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6 *Attorney for Appellant*  
VEGAS UNITED INVESTMENT  
7 SERIES 105, INC.

Electronically Filed  
Oct 11 2018 12:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8  
9 IN THE SUPREME COURT OF THE STATE OF NEVADA

10 \*\*\*

11 VEGAS UNITED INVESTMENT SERIES )  
12 105, INC., A NEVADA DOMESTIC )  
CORPORATION, )  
13 )  
Appellant, )  
14 )  
vs. )  
15 )  
CELTIC BANK CORPORATION, )  
16 SUCCESSOR-IN-INTEREST TO SILVER )  
STATE BANK BY ACQUISITION OF )  
17 ASSETS FROM THE FDIC AS RECEIVER )  
FOR SILVER STATE BANK, A UTAH )  
18 BANKING CORPORATION ORGANIZED )  
AND IN GOOD STANDING WITH THE )  
19 LAWS OF THE STATE OF UTAH, )  
Respondents. )  
20 )

Supreme Court No. 74163

District Court Case No. A728233

21 **MOTION TO EXTEND TIME TO FILE OPENING BRIEF AND APPENDIX**  
22 **(Second Request)**

23 COMES NOW, Appellant, VEGAS UNITED INVESTMENT SERIES 105, INC., by and  
24 through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its  
25 Motion to Extend Time to File Opening Brief and Appendix, requesting an additional extension  
26 of time of approximately 45 days from the current due date of October 11, 2018. This Motion is  
27 made and based upon the attached Memorandum of Points and Authorities, the attached exhibits,  
28

the declaration of counsel, and all papers and pleadings on file herein.

DATED this 11<sup>th</sup> day of October, 2018.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda  
ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
TIMOTHY E. RHODA, ESQ.  
Nevada Bar No. 7878  
9120 West Post Road, Suite 100  
Las Vegas, Nevada 89148  
(702) 254-7775  
*Attorney for Appellant*  
**VEGAS UNITED INVESTMENT  
SERIES 105, INC.**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. STATEMENT OF THE FACTS**

1. Appellant caused the instant appeal to be filed on September 28, 2017.
2. On February 23, 2018, after the case was released from the Supreme Court's mediation program, this Court issued an Order to Show Cause regarding a potential jurisdictional defect. Pursuant to said Order, this Court stayed the deadlines for the filing of the transcript request form, opening brief and appendix.
3. Appellant filed a Response to the Order to Show Cause on March 26, 2018.
4. On April 6, 2018, this Court entered an Order granting Appellant a period of 45 days in which to obtain a NRCP 54(b) certification of the Order appealed from. The deadlines for the filing of the transcript request form, opening brief and appendix remained stayed.
5. On May 8, 2018, Appellant supplemented its Response to the Order to Show Cause with a stipulation and order which was entered by the district court and which certified the judgment appealed from as final.
6. On May 29, 2018, this Court entered an Order Reinstating Briefing, finding jurisdiction to exist. The Court directed that Appellant should have 15 days in

- 1 which to comply with NRAP 9(a) and 90 days in which to file the opening brief  
2 and appendix.
- 3 7. Appellant timely filed a transcript request form in the district court on June 13,  
4 2018, with a copy filed in this Court on June 14, 2018. See Exhibit 1, attached  
5 hereto and incorporated herein by reference.
- 6 8. On August 27, 2018, Appellant's counsel filed a Motion to Extend Time to File  
7 Opening Brief and Appendix (First Request), requesting an extension of  
8 approximately 45 days in which to file the Opening Brief and Appendix herein.  
9 Said request was based primarily upon numerous personal and professional  
10 obligations which made it impossible to timely complete the brief. The request  
11 was in excess of a standard 30-day extension primarily because counsel was  
12 required to file another appellate brief in this Court in Appeal No. 74840 on  
13 September 26, 2018. Said brief was timely filed on that date.
- 14 9. On September 6, 2018, this Court entered an Order granting the Appellant's  
15 Motion to Extend Time to File Opening Brief and Appendix (First Request).  
16 Pursuant to this Order, the Court granted Appellant until October 11, 2018, in  
17 which to file the Opening Brief and Appendix. The Court cautioned that further  
18 extensions would not be permitted absent extraordinary circumstances and need.
- 19 10. During the course of preparing the Opening Brief and Appendix, counsel  
20 discovered that it does not possess a copy of the transcript that was requested on  
21 or about June 13, 2018. Counsel contacted the court reporter, Norma Ramirez, to  
22 inquire about the status of the transcript. Ms. Ramirez advised that she does not  
23 possess a record of having received the transcript request form although she did  
24 have an email from counsel's paralegal, Jennifer Lee, dated June 12, 2018, which  
25 stated that a transcript was going to be requested and asked whether a deposit  
26 would be necessary.
- 27 11. The certificate of service associated with the transcript request form included Ms.  
28 Ramirez as a party to be served electronically. See Exhibit 1. However, upon

information and belief, Ms. Ramirez is not a party that routinely received service in this matter via the district's court's Odyssey system or the Nevada Supreme Court's eflex system.

12. Ms. Ramirez states that she was unaware of the need to prepare the transcript. Mr. Ramirez further states that prior to her conversation with counsel, she had received no notice from the Court or any other party that the transcript was late.
13. Appellant's counsel has requested that Ms. Ramirez commence preparation of the transcript as soon as possible. Ms. Ramirez states that she will require approximately 30 days in which to complete the transcript.
14. Counsel's paralegal, Ms. Lee is presently on vacation out of the country and thus unavailable to confirm her recollection of the facts and circumstances at hand. However, based upon Ms. Ramirez's statements and the information available at the time, counsel believes that the transcript request form was inadvertently not forwarded to Ms. Ramirez and that the mistake was on the part of Appellant's counsel.
15. The trial transcript is an important part of the record in this case and necessary in order to complete the Opening Brief and Appendix. The Appellant will be significantly prejudiced if the Court is not provided with the transcript of the trial proceedings below.
16. The failure to forward the transcript request form and properly notify Ms. Ramirez of the need to prepare the transcript was inadvertent and constitutes excusable error and neglect.
17. Appellant's counsel respectfully requests a second extension of time in which to file the Opening Brief and Appendix herein.
18. Ms. Ramirez states that she requires approximately 30 days in which to prepare the transcript. Thirty days from October 11, 2018, is November 10, 2018 – a Saturday. Thus, Appellant expects the transcript to be available on or before Monday, November 12, 2018.

19. Appellant respectfully requests a period of approximately 15 days after November 12, 2018, or such other period of time that the Court may deem appropriate, in which to file the Opening Brief and Appendix herein. Thus, Appellant requests that the Opening Brief and Appendix be due on or before November 27, 2018. Alternatively, counsel will strive to complete the brief and appendix by such other date that the Court may deem appropriate.

**B STATEMENT OF THE LAW**

NRAP 31(b) provides in pertinent part as follows:

**(2) Stipulations.** Unless the court orders otherwise, in all appeals except child custody, visitation, or capital cases, the parties may extend the time for filing any brief for a total of 30 days beyond the due dates set forth in Rule 31(a)(1) by filing a written stipulation with the clerk of the Supreme Court on or before the brief's due date. No extensions of time by stipulation are permitted in child custody, visitation, or capital cases.

**(3) Motions for Extensions of Time.** A motion for extension of time for filing a brief may be made no later than the due date for the brief and must comply with the provisions of this Rule and Rule 27.

**(A) Contents of Motion.** A motion for extension of time for filing a brief shall include the following:

- (i) The date when the brief is due;
- (ii) The number of extensions of time previously granted (including a 5-day telephonic extension), and if extensions were granted, the original date when the brief was due;
- (iii) Whether any previous requests for extensions of time have been denied or denied in part;
- (iv) The reasons or grounds why an extension is necessary; and
- (v) The length of the extension requested and the date on which the brief would become due.

**C. ARGUMENT**

Pursuant to this Court's Order dated May 29, 2018, the Opening Brief and Appendix were initially due on August 27, 2018. To date, Appellant's counsel has previously sought and obtained one extension of the due date until October 11, 2018. No previous request for an extension has been denied although the Court has cautioned that additional extensions would not be granted absent extraordinary circumstances.

As set forth above, Appellant's counsel is now requesting a second extension of time due to an inadvertent error which resulted in the trial transcript not being timely completed. Specifically, although a transcript request form was timely filed, it appears that the court reporter

1 was not properly provided with a copy of said request form. As a result, the court reporter has  
2 not yet prepared the transcript. The transcript is an important part of the record herein.  
3 Appellant's counsel respectfully suggests that the failure to notify the court reporter of the  
4 transcript request form constitutes excusable error. Appellant's counsel further suggests that the  
5 lack of the transcript constitutes extraordinary circumstances giving rise to extreme need.

6 Appellant's counsel freely admits that it likely should have been aware of the deficiency  
7 prior to this date. The failure to earlier confirm receipt of the transcript is also the result  
8 unintended error and the result of several circumstances, including a very busy trial and court  
9 schedule over the course of the past several weeks, as well as the aforementioned vacation of Ms.  
10 Lee. Appellant's counsel respectfully suggests that its mistake is excusable and that it will not  
11 significantly adversely affect the instant appeal.

12 **CONCLUSION**

13 Based upon the foregoing, Appellant respectfully requests that the deadline to file the  
14 opening brief and appendix herein be extended until November 27, 2018, or until such other date  
15 that the Court deems appropriate. Appellant's counsel intends to complete the Opening Brief  
16 and Appendix as soon as possible after receipt of the transcript which, according to Ms. Ramirez,  
17 should be completed by November 12, 2018.

18 DATED this 11<sup>th</sup> day of October, 2018.

19 ROGER P. CROTEAU & ASSOCIATES, LTD.

21 /s/ Timothy E. Rhoda  
22 ROGER P. CROTEAU, ESQ.  
23 Nevada Bar No. 4958  
24 TIMOTHY E. RHODA, ESQ.  
25 Nevada Bar No. 7878  
26 9120 West Post Road, Suite 100  
27 Las Vegas, Nevada 89148  
28 (702) 254-7775  
**Attorney for Appellant**  
**VEGAS UNITED INVESTMENT**  
**SERIES 105, INC.**

**DECLARATION OF TIMOTHY E. RHODA**

TIMOTHY E. RHODA, being first duly sworn, deposes and says that:

1. I am an attorney for the Appellant, Vegas United Investments Series 105 , Inc. (*"Appellant"*), in the above-captioned matter.
2. Of the following facts, I know them to be true of my own knowledge unless stated upon information and belief, in which case I possess a good faith belief that such facts are true and correct.
3. Appellant caused the instant appeal to be filed on September 28, 2017.
4. On February 23, 2018, after the case was released from the Supreme Court's mediation program, this Court issued an Order to Show Cause regarding a potential jurisdictional defect. Pursuant to said Order, this Court stayed the deadlines for the filing of the transcript request form, opening brief and appendix.
5. Appellant filed a Response to the Order to Show Cause on March 26, 2018.
6. On April 6, 2018, this Court entered an Order granting Appellant a period of 45 days in which to obtain a NRCP 54(b) certification of the Order appealed from. The deadlines for the filing of the transcript request form, opening brief and appendix remained stayed.
7. On May 8, 2018, Appellant supplemented its Response to the Order to Show Cause with a stipulation and order which was entered by the district court and which certified the judgment appealed from as final.
8. On May 29, 2018, this Court entered an Order Reinstating Briefing, finding jurisdiction to exist. The Court directed that Appellant should have 15 days in which to comply with NRAP 9(a) and 90 days in which to file the opening brief and appendix.
9. Appellant timely filed a transcript request form in the district court on June 13, 2018, with a copy filed in this Court on June 14, 2018. See Exhibit 1, attached hereto and incorporated herein by reference.
10. On August 27, 2018, Appellant's counsel filed a Motion to Extend Time to File Opening Brief and Appendix (First Request), requesting an extension of approximately 45 days in which to file the Opening Brief and Appendix herein. Said request was based primarily

- 1 upon numerous personal and professional obligations which made it impossible to timely  
2 complete the brief. The request was in excess of a standard 30-day extension primarily  
3 because counsel was required to file another appellate brief in this Court in Appeal No.  
4 74840 on September 26, 2018. Said brief was timely filed on that date.
- 5 11. On September 6, 2018, this Court entered an Order granting the Appellant's Motion to  
6 Extend Time to File Opening Brief and Appendix (First Request). Pursuant to this Order,  
7 the Court granted Appellant until October 11, 2018, in which to file the Opening Brief  
8 and Appendix. The Court cautioned that further extensions would not be permitted  
9 absent extraordinary circumstances and need.
- 10 12. During the course of preparing the Opening Brief and Appendix, counsel discovered that  
11 it does not possess a copy of the transcript that was requested on or about June 13, 2018.  
12 Counsel contacted the court reporter, Norma Ramirez, to inquire about the status of the  
13 transcript. Ms. Ramirez advised that she does not possess a record of having received the  
14 transcript request form although she did have an email from counsel's paralegal, Jennifer  
15 Lee, dated June 12, 2018, which stated that a transcript was going to be requested and  
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18 Ramirez as a party to be served electronically. See Exhibit 1. However, upon  
19 information and belief, Ms. Ramirez is not a party that routinely received service in this  
20 matter via the district's court's Odyssey system or the Nevada Supreme Court's eflex  
21 system.
- 22 14. Ms. Ramirez states that she was unaware of the need to prepare the transcript. Mr.  
23 Ramirez further states that prior to her conversation with counsel, she had received no  
24 notice from the Court or any other party that the transcript was late.
- 25 15. Appellant's counsel has requested that Ms. Ramirez commence preparation of the  
26 transcript as soon as possible. Ms. Ramirez states that she will require approximately 30  
27 days in which to complete the transcript.
- 28 16. Counsel's paralegal, Ms. Lee is presently on vacation out of the country and thus



unavailable to confirm her recollection of the facts and circumstances at hand. However, based upon Ms. Ramirez's statements and the information available at the time, counsel believes that the transcript request form was inadvertently not forwarded to Ms. Ramirez and that the mistake was on the part of Appellant's counsel.

17. The trial transcript is an important part of the record in this case and necessary in order to complete the Opening Brief and Appendix. The Appellant will be significantly prejudiced if the Court is not provided with the transcript of the trial proceedings below.

18. The failure to forward the transcript request form and properly notify Ms. Ramirez of the need to prepare the transcript was inadvertent and constitutes excusable error and neglect.

19. Appellant's counsel respectfully requests a second extension of time in which to file the Opening Brief and Appendix herein.

20. Ms. Ramirez states that she requires approximately 30 days in which to prepare the transcript. Thirty days from October 11, 2018, is November 10, 2018 – a Saturday. Thus, Appellant expects the transcript to be available on or before Monday, November 12, 2018.

21. Appellant respectfully requests a period of approximately 15 days after November 12, 2018, or such other period of time that the Court may deem appropriate, in which to file the Opening Brief and Appendix herein. Thus, Appellant requests that the Opening Brief and Appendix be due on or before November 27, 2018. Alternatively, counsel will strive to complete the brief and appendix by such other date that the Court may deem appropriate.

22. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge.

DATED this 11<sup>th</sup> day of October, 2018.

/s/ Timothy E. Rhoda  
TIMOTHY E. RHODA

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 11<sup>th</sup> day of October, 2018, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's eflex e-file and serve system.

Sylvester & Polednak, Ltd.

Contact

Bridget Williams

Kelly L. Schmitt

Email

bridget@sylvesterpolednak.com

kelly@sylvesterpolednak.com

\_\_\_\_ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

\_\_\_\_ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

\_\_\_\_ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

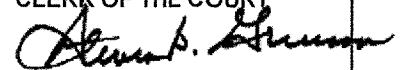
An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1

1 ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
2 TIMOTHY E. RHODA, ESQ.  
Nevada Bar No. 7878  
3 ROGER P. CROTEAU & ASSOCIATES, LTD.  
9120 West Post Road, Suite 100  
4 Las Vegas, Nevada 89148  
(702) 254-7775  
5 (702) 228-7719 (facsimile)  
croteaulaw@croteaulaw.com  
6 ***Attorney for Appellant***  
**VEGAS UNITED INVESTMENT SERIES 105, INC.**

Electronically Filed  
6/13/2018 2:02 PM  
Steven D. Grierson  
CLERK OF THE COURT



Electronically Filed  
Jun 14 2018 03:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*

10 VEGAS UNITED INVESTMENT SERIES 105,) )  
11 INC., a Nevada domestic corporation, ) )  
12 Appellant, ) )  
13 vs. ) )  
14 CELTIC BANK CORPORATION, successor- ) )  
15 in-interest to SILVER STATE BANK by ) )  
16 acquisition of assets from the FDIC as Receiver ) )  
17 for Silver State Bank, a Utah banking ) )  
18 corporation organized and in good standing ) )  
19 with the laws of the State of Utah, ) )  
20 Respondents. ) )

Supreme Court No. 74163

District Court Case No. A-15-728233-C

**REQUEST FOR TRANSCRIPT OF PROCEEDINGS**

To: Norma Ramirez, Court Reporter

Appellant requests preparation of a transcript of the proceedings before the District Court,  
as follows:

Judge or officer hearing the proceedings: **Judge Susan H. Johnson**

Date(s) of proceedings: **August 9, 10 & 11, 2017**

Portions of the transcript required: **The entire transcript related to the trial**

Number of copies required: **4**

I hereby certify that on the 13<sup>th</sup> day of June, 2018, I ordered the transcript(s) listed

1 above from the court reporter named above, and was advised that she will notify my office of the  
2 amount of any deposit required at a later date.

3 DATED this 13<sup>th</sup> day of June, 2018.

4 ROGER P. CROTEAU & ASSOCIATES, LTD.

5  
6 /s/ Timothy E. Rhoda

7 ROGER P. CROTEAU, ESQ.

8 Nevada Bar No. 4958

9 TIMOTHY E. RHODA, ESQ.

10 Nevada Bar No. 7878

11 9120 West Post Road, Suite 100

12 Las Vegas, Nevada 89148

13 (702) 254-7775

14 *Attorney for Appellant*

15 VEGAS UNITED INVESTMENT SERIES 105,  
16 INC.

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 13<sup>th</sup> day of June, 2018, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court e-file and serve system.

Dept. 22 Court Reporter

Contact

Norma Ramirez

Email

ramirezn@clarkcountycourts.us

Sylvester & Polednak, Ltd.

Contact

Bridget Williams

Kelly L. Schmitt

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Drew Starbuck, Esq.

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dstarbuck@dhwlawlv.com

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.