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VEGAS UNITED INVESTMENT  
7 SERIES 105, INC.

Electronically Filed  
Jan 04 2019 08:26 a.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 )  
21

Supreme Court No. 74163

District Court Case No. A728233

22 **MOTION TO EXTEND TIME TO FILE REPLY BRIEF**  
(First 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 Reply Brief, requesting an additional extension of time of  
26 approximately 45 days from the current due date of January 3, 2019. This Motion is made and  
27 based upon the attached Memorandum of Points and Authorities, the attached exhibits, the  
28

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

2 DATED this 3<sup>rd</sup> day of January, 2018.

3 ROGER P. CROTEAU & ASSOCIATES, LTD.

4  
5 /s/ Timothy E. Rhoda  
6 ROGER P. CROTEAU, ESQ.  
7 Nevada Bar No. 4958  
8 TIMOTHY E. RHODA, ESQ.  
9 Nevada Bar No. 7878  
10 9120 West Post Road, Suite 100  
11 Las Vegas, Nevada 89148  
12 (702) 254-7775  
13 *Attorney for Appellant*  
14 **VEGAS UNITED INVESTMENT**  
15 **SERIES 105, INC.**

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **STATEMENT OF THE FACTS**

- 13 1. Appellant caused the instant appeal to be filed on September 28, 2017.
- 14 2. On February 23, 2018, after the case was released from the Supreme Court's mediation  
15 program, this Court issued an Order to Show Cause regarding a potential jurisdictional  
16 defect. Pursuant to said Order, this Court stayed the deadlines for the filing of the  
17 transcript request form, opening brief and appendix.
- 18 3. Appellant timely filed a Response to the Order to Show Cause on March 26, 2018.
- 19 4. On April 6, 2018, this Court entered an Order granting Appellant a period of 45 days in  
20 which to obtain a NRCP 54(b) certification of the Order appealed from. The deadlines  
21 for the filing of the transcript request form, opening brief and appendix remained stayed.
- 22 5. On May 8, 2018, Appellant supplemented its Response to the Order to Show Cause with  
23 a stipulation and order which was entered by the district court and which certified the  
24 judgment appealed from as final.
- 25 6. On May 29, 2018, this Court entered an Order Reinstating Briefing, finding jurisdiction  
26 to exist. The Court directed that Appellant should have 15 days in which to comply with  
27 NRAP 9(a) and 90 days in which to file the opening brief and appendix.
- 28

- 1 7. Appellant timely filed a transcript request form in the district court on June 13, 2018,  
2 with a copy filed in this Court on June 14, 2018.
- 3 8. On August 27, 2018, Appellant's counsel filed a Motion to Extend Time to File Opening  
4 Brief and Appendix (First Request), requesting an extension of approximately 45 days in  
5 which to file the Opening Brief and Appendix herein. Said request was based primarily  
6 upon numerous personal and professional obligations which made it impossible to timely  
7 complete the brief. The request was in excess of a standard 30-day extension primarily  
8 because counsel was required to file another appellate brief in this Court in Appeal No.  
9 74840 on September 26, 2018. Said brief was timely filed.
- 10 9. On September 6, 2018, this Court entered an Order granting the Appellant's Motion to  
11 Extend Time to File Opening Brief and Appendix (First Request). Pursuant to this Order,  
12 the Court granted Appellant until October 11, 2018, in which to file the Opening Brief  
13 and Appendix. The Court cautioned that further extensions would not be permitted  
14 absent extraordinary circumstances and need.
- 15 10. During the course of preparing the Opening Brief and Appendix, counsel discovered that  
16 it did not possess a copy of the transcript that was requested on or about June 13, 2018.  
17 Upon information and belief, the transcript request form which had been filed was not  
18 was not properly provided to the court reporter as a result of oversight. On October 11,  
19 2018, Appellant filed a Motion to Extend Time to File Opening Brief and Appendix  
20 (Second Request) due to the lack of the transcript.
- 21 11. On October 17, 2018, this Court entered an Order denying a further extension of the  
22 deadline to file the Opening Brief and Appendix and directing that the Opening Brief be  
23 filed within 15 days.
- 24 12. Appellant's counsel was able to expedite the preparation of the trial transcript and  
25 thereafter timely filed the Opening Brief and Joint Appendix on November 2, 2018.
- 26 13. Respondent filed its Response Brief on December 3, 2018, and Appellant's Reply Brief  
27 became due on January 3, 2019.
- 28 14. As a result of various personal and professional obligations, including the Christmas and

- 1 New Years Day holidays and family obligations associated therewith, Appellant's counsel  
2 has been unable to complete and file the Reply Brief by the existing deadline.  
3 Specifically, Appellant's counsel had family visiting from shortly before Christmas  
4 through New Years Day. As a result, counsel was absent from work for a large portion of  
5 this time period as a planned vacation.
- 6 15. Upon returning to work on January 3, 2019, Appellant's counsel contacted Respondents'  
7 counsel by email and provided a proposed stipulation to extend time to file and serve the  
8 Reply Brief in this matter for a period of 30 days pursuant to NRAP 31(b)(2).
- 9 16. Shortly thereafter, Respondent's counsel responded to Appellant's request by email,  
10 advising that she was unable to agree to the requested continuance because it is not in the  
11 best interest of her client. Respondent's counsel further stated that she would agree to a  
12 10-day extension as a matter of professional courtesy.
- 13 17. Subsequent to the filing of the Respondent's Response Brief herein on December 3, 2018,  
14 and prior to Christmas and his planned family vacation, Appellant's counsel filed three  
15 Opening Briefs and Excerpts of Record in the Ninth Circuit Court of Appeals, as well as  
16 an amicus brief in the United States Supreme Court. During this time period, counsel  
17 also prepared, filed and/or served numerous motions, oppositions, discovery responses  
18 and other pleadings in dozens of other cases.
- 19 18. Appellant's counsel is required to file appellate briefs in this Court and the Ninth Circuit  
20 Court of Appeals which are presently due on January 14; January 15, January 25;  
21 February 8; and March 13, 2019. In addition, Appellant's counsel is required to prepare  
22 and file oppositions to motions for summary judgment in various matters which are  
23 presently due on January 4; January 7; January 8; January 10; January 11; and January 16,  
24 2019. It is highly likely that numerous other matters will arise in the ordinary course of  
25 business. As a result, the 10-day extension of time offered by Respondent's counsel  
26 would simply not be helpful for Appellant's counsel.
- 27 19. Based upon the foregoing, Appellant respectfully requests an extension of time of  
28 approximately 45 days, until February 18, 2019, in which to file its Reply Brief herein.

1 With such an extension, Appellant's counsel hopes to be able to comply with all of the  
2 various deadlines and obligations discussed above.

3 **B STATEMENT OF THE LAW**

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

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

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

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

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

25 **C. ARGUMENT**

26 The Appellant's Reply Brief is presently due on January 3, 2019. No extension of the  
27 deadline associated with the Reply Brief has either been sought or denied. Appellant respectfully  
28 seeks an extension of time of approximately 45 days in order to comply not only with the  
deadline in this matter but also in numerous other matters that are pending.

As discussed above, since the Respondent timely filed its Response Brief on November 3,  
2018, Appellant's counsel has been extraordinarily busy, attending to both family and work  
matters. Subsequent to the filing of the Response Brief herein and prior to Christmas,  
Appellant's counsel filed no fewer than three Opening Briefs and Excerpts of Record in the  
Ninth Circuit Court of Appeals, as well as an amicus brief in the United States Supreme Court.  
Obviously, these matters were all very time and labor intensive. Appellant's counsel also  
attended to numerous other more mundane work obligations in dozens of cases before taking  
some time off work to spend time with his family between Christmas and New Years Day.

1 Counsel is hopeful that it is readily apparent that the failure to file the Reply Brief to date is not  
2 the result of either dilatory conduct or lack of diligence.

3 Both Appellant and Appellant's counsel appreciate the desire of Respondent to bring this  
4 matter to a close. Indeed, Appellant also looks forward to the resolution of this matter.  
5 However, given the burdens this Court is faced with, it is unlikely that an extension of time for  
6 the filing of the Reply Brief will substantially delay this matter. Appellant respectfully suggests  
7 that the facts surrounding this matter more than warrant an extension of time.

8 **CONCLUSION**

9 Based upon the foregoing, Appellant respectfully requests that the deadline to file the  
10 Reply Brief herein be extended until February 18, 2019, or until such other date that the Court  
11 deems appropriate.

12 DATED this 3<sup>rd</sup> day of January, 2019.

13 ROGER P. CROTEAU & ASSOCIATES, LTD.

14  
15 /s/ Timothy E. Rhoda  
16 ROGER P. CROTEAU, ESQ.  
17 Nevada Bar No. 4958  
18 TIMOTHY E. RHODA, ESQ.  
19 Nevada Bar No. 7878  
20 9120 West Post Road, Suite 100  
21 Las Vegas, Nevada 89148  
22 (702) 254-7775  
23 *Attorney for Appellant*  
24 **VEGAS UNITED INVESTMENT**  
25 **SERIES 105, INC.**  
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**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 timely 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.
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 upon numerous personal and professional obligations which made it impossible to timely

- complete the brief. The request was in excess of a standard 30-day extension primarily because counsel was required to file another appellate brief in this Court in Appeal No. 74840 on September 26, 2018. Said brief was timely filed.
11. On September 6, 2018, this Court entered an Order granting the Appellant's Motion to Extend Time to File Opening Brief and Appendix (First Request). Pursuant to this Order, the Court granted Appellant until October 11, 2018, in which to file the Opening Brief and Appendix. The Court cautioned that further extensions would not be permitted absent extraordinary circumstances and need.
12. During the course of preparing the Opening Brief and Appendix, counsel discovered that it did not possess a copy of the transcript that was requested on or about June 13, 2018. Upon information and belief, the transcript request form which had been filed was not properly provided to the court reporter as a result of oversight. On October 11, 2018, Appellant filed a Motion to Extend Time to File Opening Brief and Appendix (Second Request) due to the lack of the transcript.
13. On October 17, 2018, this Court entered an Order denying a further extension of the deadline to file the Opening Brief and Appendix and directing that the Opening Brief be filed within 15 days.
14. Appellant's counsel was able to expedite the preparation of the trial transcript and thereafter timely filed the Opening Brief and Joint Appendix on November 2, 2018.
15. Respondent filed its Response Brief on December 3, 2018, and Appellant's Reply Brief became due on January 3, 2019.
16. As a result of various personal and professional obligations, including the Christmas and New Years Day holidays and family obligations associated therewith, Appellant's counsel has been unable to complete and file the Reply Brief by the existing deadline. Specifically, Appellant's counsel had family visiting from shortly before Christmas through New Years Day. As a result, counsel was absent from work for a large portion of this time period as a planned vacation.
17. Upon returning to work on January 3, 2019, Appellant's counsel contacted Respondent's



counsel by email and provided a proposed stipulation to extend time to file and serve the Reply Brief in this matter for a period of 30 days pursuant to NRAP 31(b)(2).

18. Shortly thereafter, Respondent's counsel responded to Appellant's request by email, advising that she was unable to agree to the requested continuance because it is not in the best interest of her client. Respondent's counsel further stated that she would agree to a 10-day extension as a matter of professional courtesy.

19. Subsequent to the filing of the Respondent's Response Brief herein on December 3, 2018, and prior to Christmas and his planned family vacation, Appellant's counsel filed three Opening Briefs and Excerpts of Record in the Ninth Circuit Court of Appeals, as well as an amicus brief in the United States Supreme Court. During this time period, counsel also prepared, filed and/or served numerous motions, oppositions, discovery responses and other pleadings in dozens of other cases.

20. Appellant's counsel is required to file appellate briefs in this Court and the Ninth Circuit Court of Appeals which are presently due on January 14; January 15, January 25; February 8; and March 13, 2019. In addition, Appellant's counsel is required to prepare and file oppositions to motions for summary judgment in various matters which are presently due on January 4; January 7; January 8; January 10; January 11; and January 16, 2019. It is highly likely that numerous other matters will arise in the ordinary course of business. As a result, the 10-day extension of time offered by Respondent's counsel would simply not be helpful for Appellant's counsel.

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21. Based upon the foregoing, Appellant respectfully requests an extension of time of approximately 45 days, until February 18, 2019, in which to file its Reply Brief herein. In such a manner, Appellant's counsel hopes to be able to comply with all of the various deadlines discussed above.

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 3<sup>rd</sup> day of January, 2019.

/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 3<sup>rd</sup> day of January, 2019, 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.