

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE FUND FOR THE  
ENCOURAGEMENT OF SELF RELIANCE,  
AN IRREVOCABLE TRUST

DOAN L. PHUNG,  
Appellant,  
vs.  
THU-LE DOAN,  
Respondent

Case No. 74964

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**APPELLANT'S APPENDIX OF DOCUMENTS**  
**VOLUME V of VII**

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## **APPELLANTS' APPENDIX OF DOCUMENTS**

**In the Matter of the Fund for the Encouragement of Self Reliance an Irrevocable Trust  
Doan L. Phung, Appellant  
Thu-Le Doan, Respondent  
Case No. 74964**

<b>Volume</b>	<b>Document</b>	<b>Bates No.</b>
I	Acceptance of Service	AA 000797
I	Acknowledgement	AA 000814
I	Affidavit of Mailing	AA 000795 – AA 000796
I	Affidavit of Peter Co., Esq. in Support of Ex Parte Application for Order Shortening Time on Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000804 – AA 000806
II	Affidavit of Service	AA 000861 – AA 000862
III	Affidavit of Service	AA 001039 – AA 001040
IV	Affidavit of Service	AA 001117 – AA 001119
IV	Affidavit of Service	AA 001133 – AA 001135
I	Affidavit of Service	AA 000812 – AA 000813
I	Affidavit of Service	AA 000845 – AA 000846
IV	Affidavit of Service	AA 001090 – AA 001092
IV	Affidavit of Service	AA 001193 – AA 001195
V	Affidavit of Service	AA 001289 – AA 001291
VI	Affidavit of Service	AA 001330 – AA 001332
VI	Affidavit of Service	AA 001364 – AA 001366
VI	Case Appeal Statement	AA 001335 – AA 001338
III	Certificate of Service	AA 001031 – AA 001032

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I	Citation	AA 000790 – AA 000792
IV	Count Minutes re 04/28/2017 Hearing - Request for Place (1) Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust and (2) Petition for Declaratory Judgment on Probate Commissioner's Calendar for Decision	AA 001131 – AA 001132
III	Court Minutes re 01/20/2017 Hearing – Petition for Declaratory Judgment	AA 001076 – AA 001077
IV	Court Minutes re 02/10/2017 Hearing – Respondent's Objection to Probate Commissioner's Report and Recommendation and Request for Judicial Review	AA 001099 – AA 001100
VI	Court Minutes re 02-22-2018 Hearing – Motion to Stay Proceedings	AA 001363
I	Court Minutes re 10/04/2016 Hearing – Petition HM	AA 000842 – AA 000844
V	Court Minutes re 10/12/2017 Hearing – Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001311 – AA 001312
I	Ex Parte Application for Order Shortening Time on Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000798 – AA 000803
VI	Motion to Stay Proceedings on Order Shortening Time	AA 001339 – AA 001348
VI	Notice of Appeal	AA 001333 – AA 001334
VI	Notice of Entry of Order Denying Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-	AA 001321 – AA 001329

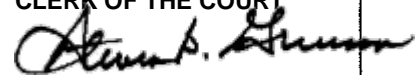
**Volume****Document****Bates No.**

	Trustees and to Modify Trust and Request for Judicial Review	
IV	Notice of Entry of Order Granting Respondent's Object to Probate Commissioner's Report and Recommendation in Part, and Remanding Case to Probate Commissioner for Decision Consistent with this Order	AA 001103 – AA 001106
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II	Notice of Entry of Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Confirming Co-Trustee and to Modify Trust	AA 000853 -AA 000860
IV	Notice of Entry of Stipulation and Order to Continued April 21, 2017 Hearing to April 28, 2017	AA 001114 – AA 001116
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I	Notice of Hearing for Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000793 – AA 000794
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VI	Notice of Submission of Proposed Order	AA 001367 – AA 001372
VI	Opposition to Motion to Stay Proceedings on Order Shortening Time	AA 001379 – AA 001362
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V	Order Denying Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001313 – AA 001320
IV	Order Granting Respondent's Object to Probate Commissioner's Report and Recommendation in Part, and Remanding Case to Probate Commissioner for Decision Consistent with this Order	AA 001101 – AA 001102
I	Order Shortening Time to Hearing Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000807 – AA 000808
III	Petition for Declaratory Judgment	AA 000962 – AA 001029
I	Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust	AA 000743 – AA 000789
I	Petitioner's Reply to Objection to Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust, Request Discovery and to Consolidate Matters	AA 000817 – AA 000841
III	Reply Brief in Support of Petition for Declaratory Judgment	AA 001041 – AA 001075

<b>Volume</b>	<b>Document</b>	<b>Bates No.</b>
V	Reply Brief in Support of Respondent's Objection to Probate Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust, and Request for Judicial Review	AA 001292 – AA 001310
IV	Reply in Support of Respondent's Objection to Probate Commissioner's Report and Recommendation	AA 001093 – AA 001098
III	Reply to Respondent Phung's Objection to Probate Commissioner's Report and Recommendation and Request for Judicial Review	AA 001078 – AA 001083
V	Reply to Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001281 – AA 001288
IV	Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Finding of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust	AA 001179 – AA 001184
II	Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Confirming Co-Trustee and to Modify Trust	AA 000847 – AA 000852
IV	Request for Place (1) Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust and (2) Petition for Declaratory Judgment on Probate Commissioner's Calendar for Decision	AA 001107 – AA 001111
IV	Request to Transfer Petition for Declaratory Judgment to Probate Judge	AA 001084 – AA 001086
II	Respondent Phung's Objection to Probate Commissioner's Report and Recommendation and Request for Judicial Review	AA 000863 – AA 000961

<b>Volume</b>	<b>Document</b>	<b>Bates No.</b>
V	Respondent's Objection to Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law Confirming Co-Trustees and to Modify Trust and Request for Judicial Review	AA 001196 – AA 001278
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VII	Transcript re April 28, 2017 Hearing – Petition HM	AA 001429 – AA 001448
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VII	Transcript re October 12, 2017 Hearing – Objection to Referee's Report and Recommendation	AA 001449 – AA 001478
VI	Transcript re October 14, 2016 Hearing re – Petition HM	AA 001373 – AA 001400



OBJ  
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DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

In the Matter of the:

FUND FOR THE ENCOURAGEMENT OF SELF  
RELIANCE,

An Irrevocable Trust.

Case No.: P-16-089638-T

Dept. No.: PC1

Date of Hearing:

Time of Hearing:

**RESPONDENT, DOAN L. PHUNG'S OBJECTION TO  
PROBATE COMMISSIONER'S REPORT AND RECOMMENDATION CONFIRMING  
PRIOR REPORT AND RECOMMENDATION GRANTING PETITION TO ASSUME  
JURISDICITON OF TRUST, MAKING ADDITIONAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW, CONFIRMING CO-TRUSTEES AND TO MODIFY TRUST,  
AND REQUEST FOR JUDICIAL REVIEW**

Respondent, Doan L. Phung ("Respondent" or "Phung"), by and through his counsel, Michael R. Mushkin and L. Joe Coppedge of Mushkin Cica Coppedge, submits his Objection to the Probate Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust (the "Report and Recommendations") filed herein on August 4, 2017, and request for judicial review. This Objection is based upon EDCR 4.17, the papers and pleadings on file herein, the Memorandum of Points and Authorities attached hereto, and any argument made by counsel at the hearing of this Objection. Respondent respectfully requests that this Court not adopt the Probate Commissioner's Report and



1 Recommendation, that this Court establish a discovery schedule and schedule this matter for an  
2 evidentiary hearing as required by EDCR 4.17.

3 DATED this 21 day of August, 2017.

4 MUSHKIN CICA COPPEDGE

5  
6 BY: 

7 Michael R. Mushkin, Esq.

8 Nevada Bar No. 2421

9 L. Joe Coppedge, Esq.

10 Nevada Bar No. 4954

11 4475 South Pecos Road

12 Las Vegas, NV 89121

13 Attorneys for Respondent, Doan L. Phung

14 **NOTICE OF MOTION**

15 TO: All Interested Parties and their Attorneys of Record.

16 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that on the \_\_\_\_ day of  
17 \_\_\_\_\_, 2017, at the hour of \_\_\_\_\_ o'clock \_\_\_\_ .m., or as soon thereafter as counsel  
18 can be heard, the undersigned will bring the foregoing Objection on for hearing before the above-  
19 entitled Court located in the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155,  
20 Courtroom 3F.

21 DATED this 21 day of August, 2017.

22 MUSHKIN CICA COPPEDGE

23 BY: 

24 Michael R. Mushkin, Esq.

25 Nevada Bar No. 2421

26 L. Joe Coppedge, Esq.

27 Nevada Bar No. 4954

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Las Vegas, NV 89121

Attorneys for Respondent, Doan L. Phung

1                   **SPECIFIC OBJECTIONS TO REPORT AND RECOMMENDATIONS**

2           1.     The Probate Commissioner erred by not following the applicable court rule. EDCR  
3 4.17(a) provides in relevant part, “[i]n contested matters before the Probate Commissioner involving  
4 disputed issues of material fact, the Probate Commissioner **shall** set an evidentiary hearing date and  
5 a discovery schedule after receiving input from the attorneys for the parties and any unrepresented  
6 parties. Such settings **shall** be made at the time of the hearing on the initial petition commencing  
7 the litigation or at the request of any party thereto. . .” (Emphasis added). As set forth in the Petition  
8 to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust (the “Petition”),  
9 Respondent Doan L. Phung’s Objection to Petition to Assume In Rem Jurisdiction of Trust, Confirm  
10 and to Modify Trust, Request for Discovery and to Consolidate Matters (the “Objection”), and the  
11 following Memorandum of Points and Authorities, there are numerous disputed issues of material  
12 fact which mandate the setting of an evidentiary hearing and a discovery schedule. Moreover, in  
13 the Objection and at the time of both hearings, Respondent requested that the Probate Commissioner  
14 establish a discovery schedule and set an evidentiary hearing. The failure of the Probate  
15 Commissioner to follow the applicable court rule requires that this Court reject the Report and  
16 Recommendation, establish a discovery schedule and set an evidentiary hearing.

17  
18  
19           2.     The Probate Commissioner’s new findings and recommendations are not supported  
20 by the limited evidence introduced at the initial and subsequent hearings on the Petition and are  
21 contrary to the law.

- 22  
23           a.     Specifically, the Probate Commissioner’s finding and recommendation that “a  
24 trustee has an absolute right to decant a trust with the only requirements being that  
25 a trustee has the power of invasion of principal and that there is no reduction of  
26 any income interest of any income beneficiary” is contrary to Nevada law.  
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- 1           b. The finding and recommendation that “the only material facts for the court to find  
2           in applying NRS 163.556 is whether a trustee has the power of invasion of  
3           principal and that there is no reduction of any income interest of any income  
4           beneficiary” is contrary to Nevada law.
- 5           c. There is no evidence that the parties are at a loggerhead with respect to the  
6           administration of the Trusts.
- 7           d. There is no evidence of why the Trusts may not be workable as there is no  
8           evidence that the functional purposes of the Trusts cannot be accomplished.
- 9           e. The finding and recommendation that the Probate Commissioner relied upon the  
10          ability and rights of the trustee to the exclusion of the parties’ contract rights is  
11          contrary to the evidence, not supported by any facts and contrary to the law.
- 12          f. The finding and recommendation that Petitioner may decant half of the Trusts’  
13          assets as she can make that determination under NRS 163.556 is contrary to  
14          Nevada law.
- 15          g. There is no competent evidence that the parties cannot work together. To the  
16          contrary, the only evidence presented at the initial hearing demonstrates that the  
17          Trusts have been functioning in the same manner as they always have for more  
18          than twenty years.

## 21                   **MEMORANDUM OF POINTS AND AUTHORITIES**

### 22           **I.     Introduction**

23           First, in the Family Court, and now in this Court, Petitioner has engaged in a systematic  
24           campaign filled with numerous unsubstantiated and false allegations to prevail upon her agenda to  
25           split up the charities after they have been capably managed for over 20 years, and gain control of  
26           50% of the charity management in violation of the Trust charters and Marital Settlement Agreement  
27  
28

1 ("MSA"). The false allegations are well documented in the objection to the initial Report and  
2 Recommendations, and other court filings.

3 **II. Case History**

4 Petitioner filed two separate Petitions on September 22, 2016, requesting that the assets of  
5 the Vietnamese American Scholarship Fund ("VASF") and the Fund for the Encouragement of Self-  
6 Reliance ("FESR") be divided equally into separate irrevocable charitable trusts or, in the  
7 alternative, that the assets be divided equally and Petitioner's portion be decanted into her own  
8 charitable trust. Respondent filed an Objection on October 12, 2016, and the matter was initially  
9 heard on an order shortening time by the Probate Commissioner on October 14, 2016. Following  
10 the entry of the initial Report and Recommendations, Respondent filed a timely objection. That  
11 objection was heard by this Court on February 1, 2017. At the hearing, this Court made the  
12 following findings:  
13

- 14 1. It is unclear from the record and Report and Recommendation whether the  
15 Probate Commissioner considered whether there are any questions of fact that will  
16 impact or militate a different relief under the Decanting Statute.  
17  
18 2. It is unclear from the record and Report and Recommendation the analysis that  
19 the Probate Commissioner went through to reach his conclusion to decant.

20 Based on the foregoing findings, the Court ordered that this matter be remanded to the  
21 Probate Commissioner to consider and clarify the following questions:

- 22 1. Whether there are any questions of fact which are material to an analysis under  
23 the Decanting Statute.  
24  
25 2. Whether the Probate Commissioner ascertained those material facts, and if so,  
26 what are the material facts and how did the Probate Commissioner consider them in his  
27 analysis.  
28

1           3.       Whether the Probate Commissioner determined there are material facts not in  
2       dispute, and if so, what are the material facts that are not in dispute.

3           4.       Whether there are material facts that support a different relief other than decanting.

4           Following a hearing on April 28, 2017, the Probate Commissioner issued his new findings  
5       and recommendations. Those findings and recommendations are not supported by the facts or law.  
6       Thus, this objection follows.

7           **III.   Factual Background**

8           Respondent Phung, age 76, and Petitioner Thu-Le Doan ("Petitioner" or "Thu-Le"), age 68,  
9       were married in 1970 and lived together over 40 years. The sole breadwinner of the family was  
10      Phung, who established his own nuclear engineering company, PAI Corporation ("PAI"), a  
11      Tennessee corporation. In over thirty (30) years of working for PAI, Phung earned millions with  
12      which he established three charity organizations to benefit the needy – VASF, FESR and the  
13      Institute for Vietnam Future ("IVNF"). Only VASF and FESR are at issue in the Petitions filed by  
14      Thu-Le. Although Thu-Le performed no role in setting up the trusts, Phung made her a trustee of  
15      VASF and FESR. Collectively, VASF and FESR are referred to as the Trusts.  
16      VASF and FESR. Collectively, VASF and FESR are referred to as the Trusts.

17           VASF was created by Phung in 1988 with the purpose of assisting students and scholars  
18      pursue their endeavors. FESR was created by Phung in 1997 with the purpose of assisting needy  
19      citizens in health and welfare. John Schlatter and T. K. Wright were made initial trustees of VASF,  
20      and served in that role until they resigned in approximately 2012. Efforts to nominate another  
21      person to replace them by Phung had been blocked by Petitioner Thu-Le Doan until October 15,  
22      2016. VASF and FESR have similar charters, true and correct copies of which are attached hereto  
23      as Exhibit A. The following sections of the Charters are pertinent to the present discussion.  
24      as Exhibit A. The following sections of the Charters are pertinent to the present discussion.

25           Section 2: RESTRICTION ON USE OF TRUST FUND

26           ...no part of the Trust fund shall be used to carry on propaganda or  
27      otherwise attempt to influence legislation, or to participate in any  
28      political campaign...other provisions of this instrument

1 notwithstanding, the Trustees shall not engage in any act of self-  
2 dealing...

3 Section 6: APPOINTMENT OF SUCCESSOR TRUSTEE

4 The number of Trustees shall not exceed five (5) individuals, two of  
5 whom are Trustors or selected exclusively by one or both Trustors.  
6 Trustors expressly reserve the right during their lifetime to appoint  
7 additional Trustees and the Trustees may elect additional Trustees by  
8 not less than two-thirds (2/3) majority vote. The term for which  
9 Trustees are authorized to act shall be for five years. A Trustee shall  
10 be removed by not less than two-thirds (2/3) majority vote of all  
11 Trustees when they deem that such Trustee is incompatible or not in  
12 sympathy with the purpose of the Trust, or for any other just cause. In  
13 the event that a vacancy shall occur because of death, resignation,  
14 incapacity to act, or removal of a Trustee, then the remaining Trustees  
15 shall, within sixty (60) days from the date of such vacancy, fill the  
16 vacancy. The failure of a Trustee to attend any of the meetings of  
17 Trustees for three (3) consecutive meetings shall be deemed  
18 conclusive as his or its incapacity to act.

19 Section 8 of VASF and 9 of FESR: GIFTS IRREVOCABLE

20 Gifts made to the Trust shall be irrevocable.

21 Section 9 of VASF and 10 of FESR: TRUST IRREVOCABLE

22 This CHARTER is irrevocable and may not be amended or modified,  
23 provided, however, that if for any reason whatsoever this Trust fails  
24 to qualify as tax-exempt charitable Trust, such changes as are  
25 necessary for the Trust to so qualify may be made by Trustors so long  
26 as they are living and competent, otherwise and thereafter, by a court  
27 of competent jurisdiction.

28 In 2010, after 40 years of marriage, Petitioner filed for divorce. Phung did not contest the  
divorce and agreed to the MSA prepared by Petitioner's attorney. The MSA was signed on February  
22, 2012. The Decree of Divorce was entered on April 12, 2012, which adopted the MSA and  
expressly made it a part of the court order. Generally, among other provisions, the MSA provides  
that Thu-Le was awarded 51% of the community assets. The parties agreed that Phung would  
continue to manage the Trust accounts on behalf of the parties, just as he had always done, subject  
to monetary restrictions on making donations. Further, the MSA could not be modified unless

1 agreed to in writing and signed by both parties. True and correct copies of the Decree of Divorce  
2 and MSA are attached hereto as Exhibit B.

3  
4 In relevant part, the MSA provides:

5 HUSBAND shall manage the Fidelity VASF Brokerage Account No.  
6 XXXX4792, Fidelity FESR Brokerage Account No. ZXXXX4784,  
7 Bank of America Account No. XXX XXX 2956, Bank of America  
8 Account XXXX XXXX 4259 on behalf of the both Trustees,  
9 HUSBAND and WIFE. However, any and all decisions relating to  
10 contributions, expenditures, grants, etc., in excess of \$5,000.00 shall  
be agreed to in writing by both trustees. Moreover, these assets cannot  
be moved or transferred without the express written permission of  
both Trustees.

11 MSA at Section 14.1.

12 The parties further agreed that:

13 The parties specifically agree that the provisions of this agreement  
14 may be enforced by the contempt powers of the Family Court,  
15 however except where specifically provided; the Family Court shall  
16 have no jurisdiction to modify the agreement of the parties without the  
express written agreement of the parties.

17 MSA, Section 26.1.

18 **IV. Legal Argument**

19 EDCR 4.17(a) provides, “[i]n contested matters before the Probate Commissioner involving  
20 disputed issues of material fact, the Probate Commissioner **shall** set an evidentiary hearing date and  
21 a discovery schedule after receiving input from the attorneys for the parties and any unrepresented  
22 parties. Such settings **shall** be made at the time of the hearing on the initial petition commencing  
23 the litigation or at the request of any party thereto. . .” (emphasis added). NRS 0.025 defines “shall”  
24 as follows: “Except as otherwise expressly provided in a particular statute or required by context:  
25 ... ‘shall’ imposes a duty to act.” Thus, use of the word “shall” in EDCR 4.17 imposed a duty on  
26 the Probate Commissioner to act when certain conditions are met. In this instance, the act to be  
27  
28

1 done was entering a discovery schedule and setting an evidentiary hearing in contested matters  
2 involving disputed issues of material fact.

3 As set forth in the verified Petition, Respondent's Objection thereto, and this Memorandum,  
4 there are numerous disputed issues of material fact which mandate, as a matter of law, the setting  
5 of an evidentiary hearing and a discovery schedule. Those disputed issues of material fact include,  
6 but are not limited to, the following:

- 7 • Petitioner has falsely alleged and Respondent has refuted that some of Respondent's  
8 donations are made to unauthorized political groups.
- 9 • Petitioner has falsely alleged and Respondent has refuted that the MSA only gave Phung  
10 "investment" management powers over the Trust assets.
- 11 • Petitioner has falsely alleged and Respondent has refuted that the Trust's assets are  
12 community property.
- 13 • Petitioner has alleged and Respondent has refuted that the relationship between Petitioner and  
14 Phung has become very hostile and Petitioner is unable to work with Phung to achieve the  
15 charitable goals of the Trust.
- 16 • Due to the documented neglect of her duties and her incapacity to serve as a Trustee,  
17 Petitioner cannot be trusted to manage the assets of VASF or FESR.
- 18 • Notwithstanding any statement by Petitioner, the Trust has operated just as it has since its  
19 formation by Respondent.
- 20 • Petitioner does not have standing to petition this Court regarding VASF or FESR as she is no  
21 longer a Trustee of either charity.

22 Moreover, in Respondent's Objection and at the time of both hearings, Respondent's counsel  
23 requested that the Probate Commissioner establish a discovery schedule and set an evidentiary  
24 hearing. Again, under the circumstances of this matter and at the request of any party, the Probate  
25 Commissioner has a duty to set an evidentiary hearing date and a discovery schedule. The failure  
26 to do so was a clear error requiring that this Court reject the Probate Commissioner's Report and  
27 Recommendation.  
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1                   A.     Petitioner is not a trustee with the power of invasion of the principal of  
2                               trust assets.

3             Not only did the Probate Commissioner err by failing to set an evidentiary hearing and a  
4     discovery schedule, but he failed to follow the applicable statutory authority in decanting the Trust  
5     funds. NRS 163.556 provides the purported authority for decanting. Section I states: "1. Except  
6     as otherwise provided in this section, unless the terms of a testamentary instrument or irrevocable  
7     trust provide otherwise, a trustee with discretion or authority to distribute trust income or principal  
8     to or for a beneficiary of the trust may exercise such discretion or authority by appointing the  
9     property subject to such discretion or authority in favor of a second trust as provided in this section."  
10    In analyzing this statute, the Commissioner found that the only material fact is whether the "trustee  
11    has the power of invasion of principal and that there is no reduction of any income interest of any  
12    income beneficiary of the trust." Even if true, such a finding requires that the Court, at the very  
13    least, examine the trust documents to ascertain whether a trustee does in fact have the power to  
14    invade the principal.  
15

16            As set forth in the Charter, MSA and as described above, Petitioner does not have unlimited  
17    discretion or authority to distribute trust income or principal. The parties agreed that Phung would  
18    manage both Trust accounts. That much is clear and not subject to dispute. See MSA at Section  
19    14.1. Moreover, both Trustees are limited to making contributions, expenditures and grants in  
20    amounts less than \$5,000. Any contribution, expenditure or grant exceeding \$5,000 must be agreed  
21    to in writing by both Petitioner and Respondent. Such a limitation was agreed to at the time of the  
22    divorce so neither party could misuse or waste Trust assets. On this point, the parties agreed as  
23    follows:  
24

25                       HUSBAND shall manage the Fidelity VASF Brokerage Account No.  
26                       xxxx4792, Fidelity FESR Brokerage Account No. xxxx4784, Bank of  
27                       America Account No. xxxx2956, Bank of America Account  
28                       xxxx4259 on behalf of the both Trustees, HUSBAND and WIFE.  
                      However, any and all decisions relating to contributions, expenditures,

1 grants, etc., in excess of \$5,000.00 shall be agreed to in writing by  
2 both trustees. Moreover, these assets cannot be moved or transferred  
3 without the express written permission of both Trustees.

4 MSA at Section 14.1.

5 The language quoted above is clear. Since the Trust assets cannot be moved or transferred  
6 without the express written permission of both Trustees, Petitioner is not a trustee with discretion  
7 or authority to distribute trust income or principal. Petitioner does not have the power to invade the  
8 principal of the Trust. Accordingly, she cannot exercise discretion or authority she does not have  
9 and, thus, she does not have the necessary authority to decant by appointing the Trust property to a  
10 second trust.

11 Unfortunately, there does not appear to be any instructive case law in Nevada regarding NRS  
12 163.556. As a result, we look to other states for guidance. In interpreting a trust, the intent of the  
13 trustees is paramount. Morse v. Kraft, 466, Mass. 92, 98 (Mass. 2013)<sup>1</sup>. In determining intent, it is  
14 particularly significant to review the language used by the trustees at the time those powers were  
15 created. Id. In fact, “[i]t is fundamental that a trust instrument must be construed to give effect to  
16 the intention of the donor as ascertained from the language of the whole instrument considered in  
17 light of circumstances known to the donor at the time of its execution.” Ferri v. Powell-Ferri, 476  
18 Mass. 651, 654 (Mass. 2016). The Probate Commissioner erred when he relied “upon the ability  
19 and rights of the trustee to the exclusion of the parties’ contract rights.” Report and  
20 Recommendation, p. 2. It is those contract rights that the Court must examine to ascertain the  
21 parties’ intent, and those contract rights which are paramount.

22 In ascertaining a trustor’s intent to permit decanting, courts look to whether a trustee has  
23 broad discretion to distribute the assets of an irrevocable trust. Id. At 656. For instance, in Morse,  
24 in a case allowing decanting, the court made note of the trustee’s “almost unlimited” discretion to  
25

26  
27  
28 <sup>1</sup> Respondent acknowledges that Massachusetts and Connecticut have not enacted explicit decanting statutes.  
However, Respondent submits these cases as persuasive authority.

1 distribute the assets of an irrevocable trust. Morse, 466 Mass. At 98. Further, in states that have  
2 enacted explicit decanting statutes, such as Nevada, courts look to “a trustee’s broad authority to  
3 distribute principal from the trust for the benefit of one or more of the beneficiaries when  
4 determining whether the trustee has the authority to decant.” Ferri, 476 Mass. at 656. Similarly, in  
5 Connecticut, the authority to decant is contingent upon a very broad discretion on the part of a  
6 trustee. Ferri v. Powell-Ferri, 2013 Conn. Super. LEXIS 1938 (Sup. Ct. Conn. 2013).

7  
8 As set forth above, Petitioner does not have broad authority to distribute trust assets.  
9 Petitioner does not have the authority to manage either of the Trusts. That authority rests solely  
10 with Phung. Further, any contribution, expenditure or grant exceeding \$5,000 must be agreed to in  
11 writing by both Petitioner and Respondent. These limitations were put in place for a reason, and  
12 that intent of the parties must be respected. Petitioner does not have the broad authority necessary  
13 to decant approximately \$8,000,000 into a separate trust that she alone has an unfettered right to  
14 manage and from which she alone can distribute trust assets. The Probate Commissioner erred as a  
15 matter of law in finding and recommending such.

16  
17 **B. Petitioner’s incapacity to serve as a trustee has been conclusively**  
18 **determined.**

19 The Commissioner’s finding that he relied the ability and rights of the trustee to the exclusion  
20 of the parties’ contract rights was not only a clear error as to the parties’ intent, but it ignored  
21 unrefuted evidence that Petitioner is not qualified to serve as a trustee over a separate trust consisting  
22 of approximately \$8,000,000 in assets. There is no dispute that Petitioner has never actively  
23 participated as a Trustee on behalf of the Trusts. Moreover, her fitness to serve as a Trustee of the  
24 Trusts must be examined by this Court. Section Six of the Charter provides in part, “[t]he failure  
25 of a Trustee to attend any of the meetings of Trustees for three (3) consecutive meetings shall be  
26 deemed conclusive as his or its incapacity to act.” Petitioner missed at least three (3) consecutive  
27 meetings and, was officially removed as a Trustee. See Minutes, attached hereto as Exhibits F, G  
28

1 and H. Thus, in addition to not having discretion or authority to distribute any trust income or  
2 principal, Petitioner's incapacity to serve as a trustee has been conclusively determined.

3 Further, at the initial hearing before the Probate Commissioner, Respondent's counsel  
4 intimated that there may have been issues with the way a gift or gifts from the Trusts were utilized  
5 by Trung Tam Khuyen Khich Tu Lap ("TTKKTL"). From 2012 until July 2016, Petitioner was the  
6 chairperson of TTKKTL, a charitable trust in Vietnam that is not the subject of these proceedings.  
7 Respondent recently discovered after her resignation that certain transition documents revealed  
8 some loss of funds. Mr. Phan Van Hai ("Hai"), the former Director who worked directly under the  
9 supervision of Thu-Le, maintained a secret TTKKTL account, and that upon resigning his office on  
10 August 31, 2016, shortly after Petitioner resigned, Hai withdrew approximately \$57,000 and  
11 deposited it into his own account. Nguyen Nhien ("Nguyen"), a member of the TTKKTL Board of  
12 Directors and Inspector General, investigated with the help of the Vietnamese police. Hai confessed  
13 that Petitioner had instructed him to keep a portion of that money for her. TTKKTL executives then  
14 reported this event to the government for the City of Hue, which conducted its own investigation.  
15 The City of Hue Inspector interrogated Hai and found that, of the missing \$57,000, approximately  
16 \$20,400 was money that Petitioner purportedly asked Hai to keep for her and the remaining,  
17 approximately \$36,700, was money that VASF asked him to transfer to smaller charities, but he had  
18 not done so. The City of Hue Inspector further found that during the time Hai worked under the  
19 direction of Petitioner, the two committed some questionable acts. Specifically, it appears that Hai  
20 manufactured a few applications requesting funds from VASF. See Report of the Inspector General  
21 of TTKKTL dated November 21, 2016 (English Version), attached hereto as Exhibit J. The  
22 investigation into the misuse of funds continues. The Vietnamese police have assisted TTKKTL to  
23 recover funds for VASF and FESR.  
24  
25  
26

27 It is with great reluctance that Respondent raises these issues. However, for over 28 years  
28 with VASF and 20 years with FESR, Thu-Le has not done anything to demonstrate she can manage

1 the Trusts or any portion thereof to achieve the Trusts' stated objectives per their Charters. Anything  
2 she did was administrative support, such as typing or record keeping, directed by Phung. She has  
3 no record of reviewing applications for donations or screening potential recipients for awards.  
4 Moreover, Petitioner's documented neglect of her Trustee duties, her conclusive incapacity to serve  
5 as a Trustee and questionable handling of other trust funds are issues that must be addressed through  
6 competent evidence. For the Probate Commissioner to state that he was relying on the ability of  
7 Petitioner to serve as a trustee, and not even inquire about her unrefuted incapacity to serve and her  
8 questionable conduct with respect to another charitable trust, is an error that mandates the Report  
9 and Recommendation be rejected.  
10

11 **C. Petitioner is not a bona fide trustee as she has been removed as a trustee**  
12 **of the Trusts.**

13 Since the formation of the Trusts, VASF has been exclusively managed by Phung. Phung  
14 spends hundreds of uncompensated hours each year reviewing applications for donations. Most of  
15 the organizations receiving donations from VASF and/or FESR are tiny grassroots citizens' groups  
16 in Communist Vietnam where both Petitioner Thu-Le and Phung came from. All the recipients of  
17 the charitable donations over the years have been properly documented with thousands of pages by  
18 Phung. This is precisely how Dr. Phung has managed the charity operations for 28 years without  
19 objection by Thu-Le Doan. Petitioner has never performed an active role with respect to any Trust  
20 business and knows very little about the working of the trusts.  
21

22 Notwithstanding the fact that Petitioner has never performed an active role with respect to  
23 the Trusts, Phung has attempted to work amicably with Thu-Le concerning Trust matters, both  
24 before and after the divorce. Since the divorce, Phung has called multiple meetings, all to take place  
25 in a public place to address specifically identified charity matters. See meeting notices scheduling  
26 meetings for October 15, 2015; August 27, 2016 and October 15, 2016 attached hereto as Exhibits  
27 C, D and E. Dr. Phung's efforts to work with Petitioner have been constant and respectful.  
28

1 However, each time, Petitioner neglected her duties owed to the Trusts and refused to attend any  
2 Trust meetings. Further, she had made it difficult for Phung to conduct the Trusts' business; for  
3 example, she asked Fidelity to freeze the accounts, causing checks to be bounced and penalized.

4 Following the divorce, Phung, always, acted in good faith and in compliance with the MSA  
5 and Charter in relation to the Trusts. Moreover, he went out of his way to be courteous to and  
6 cooperative with Petitioner Thu-Le with respect to the charities. Phung has, on several occasions,  
7 requested Thu-Le's cooperation in filling the trustee vacancy in the Trust, but Petitioner has refused  
8 to cooperate. As a result, at the duly noticed meeting scheduled for October 15, 2016, Phung  
9 provided Petitioner with an advance meeting agenda, which among other things included the  
10 approval and appointment of Holly Ngo as a trustee of the Trusts. See Meeting Notice, Exhibit E.

12 During the Trust meeting of October 15, 2016, at the North Buffalo public library, Petitioner  
13 failed to show, just as she failed to attend any previous meetings, nor did she provide any message  
14 or comments. At the properly noticed meeting, consistent with his authority as a Trustor and  
15 Trustee, Phung nominated and appointed, without objection, Holly Ngo to serve as a Trustee for a  
16 five (5) year term. See Minutes of Trustee's Meeting on October 15, 2016 of VASF, attached hereto  
17 as Exhibit H.

19 Also at the October 15, 2016, the issue of Petitioner Thu-Le's status as a Trustee was  
20 addressed and resolved. Pursuant to the express terms of the Charter, "[t]he failure of a Trustee to  
21 attend any of the meetings of Trustees for three (3) consecutive meetings shall be deemed conclusive  
22 as his or its incapacity to act." See Charter, Section Six, Exhibit A (emphasis added).

24 The Board of Trustees discussed the fact that Thu-Le had not performed any of her duties  
25 as Trustee, and had single-handedly done harm to the work of the Trust, such as causing real estate  
26 in Tennessee to lose insurance and freezing bank accounts leading to its checks being bounced and  
27 penalized. Petitioner failed to attend any meetings since 2012, and specifically failed to attend three  
28

1 (3) consecutive meetings on October 15, 2015; August 27, 2016 and October 15, 2016. See meeting  
2 minutes attached hereto as Exhibits F, G and H.

3 Based on the above facts, the Board voted with 2 votes out of 3 (the third vote being that of  
4 Thu-Lc who was absent) to remove Petitioner as a Trustee, effective October 15, 2016, due to her  
5 conclusive incapacity to serve.

6 Previously, this Court has assumed jurisdiction and confirmed the terms of the Trust. Those  
7 terms are clear. As expressly authorized by the Trust Charter, Phung, as Trustor, appointed Holly  
8 Ngo to serve as a Trustee for a five (5) year term. Moreover, because of Petitioner's documented  
9 failures as a Trustee and her conclusively proven incapacity to serve, she was removed as a Trustee  
10 at the meeting on October 15, 2016. Although the Probate Commissioner failed to even address  
11 Petitioner's incapacity, Respondent respectfully requests that this Court enter a declaratory  
12 judgment pursuant to NRS 30.040 approving these acts of the Board, and upon such approval,  
13 dismiss this action as Petitioner has no standing.  
14

15 **D. The Probate Commissioner's reliance, in any way, upon Petitioner's false**  
16 **allegations was an error.**  
17

18 It is well documented that Petitioner has made several false allegations throughout the  
19 pendency of this case. Although the Probate Commissioner modified his initial findings to state  
20 that "the facts on whether the trustees are at loggerheads are illuminating, such facts are not  
21 determinative to the ultimate resolution," it is unclear in the context of this case what "illuminating"  
22 means, and the extent to which the Probate Commissioner still considered those "facts". As a result,  
23 it is necessary to address some of Petitioner's false claims in her Petition. For example, it is  
24 disingenuous for Petitioner Thu-Le to claim that she does work in Vietnam for the Trusts while in  
25 fact all agreements she signed with the Communist government of Vietnam are for TTKKTL of  
26 which she was the chairperson until she resigned in July 2016. It is also disingenuous when she  
27 claims, without proof, that the police interviewed her and asked her about the activities of Phung  
28

1 and that she is afraid for her safety. Further, Petitioner used FESR money for extended trips to  
2 Vietnam and for providing special attention to the village of Niem Pho where her paramour was  
3 from.

4 Petitioner further claims that the relationship between she and Respondent "has become very  
5 hostile, thus Petitioner is unable to work with Phung as Co-Trustees to achieve the charitable goals  
6 of the Trust." Petition, p. 4. Again, other than Petitioner's unsubstantiated statement, there is no  
7 evidence that Respondent has been hostile to Petitioner. For Petitioner to imply that Phung has  
8 threatened her or that he would harm her in any way is not accurate or a fair representation of the  
9 true facts. The evidence will show continual amicable efforts on the part of Phung to work with  
10 Petitioner. Phung's efforts to work with Petitioner have been constant and respectful. Phung has  
11 called multiple meetings, all to take place in a public place, to address specifically identified charity  
12 matters. Each time Petitioner has declined to meet. Phung has provided her with all documentation  
13 supporting donations made by him. Petitioner has failed to reciprocate. Petitioner has declined to  
14 provide him with documentation supporting requested donations and, apparently, is the one who  
15 wishes to do as she pleases with respect to the charities. These facts are supported by electronic  
16 correspondence between the parties, which is further reason this Court must reject the Probate  
17 Commissioner's Report and Recommendations, enter a discovery schedule and order an evidentiary  
18 hearing. If Petitioner does not want to work with Phung, she had a readily available remedy. She  
19 can appoint a substitute trustee.

22 Moreover, and contrary to Petitioner's assertion that Phung would only have "investment  
23 management powers," Petitioner agreed in the MSA that Phung would manage the charity accounts.  
24 See MSA, Section 14.1. Petitioner's allegation that Phung is refusing to let Thu-Le send any money  
25 to charities is another factual distortion. Petition, p. 4. As the manager of the Trust accounts, Phung  
26 has required, not only of Thu-Le, but also of himself, that any donation be documented before a  
27 check is written. The fact is that Phung has promptly written checks to charities requested by Thu-  
28



1 Le when the request has been documented. For her to claim otherwise is another intentionally false  
2 statement proffered by Petitioner.

3 **V. Conclusion**

4 Respondent Phung has worked tirelessly for the Trusts without compensation and has  
5 hundreds, if not thousands, of documents demonstrating his work with educational institutions,  
6 students, scholars, hospitals, scouts, kindergartens, victims of human trafficking and civic groups  
7 all in an effort to achieve the goals of the Trusts he formed. Respondent owes the Trust fiduciary  
8 duties and takes these duties serious, as he should. He is compelled to raise the foregoing issues  
9 with the Court notwithstanding his prior willingness to work with Petitioner. Respondent Phung  
10 respectfully requests that this Court reject the Probate Commissioner's Report and  
11 Recommendation and remand this matter to allow for an appropriate discovery schedule and  
12 evidentiary hearing as required by EDCR 4.17.  
13

14 DATED this 21 day of August, 2017.

15 MUSHKIN CICA COPPEDGE

16  
17  
18 BY: 

19 Michael R. Mushkin, Esq.

20 Nevada Bar No. 2421

21 L. Joe Coppedge, Esq.

22 Nevada Bar No. 4954

23 4475 South Pecos Road

24 Las Vegas, NV 89121

25 *Attorneys for Respondent, Doan L. Phung*  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing *Respondent, Doan L. Phung's Objection to Probate*  
3 *Commissioner's Report and Recommendation Confirming Prior Report and Recommendation*  
4 *Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and*  
5 *Conclusions of Law, Confirming Co-Trustees and to Modify Trust, and Request for Judicial Review*  
6 was submitted electronically for filing and/or service with the Eighth Judicial District Court on this  
7 21 day of August, 2017. Electronic service of the foregoing document shall be upon all parties  
8 listed on the Odyssey eFileNV service contact list<sup>2</sup>.

9  
10   
11 An Employee of  
12 MICHAEL R. MUSHKIN & ASSOCIATES  
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28 <sup>2</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

# **EXHIBIT A**

# **EXHIBIT A**

CHARTER  
FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR)

For the purpose of empowering qualified but disadvantaged people and organization activities in Vietnam and the United States of America to look for ways to help themselves, we, THU-LE DOAN AND DOAN L. PHUNG of 5505 Painted Sunrise Drive, Las Vegas, Clark County, Nevada herein referred to as "Trustors," irrevocably create a Trust fund of the property listed in Exhibit "A" attached hereto and made a part hereof, which we have today delivered to THU-LE DOAN and DOAN L. PHUNG, trustees.

We hereby give, transfer, and deliver the property described in Exhibit "A" to the Trustees in Trust for the purposes stated.

This fund shall be known as the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR).

Trustors and Trustees agree as follows:

SECTION ONE

MANAGEMENT OF TRUST FUND AND INCOME

Trustees shall hold Trust fund and may, in their discretion, use any legal means permitted under the laws of the State of Nevada, invest the Trust fund to create income, or to raise further funds, to be used for the purpose of encouraging the pursuit of self reliance. These include, but are not limited to: (1) assisting organizations that loans micro amounts of money at favorable interest rates for the purpose of enabling individuals to pursue a trade or business; (2) paying micro amounts of money to individuals who are qualified as above but are nevertheless unable to meet the loan criteria; to individuals from a disadvantaged background who are qualified to attend Vietnamese or American institutions of training but because of their financial need have difficulty in so doing; or (3) contributions to any charitable organizations, trust, community chest, fund or foundation which at the time of the contribution by Trustees is one of those organizations specified in the Internal Revenue Code, contributions to which are deductible for income tax purposes.

SECTION TWO

RESTRICTIONS ON USE OF TRUST FUND

The Trust fund and the income thereof shall be devoted exclusively to the purposes described above and shall in no part and under any circumstances be given or contributed to or inure to the benefit of any private person or corporation. No part of the Trust fund shall be used to carry on propaganda or otherwise attempt to influence legislation, or to participate in any political campaign. Notwithstanding any other provision hereof, this Trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under the Internal Revenue Code and its regulations

as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended.

Other provisions of this instrument notwithstanding, the Trustees shall not engage in any act of self-dealing as defined in Section 4941 subdivision (d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor retain any excess business holding as defined in Section 4943 subdivision (e) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945.

### SECTION THREE

#### ADDITIONAL GIFTS TO FUND

Either Trustors or other persons or organizations may, from time to time, make additional gifts of money or property to Trustees to become part of the Trust fund.

### SECTION FOUR

#### ACCOUNTING

The fiscal year of the Trust shall be from January 1 to December 31 of each year. Trustees shall publish on January 31 of each year a statement of the receipts and disbursements and the purposes for which disbursements have been made for the preceding fiscal year. An annual audit shall be made of the accounts of the Trust by certified public accountants.

### SECTION FIVE

#### REIMBURSEMENT AND COMPENSATION OF TRUSTEE

Trustees shall be reimbursed from the Trust fund for all expenses reasonably incurred by them in the administration of the Trust fund.

### SECTION SIX

#### APPOINTMENT OF SUCCESSOR TRUSTEE

The number of Trustees shall not exceed five (5) individuals, two of whom are Trustors or selected exclusively by one or both Trustors. Trustors expressly reserve the right during their lifetime to appoint additional Trustees and the Trustees may elect additional Trustees by not less than two-thirds (2/3) majority vote. The term for which Trustees are authorized to act shall be for three years. A Trustee may be removed by not less than two-thirds (2/3) majority vote of all Trustees when they deem that such Trustee is incompatible, or not in sympathy with the purposes of the Trust, or for any other just cause. In

the event that a vacancy shall occur because of death, resignation, incapacity to act, or removal of a Trustee, then the remaining Trustees shall, within sixty (60) days from the date of such vacancy, fill the vacancy. The failure of a Trustee to attend any of the meetings of Trustees for three (3) consecutive meetings shall be deemed conclusive as his or its incapacity to act.

#### SECTION SEVEN

##### MANAGEMENT

Trustees by majority vote of not less than 51%, may hire a manager who may hire staff to manage the operations of the Fund.

#### SECTION EIGHT

##### LIABILITY OF TRUSTEE

Trustees shall be chargeable only with the exercise of good faith in carrying out the provisions of the Trust and shall not, in the absence of bad faith, be responsible or accountable for error of judgment in making the contributions and gifts pursuant to the provisions of Section One hereof.

#### SECTION NINE

##### GIFTS IRREVOCABLE

Gifts made to the Trust shall be irrevocable. Donor(s) has the privilege to designate the contribution for a specific use and in honor of an individual(s) or organization(s), provided that such use is in line with the objectives of the fund, and that it does not run counter to the law. Trustees of the fund have the right to reject such privilege by majority vote. In that case, the contribution shall be returned in total to the donor or be given to an organization of the donor's designation.

If it shall be determined by the Internal Revenue Service subsequent to the transfer of any funds to Trustees by Trustors or any other person that the Trust fund is not exempt from the payment of income tax on its income or if the donors to the fund may not be entitled to charitable deductions for income tax purposes for contributions made thereto in the manner and to the full extent provided by the Internal Revenue Code, then such gifts as remain in the fund at the time of such determination shall be given by Trustees to a qualified tax exempt charitable organization selected by Trustees to best carry out the purpose of this Trust, and this Trust shall thereupon terminate.

#### SECTION TEN

##### TRUST IRREVOCABLE

This CHARTER is irrevocable and may not be amended or modified; provided, however, that if for any reason whatsoever this Trust fails to qualify as tax-exempt charitable Trust, such changes as are

necessary for the Trust to so qualify may be made by Trustors so long as they are living and competent, otherwise and thereafter, by a court of competent jurisdiction.

#### SECTION ELEVEN

##### INTERPRETATION OF TRUSTOR'S INTENT

In the event that the purpose for which this Trust has been created cannot, at any time, be carried out, Trustees are to administer the Trust for another charitable purpose which is similar to the original purpose of the Trustors.

#### SECTION TWELVE

##### DISSOLUTION

In the event of dissolution, the remaining funds will be turned over to a qualified not-for-profit organization which itself is exempt as a not-for-profit organization described in Sections 501(c)(3) and 170 (c)(2) of the Internal Revenue Code of 1954, or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state, or local government for exclusive public purpose.

##### TRUSTORS:

12/26/97  
Date  
12/26/97  
Date

Thuc Doan  
THU-LE DOAN  
Doan L. Phung  
DOAN L. PHUNG

We the undersigned, hereby accept and assume the Trust created by the foregoing Trust instrument according to all the terms and conditions thereof.

##### TRUSTEES:

12/26/97  
Date  
12/26/97  
Date

Thuc Doan  
THU-LE DOAN  
Doan L. Phung  
DOAN L. PHUNG

STATE OF Nevada

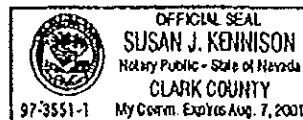
COUNTY OF Clark

Personally appeared before me, Thu Le Doan, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained.

Witness my hand, at office, this 21 day of Nov, 1997

Susan J. Kennison  
NOTARY PUBLIC

My Commission Expires: Aug 7, 2001



Personally appeared before me, Doan L. Phung, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained.

Witness my hand, at office, this 21 day of Nov, 1997

Susan J. Kennison  
NOTARY PUBLIC

My Commission Expires: Aug 7, 2001

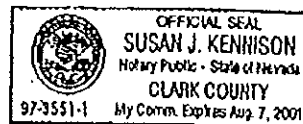




Exhibit "A"

SCHEDULE OF PROPERTY

This schedule attached hereto and made a part hereof that certain irrevocable trust agreement executed by THU-LE DOAN and DOAN L. PHUNG, referred to as "Trustors," and THU-LE DOAN and DOAN L. PHUNG, referred to as "Trustees" of a Trust fund known as the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR) and identifies the initial trust property held subject to the trust thereunder.

A check of one hundred and eighty thousand dollars (\$180,000.00)

\_\_\_\_\_

#### AMENDMENT 1

(Note: the additions to the Charter are *in italic and underlined*)

#### CHARTER

#### FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE (FESR)

#### SECTION ONE

##### MANAGEMENT OF TRUST FUND AND INCOME

Trustees shall hold Trust fund and may, in their discretion, use any legal means permitted under the laws of the State of Nevada, invest the Trust fund to create income, or to raise further funds, to be used for the purpose of encouraging the pursuit of self reliance within the meaning of Section 501 (c) (3) of the Internal Revenue Code. These include, but are not limited to: (1) assisting organizations that loans micro amounts of money at favorable interest rates for the purpose of enabling individuals to pursue a trade or business; (2) paying micro amounts of money to individuals who are qualified as above but are nevertheless unable to meet the loan criteria; to individuals from a disadvantaged background who are qualified to attend Vietnamese or American institutions of training but because of their financial need have difficulty in so doing; or (3) contributions to any charitable organizations, trust, community chest, fund or foundation which at the time of the contribution by Trustees is one of those organizations specified in the Internal Revenue Code, contributions to which are deductible for income tax purposes.

#### SECTION TWO

##### RESTRICTIONS ON USE OF TRUST FUND

The Trust fund and the income thereof shall be devoted exclusively to the purposes described above within the meaning of Section 501 (c) (3) of the Internal Revenue Code and shall in no part and under any circumstances be given or contributed to or inure to the benefit of any private person or corporation. FESR shall not make gifts or grants to foreign organizations or individuals without having evidence that it has full control of the donated funds within the meaning of the Internal Revenue Code Section 170 (c) and IRS guidelines GCM 35319 and 37444. No part of the Trust fund shall be used to carry on propaganda or otherwise attempt to influence legislation, or to participate in any political campaign. Notwithstanding any other provision hereof, this Trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended.

Any other provisions of this instrument notwithstanding, the trustees shall distribute tax income for each tax year at a time and in a manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Any other provisions of this instrument notwithstanding, the Trustees shall not engage in any act of self-dealing as defined in Section 4941 subdivision (d) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor retain any excess business holding as

defined in Section 4943 subdivision (c) of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any investments in such manner as to incur tax liability under Section 4944 of the Internal Revenue Code of 1986, or corresponding provisions of any subsequent federal tax laws; nor make any taxable expenditures as defined in Section 4945 (d) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

## SECTION TWELVE

### DISSOLUTION

In the event of dissolution, assets shall be distributed for one or more exempt purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code. The remaining funds will be turned over to a qualified not-for-profit organization which itself is exempt as a not-for-profit organization described in Sections 501(c)(3) and 170 (c)(2) of the Internal Revenue Code of 21954, or corresponding sections of any prior or future Internal Revenue Code, or to the federal, state, or local government for exclusive public purpose.

END OF AMENDMENT 1. ALL OTHER SECTIONS REMAIN THE SAME.

#### TRUSTORS:

Jan 26, 1999  
Date

Jan 26, 1999  
Date

Thu-Le Doan  
THU-LE DOAN  
Doan L. Phung  
DOAN L. PHUNG

We the undersigned, hereby accept and assume the Amendment 1 of the Trust created by the foregoing Trust instrument according to all the terms and conditions thereof.

#### TRUSTEES:

Jan 26, 1999  
Date

Jan 26, 1999  
Date

Thu-Le Doan  
THU-LE DOAN  
Doan L. Phung  
DOAN L. PHUNG

# **EXHIBIT B**

# **EXHIBIT B**

ORIGINAL

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*Alvin L. Kolber*

CLERK OF THE COURT

1 DECD  
2 KIRBY R. WELLS, ESQ.  
3 Nevada Bar No. 001666  
4 WELLS & RAWLINGS  
5 6900 Westcliff Drive, Suite 710  
6 Las Vegas, Nevada 89145  
7 (702) 341-7117  
8 (702) 341-8527  
9 kwells@wellsrawlings.com  
10 Attorney for Plaintiff

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

11 THU-LE DOAN,

12 Plaintiff,

13 vs.

14 DOAN L. PHUNG,

15 Defendant.

CASE NO: D-11-455322-D  
DEPT NO: F

DECREE OF DIVORCE

18 Plaintiff, Thu-Le Doan, by and through her attorney, Kirby R. Wells, Esq., of WELLS &  
19 RAWLINGS, and Defendant, Doan L. Phung, by and through his attorney, Ann E. Kolber, Esq., of  
20 Law Practice, Ltd., submitted this matter to the Court for Summary Disposition of Divorce, with  
21 both parties having consented to this Court's jurisdiction. The Court was fully advised as to the law  
22 and the facts of the case, and finds that: the parties were married on June 28, 1970, in Lake Forest,  
23 Illinois; there are no minor children the issue of this marriage, no children adopted during the  
24 marriage, and the Plaintiff is not pregnant; this Court has complete jurisdiction in the premises, both  
25 as to the subject matter, as well as the parties; the Plaintiff is an actual and bona fide resident of the  
26 County of Clark, State of Nevada, and was actually domiciled herein for more than six weeks

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ATTORNEYS AT LAW  
6900 WESTCLIFF DRIVE SUITE 710  
LAS VEGAS, NEVADA 89145  
TELEPHONE 702 341-7117  
FACSIMILE 702 341-8527

DISPOSITIONS  
☐ Converted from  
Blackstone  
☐ Mandatory  
Disposal  
☐ Transferred  
☐ Voluntary  
Dismissal  
☒ Disposition with  
Trial/Hearing  
☐ Disposition w/  
Hearing  
☐ Disposition w/  
Trial/Hearing  
Hearing  
☐ Disposition  
Guardianship  
☐ Death  
☐ Age of Majority  
☐ Restoration of  
Competency  
☐ Order  
Terminating  
Guardianship/  
Plaintiff's

1 immediately preceding the commencement of this action; all of the jurisdictional allegations  
2 contained in Plaintiff's Complaint are true as therein alleged and Plaintiff is entitled to a Decree of  
3 Divorce from the Defendant on the ground as set forth in Plaintiff's Complaint; and Defendant  
4 having answered has waived Findings of Fact, Conclusions of Law, and written Notice of Entry of  
5 Judgment in said cause;  
6

7 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
8 that the bonds of matrimony existing between Plaintiff, Thu-Le Doan ("Thu-Le"), and Defendant,  
9 Doan L. Phung ("Doan"), be, and the same are wholly dissolved, and an absolute Decree of Divorce  
10 is hereby granted to Thu-Le, and each of the parties is restored to the status of a single, unmarried  
11 person.  
12

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all of terms of the  
14 *Marital Settlement Agreement*, dated February 22, 2012, are approved, adopted, ratified, and  
15 confirmed as an Order of this Court, and are merged into this Decree as if set forth in full. A copy  
16 of the *Marital Settlement Agreement* (MSA) is attached to this *Decree of Divorce* as Exhibit "1."  
17

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that neither party shall pay  
19 the other alimony.

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, recognizing the  
21 parties have already agreed to the equitable division of all of their community, jointly owned, and  
22 separate assets, as well as their community, joint, and separate debts, as set forth in the MSA, each  
23 party shall comply fully with the same, and each party is hereby ordered to comply with each and  
24 every provision set forth in the MSA.  
25

26 \* \* \* \* \*

27 \* \* \* \* \*

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither party shall  
2 hereafter incur any debts or obligations in the name of or against the other and each shall pay debts  
3 incurred by him or her and each agrees to indemnify, defend, and hold each other free and harmless  
4 from and against any claims asserted by either of them against the other, or by a third party through  
5 either of them against the other, which claims are contrary to any of the provisions contained in the  
6 MSA.  
7

8 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party has had a  
9 reasonable opportunity with the advice of independent counsel to obtain adequate and sufficient  
10 knowledge of the extent and approximate present value of the community and separate property of  
11 the other party, and to the extent of having declined to examine and/or investigate further, has  
12 thereby waived and does hereby waive and relinquish the right to do so.  
13

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Thu-Le and Doan  
15 acknowledge and agree that at their specific instructions, neither of their attorneys have undertaken  
16 any discovery and investigation to determine or confirm the nature, extent or valuation of the parties'  
17 assets and obligations. Thu-Le and Doan hereby indemnify and agree to hold harmless, Thu-Le's  
18 attorney, Kirby R. Wells, Esq., of WELLS & RAWLINGS and Doan's attorney, Ann E. Kolber, Esq.,  
19 of LAW PRACTICE, LTD., from liability relating to the valuation of community assets and/or the  
20 division of property set forth in the MSA. Thu-Le and Doan also acknowledge and agree that each  
21 has independently obtained sufficient information to individually determine to their satisfaction, the  
22 nature, extent, and/or valuation of the subject assets and obligations. Thu-Le and Doan further  
23 acknowledge and agree that each has not relied on any representations by Kirby R. Wells, Esq., of  
24 WELLS & RAWLINGS or Ann E. Kolber, Esq., of LAW PRACTICE, LTD., as to the nature, extent and  
25  
26  
27  
28

WELLS & RAWLINGS

ATTORNEYS AT LAW  
6900 WESTOLIFF DRIVE, SUITE 710  
LAS VEGAS, NEVADA 89145  
TELEPHONE (702) 341-7117  
FACSIMILE (702) 341-7117

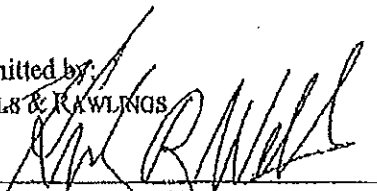
1 valuation of the subject assets and obligation or with respect to the division of properties and  
2 indebtedness herein.

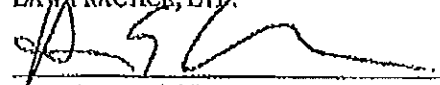
3 The parties further acknowledge and agree that they are fully aware of and understand the  
4 contents, legal effects, and consequences of this Decree of Divorce; that they enter into this  
5 agreement freely, voluntarily, free from duress, fraud, undue influence, coercion or misrepresentation  
6 of any kind, and with full knowledge of the consequences thereof.  
7


8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties shall  
9 perform each and every act required under the terms of the *Marital Settlement Agreement*, and the  
10 Court retains jurisdiction to enforce the timely performance of said acts through its contempt powers.  
11

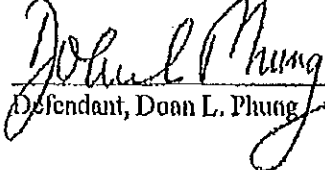
12 DATED April 6, 2012

13   
14 DISTRICT COURT JUDGE 

15 Submitted by:  
16 WELLS & RAWLINGS   
17 KIRBY R. WELLS, ESQ.  
18 Nevada Bar No. 001666  
19 6900 Westoliff Drive, Suite 710  
20 Las Vegas, Nevada 89145  
21 (702) 341-7117  
22 Attorney for Plaintiff

Approved as to form and content:  
LAW PRACTICE, LTD.  
  
ANNE E. KOLBER, ESQ.  
Nevada Bar No. 008144  
5616 S. Fort Apache Road #110  
Las Vegas, Nevada 89148  
(702) 871-6144  
Attorney for Defendant

23 Approved by:  
24  2/22/12  
25 Plaintiff, Thu-Le Doan Dated

Approved by:  
24  2/16/12  
25 Defendant, Doan L. Phung Dated



1

WELLS & RAWLINGS

ATTORNEYS AT LAW  
2500 WESTCLIFF DRIVE SUITE 700  
LAS VEGAS, NEVADA 89102  
TELEPHONE 792-3417  
FACSIMILE 792-5410-527

MARITAL SETTLEMENT AGREEMENT

THIS AGREEMENT, is made and entered into by and between THU-LEDOAN ("WIFE"), a resident of the County of Clark, State of Nevada and DOAN L. PHUNG ("HUSBAND"), a resident of the County of Clark, State of Nevada on the 22<sup>nd</sup> day of February, 2012;

WITNESSETH:

WHEREAS, the parties to this Agreement were married on June 28, 1970, in Lake Forest, Illinois, and ever since said date have been and now are husband and wife;

WHEREAS, there are no minor children the issue of this marriage; there were no children adopted during the marriage and WIFE is not pregnant;

WHEREAS, in consequence of disputes and numerous differences, the parties hereto intend to live separate and apart one from the other;

WHEREAS, it is the mutual wish and desire of the parties that a full and final adjustment and settlement of their property rights, interests and claims against each other be had, settled and determined at the present time by this Agreement, including all issues regarding the support and maintenance of the parties; further, that this agreement be subject to the approval and order of the court, a divorce action shall be entered in the Eighth Judicial District Court of Nevada, County of Clark, Family Division;

NOW, THEREFORE, in consideration of the foregoing facts and the mutual agreements and covenants herein contained, it is covenanted, agreed and promised by each party hereto as follows:

WIFE'S INITIALS: TL

HUSBAND'S INITIALS: DP

1.0 INCORPORATION OF RECITALS

1.1 The recitals above set forth are incorporated herein as a part of this Agreement.

2.0 LIVING SEPARATE AND APART

2.1 HUSBAND and WIFE agree that at all times hereafter, it shall be lawful for each party to live separate and apart from the other free from the marital control, interference, restraint, and authority of the other whatsoever, either directly or indirectly as if each party were single and unmarried. Neither party shall molest, harass, disturb or malign the other to his or her friends, relatives, employers or agents in any manner whatsoever.

3.0 ALIMONY PROVISIONS

3.1 Neither party shall pay the other alimony, support, or maintenance.

4.0 DIVISION OF COMMUNITY PROPERTY

4.1 WIFE shall have confirmed to her as her sole and separate property, free of any claims of HUSBAND, the sole ownership in and to the following:

4.1.1 One-half of the net proceeds from the sale of the marital residence located at 8021 Golfers Oasis Drive, Las Vegas, Nevada 89149 (APN: 125-33-210-058), owned free and clear, subject to the provisions set forth in Section 6 below.

4.1.2 One-half of the Kelley Blue Book value of the 2011 Toyota RAV4, subject to the provisions set forth in Section 7 below.

4.1.3 Her 51% ownership interest in the business entity known as PAI Corporation n/k/a Professional Analysis, Inc., subject to the provisions set forth in Section 8 below.

WIFE'S INITIALS: LED

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS  
ATTORNEYS AT LAW  
2800 WESTCLIFF DRIVE, SUITE 710  
LAS VEGAS, NEVADA 89149  
TELEPHONE 792-2411  
FACSIMILE 792-34-2227

- 1 4.1.4 One-half of the funds in the Bank of America Checking Account No.  
2 004970158473, subject to the provisions set forth in Section 9 below.  
3  
4 4.1.5 One-half of the funds in the Bank of America Money Market Account No.  
5 004960573822, subject to the provisions set forth in Section 9 below.  
6  
7 4.1.6 One-half of the Fidelity Investments Account No. X94-109380, subject to the  
8 provisions set forth in Section 10 below.  
9  
10 4.1.7 Bank of America Checking Account No. 501009793082.  
11  
12 4.1.8 Bank of America Money Market Savings Account No. 005012957722.  
13  
14 4.1.9 Fidelity Investments Account No. X66-411965.  
15  
16 4.1.10 One-half (5%) of the parties 10% interest in Ridgeway Square Partnership.  
17  
18 4.1.11 One-half (5%) of the parties 10% interest in Broadway Shopping Center, LLC.  
19  
20 4.1.12 One-half of parties' retirement accounts, IRA's, and pensions, subject to the  
21 provisions set forth in Section 11 below.  
22  
23 4.1.13 One-half of the household furniture and furnishings located at 8021 Golfers Oasis  
24 Drive, Las Vegas, Nevada 89149, subject to Section 12 below.  
25  
26 4.1.14 WIFE's clothing, jewelry and personal possessions (including all gifts from the  
27 parties' children, grandchildren, and friends), subject to Section 12 below.  
28  
4.2 HUSBAND shall have confirmed to him as his sole and separate property free  
of any and all claims by WIFE, the sole ownership in and to the following:

WIFE'S INITIALS: LD

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS  
ATTORNEYS AT LAW  
8000 WESTCLIFF DRIVE SUITE 710  
LAS VEGAS, NEVADA 89149  
TELEPHONE 792-8487  
FACSIMILE 792-34-9527

- 1 4.2.1 One-half of the net proceeds from the sale of the marital residence located at 8021  
2 Golfers Oasis Drive, Las Vegas, Nevada 89149 (APN: 125-33-210-058), owned free  
3 and clear, subject to the provisions set forth in Section 6 below.  
4  
5 4.2.2 One-half of the Kelley Blue Book value of the 2011 Toyota RAV4, subject to the  
6 provisions set forth in Section 7 below.  
7  
8 4.2.3 His 49% ownership interest in the business entity known as PAI Corporation a/k/a  
9 Professional Analysis, Inc., subject to the provisions set forth in Section 8 below.  
10  
11 4.2.4 One-half of the funds in the Bank of America Checking Account No.  
12 004970158473, subject to the provisions set forth in Section 9 below.  
13  
14 4.2.5 One-half of the funds in the Bank of America Money Market Account No.  
15 004960573822, subject to the provisions set forth in Section 9 below.  
16  
17 4.2.6 One-half of the Fidelity Investments Account No. X94-109380, subject to the  
18 provisions set forth in Section 10 below.  
19  
20 4.2.7 Bank of America Checking Account No. 501013725444.  
21  
22 4.2.8 Fidelity Investments Account No. X66-411280.  
23  
24 4.2.9 One-half (5%) of the parties 10% interest in Ridgeway Square Partnership.  
25  
26 4.2.10 One-half (5%) of the parties 10% interest in Broadway Shopping Center, LLC.  
27  
28 4.2.11 One-half of parties' retirement accounts, IRA's, and pensions, subject to the  
provisions set forth in 11 below.  
4.2.12 One-half of the household furniture and furnishings located at 8021 Golfers Oasis  
Drive, Las Vegas, Nevada 89149, subject to Section 12 below.

WIFE'S INITIALS: WR

HUSBAND'S INITIALS: DLP

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ATTORNEYS AT LAW  
2500 WESTCLIFF DRIVE SUITE 70  
LAS VEGAS, NEVADA 89102  
TELEPHONE 702 341-1177  
FACSIMILE 702 341-9527

4.2.13 HUSBAND's clothing, jewelry and personal possessions.

5.0 ASSUMPTION OF COMMUNITY DEBTS

5.1 WIFE shall assume and pay the following debts and hold HUSBAND harmless therefrom:

5.1.1 Any and all personal debts incurred by WIFE since September 1, 2011.

5.1.2 Any and all other obligations relating to the property awarded to WIFE by this Agreement.

5.2 HUSBAND shall assume and pay the following debts and hold WIFE harmless therefrom

5.2.1 Any and all personal debts incurred by HUSBAND since September 1, 2011.

5.2.2 Any and all other obligations relating to the property awarded to HUSBAND by this Agreement.

6.0 PROVISIONS REGARDING THE MARITAL RESIDENCE

6.1. The parties shall share possession of the residence separately and equally until it is sold, and equally share the expenses associated with the residence, including, but not limited to, taxes, homeowner's association dues, repairs, maintenance, utilities, etc., to paid from the joint account.

6.2 The cost of major improvements made to the property shall be shared equally and paid with joint funds. Any additional improvements must be mutually agreed to by the parties prior to the improvements being made.

WIFE'S INITIALS: WLD

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS  
ATTORNEYS AT LAW  
4900 WEST 17<sup>TH</sup> DRIVE, SUITE 710  
LAS VEGAS, NEVADA 89148  
TELEPHONE 702-547-7117  
FAX 702-547-7117

1 6.3 On or before February 28, 2012, from funds held in an account in HUSBAND's name  
2 only, he shall reimburse the joint account all funds paid or removed from any joint account belonging  
3 to the parties for his personal expenses since September 1, 2011, i.e, food, gas, medicine, clothes,  
4 etc.  
5

6 6.4 The marital residence shall be listed for sale on or before June 30, 2012,  
7 unless this date is extended by written mutual agreement of the parties, with HUSBAND and WIFE  
8 equally sharing all expenses related to the sale. Alternatively, the parties may agree to have the  
9 marital residence appraised and one party may buy out the other party.  
10

11 6.5 The Court shall retain jurisdiction to enter appropriate orders to effectuate the  
12 buy out of the residence as set forth herein.

13 7.0 2011 TOYOTA RAV 4

14 7.1 Both parties shall have use of the 2011 Toyota Rav 4 during the times he/she  
15 has possession of the marital residence. The expenses related to the car, such as insurance,  
16 maintenance, registration shall be paid from the joint account.  
17

18 8.0 PAI CORPORATION A/K/A PROFESSIONAL ANALYSIS, INC.

19 8.1 Each party shall maintain their present ownership interest in the business  
20 known as PAI Corporation a/k/a Professional Analysis, Inc., under the existing terms and conditions.  
21

22 8.2 In the event any dispute arises relating to business operations, financials, or  
23 ultimate disposition of this assets, either party may petition the Eighth Judicial District Court, Family  
24 Division to resolve such dispute in conformity with the laws of the State of Nevada.  
25

26  
27 WIFE'S INITIALS: LD

HUSBAND'S INITIALS: DLP

8.3 WIFE shall receive 51% and HUSBAND shall receive 49% of the PAI Fidelity Investments Account X02112178 as their sole and separate property.

8.3.1 HUSBAND shall continue to manage this account on behalf of PAI. Whenever the funds in the account exceed the necessary amount that the company needs for its daily operations, the excess funds shall be transferred to each party according to their ownership interest, i.e. 51% to WIFE's individual Fidelity Investments Account No. X66-411965 and 49% to HUSBAND's individual Fidelity Investments Account Fidelity Investments Account No. X66-411280.

8.3.2 Neither HUSBAND or WIFE shall remove or transfer any other funds from this account without the other's express written permission.

8.4 The Court shall specifically retain jurisdiction to enter appropriate orders to effectuate the provisions set forth in the section/paragraph.

9.0 BANK OF AMERICA JOINT CHECKING AND MONEY MARKET ACCOUNTS

9.1. As set forth in Sections 4.1.4, 4.1.5, 4.2.4, and 4.2.5 above, the funds in these accounts shall be divided at the time the marital residence is sold.

9.2 HUSBAND shall provide WIFE with an accounting of all funds paid from these accounts for his charity organization, Institute for VietNam Future (IVNF) expenses and reimburse those funds to the joint Bank of America account no later than February 28, 2012.

9.3 The Court shall retain jurisdiction to enter an appropriate order to effectuate the provisions set forth herein.

WIFE'S INITIALS: ALJ

HUSBAND'S INITIALS: DLP



10.0 FIDELITY INVESTMENTS ACCOUNT NO. X-94-109380

10.1 HUSBAND shall continue to manage this account on behalf of HUSBAND and WIFE until February 28, 2012, at which time the account shall be closed. The proceeds of the account shall be divided as follows:

10.1.1 HUSBAND shall receive the first \$127,799.07 (\$91,689.48 principal and \$36,109.59 interest), which amount belongs to HUSBAND's parents, and a 1099 shall be issued to HUSBAND's parents for the interest (\$36,109.59).

10.1.2 Thereafter, the account shall be equally divided between the parties, share by share, dollar by dollar, as is possible for the assets contained therein until the account is closed on February 28, 2012.

10.2. Neither HUSBAND or WIFE shall remove or transfer any other funds from this account without the other's express written permission.

10.3 The Court shall retain jurisdiction to enter an appropriate order to effectuate the transfers herein if necessary.

11.0 PENSIONS, RETIREMENT AND IRA ACCOUNTS

11.1 The parties acknowledge that the following accounts were accumulated during the marriage and constitute community property regardless of title:

11.1.1 Fidelity Brokerage Serv., Inc., Brokerage No. 411-070173.

11.1.2 Fidelity Brokerage Serv. Inc., Rollover IRA, Brokerage No. 194-363030.

11.1.3 Fidelity Brokerage Serv. Inc., Brokerage No. 441-070181.

WIFE'S INITIALS: AW

HUSBAND'S INITIALS: DLP

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ATTORNEYS AT LAW  
6805 WESTCLIFF DRIVE, SUITE 700  
LAS VEGAS, NEVADA 89142  
TELEPHONE 702-34-7117  
FAX 702-34-7117

11.1.4 TIAA/CREF, TIAA A773522-6, CREF P773522-3, TIAA Traditional, SS#034-40-7758,

11.1.5 Principal 401(k) and 401(a), SSN: 034 40 7758, Contract No. 4-09529.

11.1.6 Principal 401(k) and 401(a), SSN: 170 46 4810, Contract No. 4-09529

11.2 Each party shall receive one-half of the above accounts as follows:

11.2.1 All funds in each account shall be valued as of the date this agreement is signed.

Each party shall be entitled to one-half of the total of the funds, plus one-half of all gains or losses until the accounts are distributed.

11.2.2 Each party shall maintain the accounts in their respective names, and the party with the excess funds shall pay (or transfer to) the other party's account whatever amount is necessary to equalize the division of the accounts.

11.3. Neither HUSBAND or WIFE shall remove or transfer any other funds from these accounts without the other's express written permission until the accounts are divided equally to each party's respective account.

12.0 HOUSEHOLD FURNISHINGS AND PERSONAL PROPERTY LOCATED AT 8021 GOLFERS OASIS DRIVE, LAS VEGAS, NEVADA 89142

12.1 Each party shall receive their respective personal possessions, i.e., clothing, jewelry, gifts, etc.

12.2 Each party shall receive one-half of the household furniture and furnishings. The division of the household furniture and furnishings shall be accomplished through the employment of an "A/B List," which entails the following: WIFE shall prepare two lists, each of

WIFE'S INITIALS: ACD

HUSBAND'S INITIALS: DLP

which shall contain a fair and equitable distribution of one-half (1/2) of the parties household furniture and furnishings. WIFE shall provide these lists to HUSBAND Defendant [see Exhibit "A" attached], and HUSBAND shall choose, within five (5) days of the date he signs this agreement, either the "A" or the "B" list as the list of items he wishes to have. The parties shall thereafter cooperate to effectuate the resulting division of property at the time the residence is sold.

12.3 Neither party shall interfere with the other party's access to the home and the items set forth herein.

13.0 DISSOLUTION OF THE DOAN PHUNG AND THU-LE DOAN TRUST (A REVOCABLE FAMILY TRUST)

13.1 The parties agree that the Doan Phung and Thu-Le Doan Trust shall be dissolved and the assets contained therein shall be transferred out of the trust to effectuate the terms of this agreement.

14.0 VIETNAMESE AMERICAN SCHOLARSHIP FUND (VASF) AND FUND FOR ENCOURAGEMENT OF SELF RELIANCE (FESR)

14.1 HUSBAND shall manage the Fidelity VASF Brokerage Account No. Z85044792, Fidelity FESR Brokerage Account No. Z85044784, Bank of America Account No. 5010 1205 2956, and Bank of America Account 4440 0794 4259 on behalf of the both Trustees, HUSBAND and WIFE. However, any and all decisions relating to contributions, expenditures, grants, etc., in excess of \$5,000.00 shall be agreed to in writing by both trustees. Moreover, these assets cannot moved or transferred without the express written permission of both Trustees.

14.2 HUSBAND shall provide WIFE with an accounting of all funds paid from these accounts for his charity organization, Institute for VietNam Future (IVNF) expenses and

WIFE'S INITIALS: ATD

HUSBAND'S INITIALS: DLP

reimburse those funds to the appropriate VASP or PPSR accounts at Bank of America no later than February 28, 2012.

15.0 INDEMNIFICATION AND PROTECTION

15.1 HUSBAND and WIFE acknowledge and agree that each of them covenants and agrees not to contract any debts, charges, or liabilities whatsoever for which the other's property or estate shall or may become liable or answerable, and agrees to hold the other party harmless and indemnified therefrom.

16.0 TAX PROVISIONS

16.1 HUSBAND and WIFE shall file a joint tax return for the calendar year 2011. Thereafter, the parties shall file separate tax returns.

16.2 The parties shall be equally responsible for any past income tax liability, including without limitation taxes, assessments, penalties and interest on any United States tax return filed during the marriage through and including 2011.

16.3 For tax year 2010, in the event of an audit of PAI Corporation a/k/a Professional Analysis, Inc., HUSBAND agrees to be fully responsible for additional taxes owed and interest and penalties imposed by the Internal Revenue Service, if it is related to the donation of \$657,250.00 to IVNP.

16.4 Additionally, each party shall be responsible for all tax liabilities and/or tax benefits arising from or attributable to his or her property rights and obligations awarded or created by this Agreement.

WIFE'S INITIALS: led

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS  
ATTORNEYS AT LAW  
6800 WESTCLIFF DRIVE, SUITE 700  
LAS VEGAS, NEVADA 89120  
TELEPHONE 702 341-1111  
FACSIMILE 702 341-1111

16.5 HUSBAND and WIFE acknowledge and agree that all transfers of property between them required by this Agreement are tax free transfers of property made between them pursuant to Section 1041 of the Internal Revenue Code and are not taxable sales or exchanges of properties. Each party covenants and agrees not to take any position inconsistent with this belief and agreement, including, without limitation, any position with respect to the basis of any asset on his or her tax return filed after the date of this Agreement.

16.6 HUSBAND and WIFE confirm and agree that each of them has had the opportunity to discuss with independent tax counselors, concerning the income tax and estate tax implications and consequences with respect to the agreed upon division of properties and indebtedness, and that KIRBY R. WELLS, ESQ. and ANN E. KOLBER, ESQ. were not expected to provide and, in fact, did not provide any tax advice concerning this Agreement.

17.0 PROPERTY ACQUIRED IN FUTURE TO BE SEPARATE PROPERTY

17.1 Any and all property acquired by either of said parties hereto from and after the date hereof shall be the sole and separate property of the one so acquiring the same and each of said parties hereby respectively grants to the other all such future acquisitions of property as the sole and separate property of the one so acquiring the same.

18.0 RIGHT TO DISPOSE OF PROPERTY BY WILL

18.1 Each of said parties shall have an immediate right to dispose of or bequeath by will his or her respective interests in and to any and all property belonging to him or her from and after the date hereof, and that such right shall extend to all of the aforesaid future acquisitions of property as well as to all property set over to either of the parties hereto under this Agreement.

WIFE'S INITIALS: tes

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS

ATTORNEYS AT LAW  
6000 WESTCLIFF DRIVE SUITE 310  
LAS VEGAS, NEVADA 89120  
TELEPHONE 792-3417  
FACSIMILE 792-3417

19.0 WAIVER OF INHERITANCE RIGHTS

19.1 Except as hereinafter provided, said parties each hereby waive any and all right to the estate of the other left at his or her death and forever quitclaim any and all right to share in the estate of the other by the laws of succession, and said parties hereby release one to the other all rights to inherit from the other. Furthermore, said parties hereby renounce, one to the other, all right to be administrator or administratrix, executor or executrix, of the estate of the other, and said parties hereby waive any and all right to the estate or any interest in the estate of the other by way of inheritance, or otherwise, for family allowance therein or therefrom, to a probate or other homestead upon any property of the other, and to have set aside to him or her any property of the other exempt from execution, and from the date of this Agreement to the end of the world, said waiver by each in the estate of the other party shall be effective, and said parties shall have all the rights of single persons and maintain the relationship of such toward each other.

20.0 MUTUAL RELEASE OF OBLIGATIONS AND LIABILITIES

20.1 It is hereby mutually understood and agreed by and between the parties hereto that this Marital Settlement Agreement is deemed to be a final and conclusive and integrated agreement between the parties, and that except as herein specified, each party hereto is hereby released and absolved from any and all liabilities and obligations for the future acts and duties of the other, and that each of said parties hereby releases the other from any and all liabilities, future accounts, alimony and support or otherwise, or debts or obligations of any kind or character incurred by the other except as hereinbefore provided, it being understood that this Instrument is intended to

WIFE'S INITIALS: WLP

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS  
ATTORNEYS AT LAW  
8900 WESTCLIFF DRIVE, SUITE 20  
LAS VEGAS, NEVADA 89142  
TELEPHONE 762-54-577  
FACSIMILE 762-341-5527

1 settle finally and conclusively the rights of the parties hereto in all respects arising out of their  
2 marital relationship except as hereinbefore provided.

3  
4 21.0 EXECUTION OF NECESSARY DOCUMENTS

5 21.1 HUSBAND and WIFE agree to execute quitclaim deeds, stock transfers, and  
6 any and all other instruments that may be required in order to effectuate transfer of any and all  
7 interest either may have in and to the said property hereby conveyed to the other as hereinabove  
8 specified. Should either party fail to execute any said documents to transfer interest to the other, this  
9 Agreement shall constitute a full and complete transfer of the interest of one to the other as  
10 hereinabove provided. Upon failure of either party to execute and deliver any such deed,  
11 conveyance, title, certificate or other document or instrument to the other party, this Agreement shall  
12 constitute and operate as such properly executed document and the County Assessor and County  
13 Recorder and any and all other public and private officials are hereby authorized and directed to  
14 accept this Agreement or a properly certified copy thereof in lieu of the document regularly required  
15 for such conveyance or transfer.  
16

17  
18 22.0 ACCEPTANCE OF AGREEMENT - ADVICE AND/OR WAIVER OF  
19 COUNSEL

20 22.1 Each party hereto acknowledges that he or she has read the foregoing  
21 Agreement and fully understands the contents thereof and accepts the same as equitable and just and  
22 that there has been no promise, agreement or understanding of either of the parties to the other except  
23 as hereinabove set forth, which has been relied upon by either as a matter of inducement to enter into  
24 this agreement.  
25

26  
27 WIFE'S INITIALS: ACD

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS  
ATTORNEYS AT LAW  
6000 WESTCLIFF DRIVE SUITE 710  
LAS VEGAS, NEVADA 89120  
TELEPHONE 702-341-7110  
FACSIMILE 702-341-2227

22.2 Each party hereto stipulates with the other that he or she has had the opportunity for independent legal representation in negotiations for and in the preparation of the Agreement by counsel by his or her own choosing.

22.3 Each party hereto has had the opportunity to be independently advised as to the legal effect of the execution of the Agreement.

22.4 Each party to this Agreement hereby understands that KIRBY R. WELLS, ESQ., of WELLS & RAWLINGS represents WIFE in this matter and is an advocate for her position, and that ANN L. KOLBER, ESQ. of LAW PRACTICE LTD. represents HUSBAND in this matter and is an advocate for his position; that both parties have entered into this Agreement without undue influence or coercion, or misrepresentation, or for any other cause except as herein specified.

23.0 PAYMENT OF ATTORNEY'S FEES

23.1 HUSBAND and WIFE agree to each pay his or her respective reasonable attorney's fees and costs incurred in the preparation of this Agreement.

24.0 KNOWLEDGE AND DISCLOSURE

24.1 HUSBAND and WIFE each acknowledge that he or she has full knowledge of the assets, financial status and possibilities of inheritance of the other at the time of this Agreement.

24.2 Each party warrants that he or she has made full disclosure of all the assets of the parties hereto. Should it be found that there exist other assets, separate or community, which have not been disclosed and stated in this Marital Settlement Agreement, with a cumulative value of more than \$2,500.00, either party may move the court for a partition of such asset(s) at any time

WIFE'S INITIALS: KLD

HUSBAND'S INITIALS: DLP



hereafter. With respect to this paragraph, each party hereto specifically waives any and all limitation periods for the bringing of an action to partition such undisclosed asset(s) and further specifically stipulates that the failure to disclose such asset(s) constitutes extrinsic fraud, which will invoke the jurisdiction of the court to partition such undisclosed asset(s) at any future time.

#### 25.0 VALUATION OF PROPERTY

25.1 HUSBAND and WIFE acknowledge and agree that at their specific instructions, WIFE's attorney, Kirby R. Wells, Esq., and HUSBAND's attorney, Ann E. Kolber, Esq., have undertaken no independent investigation to determine the nature, extent, or valuation of the assets and obligations set forth in this agreement. HUSBAND and WIFE hereby indemnify and agree to hold harmless Kirby R. Wells, Esq., and Ann E. Kolber, Esq. from liability relating to the valuation of community assets and/or the division of property set forth in this agreement. HUSBAND and WIFE also acknowledge and agree that each of them has independently obtained the information necessary to determine the nature, extent, and valuation of the subject assets and obligations. HUSBAND and WIFE further acknowledge and agree that each of them has independently valued the subject assets and obligations and that they have not relied on any representations by Kirby R. Wells, Esq., and Ann E. Kolber, Esq., as to the nature, extent, and valuation of the subject assets and obligations or with respect to the division of properties and indebtedness.

#### 26.0 AGREEMENT SHALL BE MERGED INTO DECREE OF DIVORCE

26.1 This Agreement shall be taken as the full and final Marital Settlement Agreement between the parties, and it is agreed that a copy of this Agreement shall be offered to the

WIFE'S INITIALS: HO

HUSBAND'S INITIALS: DLP

1 Eighth Judicial District Court, Family Division, County of Clark, State of Nevada, and the Court  
2 shall be requested to ratify, confirm and approve the same, and this Agreement shall by reference be  
3 merged into and become a part of said Decree to the extent as if therein set forth in full. The parties  
4 specifically agree that the provisions of this agreement may be enforced by the contempt powers of  
5 the Family Court, however except where specifically provided, the Family Court shall have no  
6 jurisdiction to modify the agreement of the parties without the express written agreement of the  
7 parties.  
8

9  
10 27.0 ENTIRE AGREEMENT

11 27.1 This Agreement contains the entire agreement and understanding of the  
12 parties, and there are no representations, warranties, covenants or understandings other than those  
13 expressly set forth herein. Furthermore, this Agreement may not be changed, modified, or  
14 terminated orally, and any such change, modification, or termination may only be made by a written  
15 instrument executed by the parties with the same formality as this Agreement.  
16

17 28.0 NO PARTY DEEMED DRAFTER

18 28.1 The parties agree that neither party shall be deemed to be drafter of this  
19 Agreement and, in the event this Agreement is ever construed by a court of law or equity, such court  
20 shall not construe this Agreement or any provision hereof against either party as the drafter of the  
21 Agreement. HUSBAND and WIFE hereby acknowledge that both parties have contributed  
22 substantially and materially to the preparation of this Agreement.  
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27 WIFE'S INITIALS: ED

HUSBAND'S INITIALS: DLP

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29.0 WAIVER

29.1 No waiver of any one of the provisions hereof shall work a continuing waiver or a waiver of any subsequent breach.

30.0 BINDING EFFECT

30.1 This Agreement shall be binding upon, and inure to the benefit of, the respective agents, representatives, heirs, assigns, and successors-at-law of the parties hereto.

31.0 GOVERNING LAW

31.1 This Agreement and the rights of the parties hereto shall be governed and interpreted in all respects by the law applied to contracts made and wholly to be performed within the State of Nevada.

32.0 CUMULATIVE EFFECT

33.1 The parties' rights and remedies hereunder shall be cumulative, and the exercise of one or more shall not preclude the exercise of any other(s).

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WIFE'S INITIALS: KL

HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS

ATTORNEYS AT LAW  
8255 WESTLAF DRIVE, SUITE 200  
LAS VEGAS, NEVADA 89123  
TELEPHONE 762 3447  
FACSIMILE 762 3447-0527

33.0 LITIGATION/ATTORNEY'S FEES

33.1 Should litigation arise concerning the terms and conditions of this Agreement, or the breach of same by any party hereto, the prevailing party shall be entitled to attorney's fees and costs in an amount awarded by the Court.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands to this Agreement the year and date above written.

Thiule Doan  
THU-LE DOAN, Wife

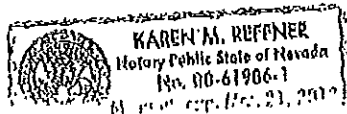
Doan L. Phung  
DOAN L. PHUNG, Husband

ACKNOWLEDGMENTS

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

On this 22 day of February, 2012, before me the undersigned Notary Public in and for said County and State, personally appeared THU-LE DOAN, known to me (or proven) to be the person described in and who executed the foregoing instrument, and who acknowledged to me that she did so freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



Karen M. Ruffner  
NOTARY PUBLIC

WIFE'S INITIALS: td

HUSBAND'S INITIALS: DUP

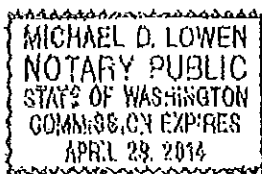
WELLS & RAWLINGS

ATTORNEYS AT LAW  
6000 WESTCLIFF DRIVE SUITE 700  
LAS VEGAS, NEVADA 89120  
TELEPHONE 702.341.5517  
FACSIMILE 702.341.5517

ALL  
WASHINGTON  
STATE OF NEVADA (ALL)  
Snohomish ) ss.  
COUNTY OF CLARK )

On this 16 day of FEBRUARY, 2012, before me the undersigned Notary Public in and for said County and State, personally appeared DOAN L. PHUNG, known to me (or proven) to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he did so freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.



*Michael D. Lowen*  
NOTARY PUBLIC

ATTORNEY CERTIFICATIONS

The undersigned hereby certifies that he is an attorney at law duly licensed and admitted to practice in the State of Nevada; that he has been employed by and compensated by THU-LE DOAN in the foregoing Marital Settlement Agreement; that he has advised and consulted with her in connection with her property rights and has fully explained to her the legal effect of the foregoing Marital Settlement Agreement and the effect which it has upon her rights otherwise obtaining as a matter of law; that, after being duly advised by the undersigned, she acknowledged to the undersigned that she understood the legal effect of the foregoing Property Settlement Agreement and she executed the same freely and voluntarily.

DATED 2-28-12

*Kirby R. Wells*  
KIRBY R. WELLS, ESQ.

WIFE'S INITIALS: LED

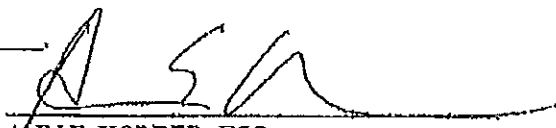
HUSBAND'S INITIALS: DLP

WELLS & RAWLINGS

ATTORNEYS AT LAW  
6800 WESTCLIFF DRIVE SUITE 710  
LAS VEGAS, NEVADA 89146  
TEL: 702-734-1111  
FAX: 702-734-1111

1  
2 The undersigned hereby certifies that he is an attorney at law duly licensed and admitted to  
3 practice in the State of Nevada; that he has been employed by and compensated by DOAN L.  
4 PFUNG in the foregoing Marital Settlement Agreement; that he has advised and consulted with him  
5 in connection with his property rights and has fully explained to him the legal effect of the foregoing  
6 Marital Settlement Agreement and the effect which it has upon his rights otherwise obtaining as a  
7 matter of law; that, after being duly advised by the undersigned, he acknowledged to the undersigned  
8 that he understood the legal effect of the foregoing Property Settlement Agreement and he executed  
9 the same freely and voluntarily.  
10

11 DATED: 2-17-12

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14 ANN E. KOLBER, ESQ.  
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WIFE'S INITIALS: HD

HUSBAND'S INITIALS: DLP

# EXHIBIT

“A”

Gifts are not accounted for in the AB list:

1. Blue oriental carpet in the dining room, for daughter Lili
2. Grandfather clock, gift from husband parents, husband should keep it
3. Treadmill, used to belong to husband father, husband should keep it.

List A

1. Master bedroom, king size bedroom set
2. 4<sup>th</sup> bedroom upstairs, day bed and furniture plus sofa and chairs in master bedroom
3. Family room, all furniture in the room including desk and credenza
4. Computer and printer
5. Washer/Dryer and 32 in. TV
6. Half of desks file cabinet in the study
7. Half of bookcases and books
8. Half of kitchen items such as china, cups, silverware, small appliances
9. Half of wall hangings such as lacquers, embroideries, water paintings.
10. Half of all decorations such as silk flower arrangements and silk plants, vases
11. Half of all linens, towels, bed covers

List B

1. Bedroom downstairs, queen size bedroom set
2. 3<sup>rd</sup> bedroom upstairs, 2 single beds and other furniture in the room
3. Living room, all furniture in the room
4. Computer and printer
5. 46 in. TV
6. Half of desks file cabinet in the study
7. Half of bookcases and books
8. Half of kitchen items such as china, cups, silverware, small appliances
9. Half of wall hangings such as lacquers, embroideries, water paintings.
10. Half of all decorations such as silk flower arrangements and silk plants, vases
11. Half of all linens, towels, bed covers



# EXHIBIT C

EXHIBIT C

doanthule@yahoo.com

Gmail

Move to Inbox

More

Gmail - Web

Inbox (1,278)

Starred

Important

Sent Mail

Drafts

Circles



Doan

No Hangouts Contacts

[Find someone](#)

On Monday, September 14, 2015 11:44 PM, Doan Phung &lt;dlp.vasfcsr@gmail.com&gt; w

Thu Le:

While we have personal problems, we still should and could perform the trustee functi

I am calling a meeting on Thursday October 15, 2015, to take place in the private groi  
p.m. The venue could also be moved to a public place of your choice by suggestion b

Among items of discussion include the following:

1. Achievements of VASF and CCSR in 2014
2. Work in progress of VASF and CCSR in 2015
3. Investment decisions
4. Discussion on electing an additional trustee to ensure conflict resolution by  
faithfully.

Please let me know ASAP whether you would like to add any additional items on the :

DoanLPhung

# EXHIBIT D

# EXHIBIT D

From: Doan Phung <dlp.vasfcesr@gmail.com>  
Date: August 23, 2016 at 5:53:36 PM PDT  
To: Doan Thu-Le <doanthule@yahoo.com>  
Subject: Re: Meeting of the VASF and FESR

Hello Thu Le:

On August 15 I wrote to invite you to select a date of 8/20 or 8/27 to have the trustees' meeting. As August 20 has past without your response, and August 31 is the date I plan to send out the announcement for the 2016-2017 program, I have decided to convene the meeting on August 28, 2 to 4 p.m.

Please come to the public library at Cheyenne and Buffalo before 2 p.m. When you enter the library, you could ask the person at the reception desk which room or what area of the library the meeting is, just citing VASF or FESR, or my name.

At the meeting, we will review and make decisions regarding four most important issues:

1. Review the results of work in 2016-2016 and status of the charity organizations.
2. Review and decide on the 6th-year program on challenge-collaboration.
3. Review and decide on investments and the delayed 2016 tax filings.
4. Decide on the election of a third trustee.

Your presence is important for the operation of the organizations.

Doan L. Phung

Managing trustee

On Mon, Aug 15, 2016 at 1:59 AM, Doan Phung <dlp.vasfcesr@gmail.com> wrote:

Hello Thu Le:

I am calling a meeting of the trustees of the VASF and FESR. We could meet on Saturday, August 20, or Saturday, August 27 at your choice. the meeting could be from 2 to 4 pm, at the public library, Buffalo and Cheyenne. There are private rooms for the meeting, or we could also meet in the public corner of the library if there are not too many people.

The agenda of the meeting will include the following:

1. Review of results of the 2015-2016 programs
2. Review of the finances of the VASF and FESR
3. Make decisions regarding the 2016-2017 program and finances.

If you have any other suggestions, please feel free to put it on the agenda.

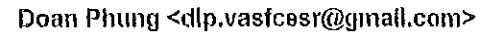
Please let me know at least 3 days before you select a date.

Thank you,

Doan L. Phung

# **EXHIBIT E**

# **EXHIBIT E**



10 messages

Wed, Sep 28, 2016 at 6:25 PM

To: trustee1.cesr@yahoo.com, Doan Thu-Le <doanthule@yahoo.com>, thuledoan@yahoo.com

**This is to Inform and to invite you to the meeting of the Board of Directors of VASF and FESR on Saturday, October 15, from 3 pm to 5 pm or later, at the public library at N. Buffalo and Cheyenne.**

1. Approve the appointment of Ms. Holly Ngo as a trustee of VASF and FESR.
2. Review and follow up on the results of the meeting on August 28, 2016.
3. Review achievements of the 5th year challenge-collaboration program, 2015-2016.
4. Review the tax filings for the 2015 fiscal year.
5. Survey the approximately 60+ applications we expect to receive for the 6th year program and decide on how to review and approve the distributions. Deadline of distribution decisions is November 30, 2016.

## Managing trustees

Wed, Oct 12, 2016 at 12:09 PM

To: Doan Phung <dip.vasfcesr@gmail.co>

# EXHIBIT F

# EXHIBIT F



**VIETNAMESE AMERICAN SCHOLARSHIP FUND (VASF)**  
**FUND FOR THE ENCOURAGEMENT OF SELF-RELIANCE (FESR)**

8021 Golfers Oasis Drive, Las Vegas, Nevada 89149

[Dip.vasfcesr@gmail.com](mailto:Dip.vasfcesr@gmail.com); [cesr.trustee1@gmail.com](mailto:cesr.trustee1@gmail.com)

---

October 15, 2015

**MEMORANDUM**

To: VASF and FESR file; Thu-Le Doan, trustee

From: Doan Phung, trustee

Date: October 15, 2015

**Notice of policy meeting**

I noticed Thu Le Doan, trustee of VASF and FESR, of this meeting on September 9, 2015, and encouraged her to suggest opinion and suggestions. Attachment 1. None was received.

I again reminded her on September 14, 2015 It was very important for the organizations to decide on a number of issues at the planned meeting. Attachment 2. I received no response.

I did the same on October 5, 2015, listing 7 issues to be discussed and decided upon. Attachment 3. I received the response that she could not work with me on any issue. Attachment 4.

On October 14, 2015, I reminded her again that the meeting was to take place as planned, at the Rainbow Public Library, intersection of Buffalo and Cheyenne, between 2 pm and 4 pm. I had chosen Study Room No. 1 for the meeting. Thu-Le Doan sent a message she would not come. I came anyway due to the importance of the issues and in the event she sent a representative. I sat at the pre-informed place in the library, in plain view of anyone who comes into the library beyond the reception desk. Ms. Thu Le Doan did not show up. Neither did any of her representatives.

**Issues to be discussed and decided upon**

Attachment 3 have listed the seven issues. They are summarized here below.

1. How are we to review the more than 50 applications for challenge funds that VASF and CESR expect to receive in our fifth-year challenge program? Ms. Thu-Le Doan participated in the first year, did not participate in but did not object to the same program in the second, third and fourth year.

2. How are we going to invest the charity funds now that they are mostly in cash upon her earlier request?
3. How are we to deal with the "no self-dealing" provision of the FESR and VASF charter in view Ms. Doan's demand, through her lawyer, to divide the VASF and FESR endowments so that she could have control of 50% by her alone?
4. The provision of "no self-dealing" is also called upon when Ms. Thu-Le Doan used FESR money to travel for several months each year since 2012 to her hometown purporting to work for the charity TTKKTL. TTKKTL is a Vietnamese organization that has received money from FESR and VASF more than any other beneficiary. But legally it is just another beneficiary, not FESR that is registered as a 501 (c) (3) organization under the US law. To use FESR money to spend several months each year at her native town at her own pleasure without the concurrence of the board of trustee is to violate the "no self-dealing" provision of the charter of FESR.
5. There is the need to elect another trustee to resolve the deadlock caused by trustee Thu-Le Doan's refusal to work with trustee Doan L Phung to discharge the duties of the VASF and FESR with respect to the law regarding distribution of fund each year.
6. For more than 20 years, Doan L Phung has been working passionately for FESR and VASF, with no compensation and practically no cost. It is now time to hire an Executive Director to run the organizations that have been very successful in pursuing the goals they envisioned when first established. A search must be conducted and decisions must be made on this subject.
7. It is important to clarify how taxes are paid and reports are compiled annually. Historically Ms. Thu-Le Doan has been doing these duties. However, it is not clear that she continues doing so in the past few years.
8. A late issue, as of October 10, 2015, is to unfreeze the accounts of VASF and FESR, when without notice, Ms. Thu-Le Doan had her attorney cause Fidelity to freeze them. This action has caused several FESR and VASF checks to bounce, with difficulties and embarrassment for Doan Phung, the trustee of the accounts per court order.

#### Outcome of the meeting

Since Ms. Thu-Le Doan did not show up after being noticed more than a month ahead of time, and reminded 3 times during the 40-day interval, she is at fault of being derelict in her duties as trustee. Doan Phung decided to review the issues as follows, pending further communication and actions.

1. Doan Phung will send to Thu-Le Doan all applications to review. The deadline for all reviews, including his own, is November 15, 2015, in time to issue letters of grants and to send the money before December 15, 2015. Previously Ms. Thu-Le Doan had suggested to Doan Phung to hire people to help in the review and paperwork.
2. While the stock market is very volatile, there are opportunities for the endowments to grow. Per request of Ms. Thu-Le Doan in August-September 2015, Doan Phung has stopped all trading and liquidated 95% of the equity holdings into cash. Doan Phung has suggested to Thu-Le Doan, without receiving any objection from her, that the funds be invested in conservative mutual funds at Fidelity or suggested by Fidelity. This issue will continued to be discussed by email between the two trustees.
3. The question of "no self-dealing" is contentious and would be discussed in continued communication.
4. Same as item #3.

5. Ms. Thu-Le Doan and Doan Phung will be asked to suggest 3 names each to be invited as trustee of VASF and FESR. The name that is on both lists will be invited to join the Board of Trustees. In the event he/she needs compensation, the same compensation shall be dispensed to the existing trustees, provided that the trustee shows up in meetings that are noticed in advance of at least two weeks.
6. Hiring an Executive Director is difficult. John Anner, Executive Director of East Meets West, has resigned from that organization that took on the new name of Thrive. He had grown EMW from having no money to an organization that undertook more than \$10M per year in Vietnam. It is doubtful, however, that he would consider VASF and FESR, even as his salary could be as high as \$150,000 per year. We will continue to communicate on the subject.
7. Doan Phung proposes that Thu-Le Doan continues to handle taxes and annual reports for VASF and FESR, until an Executive Director is hired.
8. Doan Phung will communicate with Thu-Le Doan to have her attorney unfreeze the VASF, FESR and other accounts listed in the Decree of Divorce that are not frozen by court order.

#### Conclusion

It is regretful that the divorce of Thu-Le Doan from Doan Phung has affected the work of VASF and FESR. However, as astute trustees, the parties should be able to conduct the duties in ways that the charters call for. VASF and FESR have done some wonderful things and will continue to do so with the goodwill of the trustees. Another meeting shall be called to discuss the issues. Communication should continue.

This memo is completed at 5 pm at the Rainbow Library

October 15, 2015

# EXHIBIT G

EXHIBIT G

## Minutes of VASF & FESR Trustees' Meeting

August 27, 2016

### Call to Meeting

A trustees' meeting for the charity organizations Vietnamese American Scholarship Fund (VASF) and Fund for the Encouragement of Self-Reliance (FESR) took place on Saturday, August 27, 2016, at the public library Cheyenne & Buffalo, 2 pm to 4 pm. The meeting was a joint meeting because there were only two active trustees in each, and they were the same. Further, the charters of the two organizations were identically the same, except for a small difference in Section 6.

Announcement of the meeting was made on August 15 for the trustees to select a suitable date for all parties. Failing to hear from other trustee, Doan Phung selected the date of August 27 at the above location and time. This information was sent to trustee Thu Le Doan on August 23.

Prior to the meeting, arrangements were made with the library to have a conference room. The meeting room #6 was offered with the promise that a larger room would be available if needed. This information was written up and given to both reception locations at the entrance of the library.

2:00 pm came and past. Trustee Doan Phung waited until 2:15 pm to ensure that trustee Thu-Le Doan may be late but could be present. By 2:15 pm he received neither a telephone call nor an electronic message that she would come. Neither did he see her presence in the library. Her absence was therefore intentional.

The meeting had to go on, perforce.

### Essence of Discussions

Four items of the agenda, pre-announced, are:

- Review the results of work in 2015-2016 and status of the charity organizations.
- Review and decide on the 6th-year program on challenge-collaboration.
- Review and decide on investments and the delayed 2015 tax filings.
- Decide on the election of a third trustee.

#### *I. Review of the 2015-2016 work and status of the charity organization*

During 2016, the challenge-collaboration program went well, with significant recognition among civil and charity groups in Vietnam. More than 50 groups have been challenged with \$1000 to \$5000 each from either VASF or FESR or both. Trustee Doan Phung spent significant efforts to review some 1000 pages of applications (each of approximately 70 applications of 10-20 pages), shared the reviews with Thu Le Doan by email, solicited her opinion, and gave the awards in writing with the specific challenges for each.

During the year, most organizations met the challenges with enthusiasm and submitted reports as required. But being under the Communists for so long, many were unfamiliar with the American way of doing business. They stumbled in meeting report deadlines and they did not show sufficient proofs for transparency. Significant correspondence went on from January to August 2016, and trustee Doan Phung

estimated he spent at least 20 hours per week doing this job. He does not charge the organization a penny for his labor or for the cost of Internet, telephone, transportation and postage.

Some notable successes of the program include:

- The empowerment of Canh Buom to develop, voluntarily without compensation, textbooks for elementary students to study in the self motivation style similar to the Montessori methods.
- The empowerment of Nghi Luc Song, a school for the handicapped that is directed by a handicapped person, to teach IT, English and photoshop to some 60 students per year, and to find jobs for graduates among foreign companies in Vietnam.
- Facilitating the regrouping of the fragmented Scouts organization. This organization, while being legitimate and public in Vietnam before 1946 with Ho Chi Minh being an honorary member and several of his ministers being members, was forbidden by the regime in favor of the Communist party monopoly of youth organization. While the Constitution allows groups like Scouts to be formed and to function, the government steadfastly refused giving permits and used the police to disband large gatherings of scouts. With VASFCESR challenges, some scout leaders have established non-profit companies to further scout's mission; that is, to train young people for leadership qualities and life skills to do good for the communities. Learning for Life and Do Good for the Community groups have been formed in Saigon, Danang, Hue, Daklak, Nghe An, Hanoi and Hung Yen.
- The facilitation of civil groups such as Du Ca (Sing Along), Happier (Volunteers for hospitals), Sinh Vien Dai Viet (students doing work voluntarily for the community)... to have more means to exert their voluntary labor to serve the community. They have met our challenges with enthusiasm.
- Help to established charity groups to do their work better. Examples include Thien Duc and Bao Bao that provide medical examinations and surgeries to the poor; Give It Back to Kids that assists pregnant teens to keep the babies and to learn a job skill; Good Samaritan Medical and Dental that organizes medical missions to help thousands of people annually, including establishing the emergency medicine discipline for medical schools.
- Help to organizations that help Vietnamese in need. Examples include People Serving People that assists children of Vietnamese refugees in Thailand going to school; The Compassion Flower that assists victims of human trafficking; Linh Quang that teaches classes for children in ghettos whose parents cannot afford to send them to public schools.
- Challenge was also provided to organizations in the US, designed mostly to encourage various groups to do more to integrate the Vietnamese Americans into the main stream. Examples include Vietnamese Friendship Association in Seattle, Vietnamese Leadership Training program in Dallas, Community Builders in Atlanta.

At the meeting, while Trustee Thu-Le Doan was intentionally absent, it was decided that should she sue to split the organizations, then VASF and FESR will take the lead in opposing her motion on the basis of three clauses in the charter:

1. Section 2: "Trustees shall not engage in any act of self-dealing."
2. Section 8: "Gifts made to the Trust shall be irrevocable."
3. Section 9: "This Charter is irrevocable and may not be amended or modified..."

Further, the trusts will defend trustee Doan Phung, in the event he is also sued, on the basis of the law that states, in part:

"All directors, trustees or members of the governing bodies of nonprofit cooperatives, corporations, clubs, associations and organizations described in subsection (d), whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such cooperatives, corporations, clubs, associations or organizations. Such immunity from suit shall be removed when such conduct amounts to willful, wanton or gross negligence."

*[Section 48-58-601(c) of the Tennessee Code; similar law exists in every state of the Union.]*

It is noted that VASF had 4 trustees for a long time. The existing trustees, Thu Le Doan and Doan Phung, had failed to elect their replacement within 60 days after their resignation, as provided by Section 6 of the Charter. The trustee present moved to elect a third trustee for VASF within 3 months by asking the existing trustees to submit names for voting. It was further moved that a fourth trustee is not necessary for the work at hand, and because that may cause an impasse in voting on important issues.

It was also noted that FESR never has more than two trustees. Therefore, it was moved that a third trustee be invited to join the FESR board. The process could be the same as for VASF and the third trustee could be the same person as VASF, because VASF and FESR are quite identical, except for their separate assets and a small difference in the term of the trustees.

## **II. Review and decide upon the plan for the 2016-2017 programs**

Doan Phung presented documents of the 2016-2017 program, the 6<sup>th</sup> year of the joint VASF and FESR challenge-collaboration method of distributing funds. The documents in two languages include three parts

1. Announcement of rules of the challenge-collaboration program. The rules include the eligibility of applicants, the challenge approach, the collaboration approach, and the review process. The announcement encourages organizations to work together to maximize results and minimize administrative costs.
2. Sample application outline.
3. List of more than 100 charity organizations, not all of them had been participants in past programs, to act as references for those who would apply.

The documents were similar to but tighter than those in the past 5 years. They were approved to be released on August 30, 2016.

## **III. Review and decide upon investment strategy and the filing of the 2015 tax return.**

Trustee Doan Phung explained most of the money of the VASF had been parked in cash since 2015, pending clarification of the market conditions. Market experts opined the time has come for the market to slow down and drop since it has been on the bull run for more than 7 years. The trustee decided, except for some current equities, to wait a bit longer before investing in dividend paying funds, particularly after the Federal Reserve will have decided to raise the interest rate.

VASF has a real estate property worth a million dollars in Oak Ridge, TN. It was donated to VASF by a group of investors who wanted to get tax write-offs at the time. This property had been vacant since 2013 when trustee Thu Le Doan moved PAI Corporation out of it, causing both PAI to pay rent in a storage

facility and VASF to pay utility, taxes and management on an empty building. After 3 years of unsuccessfully trying to sell it, trustee Doan Phung requested to ask trustee Thu Le Doan to take over this responsibility of managing and selling the property. This request will be conveyed to trustee Thu Le Doan as soon as possible.

Trustee Doan Phung is preparing data for CPA Fred Winters to file in October. All estimated taxes for 2015 and 2016 had been paid.

#### IV. Election of a third trustee

In accordance with the charter, when a trustee vacancy is available, the remaining trustees shall make an effort to fill it within 60 days. This had not been done since trustees Wright and Schlatter resigned in 2011 from VASF. This deficiency is hereby fixed, with the following resolutions:

- Trustee Wright's vacancy shall be filled before the end of the year 2016
- Trustee Schlatter's vacancy shall not be filled because VASF should not have an even number of trustees, and 5 would be too many for the jobs at hand.

A resolution was also made to elect a third trustee for FESR.

It is urged that trustees Doan Phung and Thu Le Doan work to elect the third trustee for board of trustees of VASF and FESR before the end of the year. If a joint agreement cannot be made, trustee Doan Phung can go ahead to invite a willing trustee who, by charter, is not paid a salary.

There being no further items to be discussed, the meeting recessed at 4:15 pm.

Recorded on August 27, 2016; typed up on August 30, 2016

By Doan L. Phung, trustee of VASF and FESR

#### Attachments:

1. Invitation to Thu Le Doan to attend the trustees' meeting
2. The charter of VASF
3. The charter of FESR/CESR
4. The 6<sup>th</sup> year program of VASFCESR
5. Example outline for the application
6. List of charity organizations that have been helping Vietnamese in need



# EXHIBIT H

EXHIBIT H

**MINUTES OF TRUSTEES' MEETING**  
**ON OCTOBER 15, 2016 OF**  
**VIETNAMESE AMERICAN SCHOLARSHIP FUND (VASF) &**  
**FUND FOR THE ENCOURAGEMENT OF SELF-RELIANCE (FESR/CESR)**

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**Prior announcement of the meeting**

The announcement of the meeting together with its agenda was sent out on September 28, 2016. Since VASF and FESR have similar charters and same trustees, except for the difference in the objectives, it was decided over the history of the trusts to have common meetings. The objective of VASF is more educational focused while the objective of FESR is more medical and social focused.

**Call to meeting**

By 2:50 pm, trustee Doan Phung had been at the library arranging for a meeting room. The library allowed the use of the large study room with glass door and windows at the NW corner of the library. This information was written up and placed with the two reception desks at the entrance of the library, with request to direct inquiries from incoming trustees.

Trustee nominee Holly Ngo showed up at the same time as trustee Doan Phung. Ms. Holly Ngo had been driving up from Southern California.

We waited till 3:10 pm to see whether trustee Thu Le Doan showed up. She did not.

At 3:10 pm Trustee Doan Phung called the meeting to begin.

**Appointment of Holly Ngo as trustee of VASF and FESR.**

As previously announced of the need of a replacement trustee, and specifically on September 28, 2016, when Ms. Holly Ngo was nominated to be trustee of VASF and FESR. Her resume' was distributed. She was informed of VASF and FESR and was sent their charters as well as their past performances. She is highly qualified by virtue of 30 years experience as an IT professional and dozens of years as a philanthropist and social worker. She has given tens of thousands of dollars and traveled to Vietnam and Thailand to help the poor, the sick and the refugees. She has never been political. The documents were sent to Trustee and Trustor Thu-Le Doan.

At the meeting, per Charter Section 6, without any objection, Ms. Holly Ngo was officially appointed to be trustee of VASF, replacing Trustee T.K. Wright who resigned in 2011 and had not been replaced. Her term is 5 years. Ms. Holly Ngo officially accepted the position and promised to spend time and energies to help fulfill the objectives of the charter of the VASF.

At the meeting, per Charter Section 6, Ms. Holly Ngo was officially appointed to be trustee of FESR/CESR. Her term is 5 years. She is amply qualified by virtue of her 30 years experience as an IT professional. She also has dozens of years of experience as philanthropist; having given money to charity causes and worked for the poor, the sick and the refugees. Ms. Holly Ngo

officially accepted the position and promised to spend time and energies to help fulfill the objectives of the FESR/CESR charter.

#### **Review and follow up on the results of the meeting on August 28, 2016.**

The minutes of Trustees' meeting of August 28, 2016 were reviewed. The Board discussed the potential threat at the time that Ms. Thu-Le Doan would bring a lawsuit to break up the VASF and FESR/CESR to give her 50% control in one form or another. While this is in violation of the Marital Settlement Agreement (MSA) section 14, this potential threat has now been real, as Trustee Doan Phung received a notice on September 29 of the lawsuit that would be heard on November 14, 2016. This hearing was moved up to October 14, 2016, in the emergency attempt to quash the October 15, 2016 meeting of the Board. At the October 14, 2016 hearing, the probate commissioner tentatively recommended to the Judge to approve Ms. Thu-Le Doan's petition, while the Trusts' Attorneys L. Joe Coppedge and Mike Mushkin indicated they will oppose that recommendation on the basis of VASF Charter Section 8 and Section 9 and FESR Charter Section 9 and Section 10. These sections state that all gifts to the charities are irrevocable, and therefore Ms. Thu-Le Doan cannot claim VASF and FESR as community properties as her petition indicated. They also state that no part of the Charter could be changed or modified. Further, court ordered MSA section 14.1 assigns Doan Phung to manage the funds and forbids the funds from being transferred without the express agreement of both parties, and section 26 forbids the change of the MSA unless there is mutual consent in writing.

Specifically, however, the Commissioner allowed all activities of the trusts to continue, to include the planned meeting on October 15, 2016.

At the meeting, the Board reaffirmed the decision made in the meeting of September 28, 2016, in that the VASF and FESR will defend their breakup by trustee Thu-Le Doan

#### **Removing Thu-Le Doan from being Trustee of VASF and Trustee of FESR/CESR**

The Board also discussed the fact that since 2011 Ms. Thu Le Doan has not done anything for VASF and FESR/CESR. In fact, she has not done practically anything for VASF for 27 years, and has further caused harm to it by (a) moving PAI Corporation out of the VASF building in Oak Ridge, Tennessee, causing the building to be vacant and to lose insurance; and (b) causing Fidelity to freeze VASF accounts, causing operational payments being bounced and penalized. Since her actions to cause the building to be vacant since 2013, with yearly maintenance costs of approximately \$30,000 in taxes and maintenance, Trustee Doan Phung has asked her to help manage it to lessen the former's duties, but she has ignored the request in a similar manner she did in the history of the Trusts.

Section Six of VASF Charter and Section Six of FESR/CESR Charter states:

*"A Trustee may be removed by not less than two-thirds (2/3) majority vote of all Trustees when they deem such Trustee is incompatible, or not in sympathy with the purposes of the Trust, or for any other just cause. In the event that a vacancy shall occur because of death, resignation, incapacity to act, or removal of a Trustee, the remaining Trustee shall, within sixty (60) days from the date of such vacancy, fill the vacancy. The failure of a Trustee to attend any of the*

*meetings of Trustees for three (3) consecutive meetings shall be deemed conclusive as his or its incapacity to act."*

Trustee T.K. Wright resigned from VASF in 2012 and no replacement has been effected due to blockage of Trustee Ms. Thu-Le Doan. In the meeting of October 15, 2016, using the power of a Trustor per Section Six, Doan Phung nominated and the Board elected Ms. Holly Ngo as trustee of both VASF and FESR.

The Board discussed the fact that Trustee Thu-Le Doan has not attended any meetings of the VASF since 2012, and specifically she has not attended three consecutive meetings on November 19, 2015; September 28 and October 15, 2016. Per Charter Section Six cited above, Ms. Thu-Le Doan is not capable of nor is willing to discharge her duties as trustee. Doan Phung moved to remove Ms. Thu Le Doan from the position of Trustee of VASF. Ms. Holly Ngo seconded the motion. The vote was 2 among 3 three trustees. The motion passed.

Similarly, Ms. Thu-Le Doan has not attended any meetings of the FESR since 2012, and has pointedly missed three consecutive meetings on November 19, 2015; September 28 and October 15, 2016. Per Charter Section Six cited above, Ms. Thu-Le Doan is not capable of and is not willing to discharge her duties as trustee. Doan Phung moved to remove Ms. Thu Le Doan from the position of Trustee of FESR/CESR. Ms. Holly Ngo seconded the motion. The motion passed.

Discussion was made regarding the fact that, per Charter, as Trustor, Ms. Thu-Le Doan has the authority to appoint another person as trustee. The Board recognized that authority but insisted on the procedure that the appointment shall be in writing and the vote shall be in person.

#### **Review achievements of the 5th year challenge-collaboration program, 2015-2016**

Doan Phung reviewed the achievements of the 5<sup>th</sup> year challenge-collaboration program. He indicated he had to do all the work as Ms. Thu Le Doan specifically declined to carry out her duties. During 2015 and 2016 she used FESR/CESR money to travel extensively to Vietnam, not to work for FESR/CESR but for TTKKTL, a Vietnamese charity. This illegal per FESR/CESR policy.

During 2015-2016 campaign, the VASF and FESR/CESR distributed approximately \$205,000 to some fifty organizations to assist them in their work to help students, the poor, the sick and the refugees. Addendum B shows the list of recipients. All recipients certified in writing they are not a political organization nor are they controlled by an agent of the government.

The recipients conducts a variety of work that fit very well with the purposes and goals of the VASF and FESR/CESR. The organizations in Addendum B (not all are recipients) can be classified as follows:

1. Organizations with a long history of providing medical, dental, psychological, and social assistance to the poor. Examples include: Good Samaritan Medical and Dental Mission (GSMDM), Give it Back to Kids (GIBTK), VNHelp, Thien Duc, Bao Bao, Linh Quang.
2. Organizations that train young people to be in good character and contributing to society. Examples include: Huong Nghia Scouts, Da'rlac Scouts, La Xanh Scouts, Phuong Dong Scouts, Du Ca, Nu Cuoi, Tuong Lai.

3. Organizations that are grassroots civil groups trying to help the communities and environments in which they live. These include SUSDEC, Batrang, Tinh Than, Nghi Luc Song.
4. Organizations that are doing basic work for education and other infrastructure of a civil society. Examples include: Canh Buom, Sach Va Hanh Dong, Hocmon Ceporer.

All in all, the program is a smashing success and has achieved most of the goals of the two Charters.

#### **Review the tax filings for the 2015 fiscal year.**

2015 taxes for VASF and FESR/CESR were not filed by May, 2016 as planned because former Trustee Thu-Le Doan had asked Fidelity Investments to freeze all VASF and FESR/CESR accounts with the intention of causing problems for Trustee Doan Phung in his management of the Trusts. Checks were bounced by the IRS and the City of Oak Ridge and the County of Anderson (TN).

It took several hearings in the court of justice before trustee Thu Le Doan's obstruction was overruled and the accounts were unfrozen. After reading the documents carefully, Fidelity further defined the word "manage" in clause 14.1 of the Marital Settlement Agreement as the right of Trustee Doan Phung to manage the accounts and Trustee Thu-Le Doan cannot sign checks against the accounts unless they have concurrence of manager Doan Phung.

Trustee Doan Phung worked with CPA Fred Winters to complete tax returns for VASF and FESR/CESR on October 14, 2016. In addition to paying the taxes, Doan Phung also sent checks of \$2,100 each to pay for the estimated taxes for 2016.

#### **Applications for 2016-2017 distribution**

Trustees Holly Ngo and Doan Phung surveyed some three dozen applications for funds from small organizations. Ms. Holly Ngo presented a matrix that systematizes the review process. Plan is to review all applications by November 30, 2016 and to decide on distribution by December 2016.

Addendum B shows the list of these applicants. Ms. Thu-Le Doan has been copied by all applicants due to her former position as trustee of the funds.

#### **Audits**

Trustee Holly Ngo discussed the need to audit recipients to ensure there would be no fraud or poor performance. She explained that in developing nations, due to the poor infrastructures, frauds are rampant. We therefore plan to distribute the approved amounts twice, 50% each time, the second conditioned upon the verification of the correct use of the first. That is, after the first 50% distribution, we will audit the activities of the recipients and the use of the money. If everything goes according to plans and promises, we will send the second 50% the awards.

#### **Visit Vietnam by Trustee Holly Ngo**

Trustee Holly Ngo planned to visit Vietnam in November 2016. She volunteered to use this occasion to visit and audit some of the recipients of VASF/CESR in the 2015-2016 distribution.

Trustee Doan Phung agreed to arrange for her to meet with principals of some two dozen recipients in places such as Hanoi, Hue and Saigon.

### Conclusions

The meeting of Trustees closed at 5:30 pm. It resolved several issues, one being the removal of Thu Le Doan from being trustee because of her failure to attend three consecutive meetings and her obstructions against the functions of the Trusts. The articles of the charters have been adhered to in this matter.

Those issues that remain will continue to be discussed by email and telephone among the trustees. Of particular concern is the lawsuit Ms. Thu-Le Doan is filing in probate court to break up the trusts in order to give her 50% to control. This is a frontal attack on the charters of the trusts, sections 2, 6, 8 and 9 for VASF and sections 2, 6, 9 and 10 for FESR/CESR. In addition, such attack is also in violation of Section 14.1 and 26 of the Court Ordered Marital Settlement Agreement between trustees Doan Phung and Thu-Le Doan.

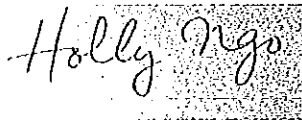
The trustees agree the most immediate actions are to oppose the lawsuits on behalf of VASF and FESR/CESR, and to review the applications for funds that the Probate Commissioner allowed to proceed.

Minutes compiled by Trustee Doan Phung

October 16, 2016



Minutes approved by Trustee Holly Ngo



October 26, 2016.

# EXHIBIT I

# EXHIBIT I

English Version  
REPORT OF THE INSPECTOR GENERAL  
TRUNG TAM KHUYEN KHICH TU LAP (TTKKTL)  
2016-11-21

To the Board of Trustees  
Trung Tam Khuyen Khich Tu Lap (TTKKTL)  
Hue, Vietnam

Dear Board Members :

My name is Nguyen Nhien, volunteer member of the Board of Trustees of the TTKKTL since 2000. After two terms and 8 years in the office, I stepped down due to term limitation. In 2012, I was invited to rejoin the Board at the invitation of Chairperson Doan Thu Le and at the concurrence of all standing members of the Board. I resigned in late December 2015 because I disagreed with a decision by Chairperson Doan Thu Le regarding the firing of a staff member. This occasioned the examination of the event by the Board, and while the Board did not reinstate the personnel, it invited me in June 2016 to rejoin the Board. I did but chairperson Doan Thu Le resigned in July 2016. Dr. Doan L Phung subsequently assumed the chairman position. Citing personal reasons, Mr. Phan Van Hai resigned as Director General of the Executive Office. Unable to persuade him to stay, the chairman accepted Mr. Phan Van Hai's resignation on August 31, 2016.

On September 1, 2016, chairman Doan L Phung, after consulting the opinion of all staff, appointed Mr. Nguyen Xuan Quy to be Director of the Executive Office, and Ms. Nguyen Thi Anh Dao, Deputy Director. The new director and deputy director went over the transition documents and discovered some irregularities : Over the years, Mr. Phan Van Hai had maintained a secret TTKKTL account that is controlled only by him, and upon resigning from the office, he had withdrawn 1,260,456,000 VND (approximately 57,000 USD) and deposited the money into his own account.

In the duty as Inspector General of TTKKTL in Hue, I have been working with Mr. Nguyen Xuan Quy and Ms. Nguyen Thi Anh Dao since October 2016, and have the following findings :

- 1- Mr. Phan Van Hai was appointed Director of the Executive Office in 2006 and worked in that position until 31/08/2016. Between 2006 and 2012, he worked closely with Dr. Doan L Phung, then chairman of TTKKTL. He also worked from time to time with other members of the Board in Hue. His work was excellent and



TTKKTL was trusted by clients and fellow organizations. It also received praise from the government of the City of Hue.

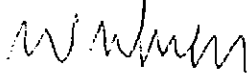
- 2- Between 2012 and July 26, 2016, Mr. Phan Van Hai worked under the supervision of Ms. Doan Thu Le, the new chairperson. All went well until Ms. Doan Thu Le discharged a staff. I resigned in protest because my suggestion of more investigation was not given sufficient attention. Subsequently the Board investigated the matter, did not reinstate the personnel, but asked me to rejoin the Board, which I assented. The Board also asked me to be Inspector General with the charter to ensure all activities of TTKKTL in Hue are compliant legally and quality wise. This appointment, however, led to the resignation of chairperson Doan Thu Le on July 26, 2016. Subsequently Mr. Phan Van Hai worked under the supervision of Dr. Doan L. Phung, the acting chairperson. In mid-August, Mr. Phan Van Hai appointed Mr. Nguyen Xuan Quy to be Director of the Executive Office while he appointed himself as Advisor. Dr. Doan L. Phung told Mr. Hai that those appointments are illegal because the authority belongs to the Board. Subsequently, Mr. Hai resigned and pointedly asked Dr. Phung to write a letter accepting his resignation precisely on August 31, 2016. Not suspecting of any design by Mr. Hai, Dr. Phung wrote the letter per request.
- 3- The new leadership team started transitioning in on September 1, 2016 with little cooperation from Mr. Hai. In particular, Mr. Hai did not mention anything about the secret account. In the following few weeks, the new leadership team discovered Mr. Hai had withdrawn the sum of 1,260,456,000 VND (approximately 57,000 USD) from that secret account but never informed the new director nor Dr. Doan L. Phung of the act. He would not return the money upon demand, stating he kept it for Ms. Doan Thu Le per her request.
- 4- I have worked closely with the new TTKKTL executives to uncover all related information. I have met twice with Mr. Phan Van Hai and asked him to return the money to TTKKTL. He refused. He said he was instructed by Ms. Doan Thu Le to keep that money for her. Without any other alternative, I let the TTKKTL executives report the event to the government of the City of Hue.
- 5- The government of Hue asked the City Inspector (TTTP) to investigate the matter. TTTP interrogated Mr. Phan Van Hai and discovered the 1.2 billion VND (approximately 57,000 USD) consisted of 448 million VND (approximately 20,400 USD) he claimed Ms. Doan Thu Le asked him to keep for her, and the remainder 812 million (approximately 36,700 USD) was the money VASFCESR asked him 9 months earlier to transfer to other smaller charities per request of VASFCESR but he had not done. The TTTP demanded Mr. Phan Van Hai to return the money. He did the 812 million on October 25, 2016, and the 448 million on November 15, 2016.
- 6- The TTTP also uncovered that, during the time Mr. Phan Van Hai worked under the direction of Ms. Doan Thu Le, the two had committed some questionable actions. Case in point, Mr. Hai manufactured a few applications to ask for funds

from VASFCESR that is under the management of Dr. Doan Phung and Ms. Doan Thu Le was suing Dr. Phung for control of VASF and CESR. Unsuspecting fraud. Dr. Phung approved half a dozen of those organizations and sent the money to Mr. Phan Van Hai for him to deliver to them because they did not have a trustworthy international bank account. It now appears that those organizations either did not exist, or belonged to Mr. Phan Van Hai or his relatives. It may be possible that Mr. Phan Van Hai withheld delivering the money to further Ms. Doan Thu Le's lawsuit in the USA.

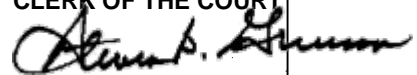
The new director, Mr. Nguyen Xuan Quy, told me that in the 5 years as the day-to-day assistant to Mr. Hai, he was not informed of any activities that Mr. Phan Van Hai conducted secretly under the direction of Ms. Doan Thu Le.

I continue to work with the new leaders of the Executive Office to ensure transparency and compliance of all activities of TTKKTL. TTKKTL is a Vietnamese charity registered with the City of Hue. Since TTTP is an effective inspection arm of the City of Hue, I have asked them to investigate further any financial wrongdoings committed by Mr. Hai in the past few years. I will have another report by year end on this matter.

Made in Hue, November 21, 2016



Nguyen Nhlen  
Member of the Board of Directors and Inspector General



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*Attorneys for Respondent, Doan L. Phung*

**DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA**

In the Matter of the:

CASE NO. P-16-089638-T

FUND FOR THE  
ENCOURAGEMENT OF SELF-  
RELIANCE

DEPT: PC1

An Irrevocable Trust.

**NOTICE OF HEARING FOR  
RESPONDENT, DOAN L. PHUNG'S OBJECTION TO  
PROBATE COMMISSIONER'S REPORT AND RECOMMENDATION CONFIRMING  
PRIOR REPORT AND RECOMMENDATION GRANTING PETITION TO ASSUME  
JURISDICTION OF TRUST, MAKING ADDITIONAL FINDINGS OF FACT AND  
CONCLUSIONS OF LAW, CONFIRMING CO-TRUSTEES AND TO MODIFY TRUST,  
AND REQUEST FOR JUDICIAL REVIEW**

TO: THU-LE DOAN, Petitioner; and

TO: DARA GOLDSMITH, ESQ. and PETER CO, ESQ., of the law firm of Goldsmith &  
Guyman, attorneys for Petitioner.

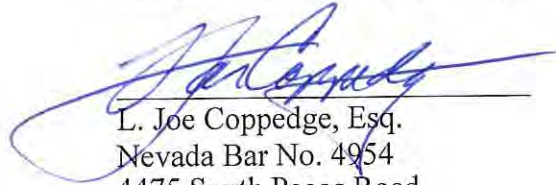
PLEASE TAKE NOTICE that Respondent Doan L. Phung, filed with the Court an  
Objection to Probate Commissioner's Report and Recommendation Confirming Prior Report and  
Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings  
of Fact and Conclusions of Law, Confirming Co-Trustees and to Modify Trust, and Request for  
Judicial Review; a hearing on the Objection has been set for the 12 day of OCTOBER,

9:30A

2017, at the hour of \_\_\_\_\_.m. at the Regional Justice Center, Department PC1, located at  
200 Lewis Avenue, Las Vegas, Nevada 89155, Courtroom 3F.

DATED this 7 day of September, 2017.

MUSHKIN CICA COPPEDGE



L. Joe Coppedge, Esq.

Nevada Bar No. 4954

4475 South Pecos Road

Las Vegas, NV 89121

Attorneys for Respondent, Doan L. Phung

**CERTIFICATE OF SERVICE**

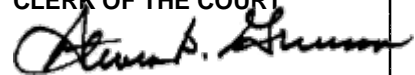
I hereby certify that the foregoing *Notice of Hearing for Respondent Doan L. Phung's Objection to Probate Commissioner's Report and Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law* was submitted electronically for filing and/or service with the Eighth Judicial District Court on this 7th day of September, 2017. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list<sup>1</sup>.



An Employee of

MICHAEL R. MUSHKIN & ASSOCIATES

<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



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12 Facsimile: (702) 873-9600  
13 Attorneys for Thu-Le Doan,  
14 Trustor of the FUND FOR  
15 THE ENCOURAGEMENT OF SELF RELIANCE

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 In the Matter of the )  
13 FUND FOR THE ENCOURAGEMENT OF ) Case No. P-16-089638-T  
14 SELF RELIANCE ) Department 26  
15 An Irrevocable Trust. )

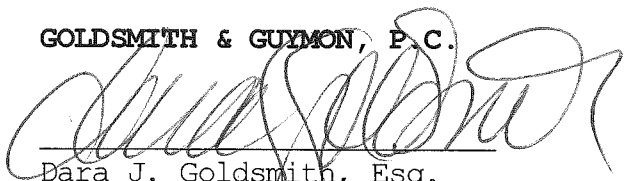
16 **REPLY TO RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE**  
17 **COMMISSIONER'S REPORT AND RECOMMENDATION CONFIRMING PRIOR REPORT**  
18 **AND RECOMMENDATION GRANTING PETITION TO ASSUME JURISDICTION OF**  
19 **TRUST, MAKING ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW,**  
20 **CONFIRMING CO-TRUSTEES AND TO MODIFY TRUST,**  
21 **AND REQUEST FOR JUDICIAL REVIEW**

20 COMES NOW, Thu-Le Doan ("Petitioner" or "Thu-Le"), by and  
21 through counsel, Dara J. Goldsmith, Esq. and Peter Co. Esq., of the  
22 law firm of Goldsmith & Guymon, P.C., and respectfully submits her  
23 Reply to Respondent, Doan L. Phung's Objection to Probate Commissioner's  
24 Report and Recommendation Confirming Prior Report and Recommendation  
25 Granting Petition to Assume Jurisdiction of Trust, Making Additional  
26 Findings of Fact and Conclusions of Law, Confirming Co-trustees and to  
27 Modify Trust, and Request for Judicial Review ("Reply"). Said Reply is made  
28 and based on the following Points and Authorities and Oral Arguments at the

1 hearing thereon.

2 DATED this 19<sup>th</sup> day of September, 2017.

3 **GOLDSMITH & GUYMON, P.C.**

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12 Attorneys for Thu-Le Doan

13 **I.**

14 **POINTS AND AUTHORITIES**

15 Thu-Le briefly responds to those statements set forth in Doan L.  
16 Phung's ("Respondent" or "Phung") Objection to Probate Commissioner's  
17 Report and Recommendation Confirming Prior Report and Recommendation  
18 Granting Petition to Assume Jurisdiction of Trust, Making Additional  
19 Findings of Fact and Conclusions of Law, Confirming Co-trustees and to  
20 Modify Trust, and Request for Judicial Review ("Objection") as follows:

- 21 1. Phung's Objection erroneously states that the Report and  
22 Recommendation Confirming Prior Report and Recommendation Granting  
23 Petition to Assume Jurisdiction of Trust, Making Additional Findings  
24 of Fact and Conclusions of Law, Confirming Co-trustees and to Modify  
25 Trust (the "Report and Recommendation") should be rejected because  
26 the Probate Commissioner failed to follow court rule EDCR 4.17(a)  
27 when in fact there were no disputed issues of material fact that the  
28 Probate Commissioner relied on in making his findings in the Report  
and Recommendation. Thus, EDCR 4.17(a) is inapplicable and it was  
proper for the Probate Commissioner to neither set an evidentiary  
hearing nor a discovery schedule.

- 1     2.     The only material facts for the Probate Commissioner to find in  
2           applying NRS 163.556 to decant a trust is whether a trustee has the  
3           power of invasion of principal and that there is no reduction of any  
4           income interest of any income beneficiary of the trust. Those facts  
5           are solely determined by reviewing the Trust document.
- 6     3.     NRS 163.556(1) states as follows: "Except as otherwise provided in  
7           this section, unless the terms of a testamentary instrument or  
8           irrevocable trust provide otherwise, a trustee with discretion or  
9           authority to distribute trust income or principal to or for a  
10          beneficiary of the trust may exercise such discretion or authority  
11          by appointing the property subject to such discretion or authority  
12          in favor of a second trust as provided in this section."
- 13    4.     In addition, NRS 163.556(3) states as follows: "A trustee may not  
14          appoint property of the original trust to a second trust if: (a)  
15          Appointing the property will reduce any income interest of any income  
16          beneficiary of the original trust if the original trust is:...(2) A  
17          trust for which a charitable deduction has been taken for federal or  
18          state income, gift or estate tax purposes..."
- 19    5.     The Probate Commissioner's findings are supported by the undisputed  
20          facts that pursuant to the Trust Agreement, Thu-Le as Co-Trustee of  
21          the Fund for the Encouragement of Self Reliance ("FESR"), has the  
22          power of invasion of principal and that there is no reduction of any  
23          income interest of any income beneficiary of FESR.
- 24    6.     The Probate Commissioner found that although the facts on whether the  
25          trustees are at loggerheads are illuminating, such facts are not  
26          determinative to the ultimate resolution, which is an absolute right  
27          given to a trustee who holds the power of invasion of principal and  
28          that there is no reduction of any income interest of any income

1 beneficiary of the trust, thus even if Phung disputes that the  
2 trustees are at loggerheads, which Phung does in his Objection, it  
3 was not a material fact that the Probate Commissioner needed to  
4 consider in granting Thu-Le's request to decant FESR. The Probate  
5 Commissioner specifically found that the Court does not have to  
6 depend upon specific evidence or instances of evidence of why things  
7 may or may not be workable between the trustees.

8 7. In granting Thu-Le's request to decant FESR, the Probate Commissioner  
9 relied upon the ability and rights of the trustee to the exclusion  
10 of the parties contract rights. Thus, even though the Marital  
11 Settlement Agreement ("MSA") limited the trustees to making  
12 contributions, expenditures and grants in amounts less than  
13 \$5,000.00, NRS 163.556 gives a trustee an absolute right to decant  
14 a trust as long as a trustee has the power of invasion of principal  
15 and that there is no reduction of any income interest of any income  
16 beneficiary of the trust.

17 8. Due to the parties contentious divorce, the \$5,000.00 limitation was  
18 placed in the MSA to ensure that neither party could dissipate the  
19 assets of FESR without the other's consent. By decanting the assets  
20 of FESR equally between Thu-Le and Phung, the trust dissipation issue  
21 is resolved.

22 9. Petitioner vehemently denies Phung's allegations that he was the sole  
23 breadwinner of the family, Thu-Le actively participated and worked  
24 for the family business, PAI Corporation, as the Chairperson of the  
25 Board, Vice President of Finance and Administration, and as President  
26 until she resigned in May 2012 because she could no longer work with  
27 Phung due to their divorce. Thu-Le also actively participated with  
28 Phung in setting up FESR and VASF and even if Phung's allegations



1 were true it simply does not matter as the only issue of fact is Thu-  
2 Le as Co-Trustee of the FESR, has the power of invasion of principal  
3 and that there is no reduction of any income interest of any income  
4 beneficiary of FESR. It appears Phung is unhappy with the outcome  
5 of his divorce case and attempts to retry such issues before this  
6 Court, which is not proper.

7 10. Thu-Le denies the allegations made by Phung against Thu-Le regarding  
8 Trung Tam Khuyen Khich Tu Lap ("TTKKTL"), however since TTKKTL is not  
9 before this Court, Thu-Le will not waste this Courts time in  
10 correcting Phung's false allegations that aren't relevant to the  
11 instant matter.

12 11. Phung is disingenuous in alleging that Thu-Le is not a bona fide  
13 trustee as she has been removed as a trustee of the Trusts during a  
14 Trust meeting held on October 15, 2016. On October 14, 2016, the  
15 Probate Commissioner already ruled in favor of Thu-Le and granted  
16 Thu-Le's request to decant FESR. After further instruction from this  
17 Court, the Probate Commissioner has again ruled in favor of Thu-Le  
18 and confirms Thu-Le's request to decant FESR. Thus, Phung had no  
19 power to remove Thu-Le as trustee for her portion of FESR.

20 12. In addition in the Order Shortening Time on Petition to Assume In Rem  
21 Jurisdiction of Trust, Confirm Trustee and to Modify Trust filed on  
22 October 5, 2016, the Court ordered that no further meetings may be  
23 called by Phung in regards to FESR and VASF and that Phung take no  
24 further action in regards to FESR and VASF until this matter is  
25 resolved by the Court. At the October 14, 2016 hearing, the Probate  
26 Commissioner inquired upon Thu-Le and Phung whether they could work  
27 together on the scholarship program or whether a substantial bond be  
28 required, both Thu-Le and Phung represented to the Court that they

1       agreed to work together on the scholarship program. See the  
2       Transcript of the October 14, 2016 hearing page 23 line 3 to page 26  
3       line 6. Yet the very next day On October 15, 2016, Phung held a  
4       meeting to remove Thu-Le as Co-Trustee.

5                               **LEGAL ARGUMENT**

6       **A. This Court should affirm the Probate Commissioner's Report and**  
7       **Recommendation because the Report and Recommendation is supported**  
8       **by substantial evidence and is not clearly erroneous.**

9       In ruling upon a report and recommendation, the district court should  
10      "accept the...findings of fact unless clearly erroneous." Nev. R. Civ. Pro.  
11      53(e)(2). "[F]indings of fact and conclusions of law, supported by  
12      substantial evidence, will not be set aside unless clearly erroneous."  
13      Edwards Industries, Inc. v. DTE/BTE, Inc., 112 Nev. 1025, 1031 (1996); see  
14      also In re Estate of Prestie, 122 Nev. 807, 813 n.17 (2006); Goodrich &  
15      Pennington Mortg. Fund, Inc. v. J.R. Woolard, Inc., 120 Nev. 777, 782 n.6  
16      (2004); Locklin v. Duka, 112 Nev. 1489, 1497 (1996) ("a district court's  
17      findings of fact will not be set aside unless clearly erroneous"); Trident  
18      Const. Corp. v. West Elec., Inc., 105 Nev. 423, 426 (1989). The court  
19      should adopt a Report unless "[t]he findings are based upon material errors  
20      in the proceedings or a mistake in law; or are unsupported by any  
21      substantial evidence; or are against the clear weight of the evidence."  
22      Russell v. Thompson, 96 Nev. 830, 834 n.2 (1980).

23      As stated above, the Probate Commissioner's findings were supported  
24      by the simple and substantial evidence that Thu-Le, as Co-Trustee of FESR,  
25      has the power of invasion of principal and that there is no reduction of  
26      any income interest of any income beneficiary of FESR, unless that finding  
27      is clearly erroneous this Court should accept the Probate Commissioner's  
28      findings.

Phung also alleges that the Probate Commissioner failed to follow the

1 applicable statutory authority in decanting the Trust funds. Phung  
2 correctly cites to NRS 163.556, but misinterprets the statute by stating  
3 that the Co-Trustees do not have unlimited discretion or authority to  
4 distribute trust income or principal. NRS 163.556 states that "a trustee  
5 with discretion or authority to distribute trust income or principal to or  
6 for a beneficiary of the trust may exercise such discretion or authority  
7 by appointing the property subject to such discretion or authority in favor  
8 of a second trust as provided in this section." The word "unlimited" does  
9 not appear anywhere in the statute, thus NRS 163.556 does not require that  
10 a trustee to have unlimited discretion, but that a trustee has discretion  
11 to distribute trust income or principal to be able to decant trust assets.  
12 In the instant matter Thu-Le and Phung also have discretion to distribute  
13 more than \$5,000.00 as long as both agree to the distribution. As long as  
14 the Co-Trustees have discretion to distribute trust income or principal,  
15 which they do, the Probate Commissioner had correctly applied NRS 163.556  
16 in granting the decanting of FESR's assets, thus there is no mistake in  
17 law.

#### 18 CONCLUSION

19 This Court should adopt the Report and Recommendation Confirming  
20 Prior Report and Recommendation Granting Petition to Assume Jurisdiction  
21 of Trust, Making Additional Findings of Fact and Conclusions of Law,  
22 Confirming Co-trustees and to Modify Trust entered on August 4, 2017, as  
23 the Probate Commissioner's findings were supported by substantial evidence  
24 and was not clearly erroneous and there was no mistake in law.

25 ...

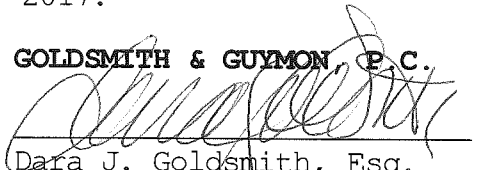
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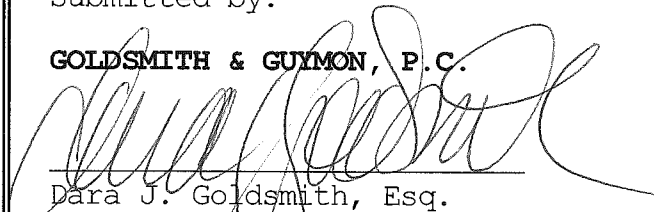
1 DATED this 17th day of September, 2017.

2 **GOLDSMITH & GUYMON, P.C.**

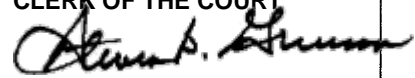
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11 Attorneys for Thu-Le Doan

12 Submitted by:

13 **GOLDSMITH & GUYMON, P.C.**

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14 Trustor of the FUND FOR  
15 THE ENCOURAGEMENT OF SELF RELIANCE

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In the Matter of the )  
13 FUND FOR THE ENCOURAGEMENT OF ) Case No. P-16-089638-T  
14 SELF RELIANCE ) Department PC1  
15 An Irrevocable Trust. )

16 AFFIDAVIT OF SERVICE

17 STATE OF NEVADA )  
18 ) ss.  
19 COUNTY OF CLARK )

20 Meredith Delaney, being first duly sworn, on oath, according to  
21 law, deposes and says:

22 I am and was, when the herein-described mailing took place, a  
23 citizen of the United States, over 18 years of age, and not a party  
24 to, nor interested in, the within action.

25 On this 13th day of September, 2017, I deposited in the United  
26 States Mail at Las Vegas, Nevada, three (3) copies of the REPLY TO  
27 RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE COMMISSIONER'S REPORT  
28 AND RECOMMENDATION CONFIRMING PRIOR REPORT AND RECOMMENDATION GRANTING  
PETITION TO ASSUME JURISDICTION OF TRUST, MAKING ADDITIONAL FINDINGS

1 OF FACT AND CONCLUSIONS OF LAW, CONFIRMING CO-TRUSTEES AND TO MODIFY  
2 TRUST, AND REQUEST FOR JUDICIAL REVIEW thereon, each enclosed in a  
3 sealed envelope, mailed regular mail, upon which first-class postage  
4 was fully prepaid, addressed to:

5 Thu-Le Doan  
6 c/o Marshal Willick, Esq.  
7 3591 E. Bonanza Rd.,  
Suite 200  
Las Vegas, NV 89110

8 Office of the Attorney General  
9 Carson City Office  
10 100 North Carson Street  
Carson City, NV 89701

11 Office of the Attorney General  
12 Attn: Sandie Geyer  
100 North Carson Street  
Carson City, NV 89701

13 and there is regular communication by mail between the place of  
14 mailing and places so addressed.

15 I also filed the REPLY TO RESPONDENT, DOAN L. PHUNG'S OBJECTION  
16 TO PROBATE COMMISSIONER'S REPORT AND RECOMMENDATION CONFIRMING PRIOR  
17 REPORT AND RECOMMENDATION GRANTING PETITION TO ASSUME JURISDICTION OF  
18 TRUST, MAKING ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW,  
19 CONFIRMING CO-TRUSTEES AND TO MODIFY TRUST, AND REQUEST FOR JUDICIAL  
20 REVIEW (Filed and E-Served on 09/12/2017) thereon, electronically via  
21 ODYSSEY, the Court's electronic filing system, pursuant to EDCR 8.05,  
22 and electronically served the following parties:

23 Joe Coppedge, Esq.  
24 jcopp7116@gmail.com  
Attorney for Doan L. Phung

25 Michael Mushkin, Esq.  
26 michael@mushlaw.com

27 These parties are deemed to have consented to electronic  
28 service of all pleadings and other documents through their

1 registration with ODYSSEY, summons and subpoenas excepted.

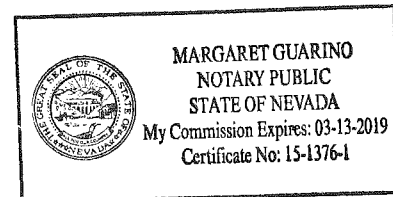
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3 DATED this 13<sup>th</sup> day of September, 2017.

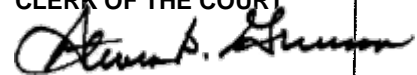
4  
5   
6 Meredith Delaney *pc*

7  
8 SUBSCRIBED AND SWORN to before me  
9 this 13<sup>th</sup> day of September, 2017.

10   
11 NOTARY PUBLIC in and for said  
12 County and State.

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1 **REPL**

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4 L. Joe Coppedge, Esq.

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13 *Attorneys for Respondent,*

14 *Doan L. Phung*

15 **DISTRICT COURT**  
16 **FAMILY DIVISION**  
17 **CLARK COUNTY, NEVADA**

18 In the Matter of the:

19 **FUND FOR THE ENCOURAGEMENT OF**  
20 **SELF RELIANCE,**

21 **An Irrevocable Trust.**

Case No.: P-16-089638-T

Dept. No.: PC1

Date of Hearing: October 12, 2017

Time of Hearing: 9:30 a.m.

22 **REPLY BRIEF IN SUPPORT FOR RESPONDENT'S OBJECTION**  
23 **TO THE PROBATE COMMISSIONER'S REPORT AND RECOMMENDATIONS**

24 Respondent, Doan L. Phung ("Respondent" or "Phung"), by and through his counsel,  
25 Michael R. Mushkin and L. Joe Coppedge of Mushkin Cica Coppedge, submits the following Reply  
26 Brief in support of his Objection to the Probate Commissioner's Report and Recommendation. This  
27 Reply Brief is based upon the following Memorandum of Points and Authorities, the Fund for the  
28 Encouragement of Self Reliance ("FESR") Charter, the court approved Marital Settlement  
Agreement ("MSA"), EDCR 4.17, the papers and pleadings on file herein, and any argument made  
by counsel at the hearing of this Objection.

The Probate Commissioner's report and recommendation is based upon an erroneous  
interpretation and application of NRS 163.556. Further, the Probate Commissioner failed to  
adequately address the questions requested by this Court, failed to analyze disputed facts that are  
material to an application of NRS 163.556, failed to analyze facts that could lead to a different relief



1 other than decanting, and in remarkable fashion, ignored the contract of the parties and rejected the  
2 clear intent of the trust charter, as amended by the MSA.

3 The Petitioner has utilized multiple manufactured reasons and tactics to mislead the Probate  
4 Commissioner into recommending the decanting of FESR while concealing the fact that she is not  
5 qualified nor prepared to run a charitable trust on her own. Petitioner has proven herself to be  
6 incompetent over the past 20 years at FESR, has been absent from all FESR activities since 2011,  
7 has misused over \$12,000 from FESR for extensive overseas travels, has taken money from the  
8 overseas TTKKTL charity, and ignored the systematic theft of over \$85,000 from TTKKTL by her  
9 operations manager during the period 2011-2016 under her watch.

10 Based upon the arguments that follow and those contained in his Objection filed herein,  
11 Respondent requests that the Petition be dismissed, and that he be awarded his attorneys' fees and  
12 legal costs.

13 DATED this 5 day of October, 2017.

14 MUSHKIN CICA COPPEDGE

15 By: 

16 Michael R. Mushkin, Esq.

17 Nevada Bar No. 2421

18 L. Joe Coppedge, Esq.

19 Nevada Bar No. 4954

20 4475 South Pecos Road

21 Las Vegas, NV 89121

22 Attorneys for Respondent, Doan L. Phung

## 23 I. SUMMARY OF ARGUMENT

24 1. The Probate Commissioner relied solely upon NRS 163.556 to decant the assets of  
25 the charitable trust FESR. In so doing, he misapplied the express language of the statute and failed  
26 to properly address the inquiries from this Court following the hearing on February 1, 2017.  
27 Previously, this Court instructed the Probate Commissioner to address and analyze the following:  
28 (a) whether there are questions of fact that are material to a decanting analysis, (b) whether the  
Probate Commissioner ascertained and considered those material facts, (c) whether the Probate

1 Commissioner determined there are material facts not in dispute, and (d) whether there are material  
2 facts that support a different relief other than decanting. The Probate Commissioner ignored all the  
3 material facts, and recommended that there is an absolute right to decant. This misapplication of  
4 NRS 163.556 not only serves as an injustice to Respondent, but such flawed reasoning could lead  
5 to an avalanche of frivolous decanting lawsuits. Further, in continuing to ignore material facts  
6 repeatedly raised by Respondent, both verbally and in writing, the Probate Commissioner has  
7 violated EDCR 4.17.

8 2. The Probate Commissioner failed to analyze relevant material facts and/or questions  
9 that should be ascertained in the application of NRS 163.556, including the following:

- 10 • Does NRS 163.556 apply to FESR, a charitable trust that is registered as a 501 (c)(3)  
11 whose beneficiaries are 100% the public?
- 12 • What is the original intent of the settlors/trustors of FESR?
- 13 • Does a trustee have unrestricted authority to appoint income and principal of FESR?
- 14 • Does the decanting of FESR abridge the right of other FESR trustee(s) who has the  
15 power to appoint property which arises under any other law?
- 16 • Will decanting FESR reduce any income interest of any income beneficiary originally  
17 intended by FESR settlors/trustors?
- 18 • Is FESR a trust for which a charitable deduction has been taken for federal or state  
19 income tax purpose?
- 20 • Can NRS 163.556 ignore the intent of the parties as set forth in the court approved  
21 contract that establishes the managerial authority and distribution limitations of the parties?

22 3. A trustee does not have the “absolute” right to decant as stated by the Commissioner  
23 and as argued by Petitioner time and again. Nowhere in NRS 163.556 does the word “absolute”  
24 appear. If anything, the opposite is true. The statute sets forth multiple conditions under which a  
25 trustee cannot decant. Specifically, a trustee can only exercise such discretion as she is provided in  
26 the trust documents. Thus, it is imperative that the trust documents be examined to ascertain the  
27 trustee’s intent – an act the Probate Commissioner failed to do.

28 4. The Commissioner failed to analyze the following material facts that are in dispute  
between the parties: The Petitioner has argued multiple manufactured facts, each of which has been

1 proved wrong by Respondent. Among these manufactured facts are: (a) Respondent has used the  
2 trust funds to support political groups, (b) Petitioner was afraid of Respondent for her safety, (c) the  
3 trustees were at "loggerhead" in the business of the trust; (d) the divorce was contentious, and (e)  
4 Petitioner was a significant income earner of PAI Corporation, which donated money to the trust.  
5 Petitioner has no record to prove those claims while Respondent has hundreds of records to prove  
6 the opposite.

7 5. The Probate Commissioner failed to analyze and recognize the FESR's rights to  
8 conduct its affairs in accordance with its Charter. Section Six of the Charter prescribes the number  
9 of trustees allowed to sit on the Board and the manner with which trustees are elected and/or  
10 removed. The Report and Recommendation treats FESR as a community property between two  
11 trustees, which it is not by definition of its charitable 501(c)(3) charter.

12 • Petitioner attempted to quash the notice of a Board meeting scheduled for October 15,  
13 2016 to review ongoing activities and make decisions regarding future donations. In the hearing of  
14 October 14, 2016, Petitioner failed to obtain the injunction to stop the meeting. During that meeting  
15 at the public library at North Buffalo, Las Vegas, trustee Holly Ngo was elected, pursuant to the  
16 FESR Charter, by her competence and dedication to charity work over a period of 30 years.

17 • Among other issues, the Board discussed the fact that Petitioner has abandoned  
18 virtually all activities of the FESR since approximately 2011. Petitioner has failed to respond to  
19 notices to attend Board meetings, has missed three consecutive properly noticed meetings and is  
20 therefore, conclusively deemed incompetent to serve as a trustee per clear language of the FESR  
21 Charter. She was voted to be removed from the Board pursuant to the express language and intent  
22 of the Charter. The Probate Commissioner erred by failing to recognize and analyze Petitioner's  
23 lack of legal standing in the April 28, 2017 hearing.

24 6. The Commissioner failed to consider how decanting abridges Respondent's rights to  
25 appoint properties pursuant to the FESR Charter and the MSA. It also abridges the right of trustee,  
26 Holly Ngo to appoint properties as she is not only a trustee, but has also donated money to FESR.  
27 These failures violate NRS 163.556(11).

28 7. The Commissioner failed to analyze the fact that Petitioner has never demonstrated  
she meets the "ascertained standard" required by NRS 163.556(18). The opposite is true, as she is

1 not capable of managing and distributing trust money to benefit the beneficiaries as originally  
2 intended by the trustors. Over the more than 20 years of FESR's existence, Petitioner did not  
3 participate in the trust's activities other than giving money to some beneficiaries from her home  
4 town in Vietnam, she did not review any applications for funds from elsewhere, and does not know  
5 of the documentation and finances of the trust. When no longer under the supervision of Respondent  
6 between 2011 and 2016, she used more than \$12,000 from FESR funds for extended overseas travels  
7 for her own pleasure and to work for TTKKTL - a Vietnamese charity in her hometown - and  
8 falsified those as travels for FESR. Furthermore, as chairman of the overseas TTKKTL (not FESR),  
9 she directly supervised its operations manager Phan Van Hai who systematically stole  
10 approximately \$85,000 from TTKKTL between 2011 and 2016. When she and Phan Van Hai  
11 resigned from TTKKTL in 2016, she asked the latter to surreptitiously take 448 million VND  
12 (\$20,400) from the TTKKTL bank account for her, claiming it was her "own" money. *See* Inspector  
13 General Report, Exhibit A. That money had been donated to TTKKTL in previous years. The  
14 Commissioner's failure to analyze Petitioner's incompetence is in violation of NRS 163.556(3).

## 15 **II. ARGUMENT AND AUTHORITY**

16 The case history and actual background of this memorandum in support of Respondent's  
17 objections have been stated in Respondents' Objection filed August 21, 2017. The following is  
18 intended to address matters in Petitioner's latest Reply. It is noteworthy that Petitioner does not  
19 refute any of the cases cited by Respondent in support of his Objection. Thus, the intent of the  
20 parties controls. The Probate Commissioner erred by neglecting to ascertain the intent of the parties  
as set forth in the trust charter and MSA.

21 NRS 163.556 contains four clauses that do not permit the Probate Commissioner to decant  
22 FESR. They include the following:

- 23 1. Except as otherwise provided in this section, unless the terms of a  
24 testamentary instrument or irrevocable trust provide otherwise, a trustee  
25 with discretion or authority to distribute trust income or principal to or  
26 for a beneficiary of the trust may exercise such discretion or authority  
by appointing the property subject to such discretion or authority in  
favor of a second trust as provided in this section.
- 27 2. The second trust to which a trustee appoints property of the first  
28 trust may only have as beneficiaries one or more of the beneficiaries of  
the original trust:

1 (a) To or for whom a distribution of income or principal may be  
made from the original trust;

2 (b) To or for whom a distribution of income or principal may be  
made in the future from the original trust at a time or upon the happening  
3 of an event specified under the first trust; or

4 (c) Both paragraphs (a) and (b).

5 ↪ For purposes of this subsection, a permissible appointee of a power  
of appointment exercised by a beneficiary of the second trust is not  
considered a beneficiary of the second trust.

6 3. A trustee may not appoint property of the original trust to a second  
trust if:

7 (a) Appointing the property will reduce any income interest of any  
income beneficiary of the original trust if the original trust is:

8 (1) A trust for which a marital deduction has been taken for  
federal or state income, gift or estate tax purposes;

9 (2) A trust for which a charitable deduction has been taken for  
federal or state income, gift or estate tax purposes; or

10 (3) A grantor-retained annuity trust or unitrust under 27 C.F.R.  
§ 25.2702-3(b) and (c).

11 ↪ As used in this paragraph, "unitrust" has the meaning ascribed to it  
12 in NRS 164.700.

13 (b) The property to be appointed is subject to a power of withdrawal  
which is held by a beneficiary of the original trust and may be executed  
14 at the time of the proposed appointment, unless after the exercise of such  
appointment, the beneficiary of the original trust's power of withdrawal  
15 is unchanged with respect to the trust property.

16 (c) Property specifically allocated for one beneficiary of the original  
trust is no longer allocated for that beneficiary under either or both  
17 trusts, unless the beneficiary consents in writing.

18 (d) Property held for the benefit of one or more beneficiaries under  
both the original and the second trust has a lower value than the value  
of the property held for the benefit of the same beneficiaries under only  
19 the original trust, unless:

20 (1) The benefit provided is limited to a specific amount or  
periodic payments of a specific amount; and

21 (2) The value of the property held in either or both trusts for  
the benefit of one or more beneficiaries is actuarially adequate to  
22 provide the benefit.

23 (e) A contribution made to the original trust qualified for a gift tax  
exclusion as described in section 2503(b) of the Internal Revenue Code,  
26 U.S.C. § 2503(b), by reason of the application of section 2503(c) of  
24 the Internal Revenue Code, 26 U.S.C. § 2503(c), unless the second trust  
provides that the beneficiary's remainder interest must vest not later  
25 than the date upon which such interest would have vested under the  
terms of the original trust.

26 \* \* \*

27 11. The provisions of this section do not abridge the right of any  
28 trustee who has the power to appoint property which arises under any  
other law.

\* \* \*

18. As used in this section, "ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, 26 U.S.C. § 2041(b)(1)(A) or 2514(c)(1), and any regulations of the United States Treasury promulgated thereunder.

**A. The Charter of FESR does not allow Thu-Le to invade the trust's assets**

Contrary to Thu-Le's unfounded assertion, FESR does not allow her to invade its charity assets at will. FESR was established by Phung in 1997 in Nevada with the purpose of assisting impoverished people in Vietnam to be self-reliant. Phung included Thu-Le, then his wife, as trustor and trustee in this charity foundation. FESR has been recognized by the Internal Revenue Service as a non-profit private 501(c)(3) charity designed to support the poor in health, welfare, micro-loans, and means that help better the livelihood of the poor in Vietnam. The rules specified in the Charter include the following essential items:

- It is a charity foundation, having a maximum of 5 trustees who would serve without compensation and elected or removed per procedures delineated in Section 6. This implicitly indicates FESR is not a community property of Thu-Le and Phung, and the court sanctioned MSA explicitly recognizes as such. To decant by one trustee is to abridge the rights of other trustees per NRS163.556 (11).

- A trustee has the duty to work for the goals of the trust (Section 1), cannot engage in self-dealing (Section 2), and must not be absent from Board meetings 3 consecutive times (Section 6).

- Gifts are irrevocable (Section 8).

- The Charter is irrevocable and may not be amended or modified unless in violation of the IRS tax code (Section 10). Implicitly, the charter cannot be modified just for the convenience of one among many trustees without consideration of the beneficiaries. *See* Trust Charter, Exhibit B, and IRS letter dated February 4, 1999. It was amended per IRS requirement to clearly stated as "charitable unitrust", thus satisfying the NRS 163.556(3) as not decantable.

Thus, FESR is clearly a charitable trust with more than two trustees and with beneficiaries being the needy people at large. Decanting FESR is a forbidden self-dealing act to serve the selfish desire of one trustee, abridging the rights of other trustees, and potentially leading to reducing the

1 benefits of the originally intended beneficiaries because Petitioner has not demonstrated the  
2 competence necessary to serve as the sole trustee of a successor trust.

3 **B. The MSA does not allow Petitioner to invade the trust assets unimpeded**

4 In 2012, Phung and Thu-Le obtained an amicable, not “contentious” divorce, as falsely  
5 argued in the Petitioner’s Reply. The MSA, attached to the Objection as Exhibit B, was prepared by  
6 Thu-Le, signed in February 2012 without any fight and sanctioned by a court order in April 2012.  
7 Among other provisions, the parties agreed in writing that Thu-Le was given close to 51% of the  
8 community assets while Phung was given the management role of FESR for the couple, and the  
9 only restriction being any distribution of over \$5,000 shall need the concurrence of both parties.  
10 Further, Section 26 of the MSA provides that any modification shall need the express written  
11 agreement of both parties. Thus, it is clear Petitioner does not have the power to invade these assets  
12 unimpeded.

13 **C. Thu-Le used manufactured facts to influence the Commissioner to decant FESR**

14 Having failed to get FESR decanted in the Family Court, Thu-Le submitted a petition in the  
15 Probate Court on September 22, 2016 to decant FESR. The hearing was initially to be heard on  
16 November 14, 2016; however, Petitioner hurriedly requested shortening time to October 14, 2016  
17 in the attempt to quash the planned FESR Board meeting of October 15, 2016. The attempt failed  
18 as the Probate Commissioner declined to enter an injunction absent the posting of a substantial bond.  
19 No bond was posted. No injunction was entered. Thus, there was no impediment to continuing  
20 FESR business as planned.

21 Thu-Le asserted the following grounds in her Petition to decant FESR’s assets and obtain  
22 complete control of 50% in another trust to be set up:

- 23 • Petitioner alleges that Phung gave donations to political causes which are against the  
24 intent of the charter;
- 25 • that Phung gave Thu-Le reasons to fear for her safety when working with him, and
- 26 • that the administration of FESR is impossible due to the two trustees being at  
27 loggerheads.

28 Respondent has proved the above allegations to be false. When the Probate Commissioner  
made his report and recommendation based entirely on his interpretation that a trustee has an

1 “absolute” right to decant the trust per NRS 163.556, Thu-Le latched upon this reasoning and  
2 abandoned the false and manufactured facts. However, in her most recent Reply, Thu-Le  
3 manufactured yet another falsehood, that the divorce was “contentious”, a falsehood that never was  
4 but for her contingency-fee led efforts to change the MSA following the divorce decree. To the  
5 extent that the Probate Commissioner relied even in a limited manner upon these false facts, the  
6 Probate Commissioner erred as a matter of law in recommending that Thu-Le has an “absolute”  
7 right to decant FESR.

8 **D. The October 15, 2016 FESR Board meeting was properly noticed and held pursuant**  
9 **to the FESR Charter**

10 It is undisputed that following the Probate Commissioner’s hearing of October 14, 2016 that  
11 no injunction was entered to prohibit the normal business of FESR. The planned meeting of FESR  
12 with a pre-noticed agenda to consider the election of Holly Ngo as a trustee of FESR was proper  
13 under the FESR Charter. Further, all Board decisions in that meeting were proper pursuant to the  
14 clear language of the FESR Charter. Among those decisions, the Board removed Thu-Le Doan as a  
15 trustee pursuant to Section Six of the Charter due to her absence from all FESR activities for 5 years  
16 (2011 to 2016), her deliberate abuse of FESR money to travel overseas for non-FESR purposes, and  
her specific failure to attend three consecutive Board meetings.

17 **E. Thu-Le is incompetent in managing FESR and dishonest in handling FESR funds**

18 The law requires that the trustee who manages the decanted trust has “ascertainable  
19 standards” to serve the trust’s purposes and beneficiaries. Thu-Le does not meet these or any  
20 standards.

- 21 • Over the life of FESR, Thu-Le has not managed the FESR at all. She has not known any  
22 beneficiary or groups of beneficiaries besides those from her own hometown. She has not  
23 reviewed the more than 60 applications for fund that FESR received annually since 2011. She  
24 stayed absent from all FESR affairs, including not attending any FESR Board meetings.
  - 25 • After seeking the divorce from Phung, she intentionally caused obstruction to Phung’s  
26 management of FESR, intentionally froze FESR accounts twice – in 2013 and 2015  
27 respectively- causing operational checks to be bounced.
- 28



- She has used over \$12,000 from FESR funds to travel overseas for her own pleasure and for causes<sup>1</sup> other than FESR's. Her current attempt to decant FESR for her to control 50% of its assets will lead to further incompetence, loss of assets, and unfair treatment of the beneficiaries in contradiction to the intent of the settlors/trustors.
- Over the period 2011-2016, Thu-Le was chairman of the TTKKTL, a Vietnamese charity operating in her hometown in Vietnam. She directly supervised its operations manager, Mr. Phan Van Hai. Under such supervision, she did not know that Mr. Hai systematically stole 85,000 USD from TTKKTL and when he resigned following her resignation in 2016 due to criticism of the Board, he stole 1200 million VND and 11,500 USD, some 448 million VND (\$20,400 USD) of which was for her. The new management of TTKKTL, with the assistance of the police, has recovered the latter amounts while the 85,000 USD equivalent is still in process of recovery through the Vietnamese court.

The Commissioner selectively ignored the above facts. Instead, the Commissioner stated he was relying upon the abilities of the trustee to the exclusion of the parties' contractual agreement. If in fact the Commissioner relied upon Thu-Le's abilities, at the very least, there is an issue of fact concerning her competence, or lack thereof, which under EDCR 4.17, mandates discovery and the scheduling of an evidentiary hearing.

**F. The Commissioner's Report and Recommendation, if approved, would establish a dangerous precedent in Nevada**

To date there is no record of any effort to decant a charitable trust just because a trustee has an "absolute" right to do so. Although the foundations were functioning very well for over 20 years under the management of Respondent to discharge the missions intended by the trustors, Thu-Le petitioned this Court to decant them asserting fabricated reasons and the Commissioner erroneously recommended that she has the "absolute power" to do so without regard to the evidence that Petitioner does not have the power to invade the assets, does not have the capabilities to discharge the purposes of the trusts originally intended by the trustors, and is not trustworthy due to her record

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<sup>1</sup> Thu-Le wrote checks of \$996.21 (12/28/2012), \$4,814.00 (12/30/2012), \$848.16 (7/14/2014), and 4,659.00 (11/1/2014) to herself; and \$1,000 (12/27/2014) to her friend, despite protests by the managing trustee. She was unable to use FESR money for similar non-FESR business since 2015 due to Fidelity Investments bank refusing to honor her checks based on the very MSA that she used to freeze FESR accounts to impede the FESR ongoing business. See Exhibit B.

1 of mismanagement of FESR and the TTKKTL, and was unable to detect the systematic theft of  
2 TTKKTL funds over six years by the person who was under her direct supervision. Adopting the  
3 Report and Recommendations is not supported by the law and facts, and would set a dangerous legal  
4 precedent for Nevada, which could lead to more frivolous disputes such as this.

5 **III. CONCLUSION**

6 Respondent respectfully requests that this Court to reject the Probate Commissioner's  
7 Report and Recommendation for the reasons set forth above. The Probate Commissioner failed to  
8 properly address the questions requested by this Court on February 1, 2017 in the application of  
9 NRS 163.556, and failed to recognize the simple fact that NRS 163.556 does not apply to charitable  
10 trusts of which FESR is one. Respondent requests this Court to summarily dismiss Thu-Le's  
11 petition, and that it award him his costs and attorney's fees in being forced to respond to the Petition.

12 DATED this 5 day of October, 2017.

13 MUSHKIN CICA COPPEDGE

14 By: 

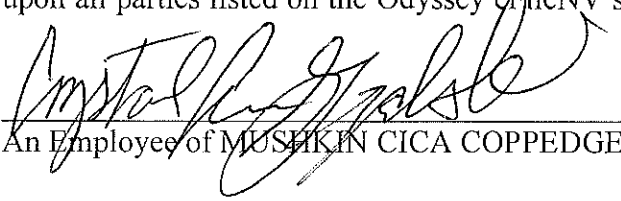
15 Michael R. Mushkin, Esq.  
16 Nevada Bar No. 2421

17 L. Joe Coppedge, Esq.  
18 Nevada Bar No. 4954  
19 4475 South Pecos Road  
20 Las Vegas, NV 89121

21 *Attorneys for Respondent, Doan L. Phung*

22 **CERTIFICATE OF SERVICE**

23 I hereby certify that the foregoing *Reply Brief in Support for Respondent's Objection to the*  
24 *Probate Commissioner's Report and Recommendations* was submitted electronically for filing  
25 and/or service with the Eighth Judicial District Court on this 5<sup>th</sup> day of October, 2017. Electronic  
26 service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service  
27 contact list<sup>2</sup>.

28   
An Employee of MUSHKIN CICA COPPEDGE

<sup>2</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

# EXHIBIT A

# EXHIBIT A

English Version  
REPORT OF THE INSPECTOR GENERAL  
TRUNG TAM KHUYEN KHICH TU LAP (TTKKTL)  
2016-11-21

To the Board of Trustees  
Trung Tam Khuyen Khich Tu Lap (TTKKTL)  
Hue, Vietnam

Dear Board Members :

My name is Nguyen Nhlen, volunteer member of the Board of Trustees of the TTKKTL since 2000. After two terms and 8 years in the office, I stepped down due to term limitation. In 2012, I was invited to rejoin the Board at the invitation of Chairperson Doan Thu Le and at the concurrence of all standing members of the Board. I resigned in late December 2015 because I disagreed with a decision by Chairperson Doan Thu Le regarding the firing of a staff member. This occasioned the examination of the event by the Board, and while the Board did not reinstate the personnel, it invited me in June 2016 to rejoin the Board. I did but chairperson Doan Thu Le resigned in July 2016. Dr. Doan L Phung subsequently assumed the chairman position. Citing personal reasons, Mr. Phan Van Hai resigned as Director General of the Executive Office. Unable to persuade him to stay, the chairman accepted Mr. Phan Van Hai's resignation on August 31, 2016.

On September 1, 2016, chairman Doan L Phung, after consulting the opinion of all staff, appointed Mr. Nguyen Xuan Quy to be Director of the Executive Office, and Ms. Nguyen Thi Anh Dao, Deputy Director. The new director and deputy director went over the transition documents and discovered some irregularities : Over the years, Mr. Phan Van Hai had maintained a secret TTKKTL account that is controlled only by him, and upon resigning from the office, he had withdrawn 1,260,456,000 VND (approximately 57,000 USD) and deposited the money into his own account.

In the duty as Inspector General of TTKKTL in Hue, I have been working with Mr. Nguyen Xuan Quy and Ms. Nguyen Thi Anh Dao since October 2016, and have the following findings :

- 1- Mr. Phan Van Hai was appointed Director of the Executive Office in 2006 and worked in that position until 31/08/2016. Between 2006 and 2012, he worked closely with Dr. Doan L Phung, then chairman of TTKKTL. He also worked from time to time with other members of the Board in Hue. His work was excellent and

TTKKTL was trusted by clients and fellow organizations. It also received praise from the government of the City of Hue.

- 2- Between 2012 and July 26, 2016, Mr. Phan Van Hai worked under the supervision of Ms. Doan Thu Le, the new chairperson. All went well until Ms. Doan Thu Le discharged a staff. I resigned in protest because my suggestion of more investigation was not given sufficient attention. Subsequently the Board investigated the matter, did not reinstate the personnel, but asked me to rejoin the Board, which I assented. The Board also asked me to be Inspector General with the charter to ensure all activities of TTKKTL in Hue are compliant legally and quality wise. This appointment, however, led to the resignation of chairperson Doan Thu Le on July 26, 2016. Subsequently Mr. Phan Van Hai worked under the supervision of Dr. Doan L Phung, the acting chairperson. In mid-August, Mr. Phan Van Hai appointed Mr. Nguyen Xuan Quy to be Director of the Executive Office while he appointed himself as Advisor. Dr. Doan L. Phung told Mr. Hai that those appointments are illegal because the authority belongs to the Board. Subsequently, Mr. Hai resigned and pointedly asked Dr. Phung to write a letter accepting his resignation precisely on August 31, 2016. Not suspecting of any design by Mr. Hai, Dr. Phung wrote the letter per request.
- 3- The new leadership team started transitioning in on September 1, 2016 with little cooperation from Mr. Hai. In particular, Mr. Hai did not mention anything about the secret account. In the following few weeks, the new leadership team discovered Mr. Hai had withdrawn the sum of 1,260,456,000 VND (approximately 57,000 USD) from that secret account but never informed the new director nor Dr. Doan L Phung of the act. He would not return the money upon demand, stating he kept it for Ms. Doan Thu Le per her request.
- 4- I have worked closely with the new TTKKTL executives to uncover all related information. I have met twice with Mr. Phan Van Hai and asked him to return the money to TTKKTL. He refused. He said he was instructed by Ms. Doan Thu Le to keep that money for her. Without any other alternative, I let the TTKKTL executives report the event to the government of the City of Hue.
- 5- The government of Hue asked the City Inspector (TTTP) to investigate the matter. TTTP interrogated Mr. Phan Van Hai and discovered the 1.2 billion VND (approximately 57,000 USD) consisted of 448 million VND (approximately 20,400 USD) he claimed Ms. Doan Thu Le asked him to keep for her, and the remainder 812 million (approximately 36,700 USD) was the money VASFCSR asked him 9 months earlier to transfer to other smaller charities per request of VASFCSR but he had not done. The TTTP demanded Mr. Phan Van Hai to return the money. He did the 812 million on October 25, 2016, and the 448 million on November 15, 2016.
- 6- The TTTP also uncovered that, during the time Mr. Phan Van Hai worked under the direction of Ms. Doan Thu Le, the two had committed some questionable actions. Case in point, Mr. Hai manufactured a few applications to ask for funds

from VASFCEsr that is under the management of Dr. Doan Phung and Ms. Doan Thu Le was suing Dr. Phung for control of VASF and CESR. Unsuspecting fraud. Dr. Phung approved half a dozen of those organizations and sent the money to Mr. Phan Van Hai for him to deliver to them because they did not have a trustworthy international bank account. It now appears that those organizations either did not exist, or belonged to Mr. Phan Van Hai or his relatives. It may be possible that Mr. Phan Van Hai withheld delivering the money to further Ms. Doan Thu Le's lawsuit in the USA.

The new director, Mr. Nguyen Xuan Quy, told me that in the 5 years as the day-to-day assistant to Mr. Hai, he was not informed of any activities that Mr. Phan Van Hai conducted secretly under the direction of Ms. Doan Thu Le.

I continue to work with the new leaders of the Executive Office to ensure transparency and compliance of all activities of TTKKTL. TTKKTL is a Vietnamese charity registered with the City of Hue. Since TTTP is an effective inspection arm of the City of Hue, I have asked them to investigate further any financial wrongdoings committed by Mr. Hai in the past few years. I will have another report by year end on this matter.

Made in Hue, November 21, 2016



Nguyen Nbien  
Member of the Board of Directors and Inspector General

# EXHIBIT B

# EXHIBIT B

**Checks Thu-Le Doan wrote to herself and her friends from funds of the FESR  
and not for FESR business**

Check No. 1148	Dec 28, 2012	\$996.21
Check No. 1150	Dec 30, 2012	\$4,814.00
Check No. 1152	July 14, 2014	\$848.16
Check No. 1155	Nov 1, 2014	\$4,659.00
Check No. 1156	Dec 27, 2014	\$1,000.00
	<b>TOTAL</b>	<b>12,317.37</b>



DOAN L PHUNG TTEE  
THU-LE DOAN TTEE  
ENCOURAGEMNT/SELF RELIANCE FD  
8021 GOLFERS OASIS DR  
LAS VEGAS, NV 89149

Fidelity Account®

1148

80-568/1012

Dec 28, 2012  
Date

Pay to the  
Order of

Thu - Le Doan

\$ 996  $\frac{21}{100}$

Nine hundred ninety six and  $\frac{21}{100}$  Dollars



**Fidelity**  
INVESTMENTS

UMB Bank, N.A.  
Warsaw, MO

Exp. im. trips

For 528.61 (Jan 12 - May 12)

Thu - Le Doan

⑆0⑆20568⑆⑆1⑆48⑆77⑆0785044784⑆

Revised Copy

DOAN L PHUNG TTEE  
THU-LE DOAN TTEE  
ENCOURAGEMNT/SELF RELIANCE FD  
8021 GOLFERS OASIS DR  
LAS VEGAS, NV 89149

Fidelity Account®

1150

80-568/1012

Dec 30, 2013  
Date

Pay to the  
Order of

Thu - Le Doan

\$ 4,814  $\frac{00}{100}$

Four thousand Eight hundred and Fourteen Dollars



**Fidelity**  
INVESTMENTS

UMB Bank, N.A.  
Warsaw, MO

For 1st trip & others expenses

Thu - Le Doan

⑆0⑆20568⑆⑆1⑆50⑆77⑆0785044784⑆

DOAN L PHUNG TTEE  
THU-LE DOAN TTEE  
ENCOURAGEMNT/SELF RELIANCE FD  
8021 GOLFERS OASIS DR  
LAS VEGAS, NV 89149

Fidelity Account®

1152

80-568/1012

July 14, 2016  
Date

Pay to the  
Order of

Cary Shiao

\$ 848.16

Eight hundred forty eight and  $\frac{16}{100}$  Dollars



**Fidelity**  
INVESTMENTS

UMB Bank, N.A.  
Warsaw, MO

For 8 years website hosting fees

Thu - Le Doan

⑆0⑆20568⑆⑆1⑆52⑆77⑆0785044784⑆

DOAN L PHUNG TTEE  
THU-LE DOAN TTEE  
ENCOURAGEMENT/SELF RELIANCE FD  
8021 GOLFERS OASIS DR  
LAS VEGAS, NV 89149

Fidelity Account®

1155

80-568/1012

NOV 1, 2014  
Date

Pay to the  
Order of

Thu - Le Doan \$ 4,659 <sup>00</sup>/<sub>100</sub>  
four thousand Six hundred Fifty nine only Dollars



**Fidelity**

UMB Bank, N.A.  
Warsaw, MO

For VN trip reimb - Feb - April 2014

Thu Le Doan

⑆101205681⑆1155⑈7710785044784⑈

MasterCard

DOAN L PHUNG TTEE  
THU-LE DOAN TTEE  
ENCOURAGEMENT/SELF RELIANCE FD  
8021 GOLFERS OASIS DR  
LAS VEGAS, NV 89149

Fidelity Account®

1156

80-568/1012

Dec 27, 2014  
Date

Pay to the  
Order of

Que Huong Huyen Tonnu \$ 1,000 <sup>00</sup>/<sub>100</sub>  
One thousand only Dollars



**Fidelity**

UMB Bank, N.A.  
Warsaw, MO

For for the poor in VN  
Nhom Phuong Vy

Thu Le Doan

⑆101205681⑆1156⑈7710785044784⑈

MasterCard

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Probate -  
Trust/Conservatorships**

**COURT MINUTES**

October 12, 2017

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P-16-089638-T                      In the Matter of the Trust of:  
Fund for the Encouragement of Self Reliance

---

**October 12, 2017      9:30 AM                      Objection - Probate**

**HEARD BY:**    Sturman, Gloria

**COURTROOM:**    RJC Courtroom 10D

**COURT CLERK:**    Lorna Shell

**PARTIES:**

Doan Phung, Respondent, present  
Fund for the Encouragement of Self Reliance,  
Trust, not present  
Thu Le Doan, Petitioner, present

L. Joe Coppedge, Attorney, present  
  
Dara Goldsmith, Attorney, present

<b>JOURNAL ENTRIES</b>
------------------------

- Also present was Marshall Willick, Esq. and Peter Co, Esq. representing Thu Doan and Michael Mushkin, Esq. representing Doan Phung.

Mr. Mushkin argued the Commissioner relied on NRCP 163.556 and misapplied the statute and that a trustee does not have an absolute right to decant a trust. Mr. Mushkin further argued regarding the intent of the settlers, whether decanting reduced income, whether the trust was tax free subject to those decanting s, that it was a charitable trust registered under 501(c)(3), and that an Evidentiary Hearing should be set. Ms. Goldsmith argued there were no disputed material fact that the Commissioner failed to follow EDCR 4.17(a) and that the trustee had the right to decant. Mr. Willick argued that Thu Doan may have missed some meetings; however he was there representing her. Colloquy regarding the effect of the removal of a trustee. Mr. Mushkin argued Ms. Doan signed a contract agreeing her discretion was less than \$5,000 to decant. Mr. Mushkin further argued regarding what discretion Ms. Doan had as trustee. COURT STATED FINDINGS and ORDERED, Objection DENIED as there was no error in the ruling by the Commissioner.

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**AA 001311**

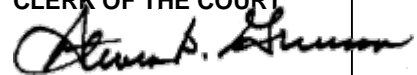
**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

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**AA 001312**



1 **ORD**

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8 **EIGHTH JUDICIAL DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 In the matter of the

11 **FUND FOR THE ENCOURAGEMENT OF**  
12 **SELF RELIANCE,**

13 An Irrevocable Trust.

Case No.: P-16-089638-T

Dept.: 26

Date of Hearing: October 12, 2017

Time of Hearing: 9:30 a.m.

14  
15 **ORDER DENYING RESPONDENT, DOAN L. PHUNG'S OBJECTION TO PROBATE**  
16 **COMMISSIONER'S REPORT AND RECOMMENDATION AND ORDER GRANTING**  
17 **TRUSTEE THU-LE DOAN TO DECANT THE ASSETS OF THE FUND FOR THE**  
18 **ENCOURAGEMENT OF SELF RELIANCE AKA CENTER FOR THE**  
19 **ENCOURAGEMENT OF RELIANCE PURSUANT TO NRS 163.556**

20 This matter came on for hearing on October 12, 2017 before the Honorable Gloria Sturman  
21 on Respondent, Doan L. Phung's Objection to Probate Commissioner's Report and  
22 Recommendation Confirming Prior Report and Recommendation Granting Petition to Assume  
23 Jurisdiction of Trust, Making Additional Findings of Fact and Conclusions of Law, Confirming Co-  
24 Trustees and to Modify Trust entered on August 4, 2017. Respondent was present and represented  
25 by Michael R. Mushkin, Esq. and L. Joe Coppedge, Esq. of the law firm MUSHKIN CICA  
26 COPPEDGE. Petitioner, Thu-Le Doan was present and represented by Dara Goldsmith, Esq. and  
27 Peter Co, Esq. of the law firm Goldsmith & Guymon, P.C. The Court, having reviewed the  
28

1 Objection, Petitioner's Reply thereto and Respondent's Reply Brief in support of the Objection, and  
2 having heard oral arguments from counsel, finds as follows.

- 3 1. That the Fund for the Encouragement of Self Reliance aka Center for the Encouragement  
4 of Reliance ("FESR") was created in Nevada, domiciled in Nevada and is subject to  
5 Nevada law.
- 6 2. That Thu-Le Doan and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan  
7 filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify  
8 Trust on September 22, 2016.
- 9 3. That a trustee has a legal right to decant a trust under NRS 163.556 if the following two  
10 prong test is met: (1) "[A] trustee with discretion or authority to distribute trust income or  
11 principal to or for a beneficiary of the trust may exercise such discretion or authority in  
12 favor of a second trust as provided in this section." NRS 163.556(1) and (2) "A trustee  
13 may not appoint property of the original trust to a second trust if: (a) Appointing the  
14 property will reduce any income interest of any income beneficiary of the original trust if  
15 the original trust is:...(2) A trust for which a charitable deduction has been taken for  
16 federal or state income, gift or estate tax purposes..." NRS 163.556(3).
- 17 4. That NRS 163.556 does not state that a trustee has an "absolute right" to decant a trust  
18 and that although the Probate Commissioner had incorrectly used the term "absolute  
19 right", the Probate Commissioner correctly analyzed NRS 163.556 in finding that  
20 Petitioner, Thu-Le Doan, had a right to decant FESR.
- 21 5. That the Probate Commissioner fully analyzed NRS 163.556 and correctly found that  
22 Petitioner as Co-Trustee of FESR met the two prong test: (1) that Petitioner had the  
23 power of invasion of principal of the trust assets and (2) that there is no reduction of any  
24 income interest of any income beneficiary of the trust; and as such has the right to decant  
25 FESR.  
26  
27  
28

- 1 6. That Petitioner as Co-Trustee of FESR had the legal right to decant FESR when she  
2 initially filed her Petition to Assume In Rem Jurisdiction of Trust, Confirm Trustee and  
3 to Modify Trust on September 22, 2016, and that whether or not Petitioner was  
4 subsequently removed as Co-Trustee of FESR, does not affect Petitioner's ability to  
5 proceed with her petition to decant FESR.
- 6 7. That the Probate Commissioner refused to enjoin FESR from continuing to act, and as the  
7 trust continued to act, Petitioner was removed as a Co-Trustee for her failure to  
8 participate.
- 9 8. That the Court did not address whether removing Petitioner as a Co-Trustee was wrong  
10 as the Court does not believe that it has to look at that since Petitioner had the right to  
11 decant FESR when she initiated the action.
- 12 9. That although the parties Marital Settlement Agreement limited a trustee's discretion to  
13 make distributions in excess of \$5,000.00, unless agreed to in writing by both trustees,  
14 such a limitation did not affect the purpose of FESR which was to provide "micro loans"  
15 at favorable interest rates for the purpose of enabling individuals to pursue a trade or  
16 business.
- 17 10. That Petitioner, Thu-Le Doan, as Co-Trustee of FESR has a legal right to decant FESR.
- 18 11. That as a matter of law, the Probate Commissioner did not err in applying NRS 163.556,  
19 that the Probate Commissioner came to the right conclusion, but used the incorrect term  
20 "absolute right" versus "right".
- 21 12. That Respondent, Doan L. Phung's Objection to the Probate Commissioner's Report and  
22 Recommendation is denied.
- 23 13. That all of the assets of FESR should be divided equally and Thu-Le Doan's portion is to  
24 be decanted into Thu-Le Doan's separate irrevocable charitable trust with Thu-Le Doan  
25 serving as sole trustee of her separate irrevocable charitable trust and Doan L. Phung's

1 portion can either remain in FESR with Doan L. Phung serving as the sole Trustee of  
2 FESR OR Doan L. Phung's portion may be decanted into a new separate irrevocable  
3 charitable trust with Doan L. Phung serving as the sole Trustee of his new separate  
4 irrevocable charitable trust.

5 14. That all the assets of FESR including but not limited to: Fidelity accounts x4784, x4840,  
6 x9909, x9921, x2574 & x2575; Bank of America account x2956; and any and all real or  
7 personal property owned by FESR shall be divided equally and Thu-Le Doan's portion  
8 shall be distributed to Thu-Le Doan as Trustee of her separate irrevocable charitable trust  
9 and Doan L. Phung's portion can either remain in FESR with Doan L. Phung serving as  
10 the sole Trustee of FESR OR Doan L. Phung's portion may be distributed to Doan L.  
11 Phung as Trustee of his new separate irrevocable charitable trust.

12  
13 15. That a certified copy of this Order may be presented to effectuate any such transfers.

14 16. That if one party violates the Charter and causes a tax effect upon the other party, the  
15 violating party shall indemnify the other party and make good of it.

16  
17 17. That the VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T  
18 and the FUND FOR THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-  
19 089638-T should not be consolidated.

20 18. That this Court should relinquish jurisdiction in accordance with NRS 164.010(3) after  
21 the requested relief is granted and proof of the decanting and funding is provided to the  
22 Court by Thu-Le Doan.

23  
24 19. That the Petition to Assume Jurisdiction of Trust, Confirm Trustee, and to Modify Trust  
25 ought to be granted.

26 ...

27 ...

28 ...



1 Based on the foregoing findings, it is hereby

2 **ORDERED, ADJUDGED AND DECREED** that the Fund for the Encouragement  
3 of Self Reliance aka Center for the Encouragement of Reliance ("FESR") was created in Nevada,  
4 domiciled in Nevada and is subject to Nevada law;

5 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Thu-Le Doan  
6 and Doan L. Phung were Co-Trustees of FESR when Thu-Le Doan filed her Petition to Assume In  
7 Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016;

8 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a trustee has a  
9 legal right to decant a trust under NRS 163.556 if the following two prong test is met: (1) "[A]  
10 trustee with discretion or authority to distribute trust income or principal to or for a beneficiary of  
11 the trust may exercise such discretion or authority in favor of a second trust as provided in this  
12 section." NRS 163.556(1) and (2) "A trustee may not appoint property of the original trust to a  
13 second trust if: (a) Appointing the property will reduce any income interest of any income  
14 beneficiary of the original trust if the original trust is:...(2) A trust for which a charitable deduction  
15 has been taken for federal or state income, gift or estate tax purposes..." NRS 163.556(3);  
16

17 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that NRS 163.556  
18 does not state that a trustee has an "absolute right" to decant a trust and that although the Probate  
19 Commissioner had incorrectly used the term "absolute right", the Probate Commissioner had  
20 correctly analyzed NRS 163.556 in finding that Petitioner, Thu-Le Doan, had a right to decant  
21 FESR;  
22

23 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate  
24 Commissioner fully analyzed NRS 163.556 and correctly found that Petitioner as Co-Trustee of  
25 FESR met the two prong test: (1) that Petitioner had the power of invasion of principal of the trust  
26 assets and (2) that there is no reduction of any income interest of any income beneficiary of the trust;  
27 and as such has the right to decant FESR;  
28

1           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner as  
2 Co-Trustee of FESR had the legal right to decant FESR when she initially filed her Petition to  
3 Assume In Rem Jurisdiction of Trust, Confirm Trustee and to Modify Trust on September 22, 2016,  
4 and that whether or not Petitioner was subsequently removed as Co-Trustee of FESR, does not affect  
5 Petitioner's ability to proceed with her petition to decant FESR;

6           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Probate  
7 Commissioner refused to enjoin FESR from continuing to act, and as the trust continued to act,  
8 Petitioner was removed as a Co-Trustee for her failure to participate.

9           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Court did  
10 not address whether removing Petitioner as a Co-Trustee was wrong as the Court does not believe  
11 that it has to look at that since Petitioner had the right to decant VASF when she initiated the action.

12           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that although the  
13 parties Marital Settlement Agreement limited a trustee's discretion to make distributions in excess of  
14 \$5,000.00, unless agreed to in writing by both trustees, such a limitation did not affect the purpose of  
15 FESR which was to provide "micro loans" at favorable interest rates for the purpose of enabling  
16 individuals to pursue a trade or business;

17           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Petitioner, Thu-  
18 Le Doan, as Co-Trustee of FESR has a legal right to decant FESR;

19           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that as a matter of  
20 law, the Probate Commissioner did not err in applying NRS 163.556, that the Probate Commissioner  
21 came to the right conclusion, but used the incorrect term "absolute right" versus "right";

22           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Respondent,  
23 Doan L. Phung's Objection to the Probate Commissioner's Report and Recommendation is denied;

24           **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all of the assets  
25 of FESR should be divided equally and Thu-Le Doan's portion is to be decanted into Thu-Le Doan's  
26

1 separate irrevocable charitable trust with Thu-Le Doan serving as sole trustee of her separate  
2 irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with Doan L.  
3 Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be decanted into a new  
4 separate irrevocable charitable trust with Doan L. Phung serving as the sole Trustee of his new  
5 separate irrevocable charitable trust;

6 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that all the assets of  
7 FESR including but not limited to: Fidelity accounts x4784, x4840, x9909, x9921, x2574 & x2575;  
8 Bank of America account x2956; and any and all real or personal property owned by FESR shall be  
9 divided equally and Thu-Le Doan's portion shall be distributed to Thu-Le Doan as Trustee of her  
10 separate irrevocable charitable trust and Doan L. Phung's portion can either remain in FESR with  
11 Doan L. Phung serving as the sole Trustee of FESR OR Doan L. Phung's portion may be distributed  
12 to Doan L. Phung as Trustee of his new separate irrevocable charitable trust;  
13

14 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that a certified copy  
15 of this Order may be presented to effectuate any such transfers;  
16

17 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that if either party  
18 violates the Charter and causes a tax effect upon the other party, the violating party shall indemnify  
19 the other party and make good of it;

20 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the  
21 VIETNAMESE-AMERICAN SCHOLARSHIP FUND case no. P-16-089637-T and the FUND FOR  
22 THE ENCOURAGEMENT OF SELF RELIANCE case no. P-16-089638-T should not be  
23 consolidated;  
24

25 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that this Court  
26 should relinquish jurisdiction in accordance with NRS 164.010(3) after the requested relief is  
27 granted and proof of the decanting and funding is provided to the Court by Thu-Le Doan; and  
28


1                   **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the Petition to  
2 Assume Jurisdiction of Trust, Confirm Trustee, and to Modify Trust ought to be granted.

3                   Dated this 21<sup>st</sup> day of December, 2017

4  
5   
6 \_\_\_\_\_  
7 DISTRICT COURT JUDGE


8 Submitted by:

9 GOLDSMITH & GUYMON, P.C.

10   
11 \_\_\_\_\_  
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19 Approved as to form and content by:

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