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12 Facsimile No. (702) 823-3400
13 *Attorneys for Plaintiff-Appellant*
14 *Yacov Jack Hefetz*

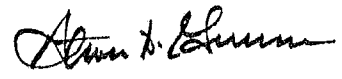
11 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

13 YACOV JACK HEFETZ,
14
15 Plaintiff-Appellant,
16
17 v.
18 CHRISTOPHER BEAVOR,
19
20 Defendant-Appellee.

Case No. 68843

**DOCKETING STATEMENT
CIVIL APPEALS**

21 **EXHIBIT 3**



CLERK OF THE COURT

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11 Tel: (702) 382-4002
12 Fax: (702) 382-1661
13 Attorneys for Christopher Beavor

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9
10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 YACOV JACK HEFETZ,

13 Plaintiff,

14 vs.

15 CHRISTOPHER BEAVOR,

16 Defendant.

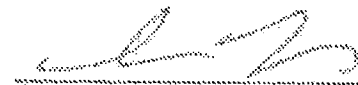
CASE NO. A-11-645353-C
DEPT. XXVIII

17 NOTICE OF ENTRY OF ORDER

18 NOTICE IS HEREBY GIVEN that an Order Granting Defendant Christopher Beavor's
19 Motion for Attorneys' Fees and Costs was entered on September 1, 2015, a copy of which is
20 attached hereto.

21 DATED this 3rd day of September 2015.

22 DICKINSON WRIGHT PLLC

23
24 
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CLERK OF THE COURT

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Attorneys for Christopher Beavor

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ,

Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

vs.

CHRISTOPHER BEAVOR,

Defendant.

**ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause appearing therefore, the Court hereby finds as follows:

IT IS HEREBY ORDERED that the Defendant's Motion for Attorney's Fees is GRANTED. Defendant is the prevailing party, having obtained a dismissal without prejudice. Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the amount of \$15,000.00.

Defendant's Offer of Judgment was both timely and reasonable in the amount especially

9/27/15 (28)

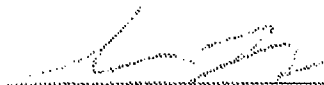
given the circumstances under which the Plaintiff had been advised prior to the filing of the motion to dismiss that the One-Action Rule would resolve the situation.

In discussing the *Brunzell* factors: (1) the quality of the work performed by Defendant's counsel was very good; (2) the character and difficulty of the work was reasonable in nature and particularly so given that it resolved the case; and (3) Defendant achieved appropriate results or results that would satisfy the *Brunzell* factors. It was the amount of time spent following the Offer of Judgment that this Court feels was excessive, and therefore the Court reduces the total award of attorneys' fees to \$15,000.00.

IT IS HEREBY FURTHER ORDERED that the Defendant's Motion for Costs is GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded costs in the amount of \$338.48.


DISTRICT COURT JUDGE
DATED: 8-28-15

Submitted by
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13 *Attorneys for Plaintiff-Appellant*
14 *Yacov Jack Hefetz*

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

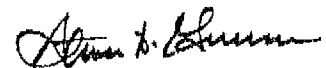
13 YACOV JACK HEFETZ,
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15 Plaintiff-Appellant,
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17 v.
18 CHRISTOPHER BEAVOR,
19
20 Defendant-Appellee.

Case No. 68843

**DOCKETING STATEMENT
CIVIL APPEALS**

21 **EXHIBIT 2**

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CLERK OF THE COURT

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13 Attorneys for Christopher Beavor

DISTRICT COURT

CLARK COUNTY, NEVADA

11 YACOV JACK HEPETZ,

12 Plaintiff,

CASE NO. A-11-645353-C
DEPT. XXVIII

13 vs.

14 CHRISTOPHER BEAVOR,

15 Defendant.

16
17 ORDER GRANTING DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR
18 ATTORNEYS' FEES AND COSTS

19 Defendant Christopher Beavor's ("Defendant") Motion for Attorneys' Fees and Costs
20 ("Motion") having come before the Court in Chambers on August 19, 2015, the Court having
21 reviewed the Motion, the opposition, and reply and supplement to reply thereto, and good cause
22 appearing therefore, the Court hereby finds as follows:

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25 Attorney fees are appropriate pursuant to the Offer of Judgment and hereby are awarded in the
26 amount of \$15,000.00.

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28

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9/1/15 (88)

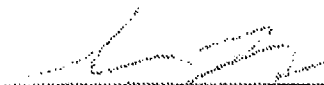
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10 GRANTED as no timely Motion to Retax was submitted and the costs set forth in Defendant's
11 memorandum of costs are all taxable pursuant to NRS 18.005. Defendant therefore is awarded
12 costs in the amount of \$338.48.

13 
14 DISTRICT COURT JUDGE
15 DATED: 8-28-15
16

17 Submitted by
18 DICKINSON WRIGHT PLLC

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

13 YACOV JACK HEFETZ,
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15 Plaintiff-Appellant,
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17 v.
18 CHRISTOPHER BEAVOR,
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20 Defendant-Appellee.

Case No. 68843

**DOCKETING STATEMENT
CIVIL APPEALS**

21 **EXHIBIT 1**

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T.J.

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Alvin D. Schuman

CLERK OF THE COURT

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Attorney for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

YACOV JACK HEFETZ, an individual, and
ALIS COHEN, an individual,
Plaintiffs,

vs.

CHRISTOPHER BEAVOR, an individual,
and SAMANTHA BEAVOR, an individual,
DOES I - X and ROE ENTITIES I - X,
inclusive

Defendants.

CASE NO: A-11-645353-C
DEPT NO.: XXVIII

VERIFIED COMPLAINT

Plaintiffs YACOV JACK HEFETZ and ALIS COHEN (collectively, "Plaintiffs"), by and through their counsel, Lee Iglody, Esq., hereby complain and allege against Defendants CHRISTOPHER BEAVOR and SAMANTHA BEAVOR (the "Guarantors") and DOES I - X and ROE ENTITIES I - X, inclusive, (collectively, "Defendants") as follows:

I. NATURE OF THE ACTION

1. This action is necessary as a result of Defendants' failure to meet their joint and several obligations as guarantors of a defaulted loan in the principal amount of \$6,000,000.00.

II. PARTIES, JURISDICTION AND VENUE

2. Plaintiff Yacov Jack Hefetz is and was at all relevant times hereto an individual that resides in Clark County, Nevada.

3. Plaintiff Alis Cohen is and was at all relevant times hereto an individual that resides in Clark County, Nevada.

4. Defendant Christopher Beavor is and was at all relevant times hereto an individual residing in Clark County, Nevada.

5. Defendant Samantha Beavor is and was at all relevant times hereto an individual residing in Clark County, Nevada.

6. Defendants designated herein as Does and Roe Entities are individuals and legal entities that are liable to Plaintiffs for the claims set forth herein. In addition to possible alter egos of the above-named Defendants, if discovery should reveal the individual Defendants, or any of their trusts, affiliated entities, family members or ex-spouses are participating in fraudulent transfers for the purpose of avoiding claims such as Plaintiffs' set forth in this Complaint, then members of these entities, trusts and/or third-party transferees, including but not limited to, individual transferees and/or new entities formed for the purpose of holding property and assets, shall be added as Defendants herein. Any transactions and the true capacities of Does and Roe Entities are presently unknown to Plaintiffs and, therefore, Plaintiffs sue said Defendants by such fictitious names. Plaintiffs will amend this Complaint to assert the true names and capacities of such Doe and Roe Entities when more information has been ascertained.

7. The majority of Defendants' wrongful acts occurred and/or arose from or in Clark County, Nevada, and the loan documents at issue provide for jurisdiction and venue in Las Vegas, Clark County, Nevada. Thus, jurisdiction is proper in the courts of this state and venue is proper in this judicial district.

III. GENERAL ALLEGATIONS

8. On or about March 29, 2007, Toluca Lake Vintage, LLC ("Borrower") entered into a Loan Agreement whereby Borrower procured a loan in the amount of \$6,000,000.00 (the "Loan") from a lender, the Herbert Frey Revocable Family Trust ("Lender"). True and correct copies of the Loan Agreement (without exhibits) and the Promissory Note evidencing the Loan are attached hereto as **Exhibits 1 and 2** respectively.

1 9. The purpose for the Loan was to improve and develop certain real property
2 located in Iron County, Utah; Los Angeles County, California; and Clark County, Nevada.

3 10. Plaintiffs participated in the Loan by contributing \$2,214,875.00 toward funding
4 of the Loan ("Participation Amount").

5 11. The Loan was benefitted by the Guarantors' joint and several, absolute,
6 unconditional and irrevocable personal guarantee of full and prompt payment of the principal
7 and interest due and owing on the Loan. A true copy of the Payment Guarantee evidencing
8 Guarantors' obligations is attached hereto as **Exhibit 3**.

9 12. Borrower defaulted on the Loan. On or about May 14, 2009, Borrower filed a
10 voluntary Chapter 11 petition under the United States Bankruptcy Code, 11 U.S.C. § 101, et seq.
11 on May 14, 2009.

12 13. Guarantors did not meet their guarantee obligations upon Borrower's default.

13 14. The Loan has not been repaid, and the Participation Amount has not been repaid
14 to Plaintiffs from Lender, Borrower, or Guarantors.

15 15. On or about July 6, 2011, Lender assigned to Plaintiffs all of Lender's right, title
16 and interest in and to the Loan, including all documents evidencing, securing, guaranteeing or
17 otherwise executed in connection with the Loan. The Guarantors' obligations, as evidenced by
18 the Payment Guarantee, were included in the assignment.

19
20 **IV. CLAIM FOR RELIEF**

21 **FIRST CLAIM FOR RELIEF**

22 **(Breach of Guarantee)**

23 16. Plaintiffs repeat and incorporate by reference the allegations in the preceding
24 paragraphs as if fully set forth herein.

25 17. Guarantors executed the Payment Guarantee in which they agreed to jointly and
26 severally, absolutely, unconditionally and irrevocably guarantee the full and prompt payment of
27 the principal and interest due and owing on the Loan.

28 18. Borrower defaulted on its obligations under the Loan.

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19. Guarantors failed to meet their guarantee obligations upon Borrower's default.

20. Lender assigned to Plaintiffs all of Lender's right, title and interest in and to the Loan, including all documents evidencing, securing, guaranteeing or otherwise executed in connection with the Loan, which encompassed Guarantors' Payment Guarantee.

21. Guarantors' failure to meet their guarantee obligations has damaged Plaintiffs in an amount in excess of \$10,000.00.

22. It has been necessary for Plaintiffs to retain the services of attorneys to prosecute their claims, and Plaintiffs are thereby entitled to an award of reasonable attorneys' fees and costs.

WHEREFORE, Plaintiffs pray for judgment in its favor and against Defendants as follows:

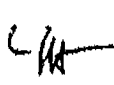
1. For judgment in favor of Plaintiffs and against Defendants, jointly and separately, in an amount to be determined at trial, in excess of \$10,000;

2. For prejudgment interest;

3. For attorneys' fees and costs; and

4. For any such other and further relief as the Court deems just and proper under the circumstances

Dated this 20th day of July, 2011.



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Attorney for Plaintiffs

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VERIFICATION

Under penalties of perjury, the undersigned declares that he is a Plaintiff named in the foregoing Verified Complaint and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.

Date:

7/18/2011

Name:

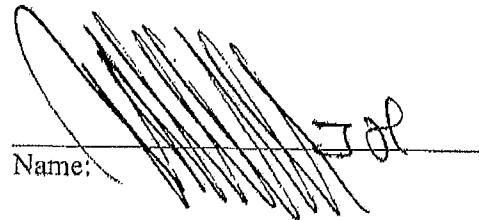


EXHIBIT 1

LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement"), is made and entered into as of March 29, 2007 by and between Toluca Lake Vintage, LLC, a California limited liability company ("Borrower"), and Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Lender").

SECTION 1. DEFINITIONS AND ACCOUNTING TERMS.

1.1 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth respectively after each:

"Acquisition Financing" shall have the meaning set forth in Section 6.7.

"Agreement" means this Loan Agreement.

"Beavor" shall mean Christopher Beavor and Samantha Beavor, each an individual.

"Borrower" means Toluca Lake Vintage, LLC, a California limited liability company.

"Brian Head Deed of Trust" shall have the meaning set forth in Section 4.1(b).

"Brian Head Property" shall have the meaning as described in Exhibit A attached hereto.

"Business Day" means any day on which banks in the State of Nevada are open for business.

"C&S" shall mean C&S Holdings, LLC, a Nevada limited liability company.

"Deeds of Trust" mean (a) the Brian Head Deed of Trust, (b) the Nevada Deed of Trust, and (c) the Toluca Lake Deed of Trust.

"Event of Default" shall have the meaning set forth in Section 7.1.

"Financing Notice" shall have the meaning set forth in Section 6.7.

"Governmental Agency" means any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public utility.

"Guarantors" mean, collectively, Beavor; C&S; and Brian Head Lofts, LLC, a Utah limited liability company.

"Guaranty" means, collectively, the Payment Guaranty executed by each Guarantor in favor of Lender, either as originally executed or as it may from time to time be supplemented, modified or amended.

"Improvements" means any and all improvements now existing or hereafter constructed on the Toluca Lake Property.

"Interest Reserve" means that portion of the Loan funds allocated to interest reserve pursuant to Section 3.2 below.

"Laws" means, collectively, all federal, state and local laws, rules, regulations, ordinances and codes.

"Lender" means Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982.

"Loan" means the loan to be made by Lender to Borrower pursuant to Section 3 hereof.

"Loan Documents" means, collectively, this Agreement, the Notes, the Deeds of Trust, the Guaranty and the Security Agreement, in each case either as originally executed or as the same may from time to time be supplemented, modified or amended, together with any other documents or instruments which may at any time be executed by Borrower in connection with the Loan.

"Nevada Deed of Trust" shall have the meaning set forth in Section 4.1(c).

"Nevada Property" shall have the meaning as described in Exhibit A attached hereto.

"Notes" mean the Phase I Note and the Phase II Note, executed by Borrower in favor of Lender to evidence the Loan, either as originally executed or as it may from time to time be supplemented, modified or amended.

"NRS" means the Nevada Revised Statutes, as amended from time to time.

"Person" means any entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization or otherwise.

"Personal Property" means all present and future personal property of Borrower of every kind and nature, whether tangible or intangible, now or hereafter located at, upon or about the Toluca Lake Property, or used or to be used in connection with or relating to or arising with respect to the Toluca Lake Property, including but not limited to the property described in the Toluca Lake Deed of Trust.

"Phase I Loan Amount" shall have the meaning set forth in Section 3.1(a).

"Phase I Note" shall have the meaning set forth in Section 4.1(a).

"Phase II Note" shall have the meaning set forth in Section 4.1(h).

"Preferred Return" shall have the meaning set forth in Section 4.2(a).

"Property" means, collectively, the Real Property, the Personal Property and any buildings, structures, or improvements now or hereafter located on all or any portion of the Real Property.

"Real Property" means, collectively, (a) the Brian Head Property, (b) the Nevada Property, and (c) the Toluca Lake Property, all as more particularly described in Exhibit A attached hereto.

"Security Agreement" shall have the meaning set forth in Section 4.1(e).

"Security Documents" means the Deeds of Trust, the Guaranty and the Security Agreement.

"Toluca Lake Deed of Trust" shall have the meaning set forth in Section 4.2(b).

"Toluca Lake Property" shall have the meaning as described in Exhibit A attached hereto.

"Unit" means each residential condominium unit created by Borrower on the Toluca Lake Property.

1.2 Use of Defined Terms. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the members of the relevant class. Any reference to the Loan Documents and other instruments, documents and agreements shall include such Loan Documents and other instruments, documents and agreements as originally executed or as the same may be supplemented, modified or amended.

1.3 Accounting Terms. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis.

1.4 Exhibits. All exhibits to this Agreement, either as now existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference.

SECTION 2. RECITALS.

Borrower has applied to Lender for a Loan to complete the acquisition and development of the Toluca Lake Property. Lender is willing to make the Loan to Borrower on the terms and conditions contained in this Agreement and the other Loan Documents.

SECTION 3. THE LOAN.

3.1 Amount of the Loan. Subject to the terms and conditions set forth in this Agreement, Lender agrees to make a loan ("Loan") to Borrower in the aggregate principal amount of Six Million Dollars (\$6,000,000) (the "Loan Amount"), the disbursement of which by Lender is subject to the terms and conditions of the Loan Documents. The Loan Amount shall be disbursed to Borrower as follows:

(a) Phase I. Concurrently with the execution of this Agreement, Lender shall disburse to Borrower the sum of Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) (the "Phase I Loan Amount") in the amounts and according to the disbursement schedule attached hereto as Exhibit B. Of this amount, Borrower and Lender acknowledge and agree that One Hundred Sixty Four Thousand Dollars (\$164,000) shall be withheld by Lender as a loan fee, which shall be deemed nonrefundable and fully earned upon disbursement of the Phase II Loan proceeds as set forth in Section 3.1(b) below, and Seventy Seven Thousand Four Hundred Ninety Dollars (\$77,490) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase I Loan shall be evidenced by the Phase I Note.

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(b) Phase II. On June 20, 2007, Lender shall disburse to Borrower the sum of Six Million Dollars (\$6,000,000). Of this amount, Borrower and Lender acknowledge and agree that Two Million Two Hundred Ninety One Thousand Four Hundred Ninety Dollars (\$2,291,490) shall be withheld by Lender and applied to pay and satisfy in full the Phase I Note, and One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) shall be withheld by Lender as a portion of the Interest Reserve to be utilized as set forth in Section 3.2 below. The Phase II Loan shall be evidenced by the Phase II Note.

3.2 Interest Reserve. A portion of the Loan Amount, in the amounts set forth in Section 3.1 above, shall withheld by Lender and applied as interest reserve for its benefit (the "Interest Reserve"). Interest accrued on the then outstanding Loan Amount shall be paid from a portion of the Interest Reserve upon presentation of a monthly interest statement by Lender to Borrower, without the necessity of any instruction or request from Borrower. Except as provided in this paragraph, the funds in the Interest Reserve shall never be used for any other purpose. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including, but not limited to, the obligation to pay interest accruing under the Note.

3.3 Prepayment. Borrower may prepay the Loan, in full or in part, at any time.

3.4 Security. The indebtedness evidenced by the Notes, and all other indebtedness and obligations of Borrower under the Loan Documents, shall be secured as set forth in Section 4. The Guaranty and the obligations of any Guarantor thereunder shall be unsecured.

SECTION 4. LOAN DOCUMENTS AND SECURITY.

4.1 Phase I Loan. Upon disbursement of the Phase I Loan, Borrower shall deliver to Lender the following:

(a) A promissory note in the principal amount of the Phase I Loan Amount bearing interest at the rate of twelve percent (12%) per annum (the "Phase I Note"), unless said rate is reduced to eight percent (8%) per annum by reason of a failure by Lender to timely fund the Phase II Loan Amount as set forth in Section 7.2(b);

(b) A Deed of Trust executed by C&S, as grantor, encumbering the Brian Head Property as a first priority lien (the "Brian Head Deed of Trust");

(c) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing executed by Beavor, as grantor, encumbering the Nevada Property as a second priority lien (the "Nevada Deed of Trust");

(d) A Payment Guaranty executed by each Guarantor in favor of Lender; and

(e) A Security Agreement and Assignment of Membership Interest by and between C&S; Rocket Construction, Inc., a California corporation; and Essential Investments, LLC, a Nevada limited liability company, collectively, as assignor, and Lender, as assignee (the "Security Agreement").

4.2 Phase II Loan. Upon disbursement of the Phase II Loan, Borrower shall deliver to Lender the following:

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(a) A promissory note in the principal amount of the Phase II Loan bearing interest at the rate of fifteen percent (15%) per annum plus a preferred return ("Preferred Return") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000), in the form attached hereto as Exhibit C (the "Phase II Note"). Upon delivery of the Phase II Note, the Phase I Note shall be deemed paid and satisfied in full and Lender shall return the Phase I Note to Borrower marked "Paid in Full"; and

(b) A Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Toluca Lake Property as a second priority lien (the "Toluca Lake Deed of Trust"), in the form attached hereto as Exhibit D. Borrower and Lender acknowledge and agree that the Phase II Loan proceeds will be used by Borrower to acquire the Toluca Lake Property and that the Toluca Lake Deed of Trust will be delivered to Lender concurrently with close of escrow by Borrower for the Toluca Lake Property.

SECTION 5. REPRESENTATIONS AND WARRANTIES BY BORROWER.

5.1 Formation, Qualification and Powers of Borrower. Borrower is a limited liability company duly formed and validly existing under the laws of the State of California and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform all of its obligations under the Loan Documents.

5.2 Authority and Compliance with Instruments and Government Regulations. The execution, delivery and performance by Borrower of all of its obligations under each Loan Document have been duly authorized by all necessary action and do not and will not:

(a) require any consent or approval not heretofore obtained of any Person holding any security or interest or entitled to receive any security or interest in Borrower;

(b) violate any provision of any organizational document or certificate of Borrower;

(c) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to any property now owned or leased or hereafter acquired by Borrower;

(d) violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Property, which violation would have a material, adverse impact thereon; or

(e) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which Borrower or any property of Borrower, is bound or affected; and Borrower is not in default in any respect that is materially adverse to the interest of Lender or that would have any material adverse effect on the financial condition of Borrower or the conduct of its business under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in Sections 5.2(d) and 5.2(e).

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Guaranty: 5.3 Execution of the Guaranty by the Guarantors. The execution and delivery of the

- (a) have been duly authorized by all necessary action;
- (b) do not require the consent, authorization or approval of any Governmental Agency or Person;
- (c) will not result in the creation of any lien or other claim of any nature upon or with respect to the property of the Guarantors, other than as may be set forth in the Guaranty; and
- (d) will not violate any provision of any Law having applicability to the Guarantors, in a manner which would have a material, adverse impact on any Guarantors; and, when executed and delivered, the Guaranty will constitute the legal, valid and binding obligation of the Guarantors enforceable against the Guarantors in accordance with its terms.

5.4 No Governmental Approvals Required. No authorization, consent, approval, order, license, exemption from, or filing, registration or qualification with, any Governmental Agency is or will be required to authorize, or is otherwise required in connection with:

- (a) the execution, delivery and performance by Borrower and the Guarantors of the Loan Documents; or
- (b) the creation of the liens, security interests or other charges or encumbrances described in the Security Documents; except that filing and/or recording may be required to perfect Lender's interest under the Security Documents.

5.5 Binding Obligations. The Loan Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Borrower and the Guarantors, as the case may be, enforceable against them in accordance with their respective terms.

SECTION 6. AFFIRMATIVE AND NEGATIVE COVENANTS.

Until payment of the Notes in full and performance of all obligations of Borrower under the Loan Documents, unless Lender otherwise consents in writing:

6.1 Compliance with Requirements. Borrower shall comply with all conditions, covenants, restrictions, leases, easements, reservations, rights and rights-of-way and all applicable Laws and other requirements relating to the Property, and obtain all necessary approvals, consents, licenses and permits of any Governmental Agency.

6.2 Sale or Other Encumbrances. Borrower specifically agrees that:

- (a) In order to induce Lender to make the Loan, Borrower agrees that if the Property or any part thereof or any interest therein, shall be sold, assigned, transferred, or conveyed, except as shall be specifically hereinafter permitted or without the prior written consent of Lender, then Lender, at its option, may declare the Notes, and all other obligations hereunder, to be forthwith due and payable. Except as shall be otherwise specifically provided herein, (a) a change in the legal or equitable ownership of the Property whether or not of record, or (b) a change in the form of entity or ownership (including the hypothecation or encumbrance

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thereof) of the stock or any other ownership interest in Borrower shall be deemed a transfer of an interest in the Property; provided, however, that any transfer of the Property or any interest therein to an entity which controls, is controlled by or is under common control with Borrower shall not be considered a transfer hereunder.

(b) Borrower may request Lender to approve a sale or transfer of the Property to a party who would become the legal and equitable owner of the Property and would assume any and all obligations of Borrower under the Loan Documents. Lender shall not be obligated to consider or approve any such sale, transfer or assumption or request for the same. However, upon such request, Lender may impose limiting conditions and requirements to its consent to an assumption.

(c) In the event ownership of the Property, or any part thereof, becomes vested in a person or persons other than Borrower, the Lender may deal with such successor or successors in interest with reference to the Notes or the Deeds of Trust in the same manner as with Borrower, without in any way releasing, discharging or otherwise affecting the liability of Borrower under the Notes, the Deeds of Trust or the other Loan Documents.

6.3 Payment of Taxes, Assessments and Charges. Borrower shall pay, prior to delinquency, all taxes, assessments, charges and levies imposed by any Governmental Agency which are or may become a lien affecting the Property or any part thereof, including, without limitation, assessments on any appurtenant water stock; except that Borrower shall not be required to pay and discharge any tax, assessment, charge or levy that is being actively contested in good faith by appropriate proceedings, as long as Borrower has established and maintains reserves adequate to pay any liabilities contested pursuant to this Section in accordance with generally accepted accounting principles and, by reason of nonpayment, none of the property covered by the Security Documents or the lien or security interest of Lender is in danger of being lost or forfeited.

6.4 Insurance. Borrower shall at all times maintain the following policies of insurance:

(a) prior to completion of the Improvements, builder's "all risk" insurance ("completed value" form), including "course of construction" coverage, covering the Improvements and any Personal Property;

(b) from and after completion of the Improvements, property "all risk" Insurance covering the Improvements and any Personal Property;

(c) commercial general liability insurance in favor of the Borrower (and naming Lender as an additional insured) in an aggregate amount not less than \$2,000,000 (or such greater amount as may be specified by Lender from time to time) combined single limit; and

(d) such other insurance as may be required by applicable Laws (including worker's compensation and employer's liability insurance) or as Lender may reasonably require from time to time (including "all risk" insurance with respect to any other improvements now or in the future located on the Toluca Lake Property and comprehensive form boiler and machinery insurance, if applicable, rental loss insurance and business interruption insurance).

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6.5 Physical Security of Property. Borrower shall take appropriate measures to protect the physical security of the Property.

6.6 Reporting and Requirements. Borrower shall cause to be delivered to Lender, in form and detail satisfactory to Lender promptly upon Borrower's learning thereof, notice of:

- (a) any litigation affecting or relating to Borrower, and/or the Guarantors, and the Property;
- (b) any dispute between Borrower and any Governmental Agency relating to the Property, the adverse determination of which would adversely affect the Property;
- (c) any threat or commencement of proceedings in condemnation or eminent domain relating to the Property;
- (d) any Event of Default or event which, with the giving of notice and/or the passage of time, could become an Event of Default; and
- (e) any change in the Manager of Borrower, as defined in Borrower's Operating Agreement.

6.7 Approval of Toluca Lake Property Financing. Borrower and Lender acknowledge and agree that Borrower intends to obtain a loan for the acquisition of the Toluca Lake Property and construction of a condominium project thereon (the "Acquisition Financing"). The Acquisition Financing shall be secured by a deed of trust encumbering the Toluca Lake Property as a lien superior in priority to the Toluca Lake Deed of Trust. Except as set forth herein, the terms of the Acquisition Financing shall be subject to the written approval of the Lender within its commercially reasonable discretion. Borrower shall deliver written notice (the "Financing Notice") to Lender describing the terms of the Acquisition Financing no later than fifteen (15) days prior to the scheduled close of escrow. In the event Borrower does not receive written notice from Lender within five (5) days after delivery of the Financing Notice to Lender disapproving the proposed terms of the Acquisition Financing, the Acquisition Financing shall be deemed approved by Lender. Notwithstanding the foregoing, Borrower shall not be required to obtain Lender's consent to the Acquisition Financing if the interest rate therefor does not exceed three percent (3%) over the prime rate then charged by major money center banks in the United States and the loan origination fee does not exceed one percent (1%) of the principal loan amount. Borrower and Lender acknowledge and agree that during the term of the Loan, the aggregate principal amount of all indebtedness secured by the Toluca Lake Property, including the Acquisition Financing and the Loan, shall not exceed Twenty Six Million Dollars (\$26,000,000).

SECTION 7. EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT.

7.1 Events of Default. The occurrence of any one or more of the following, whatever the reason therefor, shall constitute an Event of Default hereunder:

(a) Borrower shall fail to pay when due any installment of principal or interest on the Notes or any other amount owing under this Agreement or the other Loan Documents, and such failure shall continue uncured as of ten (10) calendar days after Borrower receives written notice of such failure; or

(b) Borrower or any Guarantor shall fail to perform or observe any term, covenant or agreement contained in any of the Loan Documents on its part to be performed or

observed, other than the failure to make a payment covered by Section 7.1(a), and such failure shall continue uncured as of thirty (30) calendar days after Borrower receives written notice of such failure; provided, however, that if Borrower has commenced to cure the default within said thirty (30) day period and is diligently pursuing such cure, but the default is of such a nature that it cannot be cured within thirty (30) days, then the cure period shall be extended for the number of days necessary to complete the cure, but in no event shall the total cure period be longer than sixty (60) days (the cure period set forth in this Section 7.1(b) shall not apply to any other Events of Default); or

(c) any representation or warranty in any of the Loan Documents or in any certificate, agreement, instrument or other document made or delivered pursuant to or in connection with any of the Loan Documents proves to have been incorrect in any material respect when made; or

(d) Borrower (which term shall include any entity comprising Borrower) is dissolved or liquidated, or otherwise ceases to exist, or all or substantially all of the assets of Borrower or any Guarantor are sold or otherwise transferred without Lender's written consent; or

(e) Borrower or any Guarantor is the subject of an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower or any Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer (the "Receiver"); or a Receiver is appointed without the application or consent of Borrower or any Guarantor, as the case may be, and the appointment continues undischarged or unstayed for sixty (60) calendar days; or Borrower or any Guarantor institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceedings relating to it or to all or any part of its property under the laws of any jurisdiction; or any similar proceeding is instituted without the consent of Borrower or any Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) calendar days; or any judgment, writ, attachment, execution or similar process is issued or levied against all or any part of the Property of Borrower or any Guarantor, and is not released, vacated or fully bonded within sixty (60) calendar days after such issue or levy.

7.2 Remedies Upon Default.

(a) Upon the occurrence of any Event of Default, Lender may, at its option, do any or all of the following:

(i) declare the principal of all amounts owing under a Note, this Agreement and the other Loan Documents and other obligations secured by the Security Documents, together with interest thereon, and any other obligations of Borrower to Lender, to be forthwith due and payable, regardless of any other specified maturity or due date, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character, and without the necessity of prior recourse to any security;

(ii) terminate any right of Borrower to receive any additional advance;

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(iii) terminate all rights of Borrower and obligations of Lender under the Loan Documents;

(iv) exercise its right and power to sell, or otherwise dispose of, the Personal Property, or any part thereof, and for that purpose may take immediate and exclusive possession of the Personal Property, or any part thereof, and with or without judicial process to the extent permitted by law, enter upon any premises on which the Personal Property or any part thereof may be situated and remove the same therefrom without being deemed guilty of trespass and without liability for damages thereby occasioned, or at Lender's option Borrower shall assemble the Personal Property and make it available to the Lender at the place and the time designated in the demand; and

(v) exercise any and all of its rights under the Loan Documents, including but not limited to the right to take possession of and foreclose on any security, and exercise any other rights with respect to any security, whether under the Security Documents or any other agreement or as provided by Law, all in such order and in such manner as Lender in its sole discretion may determine.

(b) If Lender shall fail to perform any obligation under this Agreement, including, without limitation, timely disbursement of the funds as set forth in Section 3.1, Borrower shall be entitled to all or any of the following remedies:

(i) in the event Lender fails to timely disburse funds as set forth in Section 3.1, the interest rate under the Phase I Note shall be reduced from twelve percent (12%) to eight percent (8%) per annum effective as of the date of Lender's failure to so fund; and

(ii) pursue an action to specifically enforce the performance of any and all provisions of this Agreement, including, without limitation, Section 7.2(b)(i).

SECTION 8. MISCELLANEOUS.

8.1 Performance by Lender. In the event that Borrower shall default in or fail to perform any of its obligations under the Loan Documents, Lender shall have the right, but not the duty, without limitation upon any of Lender's rights pursuant thereto, upon no less than fifteen (15) calendar days prior written notice, to perform the same, and Borrower agrees to pay to Lender, within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.2 Actions. Provided Borrower has not promptly so acted, Lender shall have the right to commence, appear in, and defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds, and in connection therewith Lender may pay necessary expenses, employ counsel, and pay reasonable attorneys' fees. Borrower agrees to pay to Lender within seventy-two (72) hours after demand therefor, all costs and expenses incurred by Lender in connection therewith, including without limitation actual attorneys' fees reasonably incurred.

8.3 Advances Obligatory. Anything herein to the contrary notwithstanding, it is specifically understood and agreed that any advances made by Lender pursuant to this Agreement,

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including, but not limited to, all funds advanced by Lender, shall be deemed advanced by Lender under an obligation to do so.

8.4 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that, as provided herein, Borrower may not assign its rights or interest or delegate any of its duties under this Agreement or any of the other Loan Documents without prior written consent of Lender.

8.5 Amendments; Consents. No amendment, modification, supplement, termination or waiver of any provision of this Agreement or any of the other Loan Documents, and no consent to any departure by Borrower therefrom, may in any event be effective unless in writing signed by Lender, and then only in the specific instance and for the specific purpose given.

8.6 Notices. All notices to be given pursuant to this Agreement shall be sufficient if given by personal service, by guaranteed overnight delivery service, by telex, telecopy or telegram or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the described addresses of the parties hereto as set forth below, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, the date of sending the telex, telecopy or telegram or two (2) days after mailing certified or registered mail.

BORROWER'S ADDRESS:

Toluca Lake Vintage, LLC
1930 Village Center Circle, Suite 3-231
Las Vegas, Nevada 89134
Attention: Christopher Beaver
Telephone: (702) 853-7900
Facsimile: (702) 947-6111

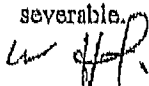
LENDER'S ADDRESS:

Herbert Frey, Trustee of the
Herbert Frey Revocable Family Trust
157 E. Warm Springs Road
Telephone: (702) _____
Facsimile: (702) _____

8.7 Governing Law. The laws of the State of Nevada, without regard to its choice of law provisions, shall govern enforcement of the Loan Documents.

8.8 Jurisdiction. Borrower and Lender, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (i) submit to personal jurisdiction in the State of Nevada over any suit, action or proceeding by any person arising from or relating to the Notes, this instrument or any other of the Loan Documents, (ii) agree that any such action, suit or proceeding shall be brought in a state or federal court of competent jurisdiction sitting in Clark County, Nevada, (iii) submit to the jurisdiction of such courts, and (iv) to the fullest extent permitted by law, agrees that they will not bring any action, suit or proceeding in any forum other than Clark County, Nevada.

8.9 Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable or invalid shall be inoperative, unenforceable or invalid without affecting the remaining provisions, and to this end the provisions of all Loan Documents are declared to be severable.



8.10 Headings. Section headings in this Agreement are included for convenience of reference only and are not part of this Agreement for any other purpose.

8.11 Attorney's Fees. If any legal action or proceeding is initiated by a party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover the reasonable fees of attorneys and any other costs incurred in connection therewith.

8.12 Time of the Essence. Time is of the essence as to any and all provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.


BORROWER:

TOLUCA LAKE VINTAGE, LLC
A California limited liability company

By:  3/29/07

Christopher Beavor
Manager

LENDER:

 3/29/07
HERBERT FREY, Trustee of the Herbert Frey
Revocable Family Trust dated
November 22, 1982

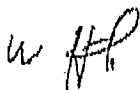


EXHIBIT 2

PROMISSORY NOTE

U.S. \$6,000,000.00

As of 8/23/07

FOR VALUE RECEIVED, Toluca Lake Vintage, LLC, a California limited liability company, having an address at 1930 Village Center Circle, Suite 3-231, Las Vegas, Nevada 89134 ("Maker"), hereby promises to pay to the order of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Payee"), having an address at 157 E. Warm Springs Road, Las Vegas, Nevada 89119, the principal sum of Six Million Dollars (\$6,000,000.00) or so much thereof as may be advanced from time to time, and interest from the date hereof on the balance of principal from time to time outstanding, in United States currency, at the rates and at the times hereinafter described.

This Note is issued by Maker pursuant to that certain Loan Agreement dated as of March 29, 2007, as amended, (the "Loan Agreement") entered into between Payee and Maker. This Note evidences the Phase II Loan (as defined in the Loan Agreement). Payment of this Note is governed by the Loan Agreement, the terms of which are incorporated herein by express reference as if fully set forth herein. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

1. Interest. The principal amount hereof outstanding from time to time shall bear interest until paid in full at the rate of fifteen percent (15%) per annum.

2. Monthly Payments. Interest only shall be payable in arrears on the first (1st) Business Day of each calendar month after the date hereof up to and including the Maturity Date in the amount of all interest accrued during the immediately preceding calendar month. All payments on account of the indebtedness evidenced by this Note shall be made to Payee not later than 11:00 a.m. Las Vegas, Nevada time on the day when due in lawful money of the United States and shall be first applied to late charges, costs of collection or enforcement and other similar amounts due, if any, under this Note and any of the other Loan Documents, then to interest due and payable hereunder and the remainder to principal due and payable hereunder.

3. Maturity Date. The indebtedness evidenced hereby shall mature on February 21, 2009, as such date may be extended by Maker as set forth herein ("Maturity Date"). Provided that an Event of Default does not exist under the Loan Documents, Maker shall have the right to extend the Maturity Date to 5/21/09 by delivering written notice to Payee of such extension at the address set forth above on or before 1/21/09. Moreover, provided that Maker has so extended the Maturity Date and an Event of Default does not exist under the Loan Documents, Maker shall have the right to further extend the Maturity Date to 8/21/09 by delivering written notice to Payee of such further extension at the address set forth above on or before 4/21/09. On the Maturity Date, the entire outstanding principal balance hereof, together with accrued and unpaid interest and all other sums evidenced by this Note, shall, if not sooner paid, become due and payable.

4. Preferred Return. In consideration for the Loan, Payee shall be entitled to receive a preferred return (the "Preferred Return") in the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00). The Preferred Return shall not bear interest hereunder and shall be payable upon the sale, transfer or conveyance of each Unit by Maker to any Person as follows: (a) to Payee, the

amount of Thirty Five Thousand Dollars (\$35,000.00); and (b) to The Gilmore Company, a Nevada corporation, at its offices located at _____, the amount of Five Thousand Dollars (\$5,000.00).

5. General Provisions.

(a) The parties hereto intend and believe that each provision in this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and the holder or holders hereof under the remainder of this Note shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, the fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

(b) This Note and all provisions hereof shall be binding upon Maker and all persons claiming under or through Maker, and shall inure to the benefit of Payee, together with its successors and assigns, including each owner and holder from time to time of this Note.

(c) Time is of the essence as to all dates set forth herein.

(d) Maker agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Payee; and Maker consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Payee with respect to the payment or other provisions of this Note, and to any substitution, exchange or release of the collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any makers, endorsers, guarantors, or sureties, all whether primarily or secondarily liable, without notice to Maker and without affecting its liability hereunder.

(e) If this Note is placed in the hands of attorneys for collection or is collected through any legal proceedings, Maker promises and agrees to pay, in addition to the principal, interest and other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including all reasonable attorneys' fees and disbursements.

(f) All parties now or hereafter liable with respect to this Note, whether Maker, principal, surety, guarantor, endorsee or otherwise hereby severally waive presentment for payment, demand, notice of nonpayment or dishonor, protest and notice of protest, except as Lender

agrees to provide in the Loan Documents. No failure to accelerate the indebtedness evidenced hereby, acceptance of a past due installment following the expiration of any cure period provided by this Note, any Loan Document or applicable law, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Payee thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by the laws of the State. Maker hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(g) THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEVADA AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

Maker has delivered this Note as of the date first set forth above.

MAKER:

TOLUCA LAKE VINTAGE, LLC
A California limited liability company

By: 

Christopher Beaver
Manager

EXHIBIT 3

PAYMENT GUARANTY

THIS PAYMENT GUARANTY ("Guaranty") made as of March 29, 2007, by Christopher Beavor, an individual, and Samantha Beavor, an individual (collectively, "Guarantor"), to and for the benefit of Herbert Frey, Trustee of the Herbert Frey Revocable Family Trust dated November 22, 1982 ("Lender").

RECITALS

A. On or about the date hereof Toluca Lake Vintage, LLC, a California limited liability company, ("Borrower") and Lender entered into that certain Loan Agreement ("Loan Agreement") whereby Lender agreed to make a secured loan (the "Loan") available to Borrower in the aggregate amount of Six Million Dollars (\$6,000,000), to finance the acquisition and development of the Toluca Lake Property. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

B. In connection with the Loan, Borrower will execute and deliver the Notes in favor of Lender, payment of which will be secured by (i) the Deeds of Trust made by Borrower in favor of Lender and (ii) the other Security Documents.

C. Guarantor will derive material financial benefit from the Loan evidenced and secured by the Notes, the Deeds of Trust and the other Security Documents.

D. Lender has relied on the statements and agreements contained herein in agreeing to make the Loan. The execution and delivery of this Guaranty by Guarantor is a condition precedent to the making of the Loan by Lender.

AGREEMENTS

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenants and agrees for the benefit of Lender and its respective successors, indorsees, transferees, participants and assigns as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees:

(a) the full and prompt payment of the principal of and interest on the Notes when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, and the full and prompt payment of all sums which may now be or may hereafter become due and owing under the Notes, the Loan Agreement and the other Loan Documents;

(b) the prompt, full and complete performance of all of Borrower's obligations under each and every covenant contained in the Loan Documents; and

(c) the full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 6 hereof).

All amounts due, debts, liabilities and payment obligations described in subsections (a) and (b) of this Section 1 shall be hereinafter collectively referred to as the "Indebtedness".

2. In the event of any default by Borrower in the payment of the Indebtedness, after the expiration of any applicable cure or grace period, Guarantor agrees, on demand by Lender or the holder of the Note, to pay the Indebtedness regardless of any defense, right of set-off or claims which Borrower or Guarantor may have against Lender or the holder of the Note.

All of the remedies set forth herein and/or provided for in any of the Loan Documents or at law or equity shall be equally available to Lender, and the choice by Lender of one such alternative over another shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seeking any other remedy under this Guaranty, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies provided herein in part because they recognize that the choice of remedies in the event of a default hereunder will necessarily be and should properly be a matter of good faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Borrower and/or Guarantor.

3. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by Lender and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which Guarantor may have against Borrower (c) waive any defense, right of set-off or other claim which Guarantor or Borrower may have against Lender, or the holder of the Note, (d) waive any and all rights Guarantor may have under any anti-deficiency statute or other similar protections, (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (f) waive any failure by Lender to inform Guarantor of any facts Lender may now or hereafter know about Borrower, the Loan, or the transactions contemplated by the Loan Agreement, it being understood and agreed that Lender has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonperformance of Borrower's obligations. Credit may be granted or continued from time to time by Lender to Borrower without notice to or authorization from Guarantor, regardless of the financial or other condition of Borrower at the time of any such grant or continuation.

4. Guarantor further agrees that Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor of the time for payment of interest or principal under the Notes or by any forbearance or delay in collecting interest or principal under the Notes, or by any waiver by Lender under the Loan Agreement, Deeds of Trust or any other Loan Documents, or by Lender's failure or election not to pursue any other remedies it may have against Borrower or Guarantor, or by any change or modification in the Notes, Loan Agreement, Deeds of Trust or any other Loan Document, or by the acceptance by Lender of any additional security or any increase, substitution or change therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein, or by the application of payments received from any source to the payment of any obligation other than the Indebtedness even though Lender might lawfully have elected to apply such payments to any part or all of the Indebtedness, it being the intent hereof that, subject to Lender's compliance with the terms of this Guaranty, Guarantor shall remain liable for the payment of the Indebtedness, until the Indebtedness has been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantor further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Notes, Loan Agreement, Deeds of Trust or other Loan Documents,

and may waive or release any provision or provisions of the Notes, Loan Agreement, Deeds of Trust and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or Guarantor's obligations hereunder.

5. This is an absolute, present and continuing guaranty of payment and not of collection. Guarantor agrees that this Guaranty may be enforced by Lender without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Notes, Loan Agreement, Deeds of Trust or any of the other Loan Documents through foreclosure or sale proceedings, as the case may be, under the Deeds of Trust or otherwise, or resorting to any other guaranties, and without limiting the generality of the foregoing, Guarantor waives any right Guarantor may have under the Nevada one action rule, Nevada Revised Statutes Section 40.430.

6. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent Lender in any proceedings whatsoever in connection with this Guaranty and Lender prevails in any such proceedings, then Guarantor shall pay to Lender upon demand all attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "*Enforcement Costs*"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

7. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable, as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Lender or the holder of the Note under the remainder of this Guaranty shall continue in full force and effect.

8. TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LENDER AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF LAS VEGAS, AND STATE OF NEVADA, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. LENDER

AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY NEVADA STATE OR UNITED STATES COURT SITTING IN THE CITY OF LAS VEGAS AND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE APPLICABLE PARTY AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

9. Any indebtedness of Borrower to Guarantor now or hereafter existing is hereby subordinated to the payment of the Indebtedness. Guarantor agrees that, until the entire Indebtedness has been paid in full, Guarantor will not seek, accept, or retain for its own account, any payment from Borrower on account of such subordinated debt. Any payments to Guarantor on account of such subordinated debt shall be collected and received by Guarantor in trust for Lender and shall be paid over to Lender on account of the Indebtedness without impairing or releasing the obligations of Guarantor hereunder.

10. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Guarantor:

Christopher Beavor
1930 Village Center Circle Suite 3-231
Las Vegas, Nevada 89134
Telephone: (702) 853-7900
Facsimile: (702) 947-6111

Lender:

Herbert Frey, Trustee of the Herbert Frey
Revocable Family Trust dated November 22, 1982
157 E. Warm Springs Road
Las Vegas, Nevada 89119
Telephone: _____
Facsimile: _____


or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

11. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death of Guarantor. If more than one party executes this Guaranty, the liability of all such parties shall be joint and several.

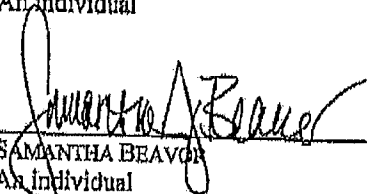
12. This Guaranty may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has delivered this Guaranty in the State of Nevada as of the date first written above.

GUARANTOR:



CHRISTOPHER BEAVOR
An individual 3/28/07



SAMANTHA BEAVOR
An individual 3/28/07

1 **COHEN-JOHNSON, LLC**
2 H. STAN JOHNSON, ESQ.
3 Nevada Bar No. 00265
4 sjohnson@cohenjohnson.com
5 MICHAEL V. HUGHES, ESQ.
6 Nevada Bar No. 13154
7 mhughes@cohenjohnson.com
8 Suite 100
9 255 East Warm Springs Road
10 Las Vegas, Nevada 89119
11 Telephone No. (702) 823-3500
12 Facsimile No. (702) 823-3400
13 *Attorneys for Plaintiff-Appellant*
14 *Yacov Jack Hefetz*

Electronically Filed
Oct 05 2015 10:02 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

13 YACOV JACK HEFETZ,
14
15 Plaintiff-Appellant,
16
17 v.
18 CHRISTOPHER BEAVOR,
19
20 Defendant-Appellee.

Case No. 68843

**DOCKETING STATEMENT
CIVIL APPEALS**

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

YACOV JACK HEFETZ,

Plaintiff-Appellant,

v.

CHRISTOPHER BEAVOR,

Defendant-Appellee.

No. 68843

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXVIII
County Clark Judge Ronald J. Israel
District Ct. Case No. A-11-645353-C

2. Attorney filing this docketing statement:

Attorney H. Stan Johnson & Michael V. Hughes Telephone (702) 823-3500

Firm Cohen|Johnson, LLC

Address Suite 100
255 East Warm Springs Road
Las Vegas, Nevada 89119

Client(s) Yacov Jack Hefetz

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Joel Z. Schwarz & Gabriel A. Blumberg Telephone (702) 382-4002

Firm Dickinson Wright PLLC

Address Suite 200
8383 West Sunset Road
Las Vegas, Nevada 89113

Client(s) Christopher Beavor

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>Failure to Meet NRS 40.430</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Fee & Cost Award</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Christopher Beavor v. Eighth Judicial District Court (Hefetz), Case No. 65656 (Supreme Court for the State of Nevada). Case Filed: May 13, 2014. Case Closed: October 13, 2014.

Yakov Jack Hefetz v. Christopher Beavor, Case No. 68438 (Supreme Court for the State of Nevada). Case Filed: July 20, 2015. Case Closed: Not Applicable.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Yacov Jack Hefetz v. Christopher Beavor, Case No. A-11-645353-C (Eighth Judicial District Court for the State of Nevada) (Department No. XXVIII) (District Court Judge Ronald J. Israel). Dismissal Order - June 17, 2015.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellant and Appellee are parties to a payment guaranty contract. The payment guaranty contract arose in connection with a real estate loan between a predecessor in interest to the Appellant and a limited liability company previously operated by the Appellee. That real estate loan contained a deed of trust, which attached to many parcels of real estate, including the personal residence of the Appellee. There was a default on the real estate loan. There was subsequently a default on the payment guaranty. Appellant, thereafter, commenced a lawsuit on the breach of the payment guaranty. Appellee responded to the lawsuit, but did not raise the affirmative defense of the One Action Rule (NRS 40.430) in his answer. The case proceeded to a trial and the jury returned a verdict in favor of the Appellee in the amount of zero dollars. The District Court eventually granted Appellant's motion for a new trial. While preparing for the second trial, Appellee raised for the first time a motion to dismiss pursuant to NRS 40.435. Appellant responded by requesting that the action be continued to allow the proceedings to be converted to an action in compliance with the One Action Rule (NRS 40.430). The Court dismissed the action without prejudice on the basis of NRS 40.435(2)(a). It also granted Appellee's motion for legal fees and costs.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether the dismissal of a claim without prejudice constitutes a "judgment" within the meaning of NRS 17.115 and NRCP 68?
2. Whether the application of the factors set forth in *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983) justifies an award of legal fees?
3. Whether the legal fees awarded to Appellee were unreasonable in light of the factors set forth in *Bunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969)?
4. Whether a dismissal of a claim without prejudice constitutes a "judgment" within the meaning of NRS 18.020 and NRS 18.110?
5. Whether computerized legal research fees are costs within the meaning of NRS 18.005?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Not Applicable.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent(identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? 5

Was it a bench or jury trial? First Trial: Jury / Second Trial: None Held

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Appellant does not intend to file a motion for disqualification of any Justice of the Nevada Supreme Court.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from September 1, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served September 3, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed September 15, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The order at issue in this appeal arises from a civil action previously pending in the Eighth Judicial District Court for the State of Nevada. The order at issue in this appeal is a final order which grants attorney fees and costs incurred in connection with a previously pending in the district court. In light of the foregoing, the judgment or order at issue in this appeal is one subject to being appealed under NRAP 3A(b)(1).

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

1. Yacov Jack Hefetz
2. Christopher Beavor

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellant's Claim: Claim for Breach of Payment Guaranty
(Date of Disposition: June 17, 2015)

Appellee's Claim: Claim for Attorney's Fees and Costs arising from an Offer of Judgment (Date of Disposition: September 1, 2015)

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Yacov Jack Hefetz
Name of appellant

H. Stan Johnson & Michael V. Hughes
Name of counsel of record

Oct 5, 2015
Date

Michael Hughes
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 5th day of October, 2015, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Joel Z. Schwarz, Esq.
Dickinson Wright PLLC
Suite 200
8383 West Sunset Road
Las Vegas, Nevada 89113

James J. Jimmerson, Esq.
Jimmerson Hansen
Suite 100
415 South Sixth Street
Las Vegas, Nevada 89101

Dated this 5th day of October, 2015

Michael Hughes
Signature