale,  
16 or in the alternative, property with comparable value, should be transferred to the LSN Trust to  
17 avoid the ELN Trust from being unjustly enriched.

18 THE COURT FURTHER FINDS that Mr. Nelson created Banone, LLC on November  
19 15, 2007, the same year that he sold High Country Inn.<sup>14</sup> The Operating Agreement lists the  
20 ELN Trust as the Initial Sole Member of the company, meaning that Banone, LLC is an asset  
21 of the ELN Trust and that all benefits received from the managing of this company are  
22 conferred to Mr. Nelson, as beneficiary of the ELN Trust.  
23  
24  
25  
26

27 <sup>12</sup> On January 24, 2007, Uinta Title & Insurance wired proceeds in the total amount of \$1,947,153.37 (\$1,240,000  
28 for High Country Inn and \$760,000 for the Off Track Betting Rights) to the ELN Trust's bank account.

<sup>13</sup> Defendant's Exhibit NNNN.

<sup>14</sup> Plaintiff's Exhibit 10K.

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D  
LAS VEGAS NV 89101

1  
2 THE COURT FURTHER FINDS that Banone, LLC, currently holds seventeen  
3 Nevada properties worth \$1,184,236.<sup>15</sup>

4 THE COURT FURTHER FINDS that equity and justice demands that the LSN Trust  
5 receive just compensation in the amount of \$1,200,000 for the sale of the High Country Inn in  
6 order to avoid the ELN Trust from being unjustly enriched, and, therefore, the LSN Trust  
7 should be awarded the Banone, LLC, properties held by ELN Trust, with a comparable value of  
8 \$1,184,236.  
9

10 THE COURT FURTHER FINDS that there were additional transfers from the LSN  
11 Trust to the ELN Trust, without just compensation, which financially benefitted the ELN Trust  
12 to the detriment of the LSN Trust, specifically regarding the Tierra del Sol property,  
13 Tropicana/Albertson property and the Brianhead cabin.  
14

15 THE COURT FURTHER FINDS that as to the Tierra del Sol property, the entire  
16 interest in the property was initially held in Mrs. Nelson's Revocable Trust and was  
17 subsequently transferred to the LSN Trust on or about October 18, 2001.

18 THE COURT FURTHER FINDS that the Tierra del Sol property was sold in August 5,  
19 2005, for \$4,800,000. Out of the proceeds from the first installment payment, Mr. Nelson had a  
20 check issued from the LSN Trust account in the amount of \$677,717.48 in payment of a line of  
21 credit incurred by Mr. Nelson against the Palmyra residence, which was solely owned by the  
22 LSN Trust. From the proceeds for the second installment payment, the ELN Trust received  
23 proceeds in the amount of \$1,460,190.58. As such, the ELN Trust received proceeds from the  
24 sale of the Tierra del Sol property despite having no ownership interest in the property.  
25

26 ...

27 ...

28  

---

<sup>15</sup> Defendant's Exhibit GGGGG,

1  
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that the ELN Trust  
3 paid federal taxes in the amount of \$509,400 and Arizona taxes in the amount \$139,240 for a  
4 total of \$648,640 on behalf of the LSN Trust from the proceeds received by the ELN Trust  
5 from the sale of the Tierra del Sol property, that would still leave over \$800,000 that the ELN  
6 Trust received despite having no ownership interest in the Tierra del Sol property.

7  
8 THE COURT FURTHER FINDS that as to the Tropicana/Albertson's property, the  
9 ELN Trust transferred a 50% interest in the property to the LSN Trust in November of 2004 in  
10 consideration of an \$850,000 loan to the ELN Trust from the LSN Trust.

11 THE COURT FURTHER FINDS that Minutes dated November 20, 2004, reflected that  
12 all Mississippi property and Las Vegas property owned by the ELN Trust was transferred to the  
13 LSN trust as final payment on the 2002 loans from the LSN to the ELN Trust and to "level off  
14 the trusts." It must be noted that in November of 2004 the only Las Vegas property owned by  
15 the ELN Trust was the Tropicana/Albertson property.

16  
17 THE COURT FURTHER FINDS that in 2007, Mr. Nelson had the LSN Trust deed  
18 back the Tropicana/Albertson property to the ELN Trust, without compensation, and then sold  
19 the property the same day, resulting in the ELN Trust receiving all the proceeds from the sale  
20 of the property in the amount of \$966,780.23.

21 THE COURT FURTHER FINDS that as to the Brianhead cabin, the entire interest was  
22 held by the LSN Trust.

23  
24 THE COURT FURTHER FINDS that on May 22, 2007, a 50% interest in the  
25 Brianhead cabin was transferred to the ELN Trust at the direction of Mr. Nelson without any  
26 compensation to the LSN Trust.

27 ...  
28

1  
2 THE COURT FURTHER FINDS that while Mr. Gerety testified that consideration for  
3 the 50% interest in the Brianhead cabin being transferred to the ELN Trust was the transfer of  
4 the Mississippi property to the LSN, the court did not find such testimony credible as it appears  
5 that the transfer of the Mississippi property occurred in 2004, whereas, the Brianhead cabin  
6 transfer to the ELN Trust was in 2007. In addition, the testimony was not clear as to which  
7 Mississippi properties were involved in the alleged transfer and no credible testimony as to the  
8 value of the Mississippi property was presented. Accordingly, any alleged consideration for the  
9 transfer of the 50% interest in the Brianhead cabin property from the LSN Trust to the ELN  
10 Trust is illusory.  
11

12 THE COURT FURTHER FINDS that the transfers from the LSN Trust to the ELN  
13 Trust regarding the Tierra del Sol property, the Tropicana/Albertson property and the  
14 Brianhead cabin all financially benefitted the ELN Trust to the financial detriment of the LSN  
15 Trust.  
16

17 THE COURT FURTHER FINDS that throughout the history of the Trusts, there were  
18 significant loans from the LSN Trust to the ELN Trust, specifically: \$172,293.80 loan in May  
19 of 2002; \$700,000 loan in October of 2003; \$250,000 loan in December of 2005 which resulted  
20 in a total amount of \$576,000 being borrowed by the ELN Trust from the LSN Trust in 2005.  
21

22 THE COURT FURTHER FINDS that while testimony was presented regarding  
23 repayments of the numerous loans via cash and property transfers, the Court was troubled by  
24 the fact that the loans were always going from the LSN Trust to the ELN Trust and further  
25 troubled by the fact that the evidence failed to satisfactorily establish that all of the loans were  
26 in fact paid in full,  
27  
28

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

1  
2 THE COURT FURTHER FINDS that the evidence clearly established that Mr. Nelson  
3 exhibited a course of conduct in which he had significant property transferred, including loans,  
4 from the LSN Trust to the ELN Trust which benefited the ELN Trust to the detriment of the  
5 LSN Trust, and, as such, justice and equity demands that the LSN Trust receive compensation  
6 to avoid such unjust enrichment on the part of the ELN Trust.  
7

8 *Credibility*

9 THE COURT FURTHER FINDS that during the first six days of trial held in 2010, Mr.  
10 Nelson repeatedly testified that the actions he took were on behalf of the community and that  
11 the ELN Trust and LSN Trust were part of the community.

12 THE COURT FURTHER FINDS that during the last several weeks of trial in 2012, Mr.  
13 Nelson changed his testimony to reflect his new position that the ELN Trust and the LSN Trust  
14 were not part of the community and were the separate property of the respective trusts.  
15

16 THE COURT FURTHER FINDS that Mr. Nelson failed to answer questions in a direct  
17 and forthright manner throughout the course of the proceedings.

18 THE COURT FURTHER FINDS that Mr. Nelson argued in the Motion to Dissolve  
19 Injunction requesting the release of \$1,568,000, which the Court had ordered be placed in a  
20 blocked trust account and enjoined from being released, that the ELN Trust "has an opportunity  
21 to purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00;  
22 however, the ELN will be unable to do so unless the Injunction is dissolved."  
23

24 THE COURT FURTHER FINDS that despite the Court's denial of the request to  
25 dissolve the injunction, the ELN Trust via Dynasty Development Group, LLC, completed the  
26 transaction and reacquired Wyoming Downs at a purchase price of \$440,000. The completion  
27  
28

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF  
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1  
2 of the purchase, without the dissolution of the injunction, evinced that Mr. Nelson misstated the  
3 ELN Trust's financial position, or at the very least was less than truthful with this Court.

4 THE COURT FURTHER FINDS that it should be noted that in an attempt to  
5 circumvent this Court's injunction regarding the \$1,568,000, Mr. Nelson had a Bankruptcy  
6 Petition filed in the United States Bankruptcy Court, District of Nevada, on behalf of the  
7 Dynasty Development Group, LLC, requesting that the \$1,568,000 be deemed property of the  
8 Debtor's bankruptcy estate; however, the bankruptcy court found that this Court had exclusive  
9 jurisdiction over the \$1,568,000 and could make whatever disposition of the funds without  
10 regard to the Debtor's bankruptcy filing.  
11

12 THE COURT FURTHER FINDS that based upon Mr. Nelson's change of testimony  
13 under oath, his repeated failure to answer questions in a direct and forthright manner, his less  
14 than candid testimony regarding the necessity of dissolving the injunction in order to purchase  
15 the Wyoming race track and RV park, and his attempt to circumvent the injunction issued by  
16 this Court clearly reflect that Mr. Nelson lacks credibility.  
17

18 THE COURT FURTHER FINDS that United States Bankruptcy Judge, Neil P. Olack,  
19 of the Southern District of Mississippi, cited similar concerns as to Mr. Nelson's credibility  
20 during a bankruptcy proceeding held on June 24, 2011, regarding Dynasty Development  
21 Group, LLC. Specifically, Judge Olack noted that as a witness, Mr. Nelson simply lacked  
22 credibility in that he failed to provide direct answers to straight forward questions, which gave  
23 the clear impression that he was being less than forthcoming in his responses.<sup>16</sup>  
24  
25  
26  
27

28 <sup>16</sup> Defendant's Exhibit QQQQQ.

1  
2 THE COURT FURTHER FINDS that Bankruptcy Judge Olack found that the evidence  
3 showed that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing in  
4 three separate transfers, and, subsequently, dismissed the Bankruptcy Petition.<sup>17</sup>

5 THE COURT FURTHER FINDS that Mr. Nelson's behavior and conduct during the  
6 course of these proceedings has been deplorable. This Court has observed Mr. Nelson angrily  
7 bursting from the courtroom following hearings.

8  
9 THE COURT FURTHER FINDS that Mr. Nelson has repeatedly exhibited  
10 inappropriate conduct towards opposing counsel, Mr. Dickerson, including, cursing at him,  
11 leaving vulgar voice messages on his office phone and challenging him to a fight in the parking  
12 lot of his office.

13 THE COURT FURTHER FINDS that Mr. Nelson's deplorable behavior also included  
14 an open and deliberate violation of the Joint Preliminary Injunction that has been in place since  
15 May 18, 2009. On 12/28/2009, Mr. Nelson purchased the Bella Kathryn property and  
16 subsequently purchased the adjoining lot on 8/11/2010. Currently, with improvements to the  
17 properties factored in, a total of \$1,839,495 has been spent on the Bella Kathryn property.

18 THE COURT FURTHER FINDS that Mr. Nelson was living in the Harbor Hills  
19 residence upon his separation from Mrs. Nelson and could have remained there indefinitely  
20 pending the conclusion of these proceedings, however, he chose to purchase the Bella Kathryn  
21 residence in violation of the JPI simply because he wanted a residence comparable to the  
22 marital residence located on Palmyra.  
23  
24  
25  
26  
27

28 <sup>17</sup> Defendant's Exhibit QQQQQ.



1  
2 THE COURT FURTHER FINDS that due to Mr. Nelson's willful and deliberate  
3 violation of the JPI, the Bella Kathryn property will be valued at its "costs" in the amount of  
4 \$1,839,495 and not at its appraised value of \$925,000 as a sanction for Mr. Nelson's  
5 contemptuous behavior.

6  
7 THE COURT FURTHER FINDS that as to Mr. Daniel Gerety, who testified as an  
8 expert witness on behalf of the ELN Trust and Mr. Nelson, he based his report solely on  
9 information and documentation provided to him by Mr. Nelson. It appears that Mr. Gerety  
10 made no effort to engage Mrs. Nelson or her counsel in the process. In the Understanding of  
11 Facts section of his report, Mr. Gerety repeatedly used the phrases "I have been told" or "I am  
12 advised".<sup>18</sup> Since Mr. Gerety considered statements from Mr. Nelson and others who were in  
13 support of Mr. Nelson, an impartial protocol would dictate that he obtain statements from Mrs.  
14 Nelson and her counsel in order to have a full and complete framework to fairly address the  
15 issues at hand.

16  
17 THE COURT FURTHER FINDS that Mr. Gerety has maintained a financially  
18 beneficial relationship with Mr. Nelson dating back to 1998. This relationship, which has netted  
19 Mr. Gerety many thousands of dollars in the past and is likely to continue to do so in the future,  
20 calls in question his impartiality.

21  
22 THE COURT FURTHER FINDS that while Mr. Gerety submitted documentation  
23 allegedly outlining every transaction made by the ELN Trust from its inception through  
24 September 2011, and "tracing" the source of funds used to establish Banone, LLC, this Court  
25 found that Mr. Gerety's testimony was not reliable, and, as such, the Court found it to be of  
26 little probative value.

27  
28  

---

<sup>18</sup> Intervenor's Exhibit 168.

1  
2 THE COURT FURTHER FINDS that as to Rochelle McGowan, she has had an  
3 employment relationship with Mr. Nelson dating back to 2001, and was the person primarily  
4 responsible for regularly notarizing various documents executed by Mr. and Mrs. Nelson on  
5 behalf of the ELN Trust and LSN Trust, respectively.

6 THE COURT FURTHER FINDS that it was the regular practice for Mr. Nelson to  
7 bring documents home for Mrs. Nelson's execution and to return the documents the following  
8 day to be notarized by Ms. McGowan.

9  
10 THE COURT FURTHER FINDS that the testimony of Ms. McGowan indicating that  
11 she would contact Mrs. Nelson prior to the notarization of her signature is not credible as the  
12 Court finds it difficult to believe that Ms. McGowan would actually contact Mrs. Nelson  
13 directly every time prior to notarizing the documents.

14 *Lack of Trust Formalities*

15 THE COURT FURTHER FINDS that the formalities outlined within the ELN Trust and  
16 the LSN Trust were not sufficiently and consistently followed. Article eleven, section 11.3, of  
17 both trusts provides that Attorney Burr, as Trust Consultant, shall have the right to remove any  
18 trustee, with the exception of Mr. Nelson and Mrs. Nelson, provided that he gives the current  
19 trustee ten days written notice of their removal.

20  
21 THE COURT FURTHER FINDS that Attorney Burr testified that on February 22,  
22 2007, at Mr. Nelson's request, he removed Mr. Nelson's employee, Lana Martin, as  
23 Distribution Trustee of both the ELN Trust and the LSN Trust and appointed Mr. Nelson's  
24 sister, Nola Harber, as the new Distribution Trustee for both trusts. Attorney Burr further  
25 testified that he did not provide Ms. Martin with ten days notice as specified in the trusts  
26 documents. In June 2011, at Mr. Nelson's request, Attorney Burr once again replaced the  
27  
28

FRANK R. BULLMAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. OF  
LAB. VEGAS NV 89101

1  
2 Distribution Trustee for the ELN Trust, without providing ten days notice, by replacing Nola  
3 Harber with Lana Martin.

4 THE COURT FURTHER FINDS that the ELN Trust and LSN Trust documents require  
5 that a meeting of the majority of the trustees be held prior to any distribution of trust income or  
6 principal. During the meetings, the trustees must discuss the advisability of making  
7 distributions to the ELN Trust Trustor, Mr. Nelson, and the LSN Trust Trustor, Mrs. Nelson. At  
8 that time, a vote must take place and the Distribution Trustee must provide an affirmative vote.  
9

10 THE COURT FURTHER FINDS that the testimony of Lana Martin and Nola Harber  
11 indicate that neither one of them ever entered a negative vote in regards to distributions to Mr.  
12 Nelson or Mrs. Nelson. The testimony also reflected that neither one of them ever advised Mr.  
13 Nelson or Mrs. Nelson on the feasibility of making such distributions.  
14

15 THE COURT FURTHER FINDS that while Ms. Martin and Ms. Harber testified that  
16 they had the authority to approve or deny the distributions to Mr. Nelson under the ELN Trust  
17 and to Mrs. Nelson under the LSN Trust, that despite literally hundreds of distributions  
18 requests, they never denied even a single distribution request. Therefore, Ms. Martin and Ms.  
19 Harber were no more than a "rubber stamp" for Mr. Nelson's directions as to distributions to  
20 Mr. Nelson and Mrs. Nelson.  
21

22 THE COURT FURTHER FINDS that while the ELN Trust produced multiple Minutes  
23 of alleged meetings; this Court seriously questions the authenticity of the submitted  
24 documentation. Specifically, several of the Minutes were unsigned, the authenticity of the  
25 signatures reflected on some of the Minutes were questionable, and several of the Minutes  
26 reflected that the meetings were held at the office of Attorney Burr while the testimony clearly  
27 established that no such meetings ever occurred at his law office.  
28

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DISTRICT JUDGE

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1  
2 THE COURT FURTHER FINDS that Daniel Gerety testified that he had to make  
3 numerous adjustments to correct bookkeeping and accounting errors regarding the two trusts by  
4 utilizing the entries "Due To" and "Due From" to correctly reflect the assets in each trust.

5 THE COURT FURTHER FINDS that the numerous bookkeeping and accounting  
6 errors, in conjunction with the corresponding need to correct the entries to accurately reflect the  
7 assets in each trust, raises serious questions as to whether the assets of each trust were truly  
8 being separately maintained and managed.

9  
10 THE COURT FURTHER FINDS that the lack of formalities further emphasizes the  
11 amount of control that Mr. Nelson exerted over both trusts and that he did indeed manage both  
12 trust for the benefit of the community.

13 THE COURT FURTHER FINDS that while the Court could invalidate both Trusts  
14 based upon the lack of Trust formalities, this Court is not inclined to do so since invalidation of  
15 the Trusts could have serious implications for both parties in that it could expose the assets to  
16 the claims of creditors, thereby, defeating the intent of the parties to "supercharge" the  
17 protection of the assets from creditors.

18  
19 *Liabilities*

20 THE COURT FURTHER FINDS that while Mr. Nelson argued that he and the ELN  
21 Trust were subject to numerous liabilities, this Court did not find any documented evidence to  
22 support such claims except for the encumbrance attached to the newly reacquired Wyoming  
23 Downs property.  
24

25 ...

26 ...

27

28

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1  
2 THE COURT FURTHER FINDS that Mr. Bertsch's report addresses several  
3 unsupported liabilities alleged by Mr. Nelson. Specifically, Mr. Nelson reported a contingent  
4 liability attached to the property located in the Mississippi Bay, however, no value was given to  
5 the liability.<sup>19</sup>

6  
7 THE COURT FURTHER FINDS that the Bertsch report indicated that several of the  
8 liabilities were actually options held by subsidiaries that Mr. Nelson owns or options held by  
9 relatives of Mr. Nelson, and, as such, were not true liabilities.<sup>20</sup>

10 THE COURT FURTHER FINDS that while Mr. Nelson represented that a \$3,000,000  
11 lawsuit was threatened by a third-party in regards to a transaction involving the Hideaway  
12 Casino, no evidence was submitted to the Court that any such lawsuit had in fact been filed.

13 THE COURT FURTHER FINDS that the only verified liability is the loan attached to  
14 Wyoming Downs. As mentioned above, Mr. Nelson, via Dynasty Development Group,  
15 purchased Wyoming Downs in December 2011 for \$440,000 and subsequently obtained a loan  
16 against the property.

17  
18 THE COURT FURTHER FINDS that outside of the encumbrance attached to the  
19 Wyoming Downs property, the liabilities alleged by Mr. Nelson have not been established as  
20 true liabilities and are based on mere speculations and threats.

21 *Community Waste*

22  
23 THE COURT FURTHER FINDS that the Nevada Supreme Court case of *Lofgren v.*  
24 *Lofgren* addressed community waste and found that the husband wasted community funds by  
25 making transfers/payments to family members, using the funds to improve the husband's home  
26 and using the funds to furnish his new home. *Lofgren v. Lofgren*, 112 Nev. 1282, 1284 (1996).

27  
28 <sup>19</sup> Defendant's Exhibit GGGGG.

<sup>20</sup> *Id.*

1  
2 THE COURT FURTHER FINDS that evidence was adduced at trial that the transfers to  
3 Mr. Nelson's family members were to compensate them for various services rendered and for  
4 joint-investment purposes, and while some of the family transfers were indeed questionable,  
5 Mr. Bertsch, the forensic accountant, testified that 1099s were provided to document income  
6 paid and loan repayments to Mr. Nelson's family members.<sup>21</sup>  
7

8 THE COURT FURTHER FINDS that transfers to Mr. Nelson's family members appear  
9 to have been part of Mr. Nelson's regular business practices during the course of the marriage  
10 and that Mrs. Nelson has always been aware of this practice and never questioned such  
11 transfers prior to the initiation of these proceedings.  
12

13 THE COURT FURTHER FINDS that Mrs. Nelson failed to establish that the transfers  
14 to Mr. Nelson's family members constituted waste upon the community estate.

15 THE COURT FURTHER FINDS that as to Mr. Nelson's purchase, improvement and  
16 furnishing of the Bella Kathryn residence via the ELN Trust, the ELN Trust and Mr. Nelson are  
17 being sanctioned by this Court by valuing such property at "costs" in the amount of \$1,839,495  
18 instead of at its appraised value of \$925,000, and, accordingly, it would be unjust for this Court  
19 to further consider the Bella Kathryn property under a claim of community waste.  
20

21 *Child Support*

22 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to child support arrears  
23 pursuant to NRS 125B.030 which provides for the physical custodian of the children to recover  
24 child support from the noncustodial parent.  
25  
26  
27

28 <sup>21</sup> Mr. Bertsch did not confirm whether or not the 1099s were filed with the IRS as that was not within the scope of his assigned duties.

1  
2 THE COURT FURTHER FINDS that the parties separated in September of 2008 when  
3 Mr. Nelson permanently left the marital residence, and, therefore, Mrs. Nelson is entitled to  
4 child support payments commencing in October 2008.

5 THE COURT FURTHER FINDS that Mr. Nelson's monthly earnings throughout the  
6 course of these extended proceedings exceeded the statutory presumptive maximum income  
7 range of \$14,816 and places his monthly child support obligation at the presumptive maximum  
8 amount which has varied from year to year.

9  
10 THE COURT FURTHER FINDS that Mr. Nelson's child support obligation  
11 commencing on October 1, 2008 through May 31, 2013, inclusive, is as follows:

12 October 1, 2008 - June 30, 2009 = [(2 children x \$968) x 9 months] = \$17,424  
13 July 1, 2009 - June 30, 2010 = [(2 children x \$969) x 12 months] = \$23,256  
14 July 1, 2010 - June 30, 2011 = [(2 children x \$995) x 12 months] = \$23,880  
15 July 1, 2011 - June 30, 2012 = [(2 children x \$1010) x 12 months] = \$24,240  
16 July 1, 2012 - May 31, 2013 = [(2 children x \$1040) x 11 months] = \$22,880  
17 **Total = \$111,680**

18 THE COURT FURTHER FINDS that Mr. Bertsch's report indicates that Mr. Nelson  
19 has spent monies totaling \$71,716 on the minor children since 2009, to wit:

20 2009: Carli = \$14,000; Garrett = \$5,270;  
21 2010: Carli = \$9,850; Garrett = \$29,539;  
22 2011: Carli = \$8,630; Garrett = \$4,427  
23 **Total = \$71,716**

24  
25  
26  
27  
28  
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DISTRICT JUDGE

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1  
2 THE COURT FURTHER FINDS that NRS 125B.080(9) describes the factors that the  
3 Court must consider when adjusting a child support obligation. The factors to consider are:

- 4 (a) The cost of health insurance;  
5 (b) The cost of child care;  
6 (c) Any special educational needs of the child;  
7 (d) The age of the child;  
8 (e) The legal responsibility of the parents for the support of others;  
9 (f) The value of services contributed by either parent;  
10 (g) Any public assistance paid to support the child;  
11 (h) Any expenses reasonably related to the mother's pregnancy and confinement;  
12 (i) The cost of transportation of the child to and from visitation if the custodial parent  
13 moved with the child from the jurisdiction of the court which ordered the support  
14 and the noncustodial parent remained;  
15 (j) The amount of time the child spends with each parent;  
16 (k) Any other necessary expenses for the benefit of the child; and  
17 (l) The relative income of both parents.

18 THE COURT FURTHER FINDS that, while the information provided to the Court does  
19 not itemize the exact nature of the expenditures by Mr. Nelson on behalf of the children, NRS  
20 125B.080(9)(k) does provide for a deviation for any other necessary expenses for the benefit of  
21 the child.

22 THE COURT FURTHER FINDS that considering the fact that \$71,716 is a relatively  
23 large sum of money, it would appear that fairness and equity demands that Mr. Nelson be given  
24 some credit for the payments he made on behalf of the children. Therefore, the Court is inclined  
25 to give Mr. Nelson credit for \$23,905 (one-third of the payments made on behalf of the  
26 children), resulting in child support arrears in the amount of \$87,775.

27 THE COURT FURTHER FINDS that, while Mr. Nelson did spend a rather significant  
28 amount of monies on the children dating back to 2009, Mr. Nelson did not provide any monies  
whatsoever to Mrs. Nelson in support of the minor children, and, as such, crediting Mr. Nelson  
with only one-third of such payments on behalf of the children seems quite fair and reasonable.

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DISTRICT JUDGE

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1  
2 THE COURT FURTHER FINDS that Mrs. Nelson is entitled to current child support in  
3 the amount of \$1,040 a month per child commencing June 1, 2013 through June 30, 2013 for a  
4 monthly total of \$2,080.

5 THE COURT FURTHER FINDS that subject minor, Garrett, is 18 years old and will be  
6 graduating from high school in June of 2013, and, as such, Mr. Nelson's child support  
7 obligation as to Garrett ends on June 30, 2013.

8  
9 THE COURT FURTHER FINDS that beginning July 1, 2013, Mr. Nelson's child  
10 support obligation as to Carli will be \$1,058 per month.

11 *Spousal Support*

12 THE COURT FURTHER FINDS that NRS 125.150 provides as follows:

13 1. In granting a divorce, the court:

14 (a) May award such alimony to the wife or to the husband, in a specified principal sum or as  
specified periodic payments, as appears just and equitable; and

15 (b) Shall, to the extent practicable, make an equal disposition of the community property of the  
16 parties, except that the court may make an unequal disposition of the community property in  
such proportions as it deems just if the court finds a compelling reason to do so and sets forth in  
writing the reasons for making the unequal disposition

17  
18 THE COURT FURTHER FINDS that the Nevada Supreme Court has outlined seven  
19 factors to be considered by the court when awarding alimony such as: (1) the wife's career prior  
20 to marriage; (2) the length of the marriage; (3) the husband's education during the marriage; (4)  
21 the wife's marketability; (5) the wife's ability to support herself; (6) whether the wife stayed  
22 home with the children; and (7) the wife's award, besides child support and alimony. *Sprenger*  
23 v. *Sprenger*, 110 Nev. 855, 859 (1974).

24  
25 THE COURT FURTHER FINDS that the Nelsons have been married for nearly thirty  
26 years; that their earning capacities are drastically different in that Mr. Nelson has demonstrated  
27 excellent business acumen as reflected by the large sums of monies generated through his  
28 multiple business ventures and investments; that Mrs. Nelson only completed a year and a half

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1  
2 of college and gave up the pursuit of a career outside of the home to become a stay at home  
3 mother to the couple's five children; that Mrs. Nelson's career prior to her marriage and during  
4 the first few years of her marriage consisted of working as a receptionist at a mortgage  
5 company, sales clerk at a department store and a runner at a law firm, with her last job outside  
6 of the home being in 1986;  
7

8 THE COURT FURTHER FINDS that Mrs. Nelson's lack of work experience and  
9 limited education greatly diminishes her marketability. Additionally, Mrs. Nelson solely relied  
10 on Mr. Nelson, as her husband and delegated investment trustee, to acquire and manage  
11 properties to support her and the children, and, as such, Mrs. Nelson's ability to support herself  
12 is essentially limited to the property award that she receives via these divorce proceedings.  
13

14 THE COURT FURTHER FINDS that while Mrs. Nelson will receive a substantial  
15 property award via this Divorce Decree, including some income generating properties, the  
16 monthly income generated and the values of the real property may fluctuate significantly  
17 depending on market conditions. In addition, it could take considerable time to liquidate the  
18 property, as needed, especially considering the current state of the real estate market. As such,  
19 Mrs. Nelson may have significant difficulty in accessing any equity held in those properties.  
20

21 THE COURT FURTHER FINDS that conversely, Mr. Nelson has become a formidable  
22 and accomplished businessman and investor. Mr. Nelson's keen business acumen has allowed  
23 him to amass a substantial amount of wealth over the course of the marriage.  
24

25 THE COURT FURTHER FINDS that the repurchase of Wyoming Downs by Mr.  
26 Nelson via Dynasty Development Group and his ability to immediately obtain a loan against  
27 the property to pull out about \$300,000 in equity, clearly evidences Mr. Nelson's formidable  
28 and accomplished business acumen and ability to generate substantial funds through his

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1 investment talents. This type of transaction is not atypical for Mr. Nelson and demonstrates his  
2 extraordinary ability, which was developed and honed during the couple's marriage, to evaluate  
3 and maximize business opportunities and will ensure that he is always able to support himself,  
4 unlike Mrs. Nelson.  
5

6 THE COURT FURTHER FINDS that based the upon the findings addressed  
7 hereinabove, Mrs. Nelson is entitled to an award of spousal support pursuant to NRS 125.150  
8 and the factors enunciated in Sprenger<sup>22</sup>  
9

10 THE COURT FURTHER FINDS that during the marriage, at the direction of Mr.  
11 Nelson, Mrs. Nelson initially received monthly disbursements in the amount of \$5,000, which  
12 was increased to \$10,000 per month, and ultimately increased to \$20,000 per month dating  
13 back to 2004. The \$20,000 per month disbursements did not include expenses which were paid  
14 directly through the Trusts.  
15

16 THE COURT FURTHER FINDS that based upon the distributions that Mrs. Nelson  
17 was receiving during the marriage, \$20,000 per month is a fair and reasonable amount  
18 necessary to maintain the lifestyle that Mrs. Nelson had become accustomed to during the  
19 course of the marriage.  
20

21 THE COURT FURTHER FINDS that based upon the property distribution that will be  
22 addressed hereinafter, Mrs. Nelson will receive some income producing properties (Lindell,  
23 Russell Road, some of the Banone, LLC properties).  
24

25 THE COURT FURTHER FINDS that while the evidence adduced at trial reflected that  
26 the Lindell property should generate a cash flow of approximately \$10,000 a month, the  
27 evidence failed to clearly establish the monthly cash flow from the remaining properties.  
28 However, in the interest of resolving this issue without the need for additional litigation, this

<sup>22</sup> Sprenger v. Sprenger, 110 Nev. 855 (1974).

1  
2 Court will assign an additional \$3,000 a month cash flow from the remaining properties  
3 resulting in Mrs. Nelson receiving a total monthly income in the amount of \$13,000.

4 THE COURT FURTHER FINDS that based upon a monthly cash flow in the amount of  
5 \$13,000 generated by the income producing properties, a monthly spousal support award in the  
6 amount of \$7,000 is fair and just and would allow Mrs. Nelson to maintain the lifestyle that she  
7 had become accustomed to throughout the course of the marriage.  
8

9 THE COURT FURTHER FINDS that Mrs. Nelson is 52 years of age and that spousal  
10 support payments in the amount of \$7,000 per month for 15 years, which would effectively  
11 assist and support her through her retirement age, appears to be a just and equitable spousal  
12 support award.

13 THE COURT FURTHER FINDS that NRS 125.150(a) provides, in pertinent part, that  
14 the court may award alimony in a specified *principal sum* or as specified periodic payment  
15 (emphasis added).  
16

17 THE COURT FURTHER FINDS that the Nevada Supreme Court has indicated that a  
18 lump sum award is the setting aside of a spouse's separate property for the support of the other  
19 spouse and is appropriate under the statute. *Sargeant v. Sargeant*, 88 Nev. 223, 229 (1972). In  
20 *Sargeant*, the Supreme Court affirmed the trial court's decision to award the wife lump sum  
21 alimony based on the husband short life expectancy and his litigious nature. The Supreme  
22 Court, citing the trial court, highlighted that "the overall attitude of this plaintiff illustrates  
23 some possibility that he might attempt to liquidate, interfere, hypothecate or give away his  
24 assets to avoid payment of alimony or support obligations to the defendant" *Id.* at 228.  
25  
26  
27  
28

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DISTRICT JUDGE

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1  
2 THE COURT FURTHER FINDS that Mr. Nelson's open and deliberate violation of the  
3 Joint Preliminary Injunction evidences his attitude of disregard for court orders. The Court also  
4 takes notice of Bankruptcy Judge Olack's finding that Mr. Nelson attempted to deplete the  
5 assets of Dynasty Development Group on the eve of the bankruptcy filing, raising the concern  
6 that Mr. Nelson may deplete assets of the ELN Trust precluding Mrs. Nelson from receiving a  
7 periodic alimony award.  
8

9 THE COURT FURTHER FINDS that Mr. Nelson has been less than forthcoming as to  
10 the nature and extent of the assets of the ELN Trust which raises another possible deterrent  
11 from Mrs. Nelson receiving periodic alimony payments.  
12

13 THE COURT FURTHER FINDS that, as addressed hereinbefore, the ELN Trust moved  
14 this Court to dissolve the injunction regarding the \$1,568,000 because it "has an opportunity to  
15 purchase Wyoming Racing LLC, a horse racing track and RV park, for \$440,000.00; however,  
16 the ELN will be unable to do so unless the Injunction is dissolved."  
17

18 THE COURT FURTHER FINDS that despite the representation to the Court that the  
19 injunction needed to be dissolved so that the ELN Trust would be able to purchase Wyoming  
20 Downs, less than a month after the hearing, the ELN Trust, with Mr. Nelson serving as the  
21 investment trustee, completed the purchase of Wyoming Downs. This leads this Court to  
22 believe that Mr. Nelson was less than truthful about the extent and nature of the funds available  
23 in the ELN Trust and such conduct on the part of Mr. Nelson raises serious concerns about the  
24 actions that Mr. Nelson will take to preclude Mrs. Nelson from receiving periodic spousal  
25 support payments.  
26  
27  
28

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DISTRICT JUDGE

FAMILY DIVISION, DEPT. D  
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1  
2 THE COURT FURTHER FINDS that Mr. Nelson alleged numerous debts and  
3 liabilities worth millions of dollars, but forensic accountant, Mr. Bertsch, found that these  
4 alleged debts and liabilities were based solely on threats and speculations.

5 THE COURT FURTHER FINDS that Mr. Nelson's practice of regularly transferring  
6 property and assets to family members, as highlighted in the transactions involving the High  
7 Country Inn and Russell Road properties, contributes to this Court's concern that Mr. Nelson  
8 may deplete the assets of the ELN Trust via such family transfers, and, thereby, effectively  
9 preclude Mrs. Nelson from receiving a periodic spousal support award.  
10

11 THE COURT FURTHER FINDS that Mr. Nelson's overall attitude throughout the  
12 course of these proceedings illustrates the possibility that he might attempt to liquidate,  
13 interfere, hypothecate or give away assets out of the ELN Trust to avoid payment of his support  
14 obligations to Mrs. Nelson, thereby justifying a lump sum spousal support award to Mrs.  
15 Nelson based on the factors addressed hereinabove and the rationale enunciated in *Sargeant*,  
16

17 THE COURT FURTHER FINDS that calculation of a monthly spousal support  
18 obligation of \$7,000 for 15 years results in a total spousal support amount of \$1,260,000 which  
19 needs to be discounted based upon being paid in a lump sum. Accordingly, Mrs. Nelson is  
20 entitled to a lump sum spousal support award in the amount of \$800,000.  
21

22 THE COURT FURTHER FINDS that the ELN Trust should be required to issue a  
23 distribution from the \$1,568,000 reflected in the account of Dynasty Development Group, LLC,  
24 and currently held in a blocked trust account pursuant to this Court's injunction, to satisfy Mr.  
25 Nelson's lump sum spousal support obligation and to satisfy his child support arrearages  
26 obligation.  
27  
28

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DISTRICT JUDGE

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1  
2 THE COURT FURTHER FINDS that Mr. Nelson argues that Dynasty Development  
3 Group, LLC, is 100% held by the ELN Trust, and, therefore, he has no interest in Dynasty nor  
4 the funds reflected in the Dynasty account as all legal interest rests with the ELN Trust.<sup>23</sup>

5 THE COURT FURTHER FINDS that various statutes and other sources suggest that  
6 the interest of a spendthrift trust beneficiary can be reached to satisfy support of a child or a  
7 former spouse.<sup>24</sup> Specifically, South Dakota, which also recognizes self-settled spendthrift  
8 trust, has addressed the issue in South Dakota Codified Law § 55-16-15 which states:

9  
10 Notwithstanding the provisions of §§ 55-16-9 to 55-16-14, inclusive, this chapter does  
11 not apply in any respect to any person to whom the transferor is indebted on account of  
12 an agreement or *order of court* for the payment of *support* or *alimony* in favor of such  
13 transferor's spouse, *former spouse*, or children, or for a *division or distribution of*  
14 *property* in favor of such transferor's spouse or former spouse, to the extent of such debt  
(emphasis added).

15 Wyoming, which also allows self-settled spendthrift trust, has also addressed the matter  
16 through Wyoming Statutes Annotated § 4-10-503(b):

17 (b) Even if a trust contains a spendthrift provision, a person who has a judgment or  
18 court order against the beneficiary for child support or maintenance may obtain from a  
19 court an order attaching present or future distributions to, or for the benefit of, the  
20 beneficiary.

21 THE COURT FURTHER FINDS that, while not binding on this Court, these statutes  
22 clearly demonstrate that spouses entitled to alimony or maintenance are to be treated differently  
23 than a creditor by providing that the interest of a spendthrift trust beneficiary can be reached to  
24 satisfy support of a child or a former spouse.

25 ...

26 ...

27  
28 <sup>23</sup> NRS 166.130

<sup>24</sup> Restatement (Third) of Trust § 59 (2003).

1  
2 THE COURT FURTHER FINDS that in *Gilbert v. Gilbert*, 447 So.2d 299, the Florida  
3 Court of Appeals affirmed the district court's order that allowed the wife to garnish the  
4 husband's beneficiary interest in a spendthrift trust to satisfy the divorce judgment regarding  
5 alimony payments.

6 THE COURT FURTHER FINDS that the *Gilbert* court found that while "the cardinal  
7 rule of construction in trusts is to determine the intention of the settler and give effect to his  
8 wishes . . . there is a strong public policy argument which favors subjecting the interest of the  
9 beneficiary of a trust to a claim for alimony."<sup>25</sup> The Court went on to state that the dependents  
10 of the beneficiary should not be deemed to be creditors as such a view would "permit the  
11 beneficiary to have the enjoyment of the income from the trust while he refuses to support his  
12 dependents whom it is his duty to support."<sup>26</sup> The *Gilbert* court went on to state that a party's  
13 responsibility to pay alimony "is a duty, not a debt."<sup>27</sup>

14 THE COURT FURTHER FINDS that there is a strong public policy argument in favor  
15 of subjecting the interest of the beneficiary of a trust to a claim for spousal support and child  
16 support, and, as such, Mr. Nelson's beneficiary interest in the ELN Trust should be subjected to  
17 Mrs. Nelson award of spousal support and child support.

18 *Attorney's Fees*

19 THE COURT FURTHER FINDS that NRS 18.010(2)(b) provides, in pertinent part, for  
20 the award of attorney's fees to the prevailing party: "when the court finds that the claim,  
21 counterclaim, cross-claim or third-party complaint or defense of the opposing party was  
22 brought or maintained without reasonable ground or to harass the prevailing party."

23 <sup>25</sup> Id at 301.

24 <sup>26</sup> *Gilbert v. Gilbert*, 447 So.2d 299, 301

25 <sup>27</sup> Id at 301.



1  
2 THE COURT FURTHER FINDS that Mr. Nelson, as the Investment Trustee for the  
3 ELN Trust, was the person authorized to institute legal action on behalf of the Trust.

4 THE COURT FURTHER FINDS that Mr. Nelson did not request that the ELN Trust  
5 move to be added as a necessary party to these proceedings until almost two years after  
6 initiating this action and following the initial six days of trial. It is apparent to this Court that  
7 Mr. Nelson was not satisfied with the tenor of the courts preliminary "findings" in that it was  
8 not inclined to grant his requested relief, and, consequently, decided to pursue a "second bite at  
9 the apple" by requesting that the ELN Trust pursue being added as a necessary party.

10  
11 THE COURT FURTHER FINDS that adding the ELN Trust as a necessary party at this  
12 rather late stage of the proceedings, resulted in extended and protracted litigation including the  
13 re-opening of Discovery, the recalling of witnesses who had testified at the initial six days of  
14 trial, and several additional days of trial.

15  
16 THE COURT FURTHER FINDS that Mr. Nelson's position that he had a conflict of  
17 interest which prevented him from exercising his authority to institute legal action on behalf of  
18 the ELN Trust was not credible as he had appeared before this Court on numerous occasions  
19 regarding community waste issues and the transfer of assets from the ELN Trust and the LSN  
20 Trust and had never raised an issue as to a conflict of interest.

21  
22 THE COURT FURTHER FINDS that while both parties were aware of the existence of  
23 the ELN and LSN Trusts from the onset of this litigation, and, as such, Mrs. Nelson could have  
24 moved to add the ELN Trust as a necessary party, Mr. Nelson had consistently maintained  
25 throughout his initial testimony that the assets held in the ELN Trust and the LSN Trusts were  
26 property of the community.

27  
28  
FRANK R. SULLIVAN  
DISTRICT JUDGE

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1  
2 THE COURT FURTHER FINDS that, while this Court fully respects and supports a  
3 party's right to fully and thoroughly litigate its position, Mr. Nelson's change in position as to  
4 the character of the property of the ELN Trust and LSN Trust in an attempt to get a "second  
5 bite of the apple", resulted in unreasonably and unnecessarily extending and protracting this  
6 litigation and additionally burdening this Court's limited judicial resources, thereby justifying  
7 an award of reasonable attorney fees and costs in this matter.  
8

9 THE COURT FURTHER FINDS that in considering whether or not to award  
10 reasonable fees and cost this Court must consider "(1) the qualities of the advocate: his ability,  
11 his training, education, experience, professional standing and skill; (2) the character of the work  
12 to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility  
13 imposed and the prominence and character of the parties where they affect the importance of  
14 the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given  
15 to the work; (4) the result: whether the attorney was successful and what benefits were  
16 derived." *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349 (1969).  
17

18 THE COURT FURTHER FINDS Attorney Dickerson has been Mrs. Nelson's legal  
19 counsel continuously since September 2009 and is a very experienced, extremely skillful and  
20 well-respected lawyer in the area of Family Law. In addition, this case involved some difficult  
21 and complicated legal issues concerning Spendthrift Trusts and required an exorbitant  
22 commitment of time and effort, including the very detailed and painstaking review of  
23 voluminous real estate and financial records. Furthermore, Attorney Dickerson's skill, expertise  
24 and efforts resulted in Mrs. Nelson's receiving a very sizeable and equitable property  
25 settlement.  
26  
27  
28

FRANK A. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

1  
2 THE COURT FURTHER FINDS that upon review of attorney Dickerson's  
3 Memorandum of Fees and Costs, this Court feels that an award of attorney fees in the amount  
4 of \$144,967 is fair and reasonable and warranted in order to reimburse Mrs. Nelson for the  
5 unreasonable and unnecessary extension and protraction of this litigation by Mr. Nelson's  
6 change of position in regards to the community nature of the property and his delay in having  
7 the ELN Trust added as a necessary party which added significant costs to this litigation.  
8

9 THE COURT FURTHER FINDS that while the Court could invalidate the Trusts based  
10 upon Mr. Nelson's testimony as to community nature of the assets held by each Trust, the  
11 breach of his fiduciary duty as a spouse, the breach of his fiduciary duty as an investment  
12 trustee, the lack of Trust formalities, under the principles of a constructive trust, and under the  
13 doctrine of unjust enrichment, the Court feels that keeping the Trusts intact, while transferring  
14 assets between the Trusts to "level off the Trusts", would effectuate the parties clear intentions  
15 of "supercharging" the protection of the assets from creditors while ensuring that the respective  
16 values of the Trusts remained equal.  
17

18 THE COURT FURTHER FINDS that in lieu of transferring assets between the Trusts  
19 to level off the Trust and to achieve an equitable allocation of the assets between the Trusts as  
20 envisioned by the parties, the Court could award a sizable monetary judgment against Mr.  
21 Nelson for the extensive property and monies that were transferred from the LSN Trust to the  
22 ELN Trust, at his direction, and issue a corresponding charging order against any distributions  
23 to Mr. Nelson until such judgment was fully satisfied.  
24

25 ...

26 ...

1  
2 THE COURT FURTHER FINDS that the Court has serious concerns that Mrs. Nelson  
3 would have a very difficult time collecting on the judgment without the need to pursue endless  
4 and costly litigation, especially considering the extensive and litigious nature of these  
5 proceedings.

6  
7 THE COURT FURTHER FINDS that due to Mr. Nelson's business savvy and the  
8 complexity of his business transactions, the Court is concerned that he could effectively deplete  
9 the assets of the ELN Trust without the need to go through distributions, thereby circumventing  
10 the satisfaction of the judgment via a charging order against his future distributions.

11 THE COURT FURTHER FINDS that its concern about Mr. Nelson depleting the assets  
12 of the ELN Trust seems to be well founded when considering the fact that Bankruptcy Judge  
13 Olack found that Mr. Nelson depleted the assets of Dynasty on the eve of its bankruptcy filing.

14 THE COURT FURTHER FINDS that upon review of Mr. Bertsch's Second  
15 Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses  
16 for the Period from April 1, 2012 through July 25, 2012, Mr. Bertsch is entitled to payment of  
17 his outstanding fees in the amount of \$35,258.

18 THE COURT FURTHER FINDS that in preparing this Decree of Divorce, the  
19 monetary values and figures reflected herein were based on values listed in Mr. Bertsch's  
20 report and the testimony elicited from the July and August 2012 hearings.<sup>28</sup>

21 THE COURT FURTHER FINDS that as to the repurchase of Wyoming Downs by the  
22 ELN Trust via the Dynasty Development Group, this Court is without sufficient information  
23 regarding the details of the repurchase of the property, the value of the property and the  
24 encumbrances on the property to make a determination as to the disposition of the property,  
25  
26  
27

28  

---

28 <sup>28</sup> *Supra*, note 6.

1  
2 and, accordingly, is not making any findings or decisions as to the disposition of the Wyoming  
3 DOWAS property at this time.

4 *Conclusion*

5 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the  
6 bonds of matrimony now existing between Eric and Lynita Nelson are dissolved and an  
7 absolute Decree of a Divorce is granted to the parties with each party being restored to the  
8 status of a single, unmarried person.  
9

10 IT IS FURTHER ORDERED that the Brianhead cabin, appraised at a value of \$985,000  
11 and currently held jointly by the ELN Trust and the LSN Trust, is to be divided equally  
12 between the Trusts.

13 IT IS FURTHER ORDERED that both parties shall have the right of first refusal should  
14 either Trust decide to sell its interest in the Brianhead cabin.  
15

16 IT IS FURTHER ORDERED that the 66.67% interest in the Russell Road property  
17 (\$4,333,550) and the 66.67% interest in the \$295,000 note/deed for rents and taxes (\$196,677)  
18 currently held by the ELN Trust, shall be equally divided between the ELN Trust and the LSN  
19 Trust.

20 IT IS FURTHER ORDERED that both parties shall have the right of first refusal should  
21 either Trust decide to sell its interest in the Russell Road property.  
22

23 ...

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28

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D  
LAS VEGAS NV 89101

1  
2 IT IS FURTHER ORDERED that the following properties shall remain in or be  
3 transferred into the ELN Trust:

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 80,000
Arizona Gateway Lots	\$ 139,500
Family Gifts	\$ 35,000
Gift from Nikki C.	\$ 200,000
Bella Kathryn Property	\$1,839,495
Mississippi Property (121.23 acres)	\$ 607,775
Notes Receivable	\$ 642,761
Banone AZ Properties	\$ 913,343
Dynasty Buyout	\$1,568,000
1/2 of Brianhead Cabin	\$ 492,500
1/3 of Russell Road (+ note for rents)	\$2,265,113.50 (\$2,166,775 + \$98,338.50)
<b>Total</b>	<b>\$8,783,487.50</b>

13  
14 IT IS FURTHER ORDERED that the following properties shall remain in or be  
15 transferred into the LSN Trust:

<u>Property Awarded</u>	<u>Value</u>
Cash	\$ 200,000
Palmyra Property	\$ 750,000
Pebble Beach Property	\$ 75,000
Arizona Gateway Lots	\$ 139,500
Wyoming Property (200 acres)	\$ 405,000
Arnold Property in Miss.	\$ 40,000
Mississippi RV Park	\$ 559,042
Mississippi Property	\$ 870,193
Grotta 16.67% Interest	\$ 21,204
Emerald Bay Miss, Prop.	\$ 560,900
Lindell Property	\$1,145,000
Banone, LLC	\$1,184,236
JB Ramos Trust Note Receivable	\$ 78,000
1/2 of Brianhead Cabin	\$ 492,500
1/3 of Russell Road (+ note for rents)	\$2,265,113.50 (\$2,166,775 + \$98,338.50)
<b>Total</b>	<b>\$8,785,988.50</b>

28  
FRANK R SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 88101

1  
2 IT IS FURTHER ORDERED that due to the difference in the value between the ELN  
3 Trust and the LSN Trust in the amount of \$153,499, the Trusts shall be equalized by  
4 transferring the JB Ramos Trust Note from the Notes Receivable of the ELN Trust, valued at  
5 \$78,000, to the LSN Trust as already reflected on the preceding page.<sup>29</sup>

6 IT IS FURTHER ORDERED that the injunction regarding the \$1,568,000 reflected in  
7 the account of Dynasty Development Group, LLC, ("Dynasty Buyout") and currently held in a  
8 blocked trust account, is hereby dissolved.

9  
10 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the  
11 \$1,568,000, herein awarded to the ELN Trust, to pay off the lump sum spousal support  
12 awarded to Mrs. Nelson in the amount of \$800,000. Said payment shall be remitted within 30  
13 days of the date of this Decree.

14 IT IS FURTHER ORDERED that Mrs. Nelson is awarded child support arrears in the  
15 amount of \$87,775 and that the ELN Trust shall use the distribution of the \$1,568,000, herein  
16 awarded to the ELN Trust, to pay off the child support arrears awarded to Mrs. Nelson via a  
17 lump sum payment within 30 days of issuance of this Decree.

18  
19 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the  
20 \$1,568,000, herein awarded to the ELN Trust, to pay Mr. Bertsch's outstanding fees in the  
21 amount of \$35,258 within 30 days of issuance of this Decree.<sup>30</sup>

22 IT IS FURTHER ORDERED that the ELN Trust shall use the distribution of the  
23 \$1,568,000, herein awarded to the ELN Trust, to reimburse Mrs. Nelson for attorney's fees  
24 paid to Attorney Dickerson in the amount of \$144,967 in payment of fees resulting from Mr.  
25

26  
27 <sup>29</sup> Defendant's Exhibit GGGGG.

28 <sup>30</sup> Second Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the  
Period from April 1, 2012 through July 25, 2012.

1  
2 Nelson's unreasonable and unnecessary extension and protraction of this litigation. Said  
3 payment shall be remitted to Mrs. Nelson within 30 days of the date of this Decree.

4 IT IS FURTHER ORDERED that the funds remaining, in the amount of approximately  
5 \$500,000, from the distribution of the \$1,568,000, herein awarded to the ELN Trust, after the  
6 payment of the spousal support, child support arrears, Mr. Bertsch's fees and reimbursement of  
7 the attorney fees to Mrs. Nelson, shall be distributed to Mr. Nelson within 30 days of issuance  
8 of this Decree  
9

10 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$2080 in child  
11 support for the month of June 2013 for their children Garrett and Carli.

12 IT IS FURTHER ORDERED that Mr. Nelson shall pay Mrs. Nelson \$1,058 a month in  
13 support of their child Carli, commencing on July 1, 2013 and continuing until Carli attains the  
14 age of majority or completes high school, which ever occurs last,  
15

16 IT IS FURTHER ORDERED that Mr. Nelson shall maintain medical insurance  
17 coverage for Carli.

18 IT IS FURTHER ORDERED that any medical expenses not paid by any medical  
19 insurance covering Carli shall be shared equally by the parties, with such payments being made  
20 pursuant to the Court's standard "30/30" Rule.

21 IT IS FURTHER ORDERED that the parties shall equally bear the private education  
22 costs, including tuition, of Carli's private school education at Faith Lutheran.  
23

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28  
FRANK A. SULLIVAN  
DISTRICT JUDGE

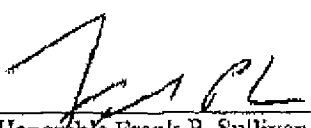
FAMILY DIVISION, DEPT. D  
LAS VEGAS NV 89101



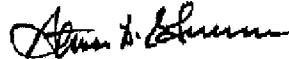
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IT IS FURTHER ORDERED that the parties shall keep any personal property now in their possession and shall be individually responsible for any personal property, including vehicles, currently in their possession.

Dated this 7th day of June, 2013.

  
Honorable Frank P. Sullivan  
District Court Judge - Dept. O

FRANK P. SULLIVAN  
DISTRICT JUDGE  
FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101



CLERK OF THE COURT

1 NEO  
2 THE DICKERSON LAW GROUP  
3 ROBERT P. DICKERSON, ESQ.  
4 Nevada Bar No. 000945  
5 KATHERINE L. PROVOST, ESQ.  
6 Nevada Bar No. 008414  
7 1745 Village Center Circle  
8 Las Vegas, Nevada 89134  
9 Telephone: (702) 388-8600  
10 Facsimile: (702) 388-0210  
11 Email: info@dickersonlawgroup  
12 Attorneys for Defendant, Lynita Sue Nelson

DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

12 ERIC L. NELSON,  
13 Plaintiff/Counterdefendant,  
14 v.  
15 LYNITA SUE NELSON,  
16 Defendant/Counterclaimant,

CASE NO. D-09-411537-D  
DEPT NO. O.

NOTICE OF ENTRY OF STIPULATION AND ORDER

18  
19 TO: ERIC L. NELSON, Plaintiff; and  
20 TO: DAVID A. STEPHENS, ESQ., of STEPHENS, GOURLEY & BYWATER, P.C.,  
21 Attorneys for Plaintiff;

22 ...  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...  
28

1 PLEASE TAKE NOTICE that a STIPULATION AND ORDER was entered in  
2 the above-entitled matter on August 9, 2011, a copy of which is attached hereto.

3 DATED this 9th day of August, 2011.

4 THE DICKERSON LAW GROUP

5  
6 By 

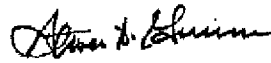
7 ROBERT P. DICKERSON, ESQ.  
8 Nevada Bar No. 000945  
9 KATHERINE L. PROVOST, ESQ.  
10 Nevada Bar No. 008414  
11 1745 Village Center Circle  
12 Las Vegas, Nevada 89134  
13 Attorneys for Defendant

14 CERTIFICATE OF MAILING

15 I HEREBY CERTIFY that I am serving via U.S. Mail, a true and correct copy of  
16 the foregoing NOTICE OF ENTRY OF ORDER to the following at his last known  
17 address on this 9th day of August, 2011.

18 David A. Stephens, Esq.  
19 Stephens, Gourley & Bywater, P.C.  
20 3636 N. Rancho Drive.  
21 Las Vegas, Nevada 89130  
22 Attorney for Plaintiff

23  
24   
25 An employee of The Dickerson Law Group  
26  
27  
28

  
CLERK OF THE COURT

1 SAO  
2 THE DICKERSON LAW GROUP  
3 ROBERT P. DICKERSON, ESQ.  
4 Nevada Bar No. 000945  
5 KATHERINE L. PROVOST, ESQ.  
6 Nevada Bar No. 008414  
7 1745 Village Center Circle  
8 Las Vegas, Nevada 89134  
9 Telephone: (702) 388-8600  
10 Facsimile: (702) 388-0210  
11 Email: info@dickersonlawgroup.com

12 Attorneys for Defendant, LYNITA NELSON

DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

11 ERIC L. NELSON,  
12 Plaintiff/Counterdefendant,  
13 v.  
14 LYNITA SUE NELSON,  
15 Defendant/Counterclaimant.

CASE NO. D-09-411537-D  
DEPT NO. "O"

17 STIPULATION AND ORDER

18 COME NOW, Plaintiff, ERIC L. NELSON, by and through his attorney,  
19 DAVID A. STEPHENS, ESQ., of STEPHENS, GOURLEY & BYWATER, P.C., and  
20 Defendant, LYNITA SUE NELSON, by and through her attorneys, ROBERT P.  
21 DICKERSON, ESQ., and KATHERINE L. PROVOST, ESQ., of THE DICKERSON  
22 LAW GROUP, and hereby stipulate and agree as follows:


23 IT IS HEREBY STIPULATED AND AGREED that the ERIC L. NELSON  
24 NEVADA TRUST dated May 30, 2001, shall be joined as a necessary party,  
25 intervening in this action, as complete relief cannot be accorded among the parties  
26 without the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 being named  
27 a party and the disposition of the action in the absence of the ERIC L. NELSON  
28 NEVADA TRUST dated May 30, 2001 will impair or impede its ability to protect its

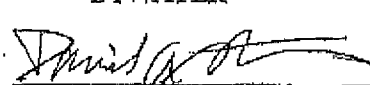
1 interests and add risk of incurring double, multiple, or otherwise inconsistent  
2 obligations.

3 IT IS FURTHER STIPULATED AND AGREED that the LSN NEVADA  
4 TRUST dated May 30, 2001, shall be joined as a necessary party, intervening in this  
5 action, as complete relief cannot be accorded among the parties without the LSN  
6 NEVADA TRUST dated May 30, 2001 being named a party and the disposition of the  
7 action in the absence of the LSN NEVADA TRUST dated May 30, 2001 will impair  
8 or impede its ability to protect its interests and add risk of incurring double, multiple,  
9 or otherwise inconsistent obligations.

10 Submitted by:  
11 THE DICKERSON LAW GROUP

Approved as to form and content:  
STEPHENS, GOURLEY &  
BYWATER

12   
13 ROBERT P. DICKERSON, ESQ.  
14 Nevada Bar No. 0945  
15 KATHERINE L. PROVOST, ESQ.  
16 Nevada Bar No. 008414  
17 1745 Village Center Circle  
18 Las Vegas, Nevada 89134  
19 Attorney for Defendant  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
DAVID A. STEPHENS, ESQ.  
Nevada Bar No. 000902  
3636 N. Rancho Drive  
Las Vegas, Nevada 89130  
Attorney for Plaintiff

1 ORDER

2 Based upon the Stipulation of the parties as set forth herein:

3 IT IS HEREBY ORDERED that the ERIC L. NELSON NEVADA TRUST dated  
4 May 30, 2001, shall be joined as a necessary party, intervening in this action, as  
5 complete relief cannot be accorded among the parties without the ERIC L. NELSON  
6 NEVADA TRUST dated May 30, 2001 being named a party and the disposition of the  
7 action in the absence of the ERIC L. NELSON NEVADA TRUST dated May 30, 2001  
8 will impair or impede its ability to protect its interests and add risk of incurring double,  
9 multiple, or otherwise inconsistent obligations.

10 IT IS FURTHER ORDERED that the LSN NEVADA TRUST dated May 30,  
11 2001, shall be joined as a necessary party, intervening in this action, as complete relief  
12 cannot be accorded among the parties without the LSN NEVADA TRUST dated May  
13 30, 2001 being named a party and the disposition of the action in the absence of the  
14 LSN NEVADA TRUST dated May 30, 2001 will impair or impede its ability to protect  
15 its interests and add risk of incurring double, multiple, or otherwise inconsistent  
16 obligations.

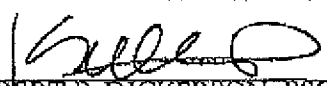
17 DATED this 4 day of August, 2011.

18  
19   
DISTRICT COURT JUDGE

20 Respectfully Submitted:

21 THE DICKERSON LAW GROUP

FRANK F. SULLIVAN

22   
23 ROBERT P. DICKERSON, ESQ.  
24 Nevada Bar No. 0945  
25 KATHERINE L. PROVOST, ESQ.  
26 Nevada Bar No. 008414  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

COPY

NEO  
THE DICKERSON LAW GROUP  
ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
JOSEF M. KARACSONYI, ESQ.  
Nevada Bar No. 010634  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Telephone: (702) 388-8600  
Facsimile: (702) 388-0210  
Email: info@dickersonlawgroup.com  
Attorneys for LYNITA SUE NELSON

DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,

Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON

Defendant/Counterclaimant.

CASE NO. D-09-411537-D  
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST  
dated May 30, 2001, and LSN NEVADA  
TRUST dated May 30, 2001,

Necessary Parties (joined in this  
action pursuant to Stipulation and  
Order entered on August 9, 2011)

NOTICE OF ENTRY OF ORDER  
FROM FEBRUARY 23, 2012  
HEARING PARTIALLY  
GRANTING ELN TRUST'S  
MOTION TO DISMISS THIRD-  
PARTY COMPLAINT WITHOUT  
PREJUDICE

1  
2 LANA MARTIN, as Distribution Trustee  
3 of the ERIC L. NELSON NEVADA  
TRUST dated May 30, 2001,

4 Necessary Party (joined in this  
5 action pursuant to Stipulation and  
6 Order entered on August 9, 2011)/  
Purported Counterclaimant and  
Crossclaimant,

7 v.

8 LYNITA SUE NELSON and ERIC  
NELSON,

9 Purported Cross-Defendant and  
10 Counterdefendant,

---

11 LYNITA SUE NELSON,

12 Counterclaimant, Cross-Claimant,  
13 and/or Third Party Plaintiff,

14 v.

15 ERIC L. NELSON, individually, and as  
16 the Investment Trustee of the ERIC L.  
NELSON NEVADA TRUST dated May  
17 30, 2001; the ERIC L. NELSON  
NEVADA TRUST dated May 30, 2001;  
18 LANA MARTIN, individually, and as the  
current and/or former Distribution  
Trustee of the ERIC L. NELSON  
19 NEVADA TRUST dated May 30, 2001,  
and as the former Distribution Trustee of  
20 the LSN NEVADA TRUST dated May  
30, 2001; NOLA HARBER, individually,  
21 and as the current and/or former  
Distribution Trustee of the ERIC L.  
NELSON NEVADA TRUST dated May  
22 30, 2001, and as the current and/or  
former Distribution Trustee of the LSN  
23 NEVADA TRUST dated May 30, 2001;  
ROCHELLE McGOWAN, individually;  
24 JOAN B. RAMOS, individually; and  
DOES I through X,

25  
26 Counterdefendants, and/or  
Cross-Defendants, and/or  
27 Third Party Defendants.

---



1 NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012 HEARING  
2 PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS THIRD-  
3 PARTY COMPLAINT WITHOUT PREJUDICE

4 TO: ERIC L. NELSON, Plaintiff; and

5 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for  
6 Plaintiff;

7 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of  
8 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson  
9 Nevada Trust:

10 PLEASE TAKE NOTICE that an ORDER FROM FEBRUARY 23, 2012  
11 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS  
12 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE was entered in the above-  
13 entitled matter on August 29, 2012, a copy of which is attached hereto.

14 DATED this 31<sup>st</sup> day of August, 2012.

15 THE DICKERSON LAW GROUP

16 By

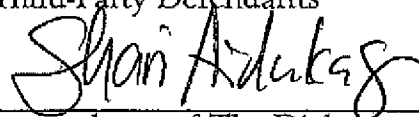
17 Robert R. Dickerson  
18 ROBERT R. DICKERSON, ESQ.  
19 Nevada Bar No. 000945  
20 KATHERINE L. PROVOST, ESQ.  
21 Nevada Bar No. 008414  
22 JOSEF M. KARACSONYI, ESQ.  
23 Nevada Bar No. 10634  
24 1745 Village Center Circle  
25 Las Vegas, Nevada 89134  
26 Attorneys for Defendant  
27  
28

1 CERTIFICATE OF MAILING

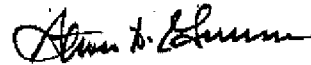
2 I HEREBY CERTIFY that I am this date depositing a true and correct copy of  
3 the attached NOTICE OF ENTRY OF ORDER FROM FEBRUARY 23, 2012  
4 HEARING PARTIALLY GRANTING ELN TRUST'S MOTION TO DISMISS  
5 THIRD-PARTY COMPLAINT WITHOUT PREJUDICE, in the U.S. Mail, postage  
6 prepaid to the following at their last known addresses, on the 31<sup>st</sup> day of August,  
7 2012:

8  
9 RHONDA K. FORSBERG, ESQ.  
10 FORSBERG & DOUGLAS  
1070 W. Horizon Ridge Pkwy., Ste. 100  
Henderson, Nevada 89012  
Attorneys for Plaintiff

11  
12 MARK A. SOLOMON, ESQ.  
13 SOLOMON, DWIGGINS, FREER & MORSE, LTD.  
14 9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129  
Attorneys for Third-Party Defendants

15 

16 An employee of The Dickerson Law Group

  
CLERK OF THE COURT

1 ORDER  
2 THE DICKERSON LAW GROUP  
3 ROBERT P. DICKERSON, ESQ.  
4 Nevada Bar No. 000945  
5 KATHERINE L. PROVOST, ESQ.  
6 Nevada Bar No. 008414  
7 JOSEF M. KARACSONYI, ESQ.  
8 Nevada Bar No. 10634  
9 1745 Village Center Circle  
10 Las Vegas, Nevada 89134  
11 Telephone: (702) 388-8600  
12 Facsimile: (702) 388-0210  
13 Email: info@dickersonlawgroup.com  
14 Attorneys for LYNITA SUE NELSON

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EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,  
Plaintiff/Counterdefendant,

v.

LYNITA SUE NELSON,  
Defendant/Counterclaimant.

CASE NO. D-09-411537-D  
DEPT NO. "O"

DATE OF HEARING: 02-23-12  
TIME OF HEARING: 2:30 p.m.

ERIC L. NELSON NEVADA TRUST  
dated May 30, 2001, and LSN NEVADA  
TRUST dated May 30, 2001,

Necessary Parties (joined in this  
action pursuant to Stipulation and  
Order entered on August 9, 2011)

1 LANA MARTIN, as Distribution Trustee of )  
 2 the ERIC L. NELSON NEVADA TRUST )  
 3 dated May 30, 2001, )  
 4 Necessary Party (joined in this action )  
 5 pursuant to Stipulation and Order )  
 6 entered on August 9, 2011)/ Purported )  
 7 Counterclaimant and Crossclaimant, )  
 8 v. )  
 9 LYNITA SUE NELSON and ERIC )  
 10 NELSON, )  
 11 Purported Cross-Defendant and )  
 12 Counterdefendant, )  
 13 LYNITA SUE NELSON, )  
 14 Counterclaimant, Cross-Claimant, )  
 15 and/or Third Party Plaintiff, )  
 16 v. )  
 17 ERIC L. NELSON, individually and as the )  
 18 Investment Trustee of the ERIC L. NELSON )  
 19 NEVADA TRUST dated May 30, 2001; the )  
 20 ERIC L. NELSON NEVADA TRUST dated )  
 21 May 30, 2001; LANA MARTIN, individually, )  
 22 and as the current and/or former Distribution )  
 23 Trustee of the ERIC L. NELSON NEVADA )  
 24 TRUST dated May 30, 2001, and as the )  
 25 former Distribution Trustee of the LSN )  
 26 NEVADA TRUST dated May 30, 2001); )  
 27 NOLA HARBER, individually, and as the )  
 28 current and/or former Distribution Trustee )  
 of the ERIC L. NELSON NEVADA TRUST )  
 dated May 30, 2001, and as the current )  
 and/or former Distribution Trustee of the )  
 LSN NEVADA TRUST dated May 30, 2001; )  
 ROCHELLE McGOWAN, individually; )

1 JOAN B. RAMOS, individually; and DOES I )  
2 through X, )  
3 Counterdefendant, and/or )  
4 Cross-Defendants, and/or )  
5 Third Party Defendants. )  
6 )

7 ORDER FROM FEBRUARY 23, 2012 HEARING PARTIALLY GRANTING  
8 ELN TRUST'S MOTION TO DISMISS THIRD-PARTY COMPLAINT  
9 WITHOUT PREJUDICE

10 This matter coming on for hearing on this 23<sup>rd</sup> day of February, 2012, before the  
11 Honorable Frank P. Sullivan, for a Decision on Third-Party Defendants' Motion to  
12 Dismiss, filed November 7, 2011, Plaintiff's Motion to Dismiss and Countermotion  
13 for Attorneys Fees and Costs, filed November 4, 2011, Defendant's Opposition to  
14 Motions to Dismiss, and Countermotion for an Award of Attorneys Fees and Costs,  
15 filed December 1, 2011, and the various supplements to the aforementioned papers  
16 filed by the parties; ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST,  
17 ESQ., and JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP,  
18 appearing on behalf of Defendant, LYNITA NELSON, and Defendant being present;  
19 RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, appearing on behalf  
20 of Plaintiff, ERIC NELSON, and Plaintiff being present; and MARK P. SOLOMON,  
21 ESQ., and JEFFREY P. LUSZECK, ESQ., of SOLOMON, DWIGGINS & FREER ,  
22 LTD., appearing on behalf of Third-Party Defendants. The Court having reviewed and  
23 analyzed the pleadings and papers on file herein, having researched the issues presently  
24 before the Court, and having heard the arguments of counsel and the parties, and good  
25 cause appearing therefore,

26 THE COURT HEREBY FINDS that the Court has reviewed Part IV of the  
27 Eighth Judicial District Court Rules with respect to probate, trust, administration of  
28 estates, the rules that apply under Chapter 164 of Title 13 of the Nevada Revised  
Statutes, and the various Nevada Supreme Court decisions cited by the parties in

1 analyzing whether this Court has jurisdiction to hear the various claims asserted by  
2 Defendant in her First Amended Claims for Relief Against Eric L. Nelson, et. al, filed  
3 December 20, 2011, and whether the Court would be inclined to exercise such  
4 jurisdiction. EDCR 4.16(a) provides:

5 (a) The probate judge may hear whichever contested matters the judge  
6 shall select, and schedule them at the convenience of the judge's calendar.  
7 The judge alone may refer contested matters pertaining to the probate  
8 calendar to a master appointed by the judge for hearing and report. All  
9 other contested matters pertaining to the probate calendar will be  
10 assigned on a random basis to a civil trial judge, other than a trial judge  
11 serving in the family division. The judge to whom a matter is assigned  
12 may, upon resolution of the contested matter, return the case to the  
13 probate calendar, or continue with the case if further contested matters  
14 are expected.

15 However, in *Landreth v. Malik*, 251 P.3d 163, 127 Nev. Adv. Op. 16 (2011), the  
16 Nevada Supreme Court held that a Family Court does not lack authority to resolve  
17 cases solely because such cases involve subject matter outside of those matters  
18 specifically delineated in NRS 3.223 setting forth the original and exclusive jurisdiction  
19 of the Family Court. *Landreth* was very clear in holding that Article 6, Section 6 of the  
20 Nevada Constitution, provides the district courts with jurisdiction that cannot be  
21 limited by the Nevada Legislature by legislative order or rule. *Landreth* further made  
22 it clear that NRS 3.223 does not limit the Constitutional power and authority provided  
23 under Article 6, Section 6(1) of the Nevada Constitution, to a district court judge  
24 sitting in the family division. The Court further notes that EDCR 4.16(a), and its  
25 language providing for contested probate matters to be assigned to a "civil trial judge,  
26 other than a trial judge serving in the family division," was enacted in May, 2004, and  
27 *Landreth* was decided seven (7) years later. Accordingly, this Court finds that it has  
28 jurisdiction to entertain actions concerning trusts and administration of estates if it so  
chooses, or where it would be appropriate. NRS 3.223, and the EDCRs, cannot limit  
this Court's powers under the Nevada Constitution.

THE COURT FURTHER FINDS that NRS 164.015(1) provides, in pertinent  
part: "The court has exclusive jurisdiction of proceedings initiated by the petition of

1 an interested person concerning the internal affairs of a nontestamentary trust . . ."  
2 Under NRS 132.116, "'District court' or 'court' means a district court of this State  
3 sitting in probate or otherwise adjudicating matters pursuant to this title."  
4 Accordingly, the reference to a court in NRS 164.015(1) is not limited to district  
5 courts sitting in probate only.

6 THE COURT FURTHER FINDS that in *Barelli v Barelli*, 11 Nev. 873, 944 P.2d  
7 246 (1997), the Nevada Supreme Court held that a family court has jurisdiction to  
8 resolve issues falling outside of its original and exclusive jurisdiction that are necessary  
9 to the resolution of claims within its original and exclusive jurisdiction. This Court is  
10 only inclined to hear such claims concerning the parties' trusts as it believes necessary  
11 to resolve the property issues surrounding the parties' divorce, and to distribute  
12 property between the parties as the Court deems appropriate.

13 THE COURT FURTHER FINDS that it has examined the causes of action  
14 asserted by Defendant in her First Amended Claims for Relief Against Eric L. Nelson,  
15 et. al, filed December 20, 2011. The Court finds that Defendant has stated a cause of  
16 action for alter ego under the First (Veil-Piercing), and Second (Reverse Veil-Piercing)  
17 claims for relief, and has further stated a cause of action under the Fourteenth  
18 (Constructive Trust), and Fifteenth (Injunctive Relief) claims for relief, which the  
19 Court is inclined and believes it needs to hear and resolve. Although the Court has  
20 jurisdiction over Defendant's other claims in the First Amended Claims for Relief  
21 Against Eric L. Nelson, et. al, filed December 20, 2011, the Court declines to hear such  
22 other claims (which are tort claims), without ruling on the merits of whether such  
23 causes of action state a claim for relief (which the Court has not analyzed).  
24 Consequently, claims against Joan Ramos, Lana Martin, individually and as former  
25 distribution trustee of the ELN Trust and LSN Trust (but not as current distribution  
26 trustee of the ELN Trust), Nola Harber, individually, and as former distribution trustee  
27 of the ELN Trust and LSN Trust, and Rochelle McGowan, should be dismissed,  
28 without prejudice.

1 NOW, THEREFORE,

2 IT IS HEREBY ORDERED the ELN Trust's Motion to Dismiss Third-Party  
3 Complaint is GRANTED IN PART WITHOUT PREJUDICE..

4 IT IS FURTHER ORDERED that the requests to dismiss the First, Second,  
5 Fourteenth, and Fifteenth claims for relief in Defendant's First Amended Claims for  
6 Relief Against Eric L. Nelson, et. al, filed December 20, 2011, are DENIED. Such  
7 claims shall remain as to the ELN Trust, Eric Nelson, individually and as investment  
8 trustee of the ELN Trust, and Lana Martin, as current distribution trustee of the ELN  
9 Trust.

10 IT IS FURTHER ORDERED that the provisions contained in NRS 78 are not  
11 the appropriate standards to be applied to Lynita Nelson's veil-piercing claims against  
12 the ELN Trust.

13 IT IS FURTHER ORDERED that the Court DECLINES to exercise its  
14 jurisdiction over the Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth,  
15 Eleventh, Twelfth, and Thirteenth claims for relief in Defendant's First Amended  
16 Claims for Relief Against Eric L. Nelson, et. al, filed December 20, 2011, without  
17 making any specific findings or orders regarding the merits of such claims, and whether  
18 such claims state a cause of action, which issues the Court has not analyzed or  
19 addressed, and as such, said claims are hereby DISMISSED WITHOUT PREJUDICE  
20 so that same can be brought in another tribunal.

21 IT IS FURTHER ORDERED that Joan Ramos, Lana Martin, individually and  
22 as former distribution trustee of the ELN Trust and LSN Trust, Nola Harber,  
23 individually and as former distribution trustee of the ELN Trust and LSN Trust, and  
24 Rochelle McGowan are hereby DISMISSED WITHOUT PREJUDICE from this  
25 action.

26 IT IS FURTHER ORDERED that the previously set trial dates in May, 2012,  
27 are hereby VACATED, and the trial in this matter shall continue on July 16, 17, 18,  
28 19, 23, and 24, 2012, at 9:00 a.m. each day.



1 IT IS FURTHER ORDERED that the parties' attorneys shall confer and attempt  
2 to reach an agreement regarding discovery deadlines.

3 IT IS SO ORDERED.

4 DATED this 28 day of August, 2012.

5  
6 Jack B. Amm  
DISTRICT COURT JUDGE JA

8 Submitted by:

9 THE DICKERSON LAW GROUP

10 By Joe Karacsonyi  
11 ROBERT P. DICKERSON, ESQ.  
12 Nevada Bar No. 000945  
13 JOSEF M. KARACSONYI, ESQ.  
14 Nevada Bar No. 010634  
15 1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

Approved as to Form and Content:

IVEY, FORSBERG & DOUGLAS

By Rhonda K. Forsberg  
RHONDA K. FORSBERG, ESQ.  
Nevada Bar No. 009557  
1020 W Horizon Ridge Pkwy #100  
Henderson, Nevada 89012  
Attorneys for Plaintiff

16 Approved as to Form and Content:

17 SOLOMON, DWIGGINS & FREER, LTD

18 By Mark A. Solomon  
19 MARK A. SOLOMON, ESQ.  
20 Nevada Bar No. 000418  
21 JEFFREY P. LUSZECK, ESQ.  
22 Nevada Bar No. 009619  
23 9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129  
24 Attorneys for Third-Party Defendants  
25  
26  
27  
28

## THE DICKERSON LAW GROUP

ROBERT P. DICKERSON  
KATHERINE L. PROVOST  
RENA C. HUGHES  
JOSEF KARACSONYI

A PROFESSIONAL CORPORATION OF ATTORNEYS AT LAW  
HILLS CENTER NORTH BUSINESS PARK  
1745 VILLAGE CENTER CIRCLE  
LAS VEGAS, NEVADA 89134

AREA CODE (702)  
TELEPHONE 388-3600  
FAX 388-0210

June 7, 2013

Joan Ramos  
436 Europa Way  
Las Vegas, Nevada 89145

VIA CERTIFIED AND  
U.S. MAIL

Re: NOTIFICATION OF ASSIGNMENT OF NOTE  
AND DEED OF TRUST

Dear Ms. Ramos:

You are hereby notified that on June 3, 2013 the Note dated February 23, 2010 between Joan B Ramos, Trustee of the Joan B Ramos Trust u/a/d October 4, 2004 and Banone, LLC and the corresponding Deed of Trust With Assignment of Rents has been assigned and transferred to the LSN Nevada Trust u/a/d 5/30/01.

You are now to send all payments due under the terms of the Note to the following address:

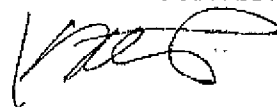
LSN Nevada Trust  
c/o The Dickerson Law Group  
1745 Village Center Circle  
Las Vegas, Nevada 89134

You are further notified that the August 25, 2011 Memorandum of Understanding entered into between you and Eric L. Nelson, on behalf of Banone, LLC is hereby null and void as it relates to your obligation to make the payments called for by the Note to the current holder of the Note. Therefore, on or before July 1, 2013, you must make a payment of \$520.00 to satisfy your obligation to the current Note holder.

You may also direct all inquiries and questions concerning this assignment to Lynita Clark Nelson at (702) 569-3696.

Sincerely,

THE DICKERSON LAW GROUP



Attorneys for LSN Nevada Trust

W. E. DICKERSON, JR., GREEN

DISCONTINUED

# ATTENTION OF CHANGE OF EXPLORED

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a formal address, and it begins with the words "I have the honor to acknowledge the receipt of your letter of the 28th inst."

THE UNIVERSITY OF CHICAGO

[illegible]

The following is a list of the names of the persons who have been appointed to the various committees of the Board of Directors of the City of New York, for the year 1901:

44120618

12

On behalf of the  
UN Women Trust

## THE DICKERSON LAW GROUP

ROBERT P. DICKERSON  
KATHERINE L. PROVOST  
RENA G. HUGHES  
JOSEF KALACSONYI

A PROFESSIONAL CORPORATION OF ATTORNEYS AT LAW  
HILLS CENTER NORTH BUSINESS PARK  
1745 VILLAGE CENTER CIRCLE  
LAS VEGAS, NEVADA 89134

AREA CODE (702)  
TELEPHONE 988-8600  
FAX 988-0210

June 10, 2013

Eric L. Nelson  
Nelson & Associates  
ELN Nevada Trust, u/a/d 5/30/01  
Dynasty Development Group, LLC  
Dynasty Development Management, LLC  
and All Others In Possession  
3611 S. Lindell Road, Suite 201  
Las Vegas, Nevada 89103

VIA HAND DELIVERY

Re: 3611 S. LINDELL ROAD, SUITE 201

As you are aware, effective June 3, 2013, the property located at 3611 S. Lindell Road, Suite 201 has come under new ownership. The new property owner is the LSN Nevada Trust u/a/d 5/30/01. Along with this letter you have been served with a Thirty (30) Day Notice of Termination of Tenancy for the property located at 3611 S. Lindell Road, Suite 201, Las Vegas, Nevada 89103.

As you are the former owner/occupant of this property, Ms. Clark Nelson desires to provide you the ability to remain in your current location contingent upon your entering into a binding lease agreement with the LSN Nevada Trust u/a/d 5/30/01 and timely payment of rent. If you are interested in remaining in your current location, please have your attorney(s) contact Robert P. Dickerson at this office to discuss this matter upon your receipt of this letter. Alternately, please vacate the premises within thirty (30) days.

Sincerely,



Robert P. Dickerson

cc: Lynita Clark Nelson

**THIRTY (30) DAY NOTICE OF TERMINATION OF TENANCY**

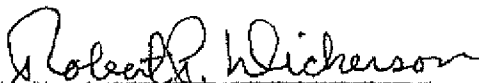
To: Eric L. Nelson; Nelson & Associates; ELN Nevada Trust u/a/d/ 5/30/01;  
Dynasty Development Group, LLC; Dynasty Development Management,  
LLC  
3611 S. Lindell Road, Suite 201  
Las Vegas, Nevada 89103

TO: AND ALL OTHERS IN POSSESSION

YOU ARE HEREBY NOTIFIED that your tenancy of the above-described Premises is being terminated by the Landlord effective thirty (30) days from receipt of this Notice, to wit: on or about July 10, 2013.

You are hereby warned, therefore, to vacate the Premises on or before the date above-referenced or a Complaint for Unlawful Detainer will be filed, which shall seek Attorneys' Fees and Costs. If a Court determines that you are guilty of unlawful detainer, it may issue a summary order for your removal or an order providing for your nonadmittance, directing the sheriff or constable to remove you within twenty-four (24) hours after receipt of the order.

DATED this 10<sup>th</sup> day of June, 2013.

By   
ROBERT P. DICKERSON, ESQ.  
Attorney for Landlord

Landlord's Name and Address:

LSN Nevada Trust u/a/d 5/30/01  
c/o Robert P. Dickerson, Esq.  
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, NV 89134  
702-388-8600

**PROOF OF SERVICE:**

- [ ] On \_\_\_\_\_, 2013, I delivered a copy of the foregoing Notice to the tenant personally, in the presence of a witness.
- [ ] On \_\_\_\_\_, 2013, I handed the Notice to a person of suitable age and discretion at the place of residence/business, and I mailed a copy to the tenant at the tenant's place of residence on \_\_\_\_\_, 200\_\_, having obtained a Certificate of Mailing.
- [ ] On \_\_\_\_\_, 2013, I posted the Notice in a conspicuous place on the door of the tenant's residence, and I mailed a copy to the tenant at the tenant's place of residence on \_\_\_\_\_, 2013, having obtained a Certificate of Mailing.

\_\_\_\_\_  
Signature of server                      Date      Time      AM PM

\_\_\_\_\_  
Signature of witness                      Date      Time      AM PM

SUBSCRIBED AND SWORN to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public in and for said  
County and State

*Acknowledgment of receipt of Notice only. Signing does NOT inhibit Legal Rights*

\_\_\_\_\_  
Signature of Tenant                      Date      Time      AM PM

**COPY**

Electronically Filed  
06/17/2013 03:14:22 PM

*Ann D. Quinn*

CLERK OF THE COURT

**RECEIVED**  
7/18/13

MOTN  
THE DICKERSON LAW GROUP  
ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Telephone: (702) 388-8600  
Facsimile: (702) 388-0210  
Email: info@dickersonlawgroup.com  
Attorneys for LYNITA SUE NELSON

EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,  
Plaintiff/Counterdefendant,  
v.  
LYNITA SUE NELSON,  
Defendant/Counterclaimant.

CASE NO. D-09-411537-D  
DEPT NO. "O"

ERIC L. NELSON NEVADA TRUST  
dated May 30, 2001, and LSN NEVADA  
TRUST dated May 30, 2001,

Necessary Parties (joined in this  
action pursuant to Stipulation and  
Order entered on August 9, 2011)

LANA MARTIN, as Distribution Trustee of  
the ERIC L. NELSON NEVADA TRUST  
dated May 30, 2001,

Necessary Party (joined in this action  
pursuant to Stipulation and Order  
entered on August 9, 2011)/ Purported  
Counterclaimant and Crossclaimant,

v.

1 )  
2  
3 LYNITA SUE NELSON and ERIC  
4 NELSON,

5 Purported Cross-Defendant and  
6 Counterdefendant,

7 LYNITA SUE NELSON,

8 Counterclaimant, Cross-Claimant,  
9 and/or Third Party Plaintiff,

10 v.

11 ERIC L. NELSON, individually and as the  
12 Investment Trustee of the ERIC L. NELSON  
13 NEVADA TRUST dated May 30, 2001; the  
14 ERIC L. NELSON NEVADA TRUST dated  
15 May 30, 2001; LANA MARTIN, individually,  
16 and as the current and/or former Distribution  
17 Trustee of the ERIC L. NELSON NEVADA  
18 TRUST dated May 30, 2001, and as the  
19 former Distribution Trustee of the LSN  
20 NEVADA TRUST dated May 30, 2001);

21 Counterdefendant, and/or  
22 Cross-Defendants, and/or  
23 Third Party Defendants.  
24

25 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH  
26 THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF  
27 YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION.  
28 FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN  
TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED  
RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE  
SCHEDULED HEARING DATE.

29  
30 DEFENDANT'S MOTION TO AMEND OR ALTER JUDGMENT, FOR  
31 DECLARATORY AND RELATED RELIEF

32 COMES NOW Defendant, LYNITA SUE NELSON ("LYNITA"), by and  
33 through her attorneys, ROBERT P. DICKERSON, ESQ., and KATHERINE L.  
34 PROVOST, ESQ., of THE DICKERSON LAW GROUP, and submits the following  
35 Motion to Amend or Alter Judgment and for Declaratory and Related Relief  
36 ("Motion"). Specifically, Lynita requests:



1           1.     That the Court Amend or Alter its June 3, 2013 Decree of Divorce to  
2 provide more specificity and clarity concerning the Mississippi real property awarded  
3 to each of the parties in this action, more specifically, to enter an Order listing the  
4 parcels of real property awarded to either Eric or Lynita, by both Parcel ID and Legal  
5 Description as set forth on the attached Exhibit A;

6           2.     That the Court Amend or Alter its June 3, 2013 Decree of Divorce to  
7 Order Eric and/or Lana Martin, in her capacity as the individual delegated by Eric to  
8 "defend, maintain and pursue any and all actions on behalf of the Eric L. Nelson  
9 Nevada Trust dated May 30, 2001 in relation to such claims" as set forth in the  
10 document entitled "Delegation of Lana A. Martin" dated August 19, 2011<sup>1</sup> to execute  
11 the correction Warranty Deeds attached as Exhibit B to this Motion within ten (10)  
12 days of presentation;

13           3.     That the Court Amend or Alter its June 3, 2013 Decree of Divorce to  
14 include an Order requiring the parties to this action to execute any and all deeds,  
15 assignments, or any and all other instruments that may be required in order to  
16 effectuate the transfer of any and all interest either may have in and to the property  
17 awarded to Eric or Lynita (or either party's respective Trust) as set forth in the June 3,  
18 2013 Decree of Divorce within ten (10) days of presentation, or if any party refuses to  
19 sign said documents then the Clerk of the Court shall sign the documents for the party  
20 that refuses to sign said documents to ensure that there is a full and complete transfer  
21 of the interest of one to the other as provided in the Decree of Divorce.

22           4.     That the Court Amend or Alter its June 3, 2013 Decree of Divorce and  
23 enter an Order awarding Lynita an additional \$151,166 in cash or other assets  
24 previously designated as being awarded to Eric in light of Eric's sale of two (2) of the  
25 seventeen (17) Banone, LLC rental properties, awarded to Lynita in the Decree, during  
26 the pendency of this action;

27  
28  

---

<sup>1</sup> Intervenor's Trial Exhibit 163.

5. That the Court Amend or Alter its June 3, 2013 Decree of Divorce and enter an Order for Declaratory Relief, specifically declaring that Eric and Lynita, through their respective trusts, each holds a 50% membership interest in Dynasty Development Management, LLC, and all of its holdings, including the horse racing track and RV park which was purchased by the ELN Trust through Dynasty Development Management, LLC<sup>2</sup> during the course of this divorce action from Wyoming Racing, LLC for \$440,000.00, OR ALTERNATIVELY, to re-open this case and permit discovery concerning the transaction involving Dynasty Development Management, LLC, Wyoming Racing, LLC, and the purchase an interest in Wyoming Racing, LLC a horse racing track and RV park for \$440,000.00 which occurred in or about January 2013, as well as the current status of this asset, so that a separate trial date can be set to make a determination as to the disposition of this asset.

6. For such further relief as deemed appropriate in the premises including an award of attorneys fees and costs should this Court find that Eric and/or the ELN Trust has unnecessarily increased the costs of litigation as related to this Motion.

This Motion is made and based upon the following Memorandum of Points and Authorities, all papers and pleadings on file herein, as well as oral argument of counsel as may be permitted at the hearing on this matter.

DATED this 17<sup>th</sup> day of June, 2013.

THE DICKERSON LAW GROUP

ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

<sup>2</sup> Incorrectly referred to as Dynasty Development Group in the Decree.



1 of resolving any title issues which exist for the Mississippi properties. Mississippi  
2 counsel has recommended that a clarifying order be obtained from this Court which  
3 specifically identifies, by Parcel ID and Legal Description, all of the Mississippi  
4 Properties. A complete list of the properties awarded by the Decree, by Parcel ID and  
5 Legal Description is attached to this Motion as Exhibit A. Further, Mississippi counsel  
6 has prepared certain Corrected Quitclaim Deeds which are attached to this Motion as  
7 Exhibit B. Such deeds are required to obtain clear title for the Mississippi properties  
8 which were awarded to Lynita by the terms of the Decree.

9 In reviewing the Decree and beginning preparations to transfer to Lynita the  
10 property awarded to her by the Decree it has become evident that while the Decree  
11 awards to Lynita "the Banone, LLC properties held by ELN Trust, with a comparable  
12 value of \$1,184,236"<sup>5</sup> to "avoid the ELN Trust from being unjustly enriched",  
13 \$151,166 of this award is illusory. This is so because during the pendency of this  
14 action, after the issuance of the Joint Preliminary Injunction in this action, Eric sold  
15 two (2) of the Banone, LLC properties, namely: 2209 Farinouth Circle (sold to  
16 employee, Rochelle McGowan's, parents) for \$88,166 and 5704 Roseridge Avenue  
17 (sold to employee Keith Little) for \$63,000. Despite such sales, these properties  
18 remained on Eric's list of Banone, LLC properties and was included by the Court's  
19 expert, Larry Bertsch, in his valuation of the Banone, LLC properties. This discrepancy  
20 should be addressed by the Court and remedied as addressed below.

21 Similarly, this Court left unresolved the issue of the existing interest in  
22 "Wyoming Downs", which is more accurately referred to as Dynasty Development  
23 Management, LLC and its real property and business holdings in or about Evanston,  
24 Wyoming. Eric, through the ELN Trust and Dynasty Development Management, LLC  
25 purchased "Wyoming Downs" during the pendency of this action. The Decree  
26 beginning at page 45, line 23 and continuing through page 46, line 3, identifies that  
27

---

28 <sup>5</sup> Decree at page 20, lines 7-9.

1 there is an asset remaining to be addressed in this divorce action. Specifically, the  
2 Decree states:

3 THE COURT FURTHER FINDS that as to the repurchase of  
4 Wyoming Downs by the ELN Trust via the Dynasty Development  
5 Group, this Court is without sufficient information regarding the details  
6 of the repurchase of the property, the value of the property and the  
7 encumbrances on the property to make a determination as to the  
8 disposition of the property, and accordingly, is not making any findings  
9 or decisions as to the disposition of the Wyoming Downs property at this  
10 time.

11 As to date no decision has been made concerning the disposition of this asset  
12 this Court should render a decision as to the disposition of this asset as suggested  
13 below so that the parties may have finality and closure of this divorce action.

## 14 II. LEGAL ARGUMENT

15 Nevada Rules of Civil Procedure, Rule 59(e)(2012), provides as follows: "A  
16 motion to alter or amend the judgment shall be filed no later than 10 days after service  
17 of written notice of entry of the judgment." The Decree and Notice of Entry of Decree  
18 were issued by the Court in this action on June 3, 2013. Accordingly, Lynita's Motion  
19 to amend and alter the judgment pursuant to NRCP 59(e) is timely filed.

20 Nevada Revised Statutes, Section 125.240 (2013), provides:

21 NRS 125.240 Enforcement of judgment and orders:  
22 Remedies. The final judgment and any order made  
23 before or after judgment may be enforced by the court  
24 by such order as it deems necessary. A receiver may be  
25 appointed, security may be required, execution may issue,  
26 real or personal property of either spouse may be sold as  
27 under execution in other cases, and disobedience of any  
28 order may be punished as a contempt.

29 Furthermore, it is well settled that the Court has inherent authority to protect the  
30 dignity and decency of its proceedings, and to enforce its decrees. *See, e.g., Halverson*  
31 *v. Hardcastle*, 123 Nev. 29, 163 P.3d 428, 440 (2007).

32 The relief Lynita has requested in this Motion is not extraordinary. Rather, this  
33 Motion is brought to ensure clarity of this Court's property division, to allow the

1 parties to begin to effectuate the transfer of assets as ordered by the Court, and to  
2 dispose of the last remaining asset not addressed by the Decree.

3       A.     Mississippi Properties

4       Lynita's first request to amend and alter the judgment issued on June 3, 2013  
5 is to provide more specificity and clarity concerning the Mississippi property awarded  
6 to each of the parties in this action, more specifically, to enter an Order listing the  
7 parcels of real property awarded to either Eric or Lynita, by both Parcel ID and Legal  
8 Description. Thus, Lynita requests this Court issue an Order confirming the  
9 properties as set forth in the attached Exhibit A.

10       This Court has awarded to Lynita the parcels of Mississippi property identified  
11 in Exhibit A. For Lynita to receive the benefits of this property award she will need  
12 to be able to obtain clear title to each individual parcel awarded to her under the terms  
13 of the Decree. After consultation with Mississippi counsel the most efficient way to  
14 obtain clear title includes this Court amending its June 3, 2013 Decree to include an  
15 Order clarifying and providing more specificity concerning the Mississippi real property  
16 awarded to each of the parties in this action, which is the intent of Exhibit A, and to  
17 also require Eric and/or Lana Martin (his authorized designee) to execute certain  
18 Corrected Quitclaim Deeds which are necessary to obtain clear title to the Mississippi  
19 properties. The Corrected Quitclaim Deeds, which must be executed to obtain clear  
20 title, are provided to the Court as Exhibit B and Lynita requests this Court order  
21 execution of the deeds within ten (10) days.

22       To ensure there is no issue with the transfer of the Mississippi property to  
23 Lynita, this Court should further amend its June 3, 2013 Decree to include an Order  
24 requiring the parties to this action to execute any and all deeds, assignments, or any  
25 and all other instruments that may be required in order to effectuate the transfer of any  
26 and all interest either may have in and to the property awarded to Eric or Lynita as set  
27 forth in the June 3, 2013 Decree of Divorce within ten (10) days of presentation, or  
28 if any party refuses to sign said documents then the Clerk of the Court shall sign the

1 documents for the party that refuses to sign said documents to ensure that there is a  
2 full and complete transfer of the interest of one to the other as provided in the Decree  
3 of Divorce.

4 **B. Banone Properties**

5 Lynita's second request to amend and alter the judgment issued on June 3, 2013  
6 is to address the illusory award of \$1,184,236 in Banone, LLC properties to Lynita.  
7 During the pendency of this action, after the implementation of the Joint Preliminary  
8 Injunction, Eric sold two (2) of the Banone, LLC properties located in Nevada. These  
9 two (2) properties are the properties located at 5704 Roseridge Avenue (which was sold  
10 for \$63,000 on or about January 23, 2012 to Keith Little, one of Eric's employees) and  
11 2209 Farmouth Circle (which was sold for \$88,166 to Wendell and Laurretta  
12 McGowan, the parents of Rochelle McGowan, one of Eric's employees). Despite these  
13 sales these two (2) properties remained on Eric's list of Banone, LLC properties which  
14 was provided to Larry Bertsch and were included in Mr. Bertsch's value for Banone,  
15 LLC.

16 This Court awarded the Banone, LLC properties to Lynita and issued a specific  
17 finding that "in order to avoid the ELN Trust from being unjustly enriched . . . the  
18 LSN Trust should be awarded the Banone, LLC properties held by ELN Trust with a  
19 comparable value of \$1,184,236". To prevent this Court's award to Lynita from being  
20 illusory, the Decree will need to be amended and altered to award awarding Lynita an  
21 additional \$151,166 in cash or other assets. Lynita suggests the simplest manner of  
22 doing so would be to award her an additional \$151,166 from the approximate  
23 \$500,000 in cash awarded to Eric from the \$1,568,000 previously held in trust by  
24 David Stephens, Esq. Alternately, this Court could award Lynita other income  
25 producing assets<sup>6</sup>.

26  
27 <sup>6</sup> As the Court's decision imputes a monthly cash flow to Lynita in the amount of \$13,000 from  
28 the income producing properties she is to receive in the overall divorce settlement the \$151,166 must  
be in the form of cash or income producing assets. The only other income producing assets which exist  
are the Banone Arizona properties which have been individually itemized by Larry Bertsch in his July

1 C. Wyoming Downs

2 Finally, Lynita's last request to amend and alter the judgment issued on June 3,  
3 2013 is to address the sole remaining asset not adjudicated in the June 3, 2013 Decree.  
4 The Decree makes clear that the Court believes it was "without sufficient information  
5 regarding the details of the repurchase of the property, the value of the property and  
6 the encumbrances on the property to make a determination as to the disposition of the  
7 property, and, accordingly, is not making any findings or decisions as to the disposition  
8 of the Wyoming Downs property at this time." As no decision has been made to date  
9 concerning the "Wyoming Downs" property referred to at pages 45-46 of the Decree  
10 this issue remains unresolved.

11 Lynita proposes two ways for the Court to reach a the resolution of this issue.  
12 First, this Court could amend or Alter its June 3, 2013 Decree of Divorce and enter an  
13 Order for Declaratory Relief, specifically declaring that Plaintiff and Defendant each  
14 hold a 50% membership interest in Dynasty Development Management, LLC, and all  
15 of its holdings, including the horse racing track and RV park which was purchased by  
16 Plaintiff through Dynasty Development Management, LLC during the course of this  
17 divorce action from Wyoming Racing, LLC for \$440,000.00 ("Wyoming Downs").  
18 This declaratory relief would be consistent with the holding of First Nat'l Bank v.  
19 Wolff, 66 Nev. 51, 202 P.2d 878 (1949), that indicates that "[a]fter the divorce, the  
20 parties to the divorce suit become tenants in common in the omitted property." Id. at  
21 56, 202 P.2d at 881; accord Molvik v. Molvik, 31 Wn.App. 133, 639 P.2d 238 (1982);  
22 Henn v. Henn, 26 Cal.3d 323, 161 Cal.Rptr. 502, 605 P.2d 10 (1980). Alternatively,  
23 Lynita requests this Court re-open this case and permit discovery concerning the  
24 transaction involving Dynasty Development Management, LLC and Wyoming Racing,  
25 which occurred in or about January 2013 and resulted in the purchase of Wyoming  
26  
27  
28

---

5, 2011 Notice of Filing Asset Schedule and Notes to Asset Schedule.



1 Downs as well as the current status of this asset.<sup>7</sup> By entering an order reopening  
2 discovery concerning "Wyoming Downs" this Court will ensure both parties have the  
3 opportunity to obtain the necessary information to present all claims concerning this  
4 asset during a separate trial proceeding, which will result in a final determination as to  
5 the disposition of this property.

6 **D. Attorney Fees**

7 The relief requested by Lynita in this Motion is not extraordinary. Rather, it is  
8 warranted and justified under the circumstances. While Lynita expects that Eric and/or  
9 the ELN Trust will oppose this Motion, as he has opposed nearly every request made  
10 by Lynita during this litigation, should this Court find that Eric and/or the ELN Trust  
11 has unnecessarily increased the costs of litigation as related to this Motion then Lynita  
12 requests an award of attorneys fees commensurate with the fees and costs she will incur  
13 in defending against any such opposition(s).

14 **III. CONCLUSION**

15 Based upon the foregoing, Lynita respectfully requests the Court to alter or  
16 amend its following Orders and grant her requests for relief:

17 1. That the Court Amend or Alter its June 3, 2013 Decree of Divorce to  
18 provide more specificity and clarity concerning the Mississippi real property awarded  
19 to each of the parties in this action, more specifically, to enter an Order listing the  
20 parcels of real property awarded to either Eric or Lynita, by both Parcel ID and Legal  
21 Description as set forth on the attached Exhibit A;

22 2. That the Court Amend or Alter its June 3, 2013 Decree of Divorce to  
23 Order Eric and/or Lana Martin, in her capacity as the individual delegated by Eric to  
24 "defend, maintain and pursue any and all actions on behalf of the Eric L. Nelson  
25 Nevada Trust dated May 30, 2001 in relation to such claims" as set forth in the  
26 document entitled "Delegation of Lana A. Martin" dated August 19, 2011 to execute  
27

---

28 <sup>7</sup> Based upon information available online it appears that Eric intends to conduct a 16 day horse racing event at Wyoming Downs as early as Spring 2014. See Exhibit C.

1 the correction Warranty Deeds attached as Exhibit B to this Motion within ten (10)  
2 days of presentation;

3       3. That the Court Amend or Alter its June 3, 2013 Decree of Divorce to  
4 include an Order requiring the parties to this action to execute any and all deeds,  
5 assignments, or any and all other instruments that may be required in order to  
6 effectuate the transfer of any and all interest either may have in and to the property  
7 awarded to Eric or Lynita (or either party's respective Trust) as set forth in the June 3,  
8 2013 Decree of Divorce within ten (10) days of presentation, or if any party refuses to  
9 sign said documents then the Clerk of the Court shall sign the documents for the party  
10 that refuses to sign said documents to ensure that there is a full and complete transfer  
11 of the interest of one to the other as provided in the Decree of Divorce.

12       4. That the Court Amend or Alter its June 3, 2013 Decree of Divorce and  
13 enter an Order awarding Lynita an additional \$151,166 in cash or other assets  
14 previously designated as being awarded to Eric in light of Eric's sale of two (2) of the  
15 seventeen (17) Banone, LLC rental properties, awarded to Lynita in the Decree, during  
16 the pendency of this action;

17       5. That the Court Amend or Alter its June 3, 2013 Decree of Divorce and  
18 enter an Order for Declaratory Relief, specifically declaring that Eric and Lynita,  
19 through their respective trusts, each holds a 50% membership interest in Dynasty  
20 Development Management, LLC, and all of its holdings, including the horse racing  
21 track and RV park which was purchased by the ELN Trust through Dynasty  
22 Development Management, LLC during the course of this divorce action from  
23 Wyoming Racing, LLC for \$440,000.00, OR ALTERNATIVELY, to re-open this case  
24 and permit discovery concerning the transaction involving Dynasty Development  
25 Management, LLC, Wyoming Racing, LLC, and the purchase an interest in Wyoming  
26 Racing, LLC a horse racing track and RV park for \$440,000.00 which occurred in or  
27 about January 2013, as well as the current status of this asset, so that a separate trial  
28 date can be set to make a determination as to the disposition of this asset.

6. For such further relief as deemed appropriate in the premises including an award of attorneys fees and costs should this Court find that Eric and/or the ELN Trust has unnecessarily increased the costs of litigation as related to this Motion.

DATED this 17<sup>th</sup> day of June, 2013.

THE DICKERSON LAW GROUP

ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

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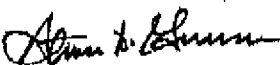
I, KATHERINE L. PROVOST, ESQ., declare under penalty of perjury under the law of the State of Nevada that the following statement is true and correct:

2. I am making this declaration in support of DEFENDANT'S MOTION TO AMEND OR ALTER JUDGMENT, FOR DECLARATORY AND RELATED RELIEF( the "Motion").

3. I have prepared the Motion and swear, to the best of my knowledge, that the facts as set forth therein are true and accurate, save and except any fact stated upon information and belief, and as to such facts I believe them to be true. I hereby reaffirm said facts as if set forth fully herein to the extent that they are not recited herein. If called upon by this Court, I will testify as to my personal knowledge of the truth and accuracy of the statements contained therein.

FURTHER DECLARANT SAYETH NAUGHT.

  
KATHERINE L. PROVOST, ESO.

  
CLERK OF THE COURT

1 **OPP**  
2 **MARK A. SOLOMON, ESQ.**  
3 Nevada State Bar No. 0418  
4 E-mail: [msolomon@sdfhvlaw.com](mailto:msolomon@sdfhvlaw.com)  
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7 E-mail: [jluszeck@sdfhvlaw.com](mailto:jluszeck@sdfhvlaw.com)  
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12 Telephone No.: (702) 853-5483  
13 Facsimile No.: (702) 853-5485  
14 *Attorneys for Distribution*  
15 *Trustee of the ERIC L. NELSON*  
16 *NEVADA TRUST dated May 30, 2001*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 **ERIC L. NELSON,**

13 **Plaintiff/Counterdefendant,**

14 **vs.**

15 **LYNITA SUE NELSON, LANA MARTIN, as**  
16 **Distribution Trustee of the ERIC L. NELSON**  
17 **NEVADA TRUST dated May 30, 2001**

18 **Defendants/Counterclaimants.**

Case No. D-411537  
Dept. No. O

**HEARING DATE: June 19, 2013**  
**HEARING TIME: 2:00 p.m.**

19 **LANA MARTIN, Distribution Trustee of the**  
20 **ERIC L. NELSON NEVADA TRUST dated**  
21 **May 30, 2001,**

22 **Crossclaimant,**

23 **vs.**

24 **LYNITA SUE NELSON,**

25 **Crossdefendant.**

26 **OPPOSITION TO MOTION FOR PAYMENT OF FUNDS BELONGING TO DEFENDANT PURSUANT**  
27 **TO COURT'S DECREE TO ENSURE RECEIPT OF SAME, AND FOR IMMEDIATE PAYMENT OF**  
28 **COURT APPOINTED EXPERT; AND COUNTERMOTION TO STAY PAYMENTS AND TRANSFER**  
**PROPERTY PENDING APPEAL AND/OR RESOLUTION TO THE NEVADA SUPREME COURT FOR**  
**AN EXTRAORDINARY WRIT**

1 The Distribution Trustee ("Trustee") of the ERIC L. NELSON NEVADA TRUST dated May  
2 30, 2001 ("ELN Trust"), by and through her Counsel of Record, Solomon Dwiggin & Freer, Ltd.,  
3 hereby file this Opposition to Lynita Nelson's Motion for Payment of Funds Belonging to Defendant  
4 Pursuant to Court's Decree to Ensure Receipt of Same, and for Immediate Payment of Court  
5 Appointed Expert ("Motion"); and Countermotion to Stay Payments and Transfer Property Pending  
6 Appeal and/or Resolution to the Nevada Supreme Court for An Extraordinary Writ  
7 ("Countermotion").

8 The ELN Trust adamantly opposes the relief requested in the Motion. As this Court is  
9 certainly aware, a Divorce Decree was issued by this Court on June 3, 2013, wherein the ELN Trust  
10 was given 30 days from issuance to make certain payments to Mrs. Nelson, Mr. Dickerson and Mr.  
11 Bertsch. Upon information and belief, this Court granted the ELN Trust 30 days to make such  
12 payments in order to grant the ELN Trust sufficient time to explore its legal options, including filing  
13 an appeal. The ELN Trust intends to file an appeal and/or an extraordinary writ regarding numerous  
14 findings and rulings contained within the Divorce Decree which the ELN Trust contend were clearly  
15 erroneous or contrary to law. Such rulings include, but are not limited to, the following:

- 16 1. Relying upon a layman's characterization of "community property" in  
17 contravention of Nevada law;
- 18 2. Holding that the ELN SSST is responsible to pay Mr. Nelson's spousal  
19 support obligation and to satisfy Mr. Nelson's child support arrearages  
20 obligation based upon statutes from other jurisdictions;
- 21 3. The Court substituting its judgment for the Distribution Trustee; and
- 22 4. Holding the ELN Trust liable for acts that were purportedly undertaken by  
23 Mr. Nelson.

24 NRCP 62 authorizes this Court to grant a stay pending appeal and pending a motion to alter  
25 or amend a judgment made pursuant to NRCP 59. Ms. Nelson filed a Motion to Amend or Alter  
26 Judgment, for Declaratory and Related Relief on June 17, 2013, which is scheduled to be heard on  
27 July 17, 2013. Further, the Nevada Supreme Court will not entertain a motion to stay pending appeal  
28

1 or resolution of original writ proceedings unless or until the appellant is able to show that (1) "moving  
2 first in the district court would be impracticable;" or (2) the "district court denied the motion or failed  
3 to afford the relief requested. . ." See NRAP 8(a)(2)(A).

4 Here, a stay pending appeal and/or writ is appropriate because the ELN Trust will be  
5 irreparably harmed if a stay is not granted because Ms. Nelson and/or the LSN trust are seeking to  
6 alter the contractual obligations between the ELN Trust and third-parties. For example, and by no  
7 means of limitation, Counsel for Ms. Nelson and the LSN Trust served Mr. Nelson with a "Thirty (30)  
8 Day Notice of Termination of Tenancy for the property located at 36111 S. Lindell Road, Suite 201,  
9 Las Vegas, Nevada 89103 ("Lindell Property"), which requires Mr. Nelson to vacate such property  
10 unless he enters into a "binding lease agreement" with the LSN Trust.<sup>1</sup> The Lindell Property is where  
11 the ELN Trust conducts business. Counsel for Ms. Nelson and the LSN Trust has also notified Joan  
12 B. Ramos that the Note dated February 23, 2010, and corresponding Deed of Trust with Assignment  
13 of Rents has been assigned and transferred to the LSN Trust.<sup>2</sup> Further, Counsel for Ms. Nelson and  
14 the LSN Trust has already contacted some or all of the tenants of Banone, LLC, advising said tenants  
15 to make all future rental payments to her, and to possibly enter into a new lease with the LSN Trust.<sup>3</sup>

16 Additionally, the ELN Trust is concerned that if it is forced to make an immediate payment  
17 to Ms. Nelson, Mr. Dickerson and Mr. Bertsch it will be unable to recoup said funds if successful on  
18 appeal. Specifically, with respect to Ms. Nelson, from 2009 through March 2012 she has received  
19 and spent over \$2,000,000.00 in income alone<sup>4</sup> and as she admitted in the Motion, she "has  
20 approximately \$19,000.00 in her bank accounts, but has outstanding credit card balances of  
21

---

22  
23 <sup>1</sup> See Correspondence from Robert P. Dickerson, Esq. dated June 10, 2013, and Third  
24 Day Notice of Termination of Tenancy, attached hereto as **Exhibit 1**.

25 <sup>2</sup> See Correspondence from Katherine L. Provost, Esq. dated June 7, 2013, to Joan  
26 Ramos, attached hereto as **Exhibit 2**.

27 <sup>3</sup> See Correspondence from Katherine L. Provost, Esq. Dated June 7, 2013, to the  
28 current tenant of 2209 Farmouth Circle, attached hereto as **Exhibit 3**.

<sup>4</sup> See Notice of Filing Income and Expense Reports for Lynita Nelson for the Period  
of January 1, 2011 through March 31, 2013, previously filed on May 1, 2012.

1 \$53,674.00, current household bills of \$3,130.00. " See Motion at 6:10-13.

2 For these reasons, the ELN Trust respectfully requests that the Divorce Decree be stayed in  
3 its entirety pending appeal and/or filing an extraordinary writ. Alternatively, if this Court is not  
4 inclined to stay the relief granted in the Divorce Decree, the ELN Trust respectfully requests that this  
5 Court deny Ms. Nelson's Motion for immediate payment so that the ELN Trust will have thirty days,  
6 which is what the Court initially granted to make such payments, to file an appeal or extraordinary  
7 writ.

8 DATED this 18<sup>th</sup> day of June, 2013.

9  
10 SOLOMON DWIGGINS & FREER, LTD.

11  
12 By: 

13 MARK A. SOLOMON, ESQ.  
14 Nevada State Bar No. 0418  
15 JEFFREY P. LUSZECK  
16 Nevada State Bar No. 9619  
17 Cheyenne West Professional Centre'  
18 9060 West Cheyenne Avenue  
19 Las Vegas, Nevada 89129  
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IN THE SUPREME COURT OF THE STATE OF NEVADA

NOLA HARBER, AS DISTRIBUTION  
TRUSTEE OF THE ERIC L. NELSON  
NEVADA TRUST DATED MAY 30, 2001,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
FRANK P. SULLIVAN, DISTRICT  
JUDGE,

Respondents,

and

ERIC L. NELSON AND LYNITA S.  
NELSON, INDIVIDUALLY; LSN  
NEVADA TRUST DATED MAY 30, 2001;  
AND LARRY BERTSCH,  
Real Parties in Interest.

No. 63432

**FILED**

JUN 21 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. McNamee  
DEPUTY CLERK

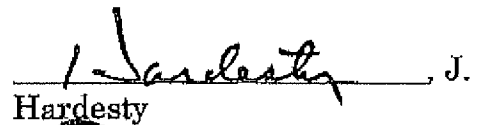
*ORDER DIRECTING ANSWER AND GRANTING TEMPORARY STAY*

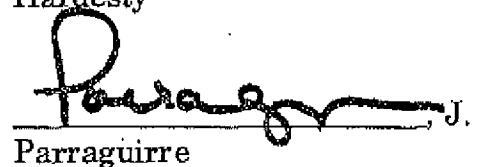
This is an original petition for a writ of prohibition challenging a district court divorce decree and an order directing payment from a self-settled spendthrift trust. Petitioners have also filed an emergency motion for a stay of the order directing payment.

Having reviewed the petition, it appears that petitioners have set forth issues of arguable merit and that petitioners may have no adequate remedy in the ordinary course of law. Therefore, real parties in interest, on behalf of respondents, shall have 15 days from the date of this order to file an answer, including authorities, against issuance of an extraordinary writ. Petitioners shall have 11 days from filing and service of the answer to file and serve any reply.

Having considered the emergency motion to stay the district court's June 19, 2013, order directing payment from the spendthrift trust, we conclude that a temporary stay is warranted to allow for receipt and consideration of any opposition to the stay motion and the answer to the writ petition. We therefore stay the June 19, 2013, order directing payment from the trust in Eighth Judicial District Court Case No. D411537 pending further order of this court.

It is so ORDERED.

 J.  
Hardesty

 J.  
Parraguirre

cc: Hon. Frank P. Sullivan, District Judge  
Solomon Dwiggins & Freer  
Radford J. Smith, Chtd.  
Larry Bertsch  
Dickerson Law Group  
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

NOLA HARBER, AS DISTRIBUTION  
TRUSTEE OF THE ERIC L. NELSON  
NEVADA TRUST DATED MAY 30, 2001,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
FRANK P. SULLIVAN, DISTRICT  
JUDGE,

Respondents,

and

ERIC L. NELSON AND LYNITA S.  
NELSON, INDIVIDUALLY; LSN  
NEVADA TRUST DATED MAY 30, 2001;  
AND LARRY BERTSCH,  
Real Parties in Interest.

No. 68482

**FILED**

JUN 26 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Malone*  
DEPUTY CLERK

*ORDER EXTENDING TEMPORARY STAY*

On June 21, 2013, this court entered a temporary stay of the district court's June 19, 2013, order that directed the Eric L. Nelson Nevada Trust to pay the sum of \$1,032,742 to Lynita S. Nelson and the sum of \$35,258 to Larry Bertsch within 24 hours of presentation of the order to counsel for the trust. The June 19, 2013, order accelerated payment of these sums that were originally ordered to be paid under the divorce decree, and which were originally due within 30 days of the June 3, 2013, decree.

On June 26, 2013, petitioner filed a motion requesting that the temporary stay be extended to the portions of the divorce decree directing payment of these sums. Petitioner contends that the trust may still arguably be required to make the same payments within 30 days of the

June 3, 2013, divorce decree. Having considered the motion, we grant it. Accordingly, we extend the temporary stay to the portions of the June 3, 2013, divorce decree entered in Eighth Judicial District Court Case No. D411537 that directed payment within 30 days from the Eric L. Nelson Nevada Trust in the sum of \$1,032,742 to Lynita S. Nelson and in the sum of \$35,258 to Larry Bertsch.

It is so ORDERED.

J. Hardesty J.  
Hardesty

Parraguirre J.  
Parraguirre

Cherry J.  
Cherry

cc: Hon. Frank P. Sullivan, District Judge, Family Court Division  
Solomon Dwiggins & Freer  
Radford J. Smith, Chtd.  
Larry Bertsch  
Dickerson Law Group  
Eighth District Court Clerk

**ERIC L. NELSON NEVADA TRUST**

**u/a/d 5/30/2001**

**THE ERIC L. NELSON NEVADA TRUST**

**Dated May 30, 2001**

Prepared by  
Jeffrey L. Burr & Associates  
4455 South Pecos  
Las Vegas, Nevada 89121

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# Trust Agreement

OF THE  
ERIC L. NELSON NEVADA TRUST

THIS TRUST AGREEMENT made this 24 day of May, 2001, by and between ERIC L. NELSON, a resident of Clark County, Nevada (hereinafter sometimes referred to as "Trustor" or "Grantor"), and ERIC L. NELSON (hereinafter referred to as "Investment Trustee") and LANA MARTIN (hereinafter referred to as "Distribution Trustee"). For purposes of this Trust Agreement both Investment Trustee and Distribution Trustee shall sometimes hereinafter collectively be referred to as "Trustees";

~~Trustee(s);~~

WHEREAS, the Trustor desires by this Trust Agreement to establish an Irrevocable Trust upon the conditions and for the purposes set forth in this instrument.

NOW, THEREFORE, the Trustor hereby gives, grants and delivers irrevocably, IN TRUST, unto the Trustees, the properties described in the Asset Inventory, TO HAVE AND TO HOLD THE SAME IN TRUST, and to manage, invest, and reinvest the same, and any later additions thereto, subject to the terms and conditions thereto.

## ARTICLE I

### ADDITIONS TO TRUST

Additional property may be accepted by the Investment Trustee at a later time. The Trust shall be on a calendar year, ending December 31st of each year, for Trust tax and accounting purposes. Property subject to this instrument is referred to as the "Trust estate."

## ARTICLE II

### BENEFICIARIES AND TRUST NAME

2.1 Beneficiaries. The Trust shall be for the benefit of ERIC L. NELSON, and for other beneficiaries named herein. The name of the now living spouse of the Trustor is LYNTIA SUB NELSON. The names of the five (5) now living children of the Trustor are AMANDA NELSON, AUBREY NELSON, ERICA NELSON, GARRETT LEE NELSON, and CARLI ANN



NELSON and they shall hereinafter be referred to, for purposes of the Trust Agreement, as the "children of the Trustor," who shall also be permissible beneficiaries. This Trust may also be for the benefit of the following tax-exempt charities, which qualify as such under the laws of the United States of America by the Internal Revenue Service or other agency of the government of the United States of America for which contributions to such qualified charity may qualify for the charitable income tax deduction under Code Section 170 or any successor legislation thereto.

2.2 Name. The Trust created in this instrument may be referred to as the "ERIC L. NELSON NEVADA TRUST."

### ARTICLE III

#### DISTRIBUTION OF INCOME AND PRINCIPAL

##### DURING THE LIFE OF THE TRUSTOR

3.1 Distribution of Income and Principal. During the lifetime of the Trustor, any property which is directed to be held in accordance with the terms and conditions set forth in this Article shall be held, by the Trustees, IN TRUST, for the following use and purposes: To manage, invest and reinvest the same, to collect the income thereof, and to pay over or apply the net income and/or principal thereof, and in such amounts and proportions, including all to one to the exclusion of the others, and at such time or times as the Trustees, in their sole and absolute discretion, shall determine, to or for the benefit of such one or more members of the class consisting of the Trustor, the Trustor's issue and other beneficiaries named herein or as described in Section 2.1 above, until the death of the Trustor. Any net income (which may be the whole of such income) not so paid over or applied shall be accumulated and added to the principal of the trust at least annually and thereafter shall be held, administered and disposed of as part thereof.

3.2 Trustor's Veto Right. During the life of the Trustor, at least ten (10) days prior to making any payment or application of income or principal to any beneficiary other than the Trustor, the Distribution Trustee shall advise the Trustor of the Trustees' intention to pay over or apply income or principal to a beneficiary other than the Trustor and the Trustor may veto any such intended payment or application by directing the Distribution Trustee in writing not to make and/or authorize the payment or application, and, if such veto is exercised by the Trustor, the Distribution Trustee shall not make and/or authorize the intended payment or application to

the intended beneficiary. The Trustor retains the right to renounce the veto power granted to the Trustor in this Article III by delivery of an acknowledged written instrument to the Trustees renouncing such veto power.

3.3 Distributions to a Trustor. Notwithstanding anything above to the contrary, any decision to make a distribution to the Trustor may not be made by the Trustor, even though the Trustor may be serving as a Trustee hereunder. Prior to any distribution to the Trustor of either income or principal of the Trust estate, a meeting of a majority of the Trustees, which majority must also include the Distribution Trustee, shall be held. At such meeting, the Trustees shall discuss the advisability of making a distribution of the Trust estate to the Trustor. Upon the vote of the Distribution Trustee and a majority of the other Trustees in attendance at such meeting, which vote must in all events include the affirmative vote of the Distribution Trustee, the Trustees may authorize and carry out the distribution of Trust income and/or principal to the Trustors.

Notwithstanding the foregoing, a meeting of the Trustees shall be effective whether held in person or by telephone or other electronic means. In addition, the Trustees may also effect a valid meeting hereunder by execution of a written consent in lieu of Trustees' meeting, which shall specifically state the amount of the Trust estate to be distributed to Trustor. However, for any written consent to be effective, it must be a unanimous written consent, subscribed to by all Investment Trustees and all Distribution Trustees.

3.4 Unauthorized Distributions to the Trustor. In the event any distribution of any of the Trust estate shall be made to the Trustor, and if such distribution is not previously authorized by the Trustees in the manner as required pursuant to Section 3.3 above, then such distribution made to the Trustor shall be void and the Distribution Trustee shall have a lien against the Trust estate distributed to the Trustor and such lien shall also extend if necessary to make the Trust estate whole, to any and all other assets of the Trustor. For as long as any of the Trust estate has passed without proper authorization out of Trust to the Trustor, upon return of the unauthorized distribution, the Trustor shall return to the Trust estate the value of the unauthorized distribution plus interest on the value of such unauthorized distribution, at a rate of One Percent (1%) per month, compounded monthly. In the event of any such unauthorized distribution, the Distribution Trustee shall give notice of the unauthorized distribution to the other named non-charitable beneficiaries hereunder as set forth in Section 2.1 above.

Furthermore, the Distribution Trustee shall have all other rights and powers as shall be necessary to recover from the Trustor the unauthorized distributions and make the Trust estate whole.

3.5 Power of Appointment. While the Trustor is living, he shall have the testamentary power to direct the Trustees to pay over and distribute Trust principal from the Trust estate in the manner provided in a special testamentary power of appointment signed by the Trustor and delivered to the Trustees. The Trustor's power to appoint beneficiaries of the Trust shall be unlimited; provided, however, that the Trustor may not appoint Trust estate, or any part thereof, to the estate of the Trustor or to creditors of the Trustor's estate. The power of appointment shall not be limited with regard to the shares or proportions to be allocated or with regard to whether a distribution shall be outright or held in trust. If the Trustor has failed to appoint beneficiaries as provided above, then the remaining assets of the Trust shall be distributed as provided for in Article IV below.

3.6 Trustor's Retained Powers of Administration. Notwithstanding any provisions contained herein to the contrary, the Trustor, whether or not acting in capacity as an Investment Trustee hereunder, shall have the power to reacquire the Trust corpus by substituting therefore other property of an equivalent value. This power may be exercised by the Trustor in a nonfiduciary capacity without the approval or consent of any Trustee, Co-Trustee or other person acting in a fiduciary capacity with respect to the Trusts created hereunder other than the right in the Trustee(s) to require fair appraisals of property received from Trustor or transferred to the Trustor in such substitution. This power of substitution shall apply only to the Trustor and shall not override N.R.S. 163.050 with respect to a trustee's acts of buying from or selling to an affiliate other than as specifically provided herein with respect to transfers between the Trustees and Trustor for fair value. Trustor understands that retention of such powers shall cause the Trust income to be taxable to him under Subchapter J, Subpart E of the Internal Revenue Code of 1986, as amended, and agree to pay all income taxes attributable to such Trust income. A Trustor may irrevocably relinquish this power of substitution at any time by a writing given to the Trustee.

#### ARTICLE IV

#### DISTRIBUTION AND ADMINISTRATION

#### AFTER THE DEATH OF THE TRUSTOR WITH HIS SPOUSE SURVIVING

4.1 Decedent and Survivor Defined. Upon the death of the Trustor, if his spouse is then living, the Trustee shall administer and divide the Trust estate, including all property received by the Trustee by reason of Trustor's death as follows:

- (a) The Trustee may, in the Trustee's sole discretion, pay from the income and/or principal of this Trust estate, the administrative expenses for the Trustor's estate; provided, however, that all such expenses shall first be paid by the Trustees of the ERIC L. NELSON SEPARATE PROPERTY TRUST, established on July 13, 1993, if the assets of such trust are sufficient to pay all such administration expenses. The Trustee may also pay the expenses of the funeral of the Trustor, but only if such expenses are not otherwise payable from the remaining assets of the ERIC L. NELSON SEPARATE PROPERTY TRUST. Notwithstanding the terms and conditions set forth herein, under no circumstances shall the proceeds from any Individual Retirement Account (IRA), 401(k) or other retirement accounts assigned to this Trust be utilized to pay the taxes, debts, expenses or administrative costs owed by the Trustor, his or her estate and this Trust.
- (b) The remainder of the Trust estate and the property received by the Trustee by reason of Trustor's death shall be divided into two separate trusts and administered as hereinafter provided:
  - (1) The Nevada Exemption Trust. The Trustee shall first allocate to the Nevada Exemption Trust, a sum not to exceed the maximum amount that can pass to the Trust free of Federal Estate Tax, after taking into account all available deductions, the unified credit and the state death tax credit (provided use of this credit does not result in an increase in the state death taxes paid) allowable to the Trustor's estate, and after also taking account of property disposed of by previous articles in this Trust and property passing outside of this Trust which is includible in the Trustor's gross estate and which does not qualify for the marital or charitable deduction, and after taking account of charges to principal that are not allowed as deductions in computing the deceased spouse's Federal Estate Tax. This allocation may be satisfied in cash or in kind, including undivided interests in property.
  - (2) The Nevada Marital Trust. If the spouse of the Trustor survives him by a period of 180 days, the Nevada Marital Trust shall consist of the rest of the Trust estate, after allocations have been made to the Nevada Exemption Trust. If the spouse of the Trustor does not survive him, the remaining Trust estate shall be distributed to the Nevada Exemption Trust.

- (3) Disclaimer. If the surviving spouse of the Trustor disclaims any of her interest in the remaining property destined for the Nevada Marital Trust, such disclaimed property shall be distributed to the Exemption Trust hereunder. Any such disclaimed property, which is added to the Nevada Exemption Trust, shall not be subject to any powers of appointment granted to the surviving spouse of the Trustor, except for those powers that would not cause such disclaimer to fail to be a qualified disclaimer under the regulations and rulings issued under Sections 2046 and 2518 of the Internal Revenue Code in effect at the time of such disclaimer.

- (c) The values to be used in computing the property to be allocated to the Nevada Exemption Trust shall be the value of such assets on the date of allocation. The property to be allocated by the Trustee to the Nevada Exemption Trust shall be selected by the Trustee and, subject to the limitation set out hereinbelow, the values of the assets so allocated shall be those above directed to be used in computing the amount of the applicable exemption. In selecting property for allocation to the Nevada Exemption Trust, the Trustee shall comply with the following rule: The value of the property, including cash, so allocated shall be selected in such a manner as to have an aggregate fair market value fairly representative of appreciation or depreciation in value, to the date or dates of each allocation, of all property then available for such allocation in satisfaction of this devise and bequest to the Trustee of the Nevada Exemption Trust. In selecting assets to comply with the above rule, the Trustee is authorized to allocate property in appropriate undivided interests. It is not intended that the Nevada Exemption Trust shall qualify for the marital deduction under federal revenue laws then in force at the Trustor's death.

- (d) In the event the Trustee receives property by inter vivos or testamentary transfer and directions are contained in the instrument of transfer for allocation to or among the respective trusts contained herein, the Trustee shall make allocations in accordance with such directions, anything to the contrary herein notwithstanding.

4.2 Nevada Exemption Trust. The Investment Trustee shall hold, manage, invest and reinvest the Nevada Exemption Trust estate and shall collect the income therefrom and dispose of the net income and principal as follows:

- (a) During the lifetime of the surviving spouse of the Trustor, the Investment Trustee, in her absolute discretion, shall pay to the Trustor's spouse such amounts of the net income of the Nevada Exemption Trust estate as shall be necessary for her health, education, maintenance, and support.
- (b) The surviving spouse of the Trustor shall have the discretionary power during her lifetime or upon her death to direct the Trustee to pay over and distribute trust principal from the Nevada Exemption Trust in the manner provided in a power of appointment signed by the Trustor's spouse and delivered to the Trustee. The

power to appoint beneficiaries of the Nevada Exemption Trust shall be limited to the issue of the Trustor and shall exclude the Trustor's surviving spouse, her estate, her creditors, and creditors of her estate. The power of appointment shall not be limited with regard to the shares or proportions to be allocated or with regard to whether a distribution shall be outright or held in trust. If the spouse of the Trustor has failed to appoint beneficiaries as provided above, then the remaining assets of the Nevada Exemption Trust shall be distributed as provided for below.

- (c) If, in the opinion of the Trustee, the income from all sources of which Trustee has knowledge shall not be sufficient for the health, education, support and maintenance of the Trustor's surviving spouse, the Trustee is authorized to use and expend such part of the Trust principal as is necessary to meet such needs,
- (d) If some or all of the Trustor's generation-skipping exemption is allocated to the property (or exempt portion of the property) that is otherwise to constitute the Nevada Exemption Trust and if that Trust would thereby have an inclusion ratio greater than zero, the Trustee shall instead establish two separate trusts so that each has a generation-skipping inclusion ratio of either zero (the "Exempt Nevada Exemption Trust") or one (the "Nonexempt Nevada Exemption Trust"), and the Trustee shall accomplish this by allocating to the Nonexempt Nevada Exemption Trust the maximum fractional portion of the property (described in paragraph (2) above) that is necessary to establish that trust with an inclusion ratio of one, while leaving the Exempt Nevada Exemption Trust with an inclusion ratio of zero.
- (e) The Trustee's duty to report information or account to the beneficiaries of the Nevada Exemption Trust, other than the Trustor's spouse, is hereby waived.
- (f) Upon the death of the Trustor's spouse, the Trustee shall administer the entire remaining income and principal of this Trust in accordance with Article V below.
- (g) The Trustee of the Nevada Exemption Trust shall respect and comply with any directions given and provisions made by the Trustor's Will for the payment of debts of the Trustor and the expenses and other obligations of his estate, and for the payment and allocation of any death taxes resulting from his death. To the extent these matters are not covered by the Trustor's Will, the Trustee of the Nevada Exemption Trust shall (without charge to any beneficiary) pay all federal, state and foreign death taxes payable on or with respect to any property which passes or has passed under this agreement, under the Trustor's Will or otherwise and which qualifies for the federal estate tax marital deduction; in all other respects the liability for and burden of federal, state and foreign death taxes imposed by reason of the Trustor's death, shall be paid by the person or from the property upon which an inheritance tax is specifically imposed or, in the case of estate or other taxes, shall be allocated or apportioned in accordance with federal and Nevada law; and the Trustee of the Nevada Exemption Trust may, in the Trustee's discretion, pay debts, last illness and funeral expenses of the Decedent

and the administrative expenses and other obligations of his estate. If, however, what would otherwise have been the Nevada Exemption Trust is instead established as two separate trusts under paragraph 4.2(d) above, the payments to be made from the Nevada Exemption Trust under this paragraph (a) shall be made first from the Nonexempt Nevada Exemption Trust.

4.3 Nevada Marital Trust. The Investment Trustee shall hold, manage, invest and reinvest the Nevada Marital Trust Estate and shall collect the income therefrom and dispose of the net income and principal as follows:

- (a) The Investment Trustee shall pay to the surviving spouse of the Trustor, during her lifetime, all of the net income of the Nevada Marital Trust in convenient, regular installments, but not less frequently than quarter annually. (N.R.S. Chapter 166 provides that the Trustee of a Nevada trust may not be required to make distributions of either principal or income to the Trustor of the Nevada trust. Because the Nevada Marital Trust is funded only with assets from the Trustor's separate property and/or the Trustor's one-half (1/2) interest in community property, the surviving spouse of the Trustor is not the Settlor of the Nevada Marital Trust and, therefore, this required distribution of income is not contrary to the terms of N.R.S. Chapter 166.)
- (b) If, in the opinion of the Investment Trustee, the income and principal from all other sources of which the Investment Trustee has knowledge shall not be sufficient for the education, health, support or maintenance of the surviving spouse of the Trustor in her accustomed manner of living at the date of the Trustor's death, the Investment Trustee is authorized to use and expend such part of the Trust principal as is necessary to meet such needs.
- (c) The surviving spouse of the Trustor shall have the discretionary power upon her death to direct the Trustee to pay over and distribute trust principal from the Nevada Marital Trust in the manner provided in a power of appointment signed by the surviving spouse of the Trustor and delivered to the Trustees. The power to appoint beneficiaries of the Nevada Marital Trust shall be limited to the issue of the Trustor. The power of appointment shall not be limited with regard to the shares or proportions to be allocated or with regard to whether a distribution shall be outright or held in trust. If the surviving spouse of the Trustor has failed to appoint beneficiaries as provided above, then the remaining assets of the Nevada Marital Trust shall be distributed as provided for below.
- (d) Upon the death of the Trustor's surviving spouse, the net income of the Trust which has not been distributed shall be distributed to the Nevada Survivor's Trust or to her estate. The Trustee shall administer the remaining principal of this Trust in accordance with Article V.
- (e) Upon the death of the Trustor's surviving spouse, the Trustee shall pay from the Trust estate the entire increment in taxes in the estate of the Trustor's spouse

payable by reason of the Trustor's death (including any interest or penalties thereon) to the extent that the total of such taxes is greater than would have been imposed if this Trust estate were not taken into account in determining such taxes. If more than one qualified terminable interest property trust is created as authorized by 4.3(h) and if any portion of the estate tax is required to be charged against and paid from a qualified terminable interest property trust, then such taxes shall be first charged against and paid without apportionment out of the principal of the trust as to which the special election provided by Section 2652(a)(3) of the Code is not applicable. Notwithstanding the terms and conditions set forth herein, under no circumstances shall the proceeds from any Individual Retirement Account (IRA), 401(k) or other retirement accounts assigned to this Trust be utilized to pay the taxes, debts, expenses or administrative costs owed by the Trustor, his estate and this Trust.

- (f) The surviving Trustor shall have the right to require the Trustee to invest the property subjected to this Trust into productive, income producing property.
- (g) It is the Trustor's intent that the property comprising the Trust estate of this Trust qualify for the marital deduction allowed by the Federal Estate Tax law applicable to the Trustor's estate. All questions applicable to the marital deduction and this Trust shall be resolved accordingly. To this end, the powers and discretions of the Trustee with respect to allocations of property to this Trust, and with respect to administration of the Trust during the spouse's lifetime, shall not be exercised or exercisable except in a manner consistent with the Trustor's intent as expressed in this paragraph.
- (h) If the special election provided by Section 2652(a)(3) of the Code is exercised as to any property held in this Trust, the Trustee of this Trust is authorized, at any time in the exercise of absolute discretion, to set apart such property in a separate trust so that its inclusion ratio, as defined in Section 2642(a) of the Code is zero.

#### ARTICLE V

##### DISTRIBUTION AND ADMINISTRATION

##### AFTER THE DEATH OF THE TRUSTOR AND THE TRUSTOR'S SPOUSE

5.1 Distribution of Trust Assets. Upon the death of the Trustor and the Trustor's spouse, any remaining unappointed property, both income and principal of this Trust estate, shall be distributed in the same manner and for the same beneficiaries as provided for in the ERIC L. NELSON SEPARATE PROPERTY TRUST, dated July 13, 1993. The Trust estate shall in no event be administered as part of the ERIC L. NELSON SEPARATE PROPERTY TRUST, dated July 13, 1993, unless the Trustor shall specifically so provide pursuant to the powers of appointment as provided for in Section 3.4 above. In the event such Trust has been revoked,



then the remaining unappointed Trust estate shall be divided into as many equal shares as there are children of the Trustor who are then living and children of the Trustor who are deceased leaving issue then living, and these shares shall be distributed or retained as follows:

- (a) If any child of the Trustor is then over the age of Thirty-five (35) years, his or her Trust share shall be distributed to him or her, outright and free of Trust,
- (b) For each child of the Trustor who is then under the age of Thirty-five (35) years, his or her Trust share shall be retained in a separate Trust and shall be administered and distributed as follows:
  - (1) Until the child attains the age of Nineteen (19) years, the net income and principal from each Trust share shall be distributed to the child as is necessary, in the discretion of the Trustee, for the support, maintenance, education or health needs of the child. Any excess income that is not distributed for these purposes shall be accumulated and added to principal.
  - (2) When the child attains the age of Nineteen (19) years, income and principal may only be used, in the discretion of the Trustee, for the education or health needs of the beneficiary.
  - (3) Upon attaining the age of Thirty (30) years, Ten Percent (10%) of the then value of the child's Trust share shall be distributed to him or her, outright and free of Trust. Upon attaining the age of Thirty-five (35) years, the entire remaining balance of the child's Trust share shall be distributed to the child, outright and free of Trust.
  - (4) In addition to the terms above, the Trustee may also distribute to a child of the Trustor, from his or her respective Trust share, money or property to start a business, buy a home or transact other necessary legal matters if the Trustee, in the Trustee's sole discretion, feels it to be in the best interest of the beneficiary to do so.
  - (5) If prior to full distribution a child becomes deceased, his or her remaining Trust share shall be distributed outright equally to his or her issue who are then living under the terms and conditions as set forth in 5.1(c) below or, if there are no then living issue of the child, his or her remaining share shall be distributed outright to the then living issue of the Trustor, by right of representation. However, if any such distributee is one for whom a Trust is then being administered under this Article V, the share of such distributee shall, instead of being distributed outright, be added to that Trust and administered and distributed in accordance with its terms.
- (c) One equal share shall be held in a separate Trust for the issue of each child of the Trustor who is then deceased leaving issue then living, each such Trust shall be divided into as many equal shares as there are children of the Trustor's deceased

child who are then living (hereinafter referred to as "grandchildren of the Trustor" or "grandchild of the Trustor") and grandchildren of the Trustor who are deceased leaving issue then living, and these shares shall be distributed or retained as follows:

- (1) If any grandchild of the Trustor is then over the age of Thirty-five (35) years, his or her share shall be distributed to him or her, outright and free of Trust.
- (2) For each grandchild of the Trustor who is then under the age of Thirty-five (35) years, his or her share shall be retained in a separate Trust and, until the grandchild attains the age of Nineteen (19) years, the net income and principal from each Trust share shall be distributed to the grandchild as is necessary, in the discretion of the Trustee, for the support, maintenance, education or health needs of the grandchild. Any excess income that is not distributed for these purposes shall be accumulated and added to principal.
- (3) After the grandchild attains the age of Nineteen (19) years, the net income and principal may only be used, in the discretion of the Trustee, for the education or health needs of the beneficiary.
- (4) Upon attaining the age of Thirty (30) years, Ten Percent (10%) of the then value of the grandchild's Trust share shall be distributed to him or her, outright and free of Trust. Upon attaining the age of Thirty-five (35) years, the entire remaining balance of the grandchild's Trust share shall be distributed to the grandchild, outright and free of Trust.
- (5) In addition to the terms above, the Trustee may also distribute to a grandchild of the Trustor, from his or her respective Trust share, money or property to start a business, buy a home or transact other necessary legal matters if the Trustee, in the Trustee's sole discretion, feels it to be in the best interest of the beneficiary to do so.
- (6) If prior to full distribution a grandchild becomes deceased, his or her remaining share shall be distributed outright equally to his or her issue who are then living under the same terms and conditions as set forth in this section or, if there are no then living issue of the grandchild, his or her remaining share shall be distributed outright to his or her then living siblings. If the deceased grandchild has no then living siblings, his or her remaining Trust share shall be distributed to the issue of the Trustor by right of representation. However, if any such distributee is one for whom a Trust is then being administered under this Article V, the share of such distributee shall, instead of being distributed outright, be added to that Trust and administered and distributed in accordance with its terms.

5.2 Last Resort Clause. In the event that the principal of the Trust administered under this Article V is not disposed of under the foregoing provisions, the remainder, if any, shall be distributed, in equal shares and outright and free of Trust, to the then living brothers and sisters of ERIC L. NELSON.

**ARTICLE VI**  
**TRUSTEE'S DISCRETION ON DISTRIBUTION**  
**TO PRIMARY BENEFICIARIES**

Notwithstanding the distribution provisions of this Trust Agreement, with respect to the distributions provided for in Articles IV and V above, the following powers and directions are given to the Distribution Trustee:

- (a) If, upon any of the dates described herein, the Trustee for any reason described below determines, in the Trustee's sole discretion, that it would not be in the best interest of the beneficiary that a distribution take place, then in that event the said distribution shall be totally or partially postponed until the reason for the postponement has been eliminated. During the period of postponement, the Trustee shall have the absolute discretion to distribute income or principal to the beneficiary as the Trustee deems advisable for the beneficiary's welfare.
- (b) If said causes for delayed distribution are never removed, then the Trust share of that beneficiary shall continue until the death of the beneficiary and then be distributed as provided in this Trust Instrument. The cases of such delay in the distribution shall be limited to any of the following:
  - (1) The current involvement of the beneficiary in a divorce proceeding or a bankruptcy or other insolvency proceedings.
  - (2) The existence of a large judgment against the beneficiary.
  - (3) Chemical abuse or dependency, or the conviction of the beneficiary of a felony, involving drugs or narcotics, unless a five year period has followed said conviction.
  - (4) The existence of any event that would deprive the beneficiary of complete freedom to expend the distribution from the Trust estate according to his or her own desires.
  - (5) In the event that a beneficiary is not residing in the United States of America at any given time, then the Trustee may decline to transmit to him or her any part or all of the income and shall not be required to transmit to him or her any of the principal if, in the Trustee's sole and uncontrolled judgment, the political and/or economic conditions of such

place of residence of the beneficiary are such that it is likely the money would not reach him or her, or upon reaching him or her, would be unduly taxed, seized, confiscated, appropriated, or in any way taken from him or her in such a manner as to prevent his or her use and enjoyment of the same.

- (6) The judicially declared incompetency of the beneficiary.
- (c) The Trustee shall not be responsible unless the Trustee has knowledge of the happening of any event set forth above.
- (d) To safeguard the rights of the beneficiary, if any distribution from his or her Trust share has been delayed for more than one (1) year, he or she may apply to the District Court in Las Vegas, Nevada, for a judicial determination as to whether the Trustee has reasonably adhered to the standards set forth herein. The Trustee shall not have any liability in the event the Court determines the Trustee made a good faith attempt to reasonably follow the standards set forth above.

#### ARTICLE VII

##### DISTRIBUTIONS IN KIND

The Trustee is authorized and empowered, in the Trustee's sole discretion, to make distributions in kind, or partly in cash and partly in kind, or by granting, transferring or assigning an undivided interest. The judgment of the Trustee concerning the valuation for the purposes of such distribution of the property or security shall be binding and conclusive on all parties interested herein.

#### ARTICLE VIII

##### IRREVOCABLE TRUST

The Trust is irrevocable and may not be altered, amended or revoked. Should any power or interest be held, retained or hereafter acquired by the Trustor or Trustee, which would cause or appear to cause the Trust estate for any reason to be subject to the claims of any creditors, then the Trustor and Trustee shall be permitted to abandon or release any such powers or interests.

#### ARTICLE IX

##### ADDITIONAL PROPERTIES

It is agreed by and between the parties hereto that the Trustor shall have the right, at any time, to devise, bequeath, grant, convey, give or transfer additional real, personal or mixed properties to the Trust by inter vivos act or by will, subject to the same terms and conditions

as the original provisions of this Trust Agreement, and said additions shall be evidenced by receipt therefore signed by the Trustee.

#### ARTICLE X

##### INCOMPETENCY OF BENEFICIARIES

During any period in which a beneficiary may be declared judicially incompetent, or if in the sole judgment of the Trustee the beneficiary is unable to care for himself or herself, the Trustee(s) may pay over to, or use for the benefit of such beneficiary the net income or any part or all of the principal of the Trust estate which has been set aside for that beneficiary, in such manner as the Trustee(s) shall deem necessary or desirable for such beneficiary's best interests.

#### ARTICLE XI

##### PROVISIONS RELATING TO TRUSTEESHIP

11.1 Successor Investment Trustee. Upon the death or resignation of ERIC L. NELSON, then LYNITA SUB NELSON shall serve as the Successor Investment Trustee hereunder. If LYNITA SUB NELSON should become deceased, unable or unwilling to serve, NOLA HARBER shall serve as the Successor Investment Trustee hereunder. If NOLA HARBER should become deceased, unable or unwilling to serve as the Successor Investment Trustee, CLARENCE NELSON shall serve as the Successor Investment Trustee hereunder.

11.2 Successor Distribution Trustee. Upon the resignation or removal of the original Distribution Trustee, then LANA MARTIN shall serve as the Successor Distribution Trustee hereunder; provided, however, that in the event of the death of the Trustor, the Distribution Trustee shall cease to serve as Trustee hereunder, and the administration and distribution of the Trust estate shall thereupon be under the exclusive control of the Investment Trustee(s).

11.3 Trust Consultant. JEFFREY L. BURR, LTD., a Nevada corporation (herein known as the "Consultant" to the Trust), shall have the right and power by giving ten (10) days written notice to the Trustee to remove any Trustee named herein (except the Trust Consultant may not remove the Trustor as a Trustee hereunder) and/or any Successor Trustee, and to appoint either (1) an individual who is an "independent" Trustee pursuant to Internal Revenue Code Section 674, as amended, or (2) a Nevada bank or Trust company to serve as Trustee or as Co-Trustees of the Trusts created hereunder. In the event of the death, resignation, incompetency, dissolution or failure to serve of any Trustee, then the Trust Consultant shall have the power to appoint a Successor Trustee as provided above. In the event he shall fail to appoint

a Successor Trustee, then a majority of the Adult Beneficiaries may appoint a banking institution or trust company to so serve. At all times at least one Trustee serving shall be a Nevada Trustee, as defined in Section 10.12 below, unless the Trustees shall choose to administer the Trust under a jurisdiction outside the State of Nevada, as allowed pursuant to Section 12.1 below.

11.4 Resignation Of Trustee and Accounting. Any Trustee named herein, and any Successor Trustees, shall have the right to resign at any time by rendering a proper accounting and by giving ninety (90) days written notice to the Trustor, during his lifetime, or to the Beneficiaries after the death of the Trustor.

11.5 Liability Of Successor Trustee. No Successor Trustee shall be liable for the acts, omissions, or default of the prior Trustees. Unless requested in writing by an adult beneficiary of a Trust hereunder, within sixty (60) days of appointment, no Successor Trustee shall have any duty to audit or investigate the accounts or administration of any such Trustee, and may accept the accounting records of the predecessor Trustee showing assets on hand without further investigation and without incurring any liability to any person claiming or having an interest in the Trust.

11.6 Acceptance By Trustee. A Trustee shall become Trustee or Co-Trustee jointly with any remaining or surviving Co-Trustees, and assume the duties thereof, immediately upon delivery of written acceptance to the Trustor, during his lifetime and thereafter to any Trustees hereunder, or to any beneficiary hereunder, if for any reason there shall be no Trustee then serving, without the necessity of any other act, conveyance, or transfer.

11.7 Majority. Subject to any limitations stated elsewhere in this Trust Indenture, all decisions affecting any of the Trust estate shall be made in the following manner: While three or more Investment Trustees are in office, the determination of a majority shall be binding. If only one or two Investment Trustees are in office, they must act unanimously. While three or more Distribution Trustees are in office, the determination of a majority shall be binding. If only one or two Distributions Trustees are in office, they must act unanimously.

11.8 Expenses and Fees. Any Trustee, while serving hereunder, shall be entitled to be reimbursed for expenses incurred on behalf of the Trust and to reasonable compensation for services rendered on behalf of the Trust. In no event, however, shall the fees exceed those fees

that would have been charged by state or federal banks in the jurisdiction in which the Trust is being governed.

11.9 Acknowledgment By Trustee of Trust Property. The Investment Trustee hereby acknowledges receipt of, and accepts the property and the Trusts created hereunder on the terms and conditions stated and agree to care for, manage and control the same in accordance with directions herein specified; to furnish the Trustor, the Distribution Trustee and the non-charitable beneficiaries annually if requested to do so, in writing, a statement showing the condition of the respective Trust properties, the character and amounts of the investments and liabilities and the receipts, expenses and disbursements since the last previous statement. The books of account of the Investment Trustee in connection with the investment and the books of account of the Distribution Trustee shall at all times be open to the reasonable inspection of the Trustor while living and to the other beneficiaries after the death of the Trustor, or his duly qualified representatives and such person or persons as he may designate for that purpose.

11.10 Trustee Actions. Any Trustee may freely act under all or any of the powers of this agreement given to the Trustee in all matters concerning the Trust, after forming judgment based upon all the circumstances of any particular situation as to the wisest and best course to pursue in the interest of the Trust and the beneficiaries hereunder, without the necessity of obtaining the consent or permission of any person interested herein (subject to the Trustor's veto power granted pursuant to Section 3.1 above and subject to the distribution authorizations as provided for in Section 3.2 above), or the consent or approval of any court, and notwithstanding that the Trustee may also be acting individually, or as Trustee of other Trusts, or as agents of other persons or corporations interested in the same matters, or may be interested in connection with the same matters as stockholders, directors or otherwise; provided, however, that the Trustee shall exercise such powers at all times in a fiduciary capacity, primarily in the interest of the beneficiaries hereunder.

11.11 Bond. No bond shall ever be required of any Trustee hereunder, unless requested by the Trustor or, following the death or incapacity of the Trustor, a majority of the beneficiaries hereunder, in which event the Trust estate shall pay for such bond or shall reimburse the Trustee for any payment made by the Trustee for a bond.

11.12 Nevada Trustee. A Nevada Trustee is a person who/which is either (a) a natural person who resides in or is domiciled in the State of Nevada, or (b) a bank or trust company organized under federal law or under the laws of the State of Nevada or another state which maintains an office in the State of Nevada for the transactions of business. "Nevada Trustee" is also defined to include any person which qualifies as a Nevada Trustee pursuant to Nevada Revised Statutes Chapter 166.

11.13 Distribution Trustee. Any Trustee designated as a Distribution Trustee shall only be allowed to exercise discretion over distributions of the Trust estate. Said Trustee shall not be responsible for investment decisions for the Trust or for reporting, accounting or tax filings of the Trust. The Investment Trustee, by accepting such Trusteeship, agrees to indemnify and hold harmless the Distribution Trustee for all actions made by the Distribution Trustee in its capacity as Distribution Trustee, except for willful misconduct or actions of gross negligence.

11.14 Investment Trustee. The Investment Trustee(s) shall at all times have the exclusive custody of the entire Trust estate and shall be the legal owner of the Trust estate. The title to Trust properties need not include the name of the Distribution Trustee, and all Trustee powers, as set forth in Section 11.1 below, may be effected under the sole and exclusive control of the Investment Trustees, subject to the requirements for authorization of distributions to Trustor as set forth in Section 3.3 above.

## ARTICLE XII

### TRUSTEE POWERS AND LIMITATIONS

12.1 Trustee's Powers. No Trustee shall be liable to any beneficiary or heir of the Trustor for the Trustee's acts or failure to act, except for willful misconduct or gross negligence.

The Investment Trustee shall have the following powers, all of which are to be exercised in a fiduciary capacity:

- (a) To register any securities or other property held hereunder in the name of Investment Trustee or in the name of a nominee, with or without the addition of words indicating that such securities or other property are held in a fiduciary capacity, and to hold in bearer form any securities or other property held hereunder so that title thereto will pass by delivery, but the books and records of Trustee shall show that all such investments are part of his respective funds.
- (b) To hold, manage, invest and account for the separate Trusts in one or more consolidated funds, in whole or in part, as he may determine. As to each



consolidated fund, the division into the various shares comprising such fund need be made only upon Trustee's books of account.

- (c) To lease Trust property for terms within or beyond the term of the Trust and for any purpose, including exploration for and removal of gas, oil, and other minerals; and to enter into community oil leases, pooling and unitization agreements.
- (d) To borrow money, mortgage, pledge or lease Trust assets for whatever period of time Trustee shall determine, even beyond the expected term of the respective Trust.
- (e) To hold and retain any property, real or personal, in the form in which the same may be at the time of the receipt thereof, as long as in the exercise of his discretion it may be advisable so to do, notwithstanding same may not be of a character authorized by law for investment of Trust funds.
- (f) To invest and reinvest in his absolute discretion, and he shall not be restricted in his choice of investments to such investments as are permissible for fiduciaries under any present or future applicable law, notwithstanding that the same may constitute an interest in a partnership.
- (g) To advance funds to any of the Trusts for any Trust purpose. The interest rate imposed for such advances shall not exceed the current rates.
- (h) To institute, compromise, and defend any actions and proceedings.
- (i) To vote, in person or by proxy, at corporate meetings any shares of stock in any Trust created herein, and to participate in or consent to any voting Trust, reorganization, dissolution, liquidation, merger, or other action affecting any such shares of stock or any corporation which has issued such shares of stock.
- (j) Except as limited in Section 3.3 above, to partition, allot, and distribute, in undivided interest or in kind, or partly in money and partly in kind, and to sell such property as the Trustee may deem necessary to make division or partial or final distribution of any of the Trusts.
- (k) To determine what is principal or income of the Trusts and apportion and allocate receipts and expenses as between these accounts.
- (l) Except as limited by Section 3.3 above, to make payments hereunder directly to any beneficiary under disability, to the guardian of his or her person or estate, to any other person deemed suitable by the Trustee, or by direct payment of such beneficiary's expenses.

- (m) To employ agents, attorneys, brokers, and other employees, individual or corporate, and to pay them reasonable compensation, which shall be deemed part of the expenses of the Trusts and powers hereunder.
- (n) To accept additions of property to the Trusts, whether made by the Trustor, a member of the Trustor's family, by any beneficiaries hereunder, or by any one interested in such beneficiaries.
- (o) To hold on deposit or to deposit any funds of any Trust created herein, whether part of the original Trust fund or received thereafter, in one or more savings and loan associations, bank or other financial institution and in such form of account, whether or not interest bearing, as Trustee may determine, without regard to the amount of any such deposit or to whether or not it would otherwise be a suitable investment for funds of a trust.
- (p) To open and maintain safety deposit boxes in the name of this Trust.
- (q) Except as limited to by Section 3.3 above, to make distributions to any Trust or beneficiary hereunder in cash or in specific property, real or personal, or an undivided interest therein, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property so distributed. The Trustor requests but does not direct, that the Trustees make distributions in a manner which will result in maximizing the aggregate increase in income tax basis of assets of the estate on account of federal and state estate, inheritance and succession taxes attributable to appreciation of such assets.
- (r) Except as limited by Section 3.3 above, the powers enumerated in NRS 163.265 to NRS 163.410, inclusive, are hereby incorporated herein to the extent they do not conflict with any other provisions of this instrument.
- (s) The enumeration of certain powers of the Trustee shall not limit his general powers, subject always to the discharge of his fiduciary obligations, and being vested with and having all the rights, powers, and privileges which an absolute owner of the same property would have.
- (t) To invest Trust assets in securities of every kind, including debt and equity securities, to buy and sell securities, to write covered securities options on recognized options exchanges, to buy-back covered securities options listed on such exchanges, to buy and sell listed securities options, individually and in combination, employing recognized investment techniques such as, but not limited to, spreads, straddles, and other documents, including margin and option agreements which may be required by securities brokerage firms in connection with the opening of accounts in which such option transactions will be effected.

- (u) To sell any property in the Trust estate, with or without notice, at public or private sale and upon such terms as the Trustee deems best, without appraisal or approval of court.
- (v) To invest and reinvest principal and income in such securities and properties as the Trustee shall determine. The Trustee is authorized to acquire, for cash or on credit (including margin accounts), every kind of property, real, personal or mixed, and every kind of investment (whether or not unproductive, speculative, or unusual in size or concentration), specifically including, but not by way of limitation, corporate or governmental obligations of every kind and stocks, preferred or common, of both domestic and foreign corporations, shares or interests in any unincorporated association, Trust, or investment company, including property in which the Trustee is personally interested or in which the Trustee owns an undivided interest in any other Trust capacity.
- (w) To deposit Trust funds in commercial savings or savings bank accounts in unlimited amounts for an unlimited period of time, with or without interest and subject to such restrictions upon withdrawal as the Trustee shall agree; any Trustee may sign on such account without any Trustee co-signature unless the signature card shall provide otherwise.
- (x) To borrow money for any Trust purpose upon such terms and conditions as may be determined by the Trustee, and to obligate the Trust estate for the repayment thereof; to encumber the Trust estate or any part thereof by mortgage, deed of trust, pledge or otherwise, for a term within or extending beyond the term of the Trust.
- (y) To grant options and rights of first refusal involving the sale or lease of any Trust asset and to sell upon deferred payments, or to acquire options and rights of first refusal for the purchase or lease of any asset, to purchase notes or accounts receivable whether secured or unsecured.
- (z) To employ and compensate, out of the principal or income or both, as the Trustee shall determine, such agents, persons, corporations or associations, including accountants, brokers, attorneys, tax specialists, certified financial planners, realtors, and other assistants and advisors deemed needful by the Trustees even if they are associated with a Trustee, for the proper settlement, investment and overall financial planning and administration of the trusts; and to do so without liability for any neglect, omission, misconduct, or default of any such person or professional representative provided such person was selected and retained with reasonable care.
- (aa) To invest and reinvest all or any part of the assets of any trust in any money management or registered investment advisory service which would provide for professional management of any such assets. In this regard, the Trustor specifically allows the Trustee to authorize the advisory service to have the discretionary

authority to invest and reinvest the assets transferred to such advisor by the Trustee without the requirement of prior approval of the Trustee on any transactions.

- (bb) Notwithstanding the prohibitions under N.R.S. 163.050 and any such Successor provisions, or notwithstanding any prohibitions against "self-dealing" as are provided under the laws of any other jurisdiction pursuant to which laws this Trust may be administered, any Trustee shall not be prohibited from engaging in acts of self-dealing with Trust property, either directly or indirectly, so long as such act of self-dealing is disclosed to the Distribution Trustee, and so long as the Trustee, in selling his, her or their own property or selling other properties in an agency or other fiduciary capacity to the Trust or in purchasing Trust assets for his, her or their personal account or in purchasing Trust assets in an agency or other fiduciary capacity, gives fair consideration in exchange for all Trust properties received. Where Trustees have engaged in acts of self-dealing for fair and adequate consideration, and has/have given notice to the Distribution Trustee, Trustee shall be relieved of any liability, sanction, and allegation of wrongdoing for such acts by any Court or other legal authority.
- (cc) To retain for any period of time any property which may be received or acquired, even though its retention by reason of its character or otherwise would not be appropriate apart from this provision.
- (dd) In the event the purchase, use or disposition of any trust property gives rise to either threatened or actual liability such that, in the sole opinion of the Trustees, the remaining assets of the Trust are thereby placed at risk of exposure to such liability, the Trustee shall be empowered to take such further and necessary steps as he deems prudent to protect and preserve the remaining assets of the trust, including but not limited to transferring such property giving rise to the threatened or actual liability to a separate trust formed to hold said property. The Trustee shall be further empowered to appoint an independent third party to act as Trustee over the newly-formed trust, and such trust shall be administered according to, and governed by, the terms of, this Trust Agreement. The Beneficiaries of the new trust shall be the same beneficiaries as herein, and their interests in the new trust shall be in the same proportion as indicated herein. The Trustee of the new trust shall maintain records and books of accounts which are independent of and separate from the records and accounts maintained hereunder.
- (ee) The Trustee shall have the power to deal with matters involving the actual, threatened or alleged contamination of property held in the Trust estate (including any interests in partnerships or corporations and any assets owned by such business enterprises) by hazardous substances, or involving compliance with environmental laws. In particular, the Trustee may:
  - (1) Inspect and monitor trust property periodically, as necessary, to determine compliance with any environmental law affecting such property, with all

expenses of such inspection and monitoring to be paid from the income or principal of the trust;

- (2) Respond (or take any other action necessary to prevent, abate or "clean up") as it shall deem necessary, prior to or after the initiation of enforcement action by any governmental body, to any actual or threatened violation of any environmental law affecting any of such property, the cost of which shall be payable from trust assets;
  - (3) Settle or compromise at any time any claim against the Trust related to any such matter asserted by any governmental body or private party;
  - (4) Disclaim any power which the Trustee determines may cause it to incur liability as a result of any such matter, whether such power is set forth herein, or granted or implied by any statute or rule of law.
- (ff) The Trustee shall not be personally liable to any beneficiary or other party interested in the Trust, or to any third parties, for any claim against the Trust for the diminution in value of Trust property resulting from such matters, including any reporting of or response to (1) the contamination of Trust property by hazardous substances; or (2) violations of any environmental laws related to the Trust; provided that the Trustee shall not be excused from liability for his, its or their own negligence or wrongful willful act.
- (gg) When used in this document the term "hazardous substance(s)" shall mean any substance defined as hazardous or toxic or otherwise regulated by any federal, state or local law(s) or regulation(s) relating to the protection of the environmental or human health ("environmental law(s)").
- (hh) Notwithstanding any contrary provision of this instrument, the Trustee may withhold a distribution to a beneficiary until receiving from the beneficiary an indemnification agreement in which the beneficiary agrees to indemnify the Trustee against any claims filed against the Trustee pursuant to any federal, state or local statute or regulation relating to clean up or management of hazardous substances.

12.2 Powers of Distribution Trustee. The Distribution Trustee shall have the power to authorize distributions of principal and/or income to the beneficiaries hereunder at times and in amounts as determined in the sole discretion of the Distribution Trustee, subject only to the veto power vested in the Trustor, according to the standards set forth in Section 3.1 above. Upon the death of the Trustor, the Successor Investment Trustee shall distribute the Trust estate as required pursuant to a duly exercised power of appointment, if any, and as otherwise provided herein, with respect to any of the Trust estate not so appointed by the Trustor.

12.3 **"Prudent Person" Rule.** In addition to the investment powers conferred above, the Trustees are authorized (but are not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would be forbidden by the "prudent person" rule. The Trustee may, in the Trustee's sole discretion, invest in any type of property, wherever located, including any type of security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, corporations, mutual funds, or any other form of participation or ownership whatsoever. In making investments, the Trustee may disregard all of the following factors:

- (a) Whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal.
- (b) Whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty or impartiality as to the different beneficiaries. The Trustor intends no such duty shall exist.
- (c) Whether the trust is diversified. The Trustor intends no duty to diversity shall exist.
- (d) Whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts. The entire trust may be so invested. The Trustor intends the Trustees to have sole discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy.

The Trustor's purpose in granting the foregoing authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustees shall not be liable for any loss in value of an investment merely because of the nature of the investment or the degree of risk presented by the investment, but shall be liable if the Trustees' procedures in selecting and monitoring the investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

12.4 **Permitted Methods of Distribution.**

- (a) With respect to any sum or property, whether income or principal, which is required or permitted to be distributed out of any trust hereunder to or for the benefit of any person, whether or not such person is, at the time, a minor and whether or not the Trustees of such trust determine such person to be under any disability preventing such person from acting properly on such person's own behalf (irrespective of whether legally so adjudicated), such Trustees may make

distribution or the same in any one or more of the following ways as such Trustee, from time to time, in her sole discretion, shall deem to be most expedient in the best interests of such person; namely, by paying, distributing or applying the same to:

- (1) Such person directly;
- (2) The duly appointed conservator, guardian or committee for such person, if any;
- (3) An apparently qualified individual (other than any donor to such trust) or bank who, in taking the same "as custodian for" such person under the appropriate state's Uniform Transfers to Minors Act, indicates that such sum or property will be treated in all respects as "custodial property" for the benefit of such person in accordance with the provisions of such act of such state (whether or not such act permits custodial property of such an origin) or other uniform gifts to minors or similar act in that state;
- (4) The parent, spouse or other individual having the care and custody of such person (other than any donor to such trust) who, as such person's natural guardian, shall agree to preserve the same for the immediate or ultimate benefit of such person (or such person's estate), but who shall not be obligated to qualify as a legal guardian or account to any probate court therefor;
- (5) The Trustee or Trustees of any trust, all of the assets of which are then fully and unqualifiedly withdrawable by such person;
- (6) The direct payment of any educational, medical or other property expense of such person (or any person to whose support or education such person would, in such Trustee's reasonable judgment, normally be expected to contribute), including expenses, such as taxes, repairs, etc., reasonably appropriate to preserving any assets belonging to such person, as long as such expense is not the legal obligation of any other person;
- (7) The purchase of stocks, bonds, insurance (the term "purchase" shall include any premium payment), or other properties of any kind, the ownership of which is registered in the sole name of such person; or
- (8) The making of a deposit into a bank, savings and loan association, brokerage or other similar account in the sole name of such person, provided that distribution shall be made in the manner described in subparagraphs (3) and (4) above only if legally enforceable indemnification in favor of such person is received against anyone other than such person (or such person's estate) benefitting thereby (even through the discharge of an obligation to support such person). The

receipt of or evidence of any such payment, distribution or application shall be a complete discharge and acquittance of such Trustee to the extent of such payment, distribution or application and, except for enforcement of any above described indemnification, such Trustee shall have no duty to see to the actual application of amounts so paid or distributed to others.

- (b) Notwithstanding the foregoing, however, where distributions are required to be made to or for the "direct" benefit of a person, only distributions made in the manner described in subparagraphs (1), (5), (6) (except for its parenthetical provision), (7) or (8) above shall be considered to have been made for the "direct" benefit of such person.

12.5 Compensation of Trustees. All Trustees may receive reasonable compensation for services rendered hereunder, plus extraordinary fees, if applicable, determined annually. Each separate Trust hereunder shall be chargeable with and may pay without application to any court:

- (a) The reasonable expenses of its Trustee(s) in the administration of such Trust, including the fees and expenses of such agents, attorneys, accountants and advisors as such Trustee(s) may employ in the administration of such Trust.
- (b) Compensation for a Corporate Trustee's services in the amount and at the time specified in its Schedule of Fees and Charges established from time to time for the administration of trusts of a character similar to the trust being administered and in effect when such compensation is payable.
- (c) Reasonable compensation for the services rendered and responsibilities assumed by each of such Trustee(s) in the administration of such Trust to be paid at reasonable intervals as incurred, with commencement and termination fees permitted only if agreed to by all of the Trustee(s) of such Trust in a written instrument approved by the Beneficiary of such Trust.
- (d) The employment of a person or firm and the payment of fees under Paragraph (a) above is specifically authorized notwithstanding the fact the person or firm so employed may be a Trustee or affiliated in business with any Trustee hereunder, provided the fees for the services rendered and responsibilities assumed in each capacity are reasonable and not duplicative.

12.6 Power to Appoint Agent. The Trustee is authorized to employ attorneys, accountants, investment managers, specialists, and such other agents as the Trustee shall deem necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said investment manager the discretionary power to acquire and dispose of assets of the Trust. The



Trustee may charge the compensation of such attorneys, accountants, investment managers, specialists, and other agents against the Trust, including any other related expenses.

12.7 Broad Powers Of Distribution. After the death of the Trustor, upon any division or partial or final distribution of the Trust estate, the successor Trustee shall have the power to partition, allot and distribute the Trust estate in undivided interest or in kind, or partly in money and partly in kind, at valuations determined by the Trustee, and to sell such property as the Trustee, in the Trustee's discretion, considers necessary to make such division or distribution. In making any division or partial or final distribution of the Trust estate, the Trustee shall be under no obligation to make a pro rata division or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustee may, in the Trustee's discretion, make non pro rata divisions between Trusts or shares and non pro rata distributions to beneficiaries as long as the respective assets allocated to separate trusts or shares or the distributions to beneficiaries have equivalent or proportionate fair market value. The income tax basis of assets allocated or distributed non pro rata need not be equivalent and may vary to a greater or lesser amount, as determined by the Trustee, in his or her discretion, and no adjustment need be made to compensate for any difference in basis.

12.8 Trustees' Liability. Except for the Trustees' own intentional and malicious breach of trust, bad faith, or gross negligence, the Trustees shall not be liable for any act, omission, loss, damage, or expense arising from the performance of the Trustees' duties under this Trust Agreement. The Trustees shall not be liable for making any investments or purchases on behalf of the Trust, nor shall the Trustees be required in any way to diversify investments nor shall the Trustees in any way be required to sell or otherwise dispose of speculative or non-productive property or assets owned or acquired by the Trust.

12.9 Indemnity. The Trustees shall, from the Trust assets, both principal and income, be indemnified and held harmless from and against any and all loss, cost, expense, and damage (including any attorney's fees) incurred by the Trustees arising out of or in any way connected with this Trust, the administration thereof, or related to any assets contained herein or for any other reason whatsoever.

12.10 Corporate Trustee. While there is a corporate Trustee acting, it shall have custody of all assets, books of account and records.

12.11 Nondisclosure. Trustees shall be under no obligation to disclose the contents of the Trust estate to anyone other than as may be required by law or lawful court order or as required pursuant to Section 10.9 above. Additionally, Trustee shall be under no obligation to disclose the assets, investments, business, or affairs of this Trust. Furthermore, Trustees, when convenient or necessary, may give an abbreviated version of the Trust Agreement and/or a written memorandum of the pertinent provisions of this Trust to those persons needing such, so as to, for instance, open bank accounts, stock brokerage accounts, etc. or to title companies to show authority for Trustees to sell or purchase real estate.

12.12 Undivided Interests. The principal of the trusts created by this Trust Agreement may consist of undivided interests in the same property, and the Trustees may administer such trusts as one fund. The Trustees shall make a separate account for each of the separate trusts created under this Trust Agreement, but all of such trusts may be administered as a single fund. Joint investments or interests in investments may be assigned to such trusts, with each trust being credited with an undivided interest in all joint investments in the proportion which is assigned to it or in the proportion which its contribution to such investment bears to the whole.

12.13 Separate Property. Any property held in trust and any income earned by the trusts created hereunder shall be the separate property (in distinction with community property, joint tenancy property, tenancy in common, marital property, quasi-community property or tenancy by the entirety) of the beneficiaries of such trusts. Additionally, any distribution to or for the benefit of any beneficiary shall be and remain the sole and separate property and estate of the beneficiaries.

#### ARTICLE XIII

##### GENERAL PROVISIONS

13.1. Controlling Law. This Trust Indenture is executed under the laws of the State of Nevada and shall in all respects be administered by the laws of the State of Nevada; provided, however, the Trustees shall have the discretion, exercisable at any later time and from time to time, to administer any trust created hereunder pursuant to the laws of any jurisdiction in which the Trustees, or any of them, may be domiciled, by executing a written instrument acknowledged before a notary public to that effect, and delivered to the then income beneficiaries. If the Trustees exercise the discretion, as above provided, this Trust Indenture shall be administered from that time forth by the laws of the other state or jurisdiction.

13.2 Spendthrift Provision. No property (income or principal) distributable under this Trust Agreement, whether pursuant to Article III, IV, Article V or otherwise, shall be subject to anticipation or assignment by any beneficiary, or to attachment by or of the interference or control of any creditor or assignee of any beneficiary, or be taken or reached by any legal or equitable process in satisfaction of any debt or liability of any beneficiary, and any attempted transfer or encumbrance of any interest in such property by any beneficiary hereunder shall be absolutely and wholly void. No beneficiary or remainderman of any Trust shall have any right or power to sell, transfer, assign, pledge, mortgage, alienate, or hypothecate his or her interest in the principal or income of the Trust estate in any manner whatsoever. To the fullest extent of the law, the interest of each beneficiary and remainderman shall not be subject to the claims of any of his or her creditors or liable to attachment, execution, bankruptcy proceedings, or any other legal process. No beneficiary of any Trust created hereunder shall have any right or power to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the Trust, in any way; nor shall any such interest in any manner be liable for or subject to the debts, liabilities, taxes or obligations of such beneficiary or claims of any sort against such beneficiary. The Distribution Trustee shall pay, disburse, and distribute principal and income of any trust only in the manner provided for in this Trust Agreement and will not make any attempted transfer or assignment, whether oral or written, to any appointee beneficiary or remainderman other than as herein provided. All Trusts created by this Trust Agreement shall be spendthrift Trusts as provided by the laws of the State of Nevada and shall be interpreted and operated so as to maintain such trusts as spendthrift trusts. Any beneficiary of any Trust created under this Trust Agreement may renounce or disclaim his or her interest in any Trust created under this Trust Agreement or any special or general power of appointment, in whole or in part, at any time; provided, however, such beneficiary shall not be treated as having died for the purpose of fiduciary appointments made in this Trust Agreement by reason of such disclaimer.

13.3 Perpetuities Savings Clause. Unless terminated earlier in accordance with other provisions of this trust, any trust hereby created or created by the exercise of any power hereunder shall terminate Twenty-one (21) years after the death of the last survivor of the following: (1) the Trustor; (2) all the issue of Trustor who are living at the death of the Trustor; and (3) all named beneficiaries who are living at the death of the Trustor, or upon the expiration of the maximum period authorized by the laws of the State of Nevada or the state by which the

trust is then being governed. Upon such termination, the Trust estate, and any accumulations thereon, shall be distributed to those persons and in the same proportions as the income of the trust is then being paid.

13.4 No-Contest Provision. The Trustor specifically desires that this Trust Indenture and these Trusts created herein be administered and distributed without litigation or dispute of any kind. If any beneficiary of these Trusts or any other person, whether stranger, relative or heir, or any legatee or devisee under the Last Will and Testament of either of the Trustor or the successors-in-interest of any such persons, including Trustor's estate under the intestate laws of the State of Nevada or any other state lawfully or indirectly, singly or in conjunction with another person, seek or establish to assert any claim or claims to the assets of these Trusts established herein, or attack, oppose or seek to set aside the administration and distribution of the Trusts, or to invalidate, impair or set aside its provisions, or to have the same or any part thereof declared null and void or diminished, or to defeat or change any part of the provisions of the Trusts established herein, then in any and all of the abovementioned cases and events, such person or persons shall receive One Dollar (\$1.00), and no more, in lieu of any interest in the assets of the Trusts or interest in income or principal.

13.5 Provision For Others. The Trustor has, except as otherwise expressly provided in this Trust Indenture, intentionally and with full knowledge declined to provide for any and all of his heirs or other persons who may claim an interest in his respective estate or in these Trusts.

13.6 Severability. In the event any clause, provision or provisions of this Trust Indenture prove to be or be adjudged invalid or void for any reason, then such invalid or void clause, provision or provisions shall not affect the whole of this instrument, but the balance of the provisions hereof shall remain operative and shall be carried into effect insofar as legally possible.

13.7 Distribution Of Small Trust. If the Trustees, in the Trustees' absolute discretion, determine that the amount held in Trust is not large enough to be administered in Trust on an economical basis, then the Trustees may distribute the Trust assets free of Trust to those persons then entitled to receive the same.

13.8 Headings. The various clause headings used herein are for convenience of reference only and constitute no part of this Trust Indenture.

13.9 More Than One Original. This Trust Indenture may be executed in any number of copies and each shall constitute an original of one and the same instrument.

13.10 Interpretation. Whenever it shall be necessary to interpret this Trust, the masculine, feminine and neuter personal pronouns shall be construed interchangeably, and the singular shall include the plural and the singular.

13.11 Definitions. The following words are defined as follows:

- (a) "Principal" and "Income". Except as otherwise specifically provided in this Trust Indenture, the determination of all matters with respect to what is principal and income of the Trust estate and the apportionment and allocation of receipts and expenses thereon shall be governed by the provisions of Nevada's Revised Uniform Principal and Income Act, as it may be amended from time to time and so long as such Act does not conflict with any provision of this instrument; provided, however, that as used herein, the term "Trust income" for any taxable year shall also include the net amount received in such taxable year for the sale or exchange of capital assets. Notwithstanding such Act, no allowance for depreciation shall be charged against income or net income payable to any beneficiary.
- (b) "Education". Whenever provision is made in this Trust Indenture for payment for the "education" of a beneficiary, the term "education" shall be construed to include technical or trade schooling, college or postgraduate study, so long as pursued to advantage by the beneficiary at an institution of the beneficiary's choice and in determining payments to be made for such college or post-graduate education, the Trustees shall take into consideration the beneficiary's related living and travelling expenses to the extent that they are reasonable.
- (c) "Child, Children, Descendants or Issue". As used in this instrument, the term "descendants" or "issue" of a person means all of that person's lineal descendants of all generations. The terms "child, children, descendants or issue" include adopted persons, but do not include a step-child or step-grandchild, unless that person is entitled to inherit as a legally adopted person.

13.12 Court Instructions. The Trustees may seek the assistance of the Courts in all matters affecting the administration of this Trust or its properties, including advice on the interpretation of the Trust or for settlement of any account by invoking the jurisdiction of any District Court with jurisdiction (including quasi-in-rem jurisdiction) over the Trust, the Trustees, or the Trust res, in a nonadversary ex parte proceeding. The decision of the Court shall be

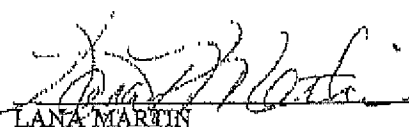
binding upon all interested parties who were given written mailing notice of the proceedings to their last known address.

SIGNED AND SEALED by the Trustor and Trustees on the day and year first above written.

TRUSTOR AND INVESTMENT TRUSTEE:

  
ERIC L. NELSON

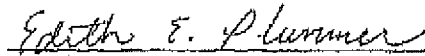
DISTRIBUTION TRUSTEE:

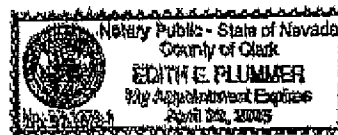
  
LANA MARTIN

STATE OF NEVADA     )  
                              ) ss;  
COUNTY OF CLARK    )

On this 30th day of May, 2001, personally appeared before me, a Notary Public in and for said County of Clark, State of Nevada, ERIC L. NELSON, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

  
NOTARY PUBLIC



STATE OF NEVADA     )  
                              ) ss:  
COUNTY OF CLARK    )

On this 07th day of June, 2001, personally appeared before me, a Notary Public in and for said County of Clark, State of Nevada, LANA MARTIN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

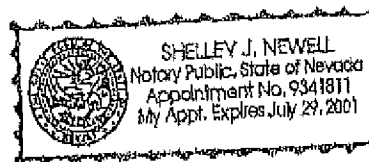
WITNESS my hand and official seal.

Shelley J. Newell  
NOTARY PUBLIC

APPROVED:

BY:

Jeffrey L. Burr  
Jeffrey L. Burr, Esq.  
4455 South Pecos Road  
Las Vegas, Nevada 89121



1 **NOTC**

2 Larry L. Bertsch, CPA, CFF

3 Nicholas S. Miller, CFE

4 **LARRY L. BERTSCH, CPA & ASSOCIATES**

5 265 East Warm Springs Rd., Suite 104

6 Las Vegas, Nevada 89119

7 Telephone: (702) 471-7223

8 Facsimile: (702) 471-7225

9 *Forensic Accountants*

10 **DISTRICT COURT**

11 **FAMILY DIVISION**

12 **CLARK COUNTY, NEVADA**

13 **ERIC L. NELSON,**

14 Plaintiff,

15 v.

16 **LYNITA SUE NELSON,**

17 Defendant.

Case No. D-09-411637-D

Dept. O

**NOTICE OF FILING ASSET SCHEDULE  
AND NOTES TO ASSET SCHEDULE**

18 Larry L. Bertsch, CPA, CFF, and Nicholas S. Miller, CFE, of the accounting firm of LARRY  
19 L. BERTSCH, CPA & ASSOCIATES, hereby file as Exhibit "A" their Asset Schedule and Notes to  
20 Asset Schedule pursuant to Judge Sullivan's Order in this matter.

21 DATED this 5<sup>th</sup> day of July, 2011.

22 **LARRY L. BERTSCH CPA & ASSOCIATES**

23   
Larry L. Bertsch, CPA, CFF

Nicholas S. Miller, CFE

265 East Warm Springs Rd., Suite 104

Las Vegas, Nevada 89119

(702) 471-7223 Telephone

(702) 471-7225 Facsimile

*Forensic Accountants*



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 5th day of July, 2011, I mailed a copy of the Notice of Filing  
3 Asset Schedule and Notes to Asset Schedule to the following at the last known address, by  
4 depositing the same in the United States mail in Las Vegas, Nevada, first class postage prepaid and  
5 addressed as follows:

6 David A. Stephens, Esq.  
7 STEPHENS, GOURLEY & BYWATER  
8 3636 N. Rancho Drive  
Las Vegas, NV 89130  
Attorneys for Plaintiff Eric L. Nelson

Robert P. Dickerson, Esq.  
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, NV 89134  
Attorneys for Defendant Lynita Sue Nelson

9  
10  
11   
12 An employee of Larry L. Bertsch, CPA & Associates  
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# **Exhibit “A”**

# **Exhibit “A”**

**Nelson v. Nelson**  
**Asset Schedule**

**July 5, 2011**

**Larry L. Bertsch, CPA & Associates**

**Larry L. Bertsch, CPA, CFF**

**Nicholas S. Miller, CFE, CSAR, MBA**

Nelson v. Nelson  
Asset Schedule

	NOTE	Lynita Value	Eric Value	Asset Titled	Income Producing
<b>Real Estate</b>					
7065 Palmyra - Las Vegas, Nevada	1	650,000	910,000	Lynita - Trust	NO
2911 Bella Kathryn Circle - Las Vegas	2	TBD	900,000	Eric Trust - Banone	NO
2911 Bella Kathryn Circle - Las Vegas	2	TBD	175,000	Eric Trust - Banone	NO
AZ-31 Gateway Lots	24	139,500	139,500	Lynita Trust	NO
AZ-29 Gateway Lots	17	139,500	139,500	Eric - Trust	NO
<b>Russell Road Property (65%)</b>	3				
Owned by Eric Nelson Auctioneering (50%)	3a	TBD	2,000,000	Eric - Trust	YES
Owned by Eric Nelson Trust (15%)	3b	TBD	2,000,000	Eric - Trust	YES
Receivable from CJE & L, LLC	3c	742,368	TBD	Eric - Trust	Unknown
Brianhead, Utah	4	2,000,000	2,000,000	Each Trust - 50%	NO
3611 Lindell - Las Vegas	5	TBD	1,400,000	Each Trust - 50%	YES
5913 Pebble Beach	6	75,000	75,000	Lynita - Trust	NO
Wyoming - 200 acres (40%)	7	TBD	800,000	Lynita - Trust	NO
<b>Mississippi Properties</b>					
830 Arnold Ave. (Clay House) - Greenville, Miss.	8	40,000	40,000	Lynita - Trust	YES
<b>MS Bay 200 Acres - allocated</b>	9				
<b><u>Emerald Bay, LLC (Holding Company)</u></b>	9a	45,500	None	Each Trust - 50%	NO
Bal Harbour, LLC	9b	TBD		Each Trust - 50%	NO
Bay Beach Resorts, LLC	9c	TBD		Each Trust - 50%	NO
Bay Resorts, LLC	9d	TBD		Each Trust - 50%	NO
<b>MS Bay allocated acreage- Lynita Trust</b>					
Lynita Trust - not used	9e	TBD		Lynita - Trust	NO
RV Park	9f	TBD		Lynita - Trust	YES
<b><u>Dynasty</u></b>	10	TBD		Eric Trust - Dynasty	
Silver Slipper	10a	TBD		Eric Trust - Dynasty	YES
MS Bay allocated acreage Titled to Dynasty	10b	TBD	937,500	Eric Trust - Dynasty	NO
MS Bay allocated acreage Titled Frank Soris Trust	10c	TBD	312,500	Eric Trust - Dynasty	NO
<b><u>Grotta, LLC - 16.67% interest</u></b>	11	TBD		Lynita - Trust	NO
Dynasty profit sharing agreement	11a	TBD		Lynita - Trust	NO
MS Bay allocated interest - titled to Grotta, LLC	11b	TBD	16,667	Lynita - Trust	NO
<b><u>Grotta Financial Partnership</u></b>	11c				NO
<b><u>Riverwalk Ent. (Holding Company for Highway Casino)</u></b>	12	Unknown	None	Eric - Trust	NO

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

Other Investments						
Banone, LLC						
4412 Baxter - Las Vegas	13,13a	62,522	82,522	Eric Trust - Banone	YES	
5314 Cloyer Blossom Court - North Las Vegas, Nevada	13	108,705	108,750	Eric Trust - Banone	YES	
1301 Heather Ridge - North Las Vegas	13	118,459	118,459	Eric Trust - Banone	YES	
6213 Anacapa - Las Vegas	13	81,411	81,411	Eric Trust - Banone	YES	
1608 Rusty Ridge Lane - Henderson (Daughters House)	13	77,526	77,526	Eric Trust - Banone	NO	
Mesa Vista (5 acres)	13	100,000	100,000	Eric Trust - Banone	NO	
Mesa Vista - Lot 68	13	21,229	21,229	Eric Trust - Banone	NO	
2209 Farmouth Circle - Nevada	13	88,166	88,166	Eric Trust - Banone	YES	
3301 Terra Bella Drive - Nevada	13	65,013	65,013	Eric Trust - Banone	YES	
4133 Compass Rose Way - Nevada	13	67,820	67,820	Eric Trust - Banone	YES	
4601 Concord Village Drive - Nevada	13	61,070	61,070	Eric Trust - Banone	YES	
4612 Sawyer Ave - Nevada	13	49,304	49,304	Eric Trust - Banone	YES	
4820 Marnett Drive - Nevada	13	23,643	23,643	Eric Trust - Banone	YES	
5113 Churchill Ave. - Nevada	13	58,070	58,070	Eric Trust - Banone	YES	
5704 Roseridge Ave. - Nevada	13	61,510	61,510	Eric Trust - Banone	YES	
6301 Cambria Ave. - Nevada	13	68,244	68,244	Eric Trust - Banone	YES	
6304 Guadalupe Ave. - Nevada	13	41,599	41,599	Eric Trust - Banone	YES	
Mesa Vista - Lot 67 - Arizona (Deeded Back)	14	21,263	21,263	Eric Trust - Banone	NO	
1628 W. Darrel Road - Arizona	14	37,882	37,882	Eric Trust - Banone	YES	
1830 N. 66th Drive - Arizona	14	24,791	24,791	Eric Trust - Banone	YES	
1837 N. 59th Street - Arizona	14	29,050	29,050	Eric Trust - Banone	YES	
2220 W. Tonto Street - Arizona	14	30,906	30,906	Eric Trust - Banone	YES	
3225 W. Roma Ave. - Arizona	14	31,299	31,299	Eric Trust - Banone	YES	
3307 W. Thomas Road - Arizona	14	35,383	35,383	Eric Trust - Banone	YES	
3332 N. 80th Lane - Arizona	14	29,924	29,924	Eric Trust - Banone	YES	
3415 N. 84th Lane - Arizona	14	35,368	35,368	Eric Trust - Banone	YES	
3424 W. Bloomfield Road - Arizona	14	43,084	43,084	Eric Trust - Banone	YES	
3631 N. 81st Ave. - Arizona	14	30,063	30,063	Eric Trust - Banone	YES	
4141 N. 34th Ave. - Arizona	14	21,804	21,804	Eric Trust - Banone	YES	
4541 N. 76th Ave. - Arizona	14	32,540	32,540	Eric Trust - Banone	YES	
4816 S. 17th Street - Arizona	14	19,633	19,633	Eric Trust - Banone	YES	
5014 W. Cypress Street - Arizona	14	30,324	30,324	Eric Trust - Banone	YES	
5518 N. 34th Drive - Arizona	14	27,641	27,641	Eric Trust - Banone	YES	
6172 W. Fillmore Street - Arizona	14	39,871	39,871	Eric Trust - Banone	YES	
6202 S. 43rd Street - Arizona	14	27,772	27,772	Eric Trust - Banone	YES	
6720 W. Cambridge Ave. - Arizona	14	32,563	32,563	Eric Trust - Banone	YES	
6822 W. Wilshire Drive - Arizona	14	40,477	40,477	Eric Trust - Banone	YES	
6901 W. Coolidge Street - Arizona	14	32,583	32,583	Eric Trust - Banone	YES	
Banone, LLC - AZ						
4838 W Berkeley Rd. - Arizona	15	TBD	32,622	Eric Trust - Banone	YES	
8 Homes - Arizona	15	TBD	251,000	Eric Trust - Banone	NO	
Banone Nevada Notes Receivable						
R & D Custom Builders - DMV Lot 16-17 (secured)	16a	46,463		Eric Trust - Banone	YES	
Advantage Construction - MV Lot 37 (secured)		20,081		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 52 (secured)		22,838		Eric Trust - Banone	YES	
Gerald & Linda Fixsen - MV Lot 53 (secured)		22,838		Eric Trust - Banone	YES	
Joe Williams & Sherry Fixsen - MV Lot 54 (secured)		22,838		Eric Trust - Banone	YES	
Bidco, Inc. - MV Lot 61 (secured)		21,263		Eric Trust - Banone	YES	
Cory & Troy Fixsen - MV Lot 98 (secured)		22,838		Eric Trust - Banone	YES	
Amada & Chris Stromberg (secured by Condo in PA)	16b	133,357		Eric Trust - Banone	YES	
JB Ramos Trust (secured by 436 Europa Way)	16c	78,000		Eric Trust - Banone	YES	
Katherine Stephens (secured by 1601 Knoll Heights)	16d	83,000	63,000	Eric Trust - Banone	YES	
Chad Ramos (secured 7933 Dover Shores)	16e	60,000		Eric Trust - Banone	YES	
Alliea Harrison (secured by 1025 Academy)		68,620		Eric Trust - Banone	YES	
Eric T. Nelson (secured by 8619 W. Mohave - AZ)	16f	95,000		Eric Trust - Banone	YES	
Michael & Lyndia Asquith - MV Lot 50 (secured)	16g	23,625		Eric Trust - Banone	NO	

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

<b><u>Other Receivables</u></b>						
Frank Soris (Contingent)	17	TBD	1,000,000	Eric - Trust	YES	
Nikki Cvintavich	18	200,000	200,000	Eric Nelson	YES	
<b><u>Family Loans</u></b>						
Chad Ramos	19	261,675	-	Eric - Trust	Unknown	
Jesse Harber	20	47,000	25,000	Eric - Trust	Unknown	
Brock Nelson		10,000	10,000	Eric - Trust	Unknown	
<b><u>Autos/Vehicles</u></b>						
2008 Escalade EXT SUV (Owned) (Eric's)	21	40,475	38,840	Eric - Trust	NO	
2007 Mercedes SL 550 (Owned) (Eric's)	21	50,115	42,845	Eric - Trust	NO	
2011 Audi (Leased) (Lynita's)		Lease	Lease	Lynita	NO	
ATV's and Snowmobiles	21a	TBD	TBD	Unknown	NO	
<b><u>Tax Situation</u></b>						
2006 Tax Refund (Held by Dave Stephens, Esq.)	22	110,125	110,128	Eric Nelson	NO	
<b><u>Cash &amp; Investment Accounts</u></b>						
<b><u>Lynita's Accounts</u></b>						
Schwab Capstone Capital- 2834 (3/31/2011)	23	1,016,969		Lynita - Trust		
Credit Union 1 37214-01 (3/31/2011)	23	5		Lynita - Trust		
Credit Union 1 37214-22 (3/31/2011)	23	48,274		Lynita - Trust		
Silver State 3736-01 (3/31/2011)	23	2,020		Lynita Nelson		
Silver State 3736-80 (3/31/2011)	23	3,767		Lynita Nelson		
<b><u>Eric Accounts</u></b>						
Bank of America 5010-0976-5829 (3/31/2011)	23		82,781	Eric - Trust		
Bank of America 5010-0716-2754 (3/31/2011)	23		13,685	Eric Trust - Banone		
Bank of America 0050-1157-7064 (3/31/2011)	23		3,533	Eric Trust - Banone		
Bank of America 5010-1100-6958 (3/31/2011)	23		7,439	Eric Trust - EN Auct		
Citi National Bank 363201539 (3/31/2011)	23		84,919	Eric Trust - Banone		
Citi National Bank 363005152 (3/31/2011)	23		4,304	Eric Trust - Dynasty		
Citi National Bank 363250807 (3/31/2011)	23		13,316	Eric Trust - Banone		
Mellon - 10594001700 (3/31/2011)	23		2,757,160	Eric - Trust		
<b><u>Liabilities</u></b>						
Frank Soris Contingent Liability	17		(562,981)	Eric - Trust		
Due on Line of Credit (3/31/2011)	23		(1,807,369)	Eric - Trust		

TBD = To Be Determined

Notes to Asset Schedule are an integral part of this schedule

Nelson v. Nelson  
Notes to Asset Schedule

July 5, 2011

Larry L. Bertsch, CPA & Associates

Larry L. Bertsch, CPA, CFF

Nicholas S. Miller, CFE, CSAR, MBA

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Larry L. Bertsch, CPA & Associates reserves the right to update this report upon the production of additional documents. The information contained within this report is for use only in the conjunction with the surrounding Clark County District Court case Nelson v Nelson.



Note 1 - 7065 Palmyra

This is the current residence of Lynita Nelson. It has been alleged that improvements have been made to the property in the last two years. The parties do not agree on the value of the Property.

Since there is no agreement on the value of the property, it is recommended an appraisal be made on the property directed by an independent third party.

Note 2 - 2911 Bella Kathryn

This is the current residence of Eric Nelson which includes an adjacent vacant lot for which Eric is conducting improvements. Eric has valued the property as \$900,000 for the residence and \$175,000 for the adjoining lot. Lynita does not agree and her issue is stated below.

According to the detailed records of Eric Nelson, a total amount of \$1,362,612.57 has been spent towards the property which contains the house. The house was initially purchased for \$381,984.00 on 12/28/2009 and improvements have been made to the property as of 06/11/2011 amounting to \$980,628.57.

In reviewing the details of the house improvements on the general ledger kept by Eric Nelson, there was only one payment recorded to a relative, Paul Nelson, in the amount of \$25,000 and designated as contract labor in building the Residence. There were other payments recorded to relatives for reimbursement of materials and supplies used on the building of the residence. None of the reimbursed amount appeared material or not related to the residence. Those reimbursed payments were made to Paul Nelson, Cal Nelson, and to Big Fish, LLC, a company owned by Cal Nelson.

The adjoining lot was purchased on 08/11/2010 for a cost of \$175,000. As of 06/11/2011, improvements have been made towards the lot in the amount of \$64,558.68. In total, the purchase price and additional improvements towards this property amount to \$239,558.68.

Therefore the aggregate costs of the residence and adjoining lot at 06/11/2011 amounts to \$1,602,171.25.

Since there is no agreement on the value it is recommended an appraisal be made of the property directed by an independent third party or a decision that funds expended for the property be the criteria of value.

*At issue - Lynita claims Eric has used community funds to build this residence and feels regardless of an appraisal, she should receive 50% on the costs to buy and build the property.*

### Note 3 - Russell Road Property

#### **History**

Property consisting of 3.3 acres at 5220 E. Russell Road was purchased on November 11, 1999 for \$855,945 by the Lynita Nelson Trust and the down payment from Cal Nelson amounting to \$20,000. Lynita then became a 50% partner with Cal Nelson in a partnership named CJE&L, LLC which was formed for the purpose of renting the property to Cal's Blue Water Marine.

Shortly thereafter, CJE&L, LLC obtained a loan from Business Bank of Nevada in the amount of \$3,100,000. The purpose of this loan was to build a building for the operations of Cal's Blue Water Marine, Inc. The loan was to be guaranteed by Clarence and Jeanette, individually as well as their Trust dated May 31, 2001 and also Cal's Blue Water Marine, Inc.

Sometime in 2004, Lynita signed a guarantee on the flooring contract for the inventory of Cal's Blue Water Marine, Inc. On 01/01/2005, Lynita withdrew her guarantee of the flooring contract and in return, Lynita signed an assignment or forfeit of her interest in the partnership to remove her from the property records. (The Examiner has not seen the flooring agreement that was signed by Lynita, although requested - Each of the parties claims the other has the contract). According to the records, the forfeiture of partnership interest was transferred to the capital account of Cal Nelson there being no cash attached to the transaction.

The boat business failed in 2008. At that time, the Bank demanded a \$300,000 pay down to keep the loan in performing status. Eric paid the \$300,000 which was secured by property owned by Cal Nelson and located in Utah.

#### **Eric's purchase of the interest in property**

On or about 02/10/2010, Eric Nelson decided to purchase a 65% interest in the property. Eric's 65% interest is said to have cost \$4,000,000; which is comprised of the following amounts:

- 1) In 2009, Eric purchased an FDIC note on a property in Phoenix commonly known as "Sugar Daddy's" for approximately \$520,000. The source of these funds came from the Line of Credit. The property was sold with proceeds amounting to \$1,520,597.88. Since this was designed as a 1031 exchange, the proceeds were used in 2010 to purchase Eric's interest in the Russell Road Property.
- 2) As indicated above, Eric had previously paid \$300,000 to pay down the Bank Loan which was secured by property in Utah. In addition, Eric paid off the mortgage on Cal's house amounting to \$400,000. Both amounts were paid from Eric's Line of Credit. These two amounts aggregating \$700,000 were then used as a credit towards the purchase price for Eric's interest.

3) Eric gave a credit amounting to \$522,138.47 which represented future agreements with Cal and the termination of any present verbal partnership agreements. This also included money on rental payments given to Cal.

4) The remaining amount to fulfill the obligation of the purchase price was to borrow \$1,257,263.67 from the Line of Credit in 2010.

Therefore the purchase of Eric's interest is comprised of the following:

Pay down of Bank Loan	\$ 300,000.00
Pay off of personal residence of Cal Nelson	400,000.00
Credit to Cal Nelson for prior payments	522,138.45
Amount to pay Bank Note from Sugar Daddy's	1,520,597.88
Amount to pay Bank Loan from Line of Credit	1,257,263.67
	<u>\$ 4,000,000.00</u>

Therefore the amount of cash contributed directly to the interest in the property by Eric in 2010, amounts to \$2,777,861.55 (1,520,597.88 + 1,257,263.67). The cash reportedly paid off the original loan held by Business Bank of Nevada.

According to CJE&L's tax returns and representations made by Cal Nelson, Cal Nelson's capital account includes \$855,000; which represents the purchase price of the land originally purchased on November 11, 1999 by the Lynita Nelson Trust as well as \$501,529 in leasehold improvements made by Cal's Blue Water Marine. The summary document supporting the leasehold improvements contribution was believed to be at cost and not the net depreciated value. As prior indicated Cal's Blue Water Marine eventually failed in 2008. Since the Business failure in 2008, Cal Nelson has taken distributions from CJE&L of \$11,096 in 2009 and \$73,978 in 2010, aggregating to \$85,074.

The current ownership of the 5220 E. Russell Road property is 50% by Eric Nelson Auctioneering (an asset of the Eric Nelson Trust), 15% by the Eric Nelson Trust and 35% by CJE&L, LLC. (See below).

**Note 3a - 50% in Russell Road owned by Eric Nelson Auctioneering**

In the purchase of the Russell Road Property, the ownership of 65% of the property purchase from CJE & L, LLC was described above to be \$4,000,000. Eric Nelson says that 50% of the interest was designated to be owned by Eric Nelson Auctioneering and the other 15% by the Eric Nelson Trust.

**Note 3b - 15% sale back to Cal Nelson for 15% interest by Eric Trust**

The 15% interest is evidenced by a note in the amount of \$2,000,000 the principal amount is due in seven years from 2/3/2010 from Cal Nelson to Eric Nelson Trust. The note is secured by 15% of the real property owned by CJE & L, LLC and 15% of all rents collected from the property will be recognized as interest on the note.

**Note 3c - Receivable from CJE & L, LLC amounting to \$742,368.**

According to the 2010 tax return of CJE&L, LLC (owned 99% by Nelson Nevada Trust (Cal's Trust) and 1% by Cal Nelson), the company reports a liability in the amount of \$742,368 is due to Eric Nelson Auctioneering (Reported under Eric Trust - Eric Nelson Auctioneering). We have not received information as to the nature of this note.

**Because of the controversy on this property, it is recommended that an appraisal of the property be made directed by an independent third party.**

*At issue, Lynita believes that Cal Nelson has not put any capital into the investment and therefore the amount of this asset is 100% owned solely by Lynita and Eric Nelson.*

*Also at issue is that Lynita bought the land for \$855,000 and was forced to forfeit her interest through an assignment to Cal Nelson. This issue is over a guarantee made by Lynita on a flooring arrangement on boats for a company owned by Cal Nelson, named Cal's Blue Water Marine.*

**Subsequent Transaction**

The property was sold to the Oasis Baptist Church on 05/27/2011, prior to this transaction, the church held an option to purchase for \$6,500,000. The payments on the note were to begin on 09/01/2011. Until this date, the Oasis Baptist Church was to pay \$17,500 each month for the months of June, July, and August. Then starting on 09/01/2011 the Oasis Baptist Church will pay interest only at 6% on \$6,000,000 for 5 years and then will have a balloon payment due of \$6,500,000.

This contract was amended on 06/15/2011 because the Church could not get an exemption from property taxes unless they own the property. Therefore the original financial arrangement has been amended.

The Oasis Baptist Church needs additional improvements in order to bring their school over to the Russell Road property. In order to do this, they need an additional \$300,000 in funds for improvements to the property. Currently, they are paying \$20,000 per month space rental for them to conduct their school.

As of 06/15/2011, Julie Brown loaned \$300,000 to the Oasis Baptist Church and has a 1st Note/Deed on the property.

A 2nd Note/Deed is placed on the property to recapture all back rents and taxes in the amount of \$295,000. The 2nd Note/Deed is shared 1/3rd to Eric Nelson Auctioneering, 1/3rd to the Eric Nelson Trust and 1/3rd to CJE&L, LLC.

Therefore the remaining amount of \$6,500,000 through subordination has become a 3rd Note/Deed in the favor of shared 1/3rd to Eric Nelson Auctioneering, 1/3rd to the Eric Nelson Trust and 1/3rd to CJE&L, LLC.

The current terms are to pay \$17,500 per month until 09/01/2011 and \$30,000 thereafter. However they may ask that the payments be extended to 12/01/2011 before they begin to pay \$30,000 per month for their purchase of the property.

We understand there is a servicing agreement to collect the mortgage payments. We do not know the entity that the servicing arrangement is contracted.

*The servicing agency is an issue with Lynita.*

#### Note 4 - Brianhead, Utah

The property located in Brianhead, Utah includes a cabin on 150 acres. In addition to the property and building, the ownership includes water rights.

Eric originally valued the asset at \$3,000,000 but now believes the property has a value of approximately \$2,000,000. Lynita states the property should bring \$2,000,000 at sale, which is her preference.

It appears there is an agreement on the value of this property. However, there is no agreement on the disposition of the asset. As a result, a third-party appraisal may be required to determine the value either party should pay to buy the other one out.

#### Note 5 - 3611 Lindell

This property is an office complex. The complex has 13,040 square feet and is the location of Eric Nelson offices. Eric collects the monthly rents as well as pays for the monthly maintenance.

Both income and expenses will be listed in the Sources of Income and Expenses report.

Since there is a disagreement about the value of the office building, it is recommended an appraisal by made of the property by an independent third party.

#### Note 6 - 5913 Pebble Beach

This property is owned by the LSN Nevada Trust and is occupied by Lynita's sister, Thelma. The mortgage of \$69,000 has been paid off and the property is currently unencumbered. It appears that neither party is interested in the property and may become a non-issue.

Note 7 - Wyoming (200 acres)

This property consists of 200 acres located in Evanston, Wyoming and owned 40% by Lynita's Trust, 50% by Paul Nelson (relative) and 10% by Aleda Nelson (relative). This property could be developed into 84 Lots and are in the name of Equestrian Estates, LLC.

Eric has given a value for Lynita's 40% interest in the property of \$800,000. Lynita has not determined a value,

It is recommended an appraisal be made by an independent third party to obtain a value of the 40% interest.

Note 8 - 830 Arnold Ave.

This is a 1,300 sq. ft. house located in Greenville Mississippi. The house is being rented at \$500 per month and the rent is being collected and deposited into Banone's Bank Account. Eric has valued the property at \$40,000, which is believed to be the initial purchase price of the property.

Because there are so many other issues, it is recommended the purchase price be considered the value based upon the current economic conditions.

Note 9 - MS Bay (200 acres)

This is 200 acres located in Mississippi. The ownership and titles to the property are not clear and need to be addressed. Currently the property is titled as follows:

	<u>Acres</u>
Bal Harbour, LLC (Note 9b)	4.7790560
Bay Harbour Beach Resort, LLC (Note 9c)	2.7996560
Emerald Bay, LLC (note 9a)	0.2217080
Grotta (Note 11)	25.3773880
Lynita Trust - RV Park (Note 9e)	20.6856080
Lynita Trust (Note 9f)	41.0152290
	<u>94.8786450</u>
Dynasty (Note 10b)	91.0927580
Frank Soris Family Trust (Note 10c)	30.1382120
	<u>121.2309700</u>
Total Acres	<u>216.1096150</u>

Note 9a - Emerald Bay, LLC has .221708 acres titled in its name, which was purchased for \$55,000. Emerald Bay, LLC (formally Paradise Bay Mississippi, LLC was formed in 2005 and changed name in 2007) is a holding Company whose purpose was to assemble property of 120

acres about 2 miles from the current Silver Slipper Casino to develop a resort type project. The subsidiaries of the Company were Bal Harbour, LLC, Bay Harbour Beach Resort, Montgaze Resort, LLC, Bay Resorts, LLC, and Paradise landing, LLC. This project is not currently operating and is at a standstill.

In 2008 the ownership in this property went from 100% ownership by Eric Trust to an ownership of 50% to Lynita Trust and 50% to Eric Trust.

*At issue, Emerald Bay owes Nelson & Associates \$45,500.*

The amount due from Emerald Bay, LLC were funds advanced to pay for expenses in the assembling process. Emerald Bay does not have funds and therefore doubtful to repay Nelson & Associates back.

Note 9b - Bal Harbour, LLC has 4.779056 acres titled in its name.

Note 9c - Bay Harbour Beach Resort, LLC has 2.799656 acres titled in its name.

Note 9d - Bay Resorts, LLC currently does not have any ownership in land. This entity operated the RV Resort, had its own Bank Account until the law suit was filed. The Bank Account was closed and the rental income from Silver Slipper was the deposited into Banone.

Note 9e - Lynita Trust has 41.0152290 titled in its name. This property is not being used.

Note 9f - RV Park is owned by Lynita's Trust. The property designated for its use is 20.6856080 acres. The Silver Slipper is leasing this property and pays an amount of approximately \$4,000.00 per month.

Since there are different owners and the property is being used differently, it is recommended either an appraisal for the separate parcels be made or that the entire 200+ acres be appraised altogether, then the value could be allocated to the individual owners. In either case, the appraisal should be directed by an independent party.

#### Note 10 - Dynasty

Dynasty is an entity that is included in the Eric Nelson Trust consisting of various types of investments as described below.

##### Note 10a - Silver Slipper (Owned by Dynasty)

Dynasty has a 34% interest in the Silver Slipper Casino. If options were to be exercised, then the interest could increase to 43%.

There is currently a dispute between Eric Nelson and the other partners of the Silver Slipper Casino. In the operating agreement of Silver Slipper is a buyout provision. The other partners are attempting to exercise that provision and have offered \$1,586,000 and are pushing Eric Nelson to accept.

The other partners have filed a law suit in Los Angeles to force Eric Nelson to accept their offer. Eric Nelson is unwilling to accept the current position of the other partners. In order to oppose the other partners, Eric Nelson did put Dynasty into Bankruptcy, filing in Mississippi.

The other partners filed a motion to have the Bankruptcy dismissed as a bad faith filing. It is understood that hearing has taken place and the Bankruptcy has been dismissed. Therefore it is back to defending the law suit filed in Los Angeles.

There are other issues affecting the ownership interest in the Silver Slipper, one of which being that Lynita is not currently licensed by the Mississippi Gaming Authorities and therefore not qualified to own an interest in a gaming property.

**It is recommended that a Business Valuation be directed by an independent third party to determine the value of the Silver Slipper and also to determine the value of the percent interest owned by Dynasty.**

**Note 10b** - Dynasty owns 91.092758 acres. There has been a lien of \$1,000,000 placed against the property by BBJ, a lender to Silver Slipper.

**Note 10c** - This land consisting of 30.1382120 acres was deeded to Frank Soris Family to collateralize the \$1,300,000 owed from the 2002 transaction between Soris and Lynita Trust. (See Note 17 for the Soris transactions). It has been stated that this acreage has been quitclaimed back to Dynasty when the property in Banone was substituted as collateral for the \$1,300,000 note to Soris. The quitclaim has not been recorded.

Eric Nelson stated the value of the property, both what Dynasty owns and the Frank Soris property totaling 121.230970 acres is valued at \$1,250,000.

**It is recommended that an appraisal be made of the property owned by Dynasty and the property currently owned by Frank Soris. Such an appraisal should be conducted as recommended in Note 9.**



**Note 11 - Grotta, LLC**

Lynita's Trust owns a 1/6<sup>th</sup> interest or 16.67% with Eric Nelson's relatives owning the remaining 5/6<sup>th</sup> interest. Grotta, LLC controls various investments as described below:

**Note 11a - Dynasty Profit Sharing Agreement**

Eric Nelson states that this Company has an interest in a Profit Sharing agreement whereby Grotta, LLC is to receive 10% of Dynasty's Profits. (No determination has been made to ascertain if that is an investment and/or operating profits). There have been no profits to-date; therefore no payments from Dynasty have ever been made to Grotta, LLC.

**Note 11b - Mississippi Land**

The Grotta, LLC owns 25.377388 acres of the 200 acres described in Note 9 as MS Bay 200 acres. Eric states the value of that land is approximately \$100,000.

Eric values Lynita's trust ownership in this land at \$16,667. Lynita does not have a separate value for the property owned by Grotta, LLC.

**Note 11c - Grotta Financial Partnership**

The Grotta Financial Partnership owned land on Flamingo Road in Las Vegas, Nevada, which was condemned for the purpose of using the land to construct the "Beltway". The condemnation was used as an IRS Section 1033 exchange. Cash amounting to \$3,025,000 which was in the Grotta Financial Partnership, was transferred to the Eric Nelson Trust for future investing purposes in order to comply with the IRS Section 1033 exchange provisions. Therefore, the cash on the books of Grotta Financial Partnership was replaced with a Note Receivable to the Eric Nelson Trust. The investments made by Eric Nelson through the Eric Nelson Trust would at this time be included in the current asset schedule.

If the Eric Nelson Trust were to pay Grotta Financial Partnership the amount of \$3,025,000 or any part thereof, it would then create the situation that the amount would become taxable because the transaction would be treated as a loan which does not qualify under the IRS Section 1033 exchange rules.

*At issue, there is a Note Receivable in the amount of \$3,025,000 booked on Grotta Financial Partnership financial statements from the Eric Nelson Trust. The transaction contains various issues relating to taxable consequences if paid back.*

#### Note 12 - Hideaway Casino

This was an investment between Eric Nelson and Steve Bieri. Eric Nelson has not spent community funds in his effort to develop a casino. The investment was not viable and thus failed. Eric states that there may be a law suit against Eric Nelson to the extent of the loss suffered by Mr. Bieri amounting to approximately \$3,000,000.

#### Note 13 - Banone, LLC (Nevada)

These properties are located in Nevada and titled in the name of Banone, LLC, which is in Eric Nelson Trust. The value indicated on the schedule is the purchase price of the property including repairs thereto. In discussion with Lynita, she appeared to have a willingness to accept those values, with the exception of 4412 Baxter as described below:

Note 13a - 4412 Baxter - According to Lynita, the amount booked for 4412 Baxter is \$20,000 greater than it should be. Lynita claims the proper amount should be \$62,522; instead of \$82,522.

#### Note 14 - Banone, LLC (Arizona)

These properties are located in Arizona and titled in the name of Banone, LLC which is in Eric Nelson Trust. The value indicated on the schedule is the purchase price of the property including repairs thereto. In discussion with Lynita, she appeared to have a willingness to accept those values.

#### Note 15 - Banone AZ, LLC

There is one property in Banone AZ, LLC that is income producing. During 2010, 8 additional homes were purchased at a cost of \$251,000; at which time we have not received indication that they are income producing.

#### Note 16 - Notes Receivable

To date, we have not received copies of the documents relating to the various notes receivable. Eric represented that the notes were secured by property but we have not examined appropriate evidence to determine the validity of the collateral.

a. This note is in default. Roger Nelson is owner of RD Builders. Roger Nelson is not a relative.

b. Amada & Chris Stromberg are the daughter and son-in-law of Eric and Lynita Nelson.

c. JB Ramos Trust is related to an employee of Eric Nelson

d. Niece - At issue by Lynita, Purchased by Banone on 03/02/2010 and questions the down payment of \$20,000 and if that money came from Community Funds.

Note 23 - Bank Accounts

It is recommended that all of the Banking Accounts be brought up to a date determined by the Court and that all transactions be reviewed for subsequent transactions.

Note 24 - AZ-31 Gateway Lots

The property in this account consists of the following:

1. 29 parcels that are titled to the Lynita Trust.
2. 8 parcels where the Lynita Trust has a 25% interest, Harbor Investments has a 25% interest, Louis Walter has a 25% interest, and Gary & Margaret Zahren have a 25% interest.
3. 2 lots that were in foreclosure. As of the date of this report, we have not received documentation relating to the disposition of the foreclosure proceedings. *LSN HRS*
4. 7 lots from Joan Ramos. Joan Ramos filed bankruptcy and all lots were to be deeded back to Lynita's Trust. As of the date of this report, all seven lots are currently in the name of "Ramos Joan B Trustee". *- she relinquished*

*needs to Read Deed in view - Lynita*

# **EXHIBIT 13**

# **EXHIBIT 13**

SEPARATE PROPERTY AGREEMENT

THIS AGREEMENT, made and entered into as of the 28th day of April, 1993, by and between ERIC L. NELSON residing in the City of Las Vegas, County of Clark, State of Nevada ("Husband"), and LYNITA SUE NELSON residing in the City of Las Vegas, County of Clark, State of Nevada ("Wife"):

WITNESSETH:

WHEREAS, the parties hereto were duly married in the City of St. George, State of Utah, on the 17<sup>th</sup> day of September, 1988, and

WHEREAS, the parties hereto desire to split the community estate into the sole and separate property of each spouse in accordance with and for the purposes contained in NRS 123.130 through 123.170, inclusive; and

WHEREAS, each party acknowledges that this AGREEMENT has been entered into freely, and with full knowledge of the facts, and each party agrees to sign and exchange any papers that may be needed to complete and effectuate this AGREEMENT.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, it is agreed by and between the parties as follows:

1. The Parties declare that each has retained independent counsel and fully understands the facts and has been fully informed of all legal rights and liabilities; that after such advice and knowledge, each believes this AGREEMENT to be fair, just and reasonable, and that each signs this AGREEMENT freely and voluntarily.

2. The Parties agree that this AGREEMENT shall be controlling in determining the ownership of each party's property regardless the manner in which the property was previously held or titled, acquired through capital or personal efforts, or whether the property is real, personal or any variation thereof.

3. The parties hereby make the following division and separation of their properties, having attempted to assign fair market values to the respective items set forth hereafter and

having divided said assets debts based upon each receiving one-half of the total assets so valued:

A. Husband shall receive as his sole and separate property all assets listed on the attached Schedule "A" hereto, subject to any encumbrances thereon.

B. Wife shall receive as her sole and separate property all assets listed on the attached Schedule "B" hereto, subject to any encumbrances thereon.

4. The parties hereto shall each have a right of first refusal to match any offer of sale and purchase relating to each parties sole and separate property whether held in trust or otherwise. Each party agrees to give at least thirty (30) days notice prior to such sale and allow the other party Thirty (30) days from receiving said notice to purchase the offered property under the same terms and conditions as set forth in the offer to sale or purchase.

5. Neither Husband nor Wife shall take any action which would result in further encumbrances being placed against the marital residence without prior written permission from the other spouse.

6. Husband and Wife shall each, respectively, pay, discharge and hold the other free and harmless from any encumbrances upon any property received by them pursuant to this AGREEMENT. Husband and Wife each, respectively, agrees to pay and discharge all debts, obligations or liabilities incurred in his or her own name or capacity, and shall hold the other free and harmless therefrom.

7. Notwithstanding Paragraph 4 above, Husband and Wife each, respectively, may transfer his or her own property by gift or inheritance, as they wish or to a revocable trust without violating this AGREEMENT.

8. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs and legal representatives.

9. This AGREEMENT shall be construed in accordance with the laws of the State of Nevada.

Dated: July 13, 93

  
ERIC L. NELSON

Dated: July 13, 93

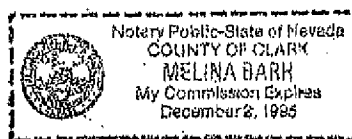
  
LYNITA SUE NELSON

STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

On this 13<sup>th</sup> day of July, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared ERIC L. NELSON, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Melina Barr  
Notary Public

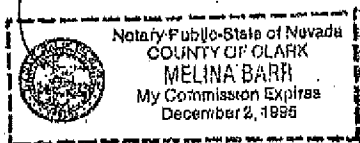


STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

On this 13<sup>th</sup> day of July, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared LYNITA SUE NELSON, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.


Melina Barr  
Notary Public



CERTIFICATION OF ATTORNEY

The undersigned hereby certifies that he is an attorney at law, duly licensed and admitted to practice in the State of Nevada; that he has been employed by JEFFREY L. BURR & ASSOCIATES and that he has advised ERIC L. NELSON with respect to this Agreement and has explained to him the legal effect of it; that ERIC L. NELSON has acknowledged his full and complete understanding of the Agreement and its legal consequences, and has freely and voluntarily executed the agreement in the undersigned's presence.

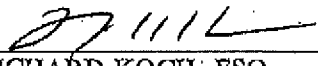
JEFFREY L. BURR & ASSOCIATES

By   
JEFFREY L. BURR, ESQ.  
1900 R. Flamingo, Suite 252  
Las Vegas, Nevada 89119

CERTIFICATION OF ATTORNEY

The undersigned hereby certifies that he is an attorney at law, duly licensed and admitted to practice in the State of Nevada; that he has been employed by RICHARD KOCH, ESQ. and that he has advised LYNITA SUE NELSON with respect to this Agreement and has explained to her the legal effect of it; that LYNITA SUE NELSON has acknowledged her full and complete understanding of the Agreement and its legal consequences, and has freely and voluntarily executed the agreement in the undersigned's presence.

RICHARD KOCH & ASSOCIATES

By   
RICHARD KOCH, ESQ.  
4520 South Pecos Road, Suite 4  
Las Vegas, Nevada 89121



**SCHEDULE "A"**  
**OF THE**  
**ERIC L. NELSON SEPARATE PROPERTY TRUST**

The following assets are hereby transferred to the Trustee as part of the Trust Estate and will be administered and distributed in accordance with the terms of the Trust Agreement of the ERIC L. NELSON SEPARATE PROPERTY TRUST, dated July 13, 1993:

The following constitutes the sole and separate property of the Trustor, and the Trustor hereby declares that all property in which he has an interest or which stands in the name of ERIC L. NELSON is wholly his sole and separate property under the laws of the State of Nevada, irrespective of the manner in which record title is held or has been held prior to the transfer to the Trustee under this Trust:

1. All of the Trustor's right, title and interest in and to any bank accounts whether they be checking or savings, certificates of deposit and other "cash" accounts as more particularly described as follows:

**INSTITUTION AND ADDRESS**

**ACCOUNT NUMBERS**

FIRST INTERSTATE BANK  
P.O. Box 98588  
Las Vegas, Nevada

085-542-433-7

BANK OF AMERICA  
300 South Fourth Street  
Las Vegas, Nevada 89101

990005372

2. The undersigned assigns, sets over and delivers all of his right, title and interest to all of his real property, subject to any and all encumbrances thereon. The description of said property is set forth below or a copy of the deed is attached.

**ADDRESS:**

Palm Park Apartments, 4021 East Portland Street, Phoenix, Arizona 85088  
304 Ramsey, Las Vegas, Nevada 89108  
Twelve (12) acres on Cheyenne, Las Vegas, Nevada  
Ten (10) acres on Cheyenne, Las Vegas, Nevada  
1098 Evergreen, Phoenix, Arizona

Jeffrey L. Burr & Associates  
Attorneys at Law

Burr00155

Forty-nine (49) lots and notes, vacant land, Queens Park Subdivision, Queens Creek, Arizona

Forty-one (41) lots and notes, vacant land, Los Ranchos Del Rio Subdivision, Sunland Park, New Mexico

3. All of the Trustor's beneficial interest in and to the following Notes Receivable:

INSTITUTION AND ADDRESS

SPORT OF KINGS  
365 Convention Center Drive  
Las Vegas, Nevada

4. All of the Trustor's beneficial interest in and to the following described automobiles:

1988 Mercedes

5. All of the Trustor's beneficial interest in and to the following described Partnership

Interests:

<u>PARTNERSHIP NAME AND ADDRESS</u>	<u>% INTEREST</u>
ERIC NELSON AUCTIONEERING 4285 South Polaris Las Vegas, Nevada 89103	40%
CASINO GAMING INTERNATIONAL, LTD. 4285 South Polaris Las Vegas, Nevada 89103	100%
POLK LANDING (TO BE FORMED)	25%

The undersigned Trustor, named in the foregoing Trust Agreement, hereby certifies that he has read said Trust Agreement and that it fully and accurately sets out the terms and Trusts and conditions under which the Trust Estate therein described is to be held, managed and disposed of by the Trustee therein named; and, that he hereby approves, ratifies and confirms the said Trust Agreement.

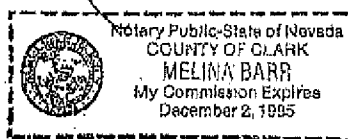
DATED July 13, 1993.

  
ERIC L. NELSON

STATE OF NEVADA )  
                          ) SS.  
COUNTY OF CLARK )

On July 13, 1993, personally appeared before me, a Notary Public, ERIC L. NELSON, who acknowledged to me that he executed the foregoing Schedule "A", free of fraud, duress, menace or undue influence of any person whatsoever.

  
NOTARY PUBLIC



Jeffrey L. Burr & Associates  
Attorneys at Law

Burr00157

**SCHEDULE "B"**  
**OF THE**  
**NELSON TRUST**

The following assets are hereby transferred to the Trustee as part of the Trust Estate and will be administered and distributed in accordance with the terms of the Trust Agreement of the NELSON TRUST, dated July 13, 1993:

The following constitutes the sole and separate property of the Trustor, and the Trustor hereby declares that all property in which she has an interest or which stands in the name of LYNITA SUE NELSON is wholly her sole and separate property under the laws of the State of Nevada, irrespective of the manner in which record title is held or has been held prior to the transfer to the Trustee under this Trust:

1. All of the Trustor's right, title and interest in and to any bank accounts whether they be checking or savings, certificates of deposit and other "cash" accounts as more particularly described as follows:

INSTITUTION AND ADDRESS

ACCOUNT NUMBERS

CONTINENTAL NATIONAL BANK  
3340 West Sahara Avenue  
Las Vegas, Nevada 89102

201023539

SILVER STATE SCHOOLS FEDERAL CREDIT UNION  
4221 S. McLeod Drive  
Las Vegas, Nevada 89121

810053106S  
810054997  
81035581  
810023736  
810038989  
810023736S

AMERICAN BANK OF COMMERCE  
4425 Spring Mountain Road  
Las Vegas, Nevada 89102

07104433

2. The undersigned assigns, sets over and delivers all of her right, title and interest to all of her real property, subject to any encumbrances thereon. The description of said property is set forth below or a copy of the deed is attached:

ADDRESS:

7065 Palmyra, Las Vegas, Nevada 89117

Jeffrey L. Burr & Associates  
Attorneys at Law

Burr00158

8558 East Indian School Road, Number J, Scottsdale, Arizona

Ten (10) acres on West Flamingo, Las Vegas, Nevada, APN 440-030-011, 440-030-010

1167 Pineridge, Panguitch, Utah

Sycamore Plaza, 749 West Main Street, Mesa, Arizona 85201

16th and Bell, 1618 East Bell Road, Phoenix, Arizona 85022

727 Hartford, Number 178, Phoenix, Arizona 85224

4285 Polaris, Las Vegas, Nevada 89103

3. All of the Trustor's beneficial interest in and to the following Notes Receivable:

INSTITUTION AND ADDRESS

METROPOLITAN MORTGAGE & SECURITY CO., INC.

W 929 Sprague Avenue

Spokane, Washington 99210

APIRADEE BUMPUS

5215 South 39th Street

Phoenix, Arizona 85040

POOL HALL SYCAMORE NOTE

749 West Main Street

Mesa, Arizona 85201

4. All of the Trustor's beneficial interest in and to the following described insurance policies and the Trustor hereby names the "NELSON TRUST" as the beneficiary under said policies:

COMPANY NAME AND ADDRESS

POLICY NUMBER

BENEFICIAL LIFE INSURANCE

(NEED #)

5. All of the Trustor's beneficial interest in and to the following described automobiles:

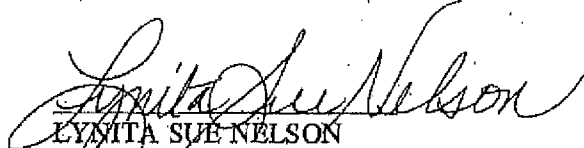
1992 VAN (need further description)

Jeffrey L. Burr & Associates  
Attorneys at Law

Burr00159

The undersigned Trustor, named in the foregoing Trust Agreement, hereby certifies that she has read said Trust Agreement and that it fully and accurately sets out the terms and Trusts and conditions under which the Trust Estate therein described is to be held, managed and disposed of by the Trustee therein named; and, that she hereby approves, ratifies and confirms the said Trust Agreement.

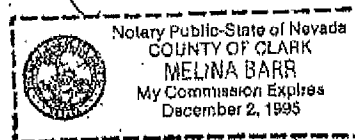
DATED July 13, 1993.

  
LYNITA SUE NELSON

STATE OF NEVADA )  
                              ) SS.  
COUNTY OF CLARK )

On July 13, 1993, personally appeared before me, a Notary Public, LYNITA-SUE NELSON, who acknowledged to me that she executed the foregoing Schedule "A", free of fraud, duress, menace or undue influence of any person whatsoever.

  
NOTARY PUBLIC



Jeffrey L. Burr & Associates  
Attorneys at Law

Burr00160