

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE and HEIDI CANARELLI,
and FRANK MARTIN, Special
Administrator of the Estate of Edward C.
Lubbers, Former Trustees,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT of the State of Nevada, in and
for the County of Clark; and THE
HONORABLE GLORIA STURMAN,
District Judge,

Respondent,

and

SCOTT CANARELLI, Beneficiary of
The Scott Lyle Graves Canarelli
Irrevocable Trust dated February 24,
1998,

Real Party in Interest.

Case No. 78883

Electronically Filed
District Court No. A-1070712019 11:28 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONERS' APPENDIX TO
PETITION FOR WRIT OF
PROHIBITION OR MANDAMUS**

(VOLUME 1 OF 5)

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
djcc@cwlawlv.com
J. COLBY WILLIAMS, ESQ. (5549)
jcw@cwlawlv.com
PHILIP R. ERWIN, ESQ. (11563)
pre@cwlawlv.com
700 South Seventh Street
Las Vegas, Nevada 89101
Tel. (702) 382-5222

*Attorneys for Lawrence and Heidi
Canarelli, and Frank Martin, Special
Administrator of the Estate of Edward
C. Lubbers, Petitioners*

MARQUIS AURBACH COFFING
LIANE K. WAKAYAMA, ESQ. (11313)
lwakayama@maclaw.com
10001 Park Run Drive
Las Vegas, Nevada 89145
Tel. (702) 382-0711

*Attorneys for Frank Martin, Special
Administrator of the Estate of
the Estate of Edward C. Lubbers,
Petitioner*

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CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 3rd day of June, 2019, serve upon the following in this action a copy of the foregoing **Petitioners' Appendix to Petition for Writ of Prohibition or Mandamus (Volumes 1 - 5)** by United States Mail, postage prepaid:

SOLOMON DWIGGINS & FREER, LTD.

Dana Dwiggins, Esq.

Tess Johnson, Esq.

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Attorneys for Scott Canarelli

HONORABLE GLORIA STURMAN

Department XXVI

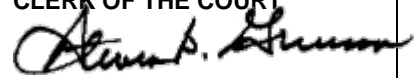
Eighth Judicial District Court

200 Lewis Avenue

Las Vegas, Nevada 89155

By: /s/ **John Y. Chong**
An Employee of Campbell & Williams

1



MOT

J. Colby Williams (NSB#5549)
Campbell & Williams
700 S. Seventh Street
Las Vegas, NV 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540
jcw@campbellandwilliams.com

and

Elizabeth Brickfield, Esq. (NSB #6236)
Var E. Lordahl, Esq. (NSB #12028)
Joel Z. Schwarz (NSB#9181)
DICKINSON WRIGHT, PLLC
8363 W. Sunset Road, Suite 200
Las Vegas, Nevada 89113
Telephone: (702) 550-4400
Facsimile: (844) 670-6009
ebrickfield@dickinsonwright.com

Counsel for Respondents

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of:

SCOTT LYLE GRAVES
CANARELLI IRREVOCABLE
TRUST, dated February 24, 1998.

Case No.: P-13-078912-T
Dept. No.: 26

Date of Hearing:
Time of Hearing:

**MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR PARTIAL SUMMARY
JUDGMENT ON PETITIONER'S FIRST PRAYER FOR RELIEF**

Respondents Lawrence ("Larry") and Heidi Canarelli ("Heidi") and Edward Lubbers ("Ed")¹ (collectively, "Respondents"), former trustees of the Scott Lyle Graves Canarelli Irrevocable Trust Dated February 24, 1998 (the "Trust"), pursuant to NRCP 12 and 56 and by and through their counsel, the law firms of Campbell & Williams and Dickinson Wright, PLLC, hereby move this Court for judgment as to Petitioner Scott Canarelli's ("Scott" or "Petitioner") First Prayer for Relief seeking an order to "compel the Trustee to enforce the [Trust's] rights under the Purchase Agreement" as Larry, Heidi and Ed are no longer trustees of the Trust and moreover, the requested "rights" for which Scott seeks to enforce have been satisfied or are now moot. This

¹ Edward Lubbers died unexpectedly on April 2, 2018. No Suggestion of Death has been filed yet.

1 Motion is based upon the Attached Memorandum of Points and Authorities, the Declaration of
2 Lawrence Canarelli and the exhibits to them.

3 Dated this 25th day of April, 2018.

4
5 CAMPBELL & WILLIAMS
6 J. Colby Williams (NSB#5549)
7 700 S. Seventh Street
8 Las Vegas, NV 89101
9 Telephone: (702) 382-5222
10 Facsimile: (702) 382-0540
11 jcw@campbellandwilliams.com

12 and

13 DICKINSON WRIGHT, PLLC

14 

15 Elizabeth Brickfield, Esq. (NSB #6236)
16 Joel Z. Schwarz (NSB#9181)
17 Var E. Lordahl, Esq. (NSB #12028)
18 8363 W. Sunset Road, Suite 200
19 Las Vegas, Nevada 89113
20 Telephone: (702) 550-4400
21 Facsimile: (844) 670-6009
22 ebrickfield@dickinsonwright.com
23 jschwarz@dickinsonwright.com
24 vlordahl@dickinsonwright.com
25 Counsel for Respondents
26
27
28

1 **NOTICE OF MOTION**

2 TO: ALL PARTIES and their Attorneys of Record:

3 Please take notice that the foregoing **MOTION FOR JUDGMENT ON THE**
4 **PLEADINGS AND/OR PARTIAL SUMMARY JUDGMENT ON PETITIONER'S FIRST**
5 **PRAYER FOR RELIEF** will be heard before this Court at Courtroom 10D of the Regional
6 Justice Center, 200 Lewis Avenue, Las Vegas, NV 89155, on the **31st** day of **May**,
7 2018, at the hour of **9:30** **a**.m., or as soon thereafter as counsel may be heard.

8 Dated this 25th day of April, 2018.

9
10 CAMPBELL & WILLIAMS
11 J. Colby Williams (NSB#5549)
12 700 S. Seventh Street
13 Las Vegas, NV 89101
14 Telephone: (702) 382-5222
15 Facsimile: (702) 382-0540
16 jcw@campbellandwilliams.com

17 and

18 DICKINSON WRIGHT, PLLC

19 

20 Elizabeth Brickfield, Esq. (NSB #6236)
21 Joel Z. Schwarz (NSB#9181)
22 Var E. Lordahl, Esq. (NSB #12028)
23 8363 W. Sunset Road, Suite 200
24 Las Vegas, Nevada 89113
25 Telephone: (702) 550-4400
26 Facsimile: (844) 670-6009
27 ebrickfield@dickinsonwright.com
28 jschwarz@dickinsonwright.com
vlordahl@dickinsonwright.com
Counsel for Respondents

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF MATERIAL FACTS**

3 1. For background, Respondents incorporate by reference the "Facts" section of the
4 *Objection To Petition To Surcharge Trustee And For Additional Relief* (the "Objection"), including
5 any defined terms therein, filed with this Court on August 9, 2017.

6 2. Subsequent to the filing of the Objection, on October 12, 2017, the Court entered an
7 order appointing Premier Trust, Inc. ("Premier") as both the Successor Independent Trustee and
8 Successor Family Trust of the Trust. *See* Order filed on October 12, 2017. (Ed had previously
9 accepted appointment as Family Trustee of the Trust, and on October 24, 2013, the Court entered
10 an order confirming Ed as the Family Trustee and Independent Trustee of the Trust.)

11 3. For disposition of this Motion, the material facts surround the execution of a
12 Purchase Agreement as well as the subsequent valuation conducted by Western Valuation
13 Advisors pursuant to the Purchase Agreement. (Exhibit A, Purchase Agreement).

14 **4. Purchase Agreement and Sale Price:**

15 a. On May 31, 2013, Ed, as Family Trustee of the Trust (Seller), entered into a
16 Purchase Agreement with the Siblings Trusts and SJA Acquisitions, LLC (Buyers)
17 for the sale of the Trust's minority interests in certain LLCs and Corporations.
18 (Exhibit A at 1). The Siblings Trusts were the Corp Purchasers as defined under
19 the Purchase Agreement and SJA Acquisitions, LLC was the LLC Purchaser.

20 b. The sale price was \$15,801,913 (LLCs) and \$9,454,861 (Corporations), for a total
21 of \$25,256,774, subject to increase as described below. The sale price was to be
22 paid by an initial \$1 million payment by both SJA Acquisitions, LLC and the
23 Siblings Trusts with both purchasers thereafter making bi-annual principal
24 payments of \$500,000 on the 1st of October and 1st of April, plus monthly
25 payments of accrued interest. (Exhibit A at 2 and LLC Note and Corporate Note
26 attached thereto).

27 c. Per the Purchase Agreement, "The LLC Sale Interests Purchase Price and/or the
28 Corporation Sale Interests Purchase Price shall be increased, but not decreased,

1 based upon a review of the enterprise value of each LLC and each Corporation by
2 a third party analyst..." (Exhibit A at 2).

3 d. Thereafter, pursuant to a Stipulation and Order, Ed, Family Trustee at the time,
4 retained Western Valuation Advisors ("WVA") to perform the aforementioned
5 valuation. (*See* Stipulation and Order filed 12/2/13).

6 e. WVA performed the valuation and opined that the sale price should be increased by
7 \$4,711,525, for a total of \$29,968,299.² (Exhibit 12 to Petition at 94; attached
8 hereto as Exhibit B are excerpted pages from the WVA Valuation). This
9 \$4,711,525 has been paid as follows:

10 i. On July 31, 2017, payment was made to the Trust in the amount of
11 \$2,837,847, which represents the undisputed adjustment to the purchase
12 price per WVA's valuation, along with applicable interest. (*See* Exhibit C,
13 Wire Transfer bates stamped RESP0037423 and 0037425; Exhibit D, July
14 25, 2017 Letter from C. Williams).

15 ii. On November 14, 2017, payment was made to the Scott Canarelli
16 Irrevocable Trust c/o Premier Trust, the Family Trustee of the Trust, in the
17 amount of \$1,873,678 plus interest from the effective date of the Purchase
18 Agreement for a total payment amount of \$2,191,422.58. Said payment
19 was made as representative of the entirety of the "Disputed Funds"
20 identified in the Court Order entered on October 12, 2017 (Exhibit E,
21 Check bates stamped RESP0037466; Exhibit F, November 13, 2017, letter
22 bates stamped RESP0086836-0086837).

23
24 ² WVA opined that the estimated market value of the LLCs exceeded the value set forth in the
25 Purchase Agreement by \$4,711,525, and the estimated market value of the Corporations was
26 \$1,873,678 *less* than the value set forth in the Purchase Agreement. (Exhibit B, WVA Valuation at
27 57-58, 93-94). WVA and Petitioner contend that the entire \$4,711,525 is due. The undisputed
28 \$2,837,847 has been paid and the \$1,873,678 has been paid per the Court's order. *See* Exhibits C,
D, E, and F. Premier Trust, the successor trustee and the parties await this Court's instructions on
whether, per the language of the Purchase Agreement, only \$2,837,847 was due to the Trust per
WVA's valuation (\$4,711,525 less \$1,873,678). Regardless of that dispute, the entirety of the \$4.7
million has been paid.

1 **5. Deferral of Principal Payments:**

2 a. On March 12, 2014, Ed, Family Trustee at the time, deferred all principal payments
3 under the Notes, commencing with the principal balance due in April 2014.
4 Interest was not deferred. (Exhibit G, March 12, 2014, letter bates stamped
5 RESP0012733). This was done in accordance with Section 2.C. of each note.
6 While the reasoning for the deferral is not necessary for the disposition of this
7 motion, Ed deferred the payments because it was unclear whether Scott sought to
8 unwind the transaction.³ Thereafter, when it became clear from Scott's Petition
9 that he did not seek to set aside the Purchase Agreement, all deferred principal
10 payments were made. (Exhibit H, July 28, 2017, E. Lubbers Letters to SJA
11 Acquisitions and Siblings Trusts, bates stamped RESP0037379-84,
12 RESP0037385-92; Exhibit D, July 25, 2017, Letter from C. Williams).

13 b. Specifically, on July 31, 2017, payment was made to the Trust in the amount of:

14 i. \$3 million from SJA Acquisitions, LLC, which represents the deferred
15 principal payments for 2014, 2015, and 2016; (Exhibit I, Wire transfer and
16 back up bates stamped RESP0037419-0037420 and 0037422).⁴

17 ii. \$3 million from the Siblings Trusts, which represents deferred principal
18 payments for 2014, 2015, and 2016; (Exhibit J, Wire transfer and back up
19 bates stamped RESP0037430-0037432; RESP0037439-0037441; and
20 RESP0037448-50).⁵

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24
25 ³ Despite the deferral, it is undisputed that interest continued to accrue and continued to be paid
26 throughout the entire deferral period.

27 ⁴ The wire was in the amount of \$3.5 million, which reflected the deferred principal payments for
28 2014, 2015, and 2016 as well as the \$500,000 for 2017's first payment.

⁵ Each of the three Siblings Trusts sent separate wires, for a total of \$3,500,000, which reflected
 the deferred principal payments for 2014, 2015, and 2016 as well as the \$500,000 for 2017's first
 payment.

6. In his Petition to Surcharge Trustee and Former Trustees filed on June 27, 2017 ("Petition"), Scott requests this Court issue the following order in Prayer 1, which directly relates to the Purchase Agreement and WVA's valuation:

1. This Court should compel **Trustee** to enforce the [Trust's] rights under the Purchase Agreement, LLC Note and Corporate Note by demanding the following:

a. Payment of an additional \$4,711,525 by SJA Acquisitions⁶ to the Trust, representing the amount of the Purchase Price relative to the LLC Sale Interests was undervalued;

b. Payment by SJA Acquisition to the [Trust] for unpaid interest on the amount the LLC Note was undervalued;

c. Payment of \$3 million by SJA Acquisitions to the [Trust] for unpaid principal payments for 2014, 2015, and 2016;

d. Payment of \$3 million by the Siblings Trust to the [Trust] for unpaid principal payments for 2014, 2015, and 2016;

e. Disclosure of the terms of the extended or new Credit Agreement so as to allow Petitioner [to] determine what, if any, impact such credit agreement has on the LLC Note, Corporate Note and Guaranty;

f. Execution of an amended note by SJA Acquisitions to represent the adjusted sale price of the LLC Sale Interests;

g. Execution of a new guaranty by the Guarantors, representing the adjusted sale price of the LLC Sale Interests;

h. Provide written notice of default and ten (10) days to cure such default;

i. Accelerating the LLC Note and Corporate Note in the event the defaults are not cured within the applicable time period;

j. Demand payment on the Guarantors for the unpaid principal balance and accrued interest;

k. Commence Default Interest under the LLC Note and Corporate Note:

⁶ SJA Acquisitions, LLC, a buyer under the Purchase Agreement, is not a party to this matter and Scott has stated he cannot bring claims against SJA Acquisitions, LLC in this probate matter. (Tr. of March 29, 2018, Hrg. at 25:22-26:2).

1 l. ***Alternatively***, demand payment of any principal payments properly
2 deferred;

3 m. Disclose all payments made to the Trust under the Purchase
4 Agreement, LLC Note and Corporate Note; and

5 n. Disclose any and all adjustments made to the LLC Note based on
6 the Valuation.

(Petition at 38) (emphasis added).

7 **II. LEGAL ARGUMENT**

8 **A. Legal Standard.**

9 7. NRCp 12(c) allows the court to grant a motion for judgment on the pleadings
10 "when the material facts of the case 'are not in dispute and the movant is entitled to judgment as a
11 matter of law.'" *Perry v. Terrible Herbst, Inc.*, 132 Nev. ___, 383 P.3d 257, 259 (2016) (quoting
12 *Sadler v. PacificCare of Nev. Inc.*, 130 Nev. Adv. Op. 98, 340 P.3d 1264, 1266 (2014)). A motion
13 for judgment on the pleadings "is designed to provide a means of disposing of cases when material
14 facts are not in dispute and a judgment on the merits can be achieved by focusing on the content of
15 the pleadings." *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1241 (1987).
16 Motions brought under NRCp 12(c) are appropriate "only when all material allegations of fact are
17 admitted in the pleadings and only questions of law remain." *Duff v. Lewis*, 114 Nev. 564, 568,
18 958 P.2d 82, 85 (1998) (quoting *Bernard*, 103 Nev. at 136, 734 P.2d at 1241).

19 8. If matters outside the pleadings are offered and not rejected by the court, the motion
20 for judgment on the pleadings will be converted to a motion for summary judgment under NRCp
21 56. NRCp 12(c). Summary judgment is appropriate if the moving party can demonstrate there is
22 no genuine issue of material fact and summary judgment is appropriate as a matter of law. NRCp
23 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). The
24 burden of establishing the non-existence of any genuine issue of fact is on the movant. *NGA #2*
25 *Ltd. Liability Co. v. Rains*, 113 Nev. 1151, 1156, 946 P.2d 163, 166-67 (1997) (citing *Pacific*
26 *Pools Construction Co. v. McClain's Concrete Inc.*, 101 Nev. 557, 559, 706 P.2d 849, 851 (1985)).
27 "A party against whom a claim ... is asserted ... may, at any time, move with or without
28 supporting affidavits for a summary judgment in his favor to all or any part thereof." NRCp 56(b).

1 9. To defeat a motion for summary judgment, the non-moving party must "set forth
2 specific facts demonstrating the existence of a genuine issue for trial or have summary judgment
3 entered against him." *Wood* at 121 Nev. at 732, 121 P.3d at 1031 (quoting *Bulbman, Inc. v.*
4 *Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992); *see also Borland v. Nevada Rock and*
5 *Sand Co.*, 111 Nev. 608, 610, 894 P.2d 988, 990 (1995). A genuine issue of material fact exists
6 "where the evidence is such that a reasonable jury could return a verdict for the nonmoving party."
7 *Valley Bank of Nevada v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989) (citing
8 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)); *see also*
9 *Wood*, 121 Nev. at 731, 121 P.3d at 1031.

10 10. However, "[w]hile the pleadings and other proof must be construed in a light most
11 favorable to the nonmoving party, that party bears the burden to do more than simply show that
12 there is some metaphysical doubt as to the operative facts in order to avoid summary judgment
13 being entered in the moving party's favor." *Wood*, 121 Nev. at 732, 121 P.3d at 1031 (quoting
14 *Matsushita Elec. Indus. Co., Ltd v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348 (1986)
15 (internal quotations omitted)). The non-moving party "is not entitled to build a case on the
16 gossamer threads of whimsy, speculation and conjecture." *Wood*, 121 Nev. at 732, 121 P.3d at
17 1031 (quoting *Bulbman v. Nevada Bell, supra*, 108 Nev. at 110, 825 P.2d at 591 and *Collins v.*
18 *Union Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

19 11. A party may move for summary judgment against the availability of a remedy. *See*
20 *e.g., Loft v. Stationary Engineers, Local 39 PTF, LLC*, 87 F.Supp.3d 1138, 1146 (N.D. Cal. 2015).
21 This is because "the right and the remedy are each part of the claim as defined in Rule 56' that
22 may be appropriately tested and resolved by the court on a motion for summary judgment." *Stellar*
23 *J Corp. v. Smith & Loveless, Inc.*, Case No. 09-CV-353-JE, 2010 WL 4791740 at *2 (D. Or.
24 November 18, 2010) (quoting *Hamblin v. British Airways PLC*, 717 F.Supp.2d 303, 307 (E.D.N.Y.
25 2010)).⁷

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27
28 ⁷ "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority,
because the Nevada Rules of Civil Procedure are based in large part upon their federal
counterparts.'" *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872,

1
2 **B. Judgment on the Pleadings Should Be Granted in Favor of Respondents as to**
3 **Prayer 1 as Premier Trust Is Now Trustee of the Trust.**

4 12. In Prayer 1, Scott requests this Court enter an order "compel[ling] the Trustee" to
5 enforce the Trust's purported rights under the Purchase Agreement and demand certain items
6 pursuant to the Purchase Agreement. (Petition at 38).

7 13. Ed was defined as "Trustee" in the Petition. (*See* Petition at 2, ln. 3).

8 14. Ed is no longer the trustee of the Trust. Premier is the trustee. (Order filed
9 10/12/17). The Court cannot compel the "Trustee," defined as Ed, to perform any acts in his
10 capacity as Trustee as he no longer holds that position.

11 15. These material facts are not in dispute and based on the content of the pleadings
12 themselves, namely the Petition and Order filed 10/12/17, Respondents are entitled to judgment as
13 a matter of law as to Prayer 1.

14 **C. Alternatively, Respondents Are Entitled to Summary Judgment as to Prayer 1**
15 **As Each of the Requested Items of Relief Have Been Satisfied or Are Not**
16 **Required Per the Terms of the Purchase Agreement.**

17 16. Respondents are entitled to summary judgment as to Prayer 1 as certain of the
18 requested relief is now moot, and the Purchase Agreement is devoid of any language requiring
19 Respondents to perform the remaining acts demanded by Petitioner.

20 17. The mootness doctrine requires that "a controversy must be present through all
21 stages of the proceeding, and even though a case may present a live controversy at its beginning,
22 subsequent events may render the case moot." *Personhood Nevada v. Bristol*, 126 Nev. 599, 245
23 P.3d 572, 574, 602 (2010). A large portion of the requested relief under Prayer 1 is now moot due
24 to subsequent events.

25 18. Respondents are entitled to summary judgment as to each requested subcategory of
26 Prayer 1:

27 ///

28 ///

876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776
(1990)).

<u>Subcategory</u>	<u>Argument</u>
a. Payment of an additional \$4,711,525 by SJA Acquisitions to the Trust, representing the amount of the Purchase Price relative to the LLC Sale Interests was undervalued	As set forth above, payment of \$2,837,847 was made on July 31, 2017 and payment of \$1,873,678 plus interest was made on November 13, 2017 (the latter being the disputed funds), reflecting the entirety of the requested \$4,711,525.00 payment, plus interest.
b. Payment by SJA Acquisition to the [Trust] for unpaid interest on the amount the LLC Note was undervalued	<i>See ¶ 18.a. supra.</i>
c. Payment of \$3 million by SJA Acquisitions to the [Trust] for unpaid principal payments for 2014, 2015, and 2016	As set forth above, payment of this \$3 million was made by SJA Acquisitions, LLC on July 31, 2017.
d. Payment of \$3 million by the Siblings Trust to the [Trust] for unpaid principal payments for 2014, 2015, and 2016	As set forth above, payment of this \$3 million was made by Siblings Trusts on July 31, 2017.
e. Disclosure of the terms of the extended or new Credit Agreement so as to allow Petitioner [to] determine what, if any, impact such credit agreement has on the LLC Note, Corporate Note and Guaranty	This request is nonsensical as the "new" or "extended" Credit Agreement is attached by Petitioner as Exhibit 3 to the Petition.
f. Execution of an amended note by SJA Acquisitions to represent the adjusted sale price of the LLC Sale Interests	Neither the Purchase Agreement nor the Promissory Note executed by SJA Acquisitions, LLC requires an amended note to be executed. Moreover, the "adjusted purchase price" per the Western Valuation Advisors' valuation has been paid, thus negating any need for an amended note. <i>See ¶ 18.a. supra.</i>
g. Execution of a new guaranty by the Guarantors, representing the adjusted sale price of the LLC Sale Interests	Neither the Purchase Agreement nor the Payment Guaranty obligates the guarantors to enter into an amended or new guaranty. Moreover, the "adjusted

		purchase price" per the Western Valuation Advisors' valuation has been paid, thus negating any need for an amended or new guaranty. <i>See</i> ¶ 18.a. <i>supra</i> .
h.	Provide written notice of default and ten (10) days to cure such default	There was no default nor notice of any default for which a cure would be required. As set forth at length above, all payments have been made.
i.	Accelerating the LLC Note and Corporate Note in the event the defaults are not cured within the applicable time period	<i>See</i> ¶ 18.h. As set forth at length above, all payments have been made.
j.	Demand payment on the Guarantors for the unpaid principal balance and accrued interest	Again, as set forth above, all payments have been made. Moreover, per the terms of the Payment Guaranty, Guarantors' obligation to pay does not arise until "Borrower defaults in the payment ... and such default is not cured within thirty (30) days after written demand..." (Exhibit A at 14). There have been no defaults in payment and even assuming <i>arguendo</i> a default occurred, no written demand for cure was sent triggering a 30-day cure period. The guarantors have no obligation to make any payments at this time.
k.	Commence Default Interest under the LLC Note and Corporate Note	Default interest would only commence under the terms of the LLC Note and Corporate Note <i>if</i> a default occurred and it was not cured within 10 days after written notice. (Exhibit A at 12, Section 5). First, no default has occurred. Second, no written notice of a default was ever sent commencing a 10-day cure period.
l.	<i>Alternatively</i> , demand payment of any principal payments properly deferred	Petitioner pleads this subcategory as an alternative to subcategories a. through k. All payments of principal payments properly deferred have been made. <i>See</i> ¶ 18.a. <i>supra</i> . Thus, this request has been met and the Court need not reach a decision as to subcategories a. through k.

	as this request is pled in the alternative. ⁸
m. Disclose all payments made to the Trust under the Purchase Agreement, LLC Note and Corporate Note	All such payments have been made by the Siblings Trust and SJA Acquisitions, LLC, the buyers under the Purchase Agreement (not Respondents). <i>See</i> Part I <i>supra</i> (refer to fact section; Ex K, October 2017 and April 2018 payments). Moreover, accountings have been made and approved for the time periods of 2014 through 2016 disclosing such payments. (<i>See</i> Tr. of March 29, 2018, Hrg.)
n. Disclose any and all adjustments made to the LLC Note based on the Valuation	As set forth in ¶ 18.f., neither the Purchase Agreement nor LLC Note require an adjustment. Moreover, the "adjusted purchase price" (\$4.7 million adjustment) raising the overall price to \$29.9 million based on WVA's valuation has been paid. <i>See</i> ¶ 18.a.

19. Because the foregoing remedies are either moot or not required pursuant to the terms of the Purchase Agreement, Respondents request summary judgment as to Prayer 1.

WHEREFORE, Respondents respectfully request that this *MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR PARTIAL SUMMARY JUDGMENT ON PETITIONER'S FIRST PRAYER FOR RELIEF* be set for hearing and that, after hearing the matters of this Petition, this Court enter an order as follows:

1. Finding that proper Notice of Hearing was duly given as required by law;
2. Granting summary judgment or judgment on the pleadings as to Petitioner's First Prayer for Relief; and

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⁸ Of course, it is Respondents' position that subcategories a. through k. are moot or otherwise not supported by the terms of the Purchase Agreement. *See* ¶¶ 18.a. through k. *supra*.

1 3. Any such other relief as this Court deems proper.

2 Dated this 25th day of April, 2018.

3 **CAMPBELL & WILLIAMS**

4 J. Colby Williams (NSB#5549)
5 700 S. Seventh Street
6 Las Vegas, NV 89101
7 Telephone: (702) 382-5222
8 Facsimile: (702) 382-0540
9 Jcw@campbellandwilliams.com
10 and

11 **DICKINSON WRIGHT, PLLC**

12 

13 Elizabeth Brickfield, Esq. (NSB #6236)
14 Var E. Lordahl, Esq. (NSB #12028)
15 8363 W. Sunset Road, Suite 200
16 Las Vegas, Nevada 89113
17 Telephone: (702) 550-4400
18 Facsimile: (844) 670-6009
19 ebrickfield@dickinsonwright.com
20 *Counsel for Respondents*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 25th day of April, 2018, I caused a copy of the foregoing
3 **MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR PARTIAL SUMMARY**
4 **JUDGMENT ON PETITIONER'S FIRST PRAYER FOR RELIEF** to be served through the
5 Eighth Judicial District Court's electronic filing system, as well as by U.S. Mail, first class postage
6 fully prepaid, addressed to the following parties:

7
8 Mark A. Solomon, Esq.
9 Dana A. Dwiggin, Esq.
10 SOLOMON DWIGGINS & FREER, LTD
11 9060 West Cheyenne Avenue
12 Las Vegas, Nevada 89129
13 msolomon@sdfnvlaw.com
14 ddwiggin@sdfnvlaw.com
15 *Counsel for Scott Canarelli*

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17
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27
28



An employee of Dickinson Wright PLLC

INDEX OF EXHIBITS

EXHIBITS	DESCRIPTION	PAGES
A.	May 31, 2013 Purchase Agreement	1 - 20
B.	Exhibit 12 to Petition at 94; attached hereto as Exhibit B are excerpted pages from the WVA Valuation	21 – 26
C.	Wire Transfer Bates Stamped RESP0037423 and 0037425	27 – 29
D.	July 25, 2017 Correspondence from J. Colby Williams	30 – 33
E.	October 31, 2017 Check to Scott L. Canarelli in the amount of \$2,191,422.56, Bates Stamped RESP0037466.	34 – 35
F.	November 13, 2017 Correspondence from SJA Acquisitions, LLC, Bates Stamped RESP0086836 – 0086837.	36 – 38
G.	March 12, 2014 Notice to Defer to Principal, Bates Stamped RESP0012733.	39 – 40
H.	July 28, 2017, E. Lubbers Letters to SJA Acquisitions and Siblings Trusts, Bates Stamped RESP0037379-84, RESP0037385-92.	41 – 55
I.	July 31, 2017 Wire transfer and back up documents Bates Stamped RESP0037419-0037420 and 0037422	56 – 59
J.	July 31, 2017 Wire transfer and back up Bates Stamped RESP0037430-0037432; RESP0037439-0037441; and RESP0037448-50.	60 - 69

1 **DEC**
2 J. Colby Williams (NSB#5549)
3 Campbell & Williams
4 700 S. Seventh Street
5 Las Vegas, NV 89101
6 Telephone: (702) 382-5222
7 Facsimile: (702) 382-0540
8 jcw@campbellandwilliams.com

9 and

10 Elizabeth Brickfield, Esq. (NSB #6236)
11 Var E. Lordahl, Esq. (NSB #12028)
12 Joel Z. Schwarz (NSB#9181)
13 DICKINSON WRIGHT, PLLC
14 8363 W. Sunset Road, Suite 200
15 Las Vegas, Nevada 89113
16 Telephone: (702) 550-4400
17 Facsimile: (844) 670-6009
18 ebrickfield@dickinsonwright.com

19 *Counsel for Respondents*

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 In the Matter of:

23 SCOTT LYLE GRAVES CANARELLI
24 IRREVOCABLE TRUST, dated February 24,
25 1998.

Case No.: P-13-078912-T
Dept. No.: 26

Date of Hearing:
Time of Hearing:

26 **DECLARATION OF LAWRENCE CANARELLI IN SUPPORT OF RESPONDENTS'**
27 **MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR PARTIAL SUMMARY**
28 **JUDGMENT ON PETITIONER'S FIRST PRAYER FOR RELIEF**

I, LAWRENCE CANARELLI, declare under penalty of perjury:

1. I am LAWRENCE CANARELLI, a Respondent in Case No. P-13-078912-T, In the Matter of The Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998, pending before Department 26 of the District Court, Probate Division, Clark County, Nevada.

2. I submit this Declaration in support of the MOTION FOR JUDGMENT ON THE PLEADINGS AND/OR PARTIAL SUMMARY JUDGMENT ON PETITIONER'S FIRST PRAYER FOR RELIEF.

3. Exhibit "A" to the Motion, the Purchase Agreement, is a true and accurate copy of the Purchase Agreement.

1 4. Exhibit "B" to the Motion, excerpts of the WVA Valuation of the Trust's assets, is a
2 true and accurate copy of excerpts of the Valuation.

3 5. It is undisputed that the payments referenced in Paragraph 4 (e)(i)-(ii) and
4 Paragraph 5 (b)(i)-(ii) were paid.

5 6. I make these Declarations under penalties of perjury.

6
7
8 DATED this 25TH day of April, 2018.

9 
10 LAWRENCE CANARELLI

EXHIBIT A

AGREEMENT

This agreement ('Agreement') is entered into this 31 day of May, 2013, and effective March 31, 2013 by and among the Scott Lyle Graves Canarelli Irrevocable Trust (Edward C. Lubbers, Family Trustee ('Seller')) and SJA Acquisitions, LLC, a Nevada limited liability company (LLC Purchaser), Jeffrey Lawrence Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee, Stacia Leigh Lemke Irrevocable Trust, Lawrence D. Canarelli, family trustee and Alyssa Lawren Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ('Corp Purchasers').

RECITALS

- A. Seller is the owner of minority interests in certain limited liability companies ('LLCs') and certain corporations ('Corporations') that comprise the Nevada home building operation commonly known as 'American West'. The LLCs and The Corporations are listed on Exhibit 'A'. Exhibit A also shows Seller's ownership interest in each LLC and each Corporation. The Corporations are each taxed as an S Corporation taxpayer.
- B. The LLCs, Corporations and Seller are borrowers under that certain Term Loan Credit Agreement dated as of December 31, 2009 with California Bank & Trust, Wells Fargo Bank, National Association and additional lenders ('Credit Agreement'). The LLCs and the Corporations, under the Credit Agreement, are included in the term, and are referred to as, members of the American West Group of Borrowers. Seller, along with the other owners of the LLCs and the Corporations, are borrowers under the Credit Agreement.
- C. Pursuant to the Credit Agreement, Seller, along with the other borrowers (including the LLCs and the Corporations) are jointly and severally liable for the amount due and owing, at any time, under the Credit Agreement.
- D. Pursuant to the Credit Agreement, Seller, along with the other borrowers (excluding Lawrence D. Canarelli and Heidi Canarelli), is precluded from receiving any cash distributions from any of the LLCs or the Corporations, including any distribution that would be attributable to Seller's ownership interests in the LLCs and the Corporations. Lawrence D. Canarelli and Heidi Canarelli are entitled to limited distributions.
- E. The Credit Agreement matures in October, 2013. The American West Group of Borrowers will not have sufficient cash at maturity to pay off the Credit Agreement. Discussions have begun with certain of the lenders for either an extension of the current Credit Agreement or a new credit agreement.
- F. It is anticipated that a new credit agreement or an extension to the current Credit Agreement will continue to: (1) require Seller to be jointly and severally liable for the full amount due, and (2) prohibit distributions from the LLCs or the Corporations to Seller.
- G. Scott Lyle Graves Canarelli ('Scott') is the grantor and beneficiary of Seller. Lawrence D. Canarelli and Heidi Canarelli were the Family Trustees of the Seller, but have resigned, and appointed Edward C. Lubbers ('Independent Trustee') as Family Trustee ('Trustee').

H. Scott has indicated to the Trustee certain needs that he has for available funds to provide for his family and certain concerns that he has in regard to management of Seller by the prior Family Trustee.

I. The Trustee and the Independent Trustee believe that the restriction on distributions currently in effect under the Credit Agreement, and likely to be in effect under a new credit agreement, will make providing cash to Scott difficult, and to make cash available would risk a default under the Credit Agreement.

J. The Trustee and the Independent Trustee believe the unlimited joint and several liability of Seller creates an unacceptable level of risk for Seller, especially in light of the cash needs of Scott and the distribution restriction.

K. In order to avoid joint and several liability under the Credit Agreement, and to provide available funds to Scott, Seller desires to sell Seller's ownership interests in the: (1) LLCs to the LLC Purchaser, and (2) Corporations to the Corp Purchasers (to maintain S corporation tax status). Each such sale shall be pursuant to the terms and provisions of this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1. The above recitals are hereby incorporated into this Agreement and, by such incorporation, shall be considered terms and provisions of this Agreement. Exhibit A is hereby incorporated into this Agreement, along with all other exhibits referenced herein.
2. Seller shall sell all of its ownership interests in the LLCs to the LLC Purchaser, and the LLC Purchaser shall purchase all of the ownership interests of Seller in the LLCs (the "LLC Sale Interests") for the LLC Sale Interests Purchase Price, as defined in Section 3. Seller shall sell all of its ownership interests in the Corporations to the Corp Purchasers, and the Corp Purchasers shall purchase all of the ownership interests of Seller in the Corporations (the "Corporation Sale Interests") for the Corporation Sale Interests Purchase Price, as defined in Section 3.
3. The LLC Sale Interests Purchase Price shall be \$15,801,913. The Corporation Sale Interests Purchase Price shall be \$9,454,861. In each case, the Purchase Price shall be the sum of the enterprise for each LLC and each Corporation, as set forth on Exhibit A. The LLC Sale Interests Purchase Price and/or the Corporation Sale Interests Purchase Price shall be increased, but not decreased, based upon a review of the enterprise value of each LLC and each Corporation by a third party analyst, to be conducted not less than 120 days after the date of this Agreement.
4. The LLC Sale Interests Purchase Price shall be paid: (a) \$1,000,000 in cash, and (b) the balance of the LLC Sale Interests Purchase Price by a promissory note ("LLC Note"), substantially in the form of Exhibit "B", which shall earn interest at the Interest Rate (defined herein), and payable in 120 monthly payments of interest, and payments of principal as set forth in the LLC Note.
5. The Corporation Sale Interests Purchase Price shall be paid: (a) \$1,000,000 in cash, and (b) the balance of the Corporation Sale Interests Purchase Price by a promissory note ("Corp Note"),

substantially in the form of Exhibit "C", which shall earn interest at the Interest Rate (defined herein), and payable in 120 monthly payments of interest, and payments of principal as set forth in the Corp Note.

6. The LLC Note and the Corp Note shall be personally guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally, by a guaranty substantially in the form of Exhibit "D" ("Guaranty").
7. The "Interest Rate" for the LLC Note and the Corp Note shall be computed as follows: the Interest Rate shall equal the interest rate payable by the United States on its 10 Year Bond, as in effect at the date of this Agreement, plus 200 basis points, but shall be, as of the 1st day of the 61st month following the date of each Note, not less than the interest rate payable by the United States on its 10 Year Bond, as in effect on the 1st day of the 60th month following the date of each Note, in all cases compounded annually.
8. In light of the familiarity of each of the parties with the LLCs, Corporations, LLC Sale Interests, Corporation Sale Interests, the Credit Agreement, power and authority of the individual parties to enter into, and perform this Agreement, title to the real properties owned and the business of American West, all parties waive warranties and representations from each other. In addition, LLC Purchaser and Corp Purchasers agree to assume all obligations of Seller.
9. The LLC Purchaser and the Corp Purchasers, jointly and severally, agree to indemnify Seller against, and agree to hold Seller harmless from, any and all losses imposed on or suffered by Seller arising out of the current Credit Agreement, or any other obligation of Seller assumed by LLC Purchaser and/or Corp Purchasers.
10. The sales contemplated by this Agreement, and the Guaranty, are conditioned on obtaining advance approval from the lenders (or agent lender, as determined by the lenders) under the current Credit Agreement. It is anticipated that the lenders, in providing consent, will condition their consent, and Seller agrees that it will sell the LLC Sale Interests and the Corporation Sale Interests subject to reasonable conditions imposed by lenders. Seller agrees that the following conditions, if imposed, would be reasonable:
 - A. LLC Purchaser must become a borrower under the Credit Agreement or new credit agreement;
 - B. The LLC Note and the Corp Note will be subordinate to the Credit Agreement or new credit agreement;
 - C. No payment will be permitted on the LLC Note or the Corp Note in the event of an uncured default under the Credit Agreement or new credit agreement;
 - D. Seller, as payee of the LLC Note and Corp Note, shall not be permitted to enforce the Guaranty in the event of an uncured default under the Credit Agreement or new credit agreement.

11. The LLC Purchaser, in regard to the LLCs, and the Corp Purchasers, in regard to the Corporations, shall prepare and file all tax returns that may be necessary to file as a result of the sales contemplated by this Agreement.
12. To the extent it is interpreted that the resignation of Lawrence D. Canarelli and Heidi Canarelli as Family Trustees of Seller renders this Agreement occurring during their incumbency as Family Trustee of Seller, then their entry into this Agreement as Family Trustee of Seller and Family Trustee of the Corp Purchasers is pursuant to authorization provided in each of the Trusts, as required by NRS 163.060.
13. Miscellaneous.
- A. Entire Agreement: Amendment. Any and all exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part hereof. This Agreement, including all exhibits hereto, is the entire Agreement between the parties pertaining to all matters agreed upon or understood in connection with the joint venture. There are no oral promises conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition may be made to this Agreement except by a written agreement executed by the parties.
- B. Further Assurances. The parties hereto shall execute, acknowledge and deliver such other instruments and documents as may be necessary or appropriate to carry out the full intent and purpose of this Agreement.
- C. Applicable Law. This Agreement and the rights of the parties hereto shall be interpreted, governed and construed in accordance with the laws of the State of Nevada, and venue of any action shall be brought in the U.S. Federal District Court for Nevada, or the State Courts of Nevada, in Clark County.
- D. Section Headings. The section headings in this Agreement are inserted only for convenience and reference and the parties intend that they shall be disregarded in interpreting the terms, covenants, conditions and provisions of this Agreement.
- E. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
- F. Waiver. Either of the parties shall have the right to excuse or waive performance by the other party of any obligation under this Agreement by a writing signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either party of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.
- G. Construction. As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context so requires. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party causing this Agreement or any part of this Agreement to be drafted.

H. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement.

THE NEXT PAGE IS THE SIGNATURE PAGE

In Witness Whereof the parties have executed this Agreement the date first set forth above.

SELLER:

Scott Lyle Graves Canarelli Irrevocable Trust,

By 

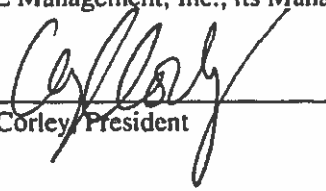
Edward C. Lubbers, Independent trustee acting as Family Trustee

LLC PURCHASER:

SJA Acquisitions, LLC, a Nevada limited liability company

By H&L Management, LLC, its Manager

By H&L Management, Inc., its Manager

By 

Cheryl Corley, President

CORP PURCHASERS:

Jeffrey Lawrence Graves Canarelli Irrevocable Trust,

Stacia Leigh Lemke Irrevocable Trust,

Alyssa Lawren Graves Canarelli Irrevocable Trust,

By 

Lawrence D. Canarelli, family trustee of each

EXHIBIT A
LLCs and Corporations

See attached

EXHIBIT A

Scott Canarelli Irrevocable Trust
Sale of ownership interests
As of 3-31-2013

	Percent Owned	BOOK VALUE	ADJUSTMENT	ENDING ENTERPRISE VALUE	ACQUISITION		ACQUIRING ENTITY	ACQUIRING INDIVIDUAL TRUSTS
					SJA	TRUSTS		
Brentwood 1, LLC	13.00	1,300.00	-	1,300.00	1,300.00			
Bridgewater 1, LLC	13.00	20,128.00	-	20,128.00	20,128.00			
Brookside 1, LLC	13.00	423,222.00	-	423,222.00	423,222.00			
Camel Hills, LLC	13.00	160,414.00	-	160,414.00	160,414.00			
Fairmont 2, LLC	13.00	20,832.00	-	20,832.00	20,832.00			
Highlands Collection 1, LLC	13.00	329,574.00	-	329,574.00	329,574.00			
Inverness 2010, LLC	13.00	490,145.00	-	490,145.00	490,145.00			
Kensington 2, Inc	13.00	462,661.00	-	462,661.00	462,661.00			462,661.00
Kingsbridge 2, LLC	13.00	137,606.00	-	137,606.00	137,606.00			
Lexington 1, LLC	13.00	310,386.00	-	310,386.00	310,386.00			
Lexington 2, LLC	13.00	1,300.00	-	1,300.00	1,300.00			
Newcastle 1, LLC	13.00	52,455.00	-	52,455.00	52,455.00			
Reserve 1, LLC	13.00	286,673.00	-	286,673.00	286,673.00			
Reserve 2, LLC	13.00	1,300.00	-	1,300.00	1,300.00			
Silverado Springs 2, LLC	13.00	386,796.00	-	386,796.00	386,796.00			
Silverado Springs 3, LLC	13.00	81,769.00	-	81,769.00	81,769.00			
Silverado Summit, LLC	13.00	360,242.00	-	360,242.00	360,242.00			
Stonebridge 1, LLC	13.00	141,918.00	-	141,918.00	141,918.00			
Woodbridge 1, Inc.	13.00	1,025,347.00	-	1,025,347.00	1,025,347.00			1,025,347.00
Woodbridge 2, LLC	13.00	318,394.00	-	318,394.00	318,394.00			
American West Development, Inc.	8.44	820,230.00	(820,230.00)	-	-			-
AWH Ventures, Inc	10.00	(11,772,862.00)		(11,772,862.00)	(11,772,862.00)			(11,772,862.00)
Model Renting 2008, LLC	13.00	592,749.00	-	592,749.00	592,749.00			
Model Renting 2009, LLC	13.00	285,132.00	-	285,132.00	285,132.00			
Model Renting 2010, LLC	13.00	562,593.00	-	562,593.00	562,593.00			
Model Renting 2012, LLC	13.00	444,041.00	-	444,041.00	444,041.00			
Model Renting Company, Inc.	10.00	2,496,753.00	-	2,496,753.00	2,496,753.00			2,496,753.00
Canfam Holdings, LLC	13.00	8,374,149.00	917,991.00	9,292,140.00	9,292,140.00			
Heritage 2, Inc	13.00	393,976.00	-	393,976.00	393,976.00			393,976.00

EXHIBIT A

**Scott Canarelli Irrevocable Trust
Sale of ownership interests
As of 3-31-2013**

	Percent Owned	BOOK VALUE	ADJUSTMENT	ENDING ENTERPRISE VALUE	ACQUIRING ENTITY	
					SJA ACQUISITION	INDIVIDUAL TRUSTS
Arizona Land Investments, Inc.	10.00	(512,712.00)		(512,712.00)		(512,712.00)
American West Home Sellers, Inc.	20.00	9,988.00		9,988.00		9,988.00
Indiana Investments, Inc.	10.00	781,280.00	-	781,280.00		781,280.00
SJSA Investments, LLC		-		-		
SJSA Ventures, LLC	25.00	1,100,804.00		1,100,804.00	1,100,804.00	
Colorado Housing Investments, Inc.	10.00	1,695,232.00		1,695,232.00		1,695,232.00
Colorado Land Investments 2	10.00	4,688.00	-	4,688.00		4,688.00
Colorado Land Investments, Inc	10.00	10,133,157.00		10,133,157.00		10,133,157.00
Note Receivable AWH Ventures	100.00	4,737,353.00		4,737,353.00		4,737,353.00
TOTALS		25,159,013.00	97,761.00	25,256,774.00	15,801,913.00	9,454,861.00

EXHIBIT B
PROMISSORY NOTE
(LLCs)

\$14,801,913.00

Las Vegas, Nevada
March 31, 2013

1. **Principal Obligation and Interest.** FOR VALUE RECEIVED, SJA Acquisitions, LLC, a Nevada limited liability company ("Borrower"), unconditionally promises to pay to Scott Lyle Graves Canarelli Irrevocable Trust, Edward C. Lubbers, trustee (the "Lender"), or order or the holder of this Note ("Holder") at 8345 West Sunset Road, Suite 250, Las Vegas, Nevada 89113, or at such other place as the Lender or Holder may designate in writing, in currently available funds of the United States, the principal sum of Fourteen Million Eight Hundred One Thousand Nine Hundred Thirteen Dollars (\$14,801,913.00) ("Principal"), or so much thereof as may be due hereunder, together with interest on the unpaid Principal equal to the interest rate payable by the United States on its 10 Year Bond, as in effect at the date of this Note, plus 200 basis points, but shall be, as of the 1st day of the 61st month following the date of this Note, not less than the interest rate payable by the United States on its 10 Year Bond, as in effect on the 1st day of the 60th month following the date of this Note ("Interest Rate"), in all cases compounded annually. As of the date of this Note, the Interest Rate is 3.70% per annum.

The Interest Rate shall be calculated on the basis of the actual number of days elapsed over a 360 day year. Whenever there is a default by Borrower under this Note, the Interest Rate on the unpaid principal balance shall, at the option of the Lender, be at the Default Rate set forth below.

2. **Term and Payment Terms.**

A. This Note shall be for Ten (10) Years ("Term"), and all accrued and unpaid interest and all unpaid Principal shall be due and payable on the date which is Ten (10) years from the date of this Note ("Maturity Date").

B. Interest on the unpaid Principal shall be paid monthly in arrears. The first of the monthly installments shall be paid on April 1, 2013, in the amount of Forty Five Thousand Six Hundred Thirty Nine and 23/100 (\$45,639.23) Dollars, and subsequent payments shall be made on or before the first day of each following month.

C. Annual payments of Principal shall be One Million (\$1,000,000) Dollars each ("Annual Principal Payment"). Each Annual Principal Payment shall be made in semi-annual installments, the first of which shall be paid on October 1, 2013, and subsequent semi-annual payments shall be made every six (6) months thereafter. At the end of the Term, the then unpaid balance of principal shall be due and payable on the Maturity Date. Lender, but not Holder, shall have the right to defer payment by Borrower of all or any part of an Annual Principal Payment, in which event any deferred payment of an Annual Principal Payment shall be made by Borrower to Holder within thirty (30) days of a written demand therefore.

All payments received hereunder shall be applied first to the payment of accrued interest and the balance applied to Principal. Borrower will make payments required hereunder to the Lender's address indicated in Section 1 above, or at a different place if required by the Lender.

3. Prepayment. Notwithstanding Section 2 (C), Borrower may prepay the entire Principal balance at any time without penalty.

4. Guaranty. This Note is guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally.

5. Default and Acceleration. The Principal unpaid balance, plus accrued interest, shall, at the option of the Lender or Holder, become due and payable without notice or demand upon Borrower's failure to pay any installment of Principal or interest due on this Note. In the event that any amount due under this Note is reduced to judgment, or if Borrower fails to make any payment provided for in this Note when due and is not cured within ten (10) days after written notice is sent to Borrower of such default, the Lender or Holder may, at its option declare the unpaid balance of Principal and the accrued unpaid interest due and payable although the time of maturity as expressed herein shall not have arrived, and, regardless whether the Lender so accelerates, the total of the unpaid balance of Principal and the then accrued and unpaid interest (past due interest being compounded monthly on the last day of each calendar month to the fullest extent permitted by law) shall then begin accruing interest at the Interest Rate plus four percent (4.0%) per annum (the "Default Rate"), until such time as all past due payments and accrued interest are paid. At that time, the Default Rate will end and the Interest Rate will again be applicable. Borrower acknowledges that the effect of this Default Rate provision could operate to compound some of the interest obligations due, and Borrower hereby expressly consents to such compounding should it occur.

6. Attorneys' Fees and Costs. Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or an attorney be retained by the Lender for collection, Borrower agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement, including any fees incurred in connection with such proceedings or collection of this Note and/or enforcement of the Lender's rights with respect to the administration, supervision, preservation or protection of, or realization upon, any property securing payment hereof, whether or not an action is filed in connection therewith.

7. Miscellaneous.

a. The failure of the Lender to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Borrower to the Lender, or constitute a waiver by the Lender of, or otherwise affect any of, the Lender's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

b. The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

c. Borrower waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest, notice of nonpayment and any other notice or formality and any right of offset.

d. All titles used in this Note are intended solely for convenience and reference; said titles shall not affect any terms, provisions, or meanings of this Note.

e. No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by a duly authorized officer of the Lender, and then only to the extent therein specifically set forth.

f. All rights and remedies provided to the Lender or the holder of this Note shall be cumulative and shall be in addition to all other rights and remedies provided at law or in equity and all such rights and remedies may be exercised singly, successively and/or concurrently.

g. Time is of the essence hereof. Interest not paid when due shall earn interest as principal.

h. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Note.

i. All notices given to or made upon Borrower shall be deemed to have been given or made when deposited in the U.S. Mail and addressed to Borrower at the address indicated below.

IN WITNESS WHEREOF, this Note has been executed effective the date and place above written.

SJA Acquisitions, LLC, a Nevada limited liability company
By H&L Management, LLC, its Manager
By H&L Management, Inc., its Manager

By _____
Cheryl Corley, President

EXHIBIT C

PROMISSORY NOTE
(Corps)

\$8,454,861.00

Las Vegas, Nevada
March 31, 2013

1. **Principal Obligation and Interest.** FOR VALUE RECEIVED, Jeffrey Lawrence Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee, Stacia Leigh Lemke Irrevocable Trust, Lawrence D. Canarelli, family trustee and Alyssa Lawren Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Borrowers"), severally and unconditionally promise to pay to Scott Lyle Graves Canarelli Irrevocable Trust, Edward C. Lubbers, trustee (the "Lender"), or order or the holder of this Note ("Holder") at 8345 West Sunset Road, Suite 250, Las Vegas, Nevada 89113, Las Vegas, Nevada, or at such other place as the Lender may designate in writing, in currently available funds of the United States, the principal sum of Eight Million Four Hundred Fifty Four Thousand Eight Hundred Sixty One Dollars (\$8,454,861.00) ("Principal"), or so much thereof as may be due hereunder, together with interest on the unpaid Principal equal to the interest rate payable by the United States on its 10 Year Bond, as in effect at the date of this Note, plus 200 basis points, but shall be, as of the 1st day of the 61st month following the date of this Note, not less than the interest rate payable by the United States on its 10 Year Bond, as in effect on the 1st day of the 60th month following the date of this Note ("Interest Rate"), in all cases compounded annually. As of the date of this Note, the Interest Rate, is 3.70% per annum.

The interest rate for this Note shall be calculated on the basis of the actual number of days elapsed over a 360 day year. Whenever there is a default by Borrower under this Note, the interest rate on the unpaid principal balance shall, at the option of the Lender, be at the Default Rate set forth below.

2. **Term and Payment Terms.**

A. This Note shall be for Ten (10) Years ("Term"), and all accrued and unpaid Interest and all unpaid Principal shall be due and payable on the date which is Ten (10) years from the date of this Note ("Maturity Date").

B. Interest on the unpaid Principal shall be paid monthly in arrears. The first of the monthly installments shall be paid on April 1, 2013, in the amount of Twenty Six Thousand Sixty Nine and 15/100 (\$26,069.15) Dollars, and subsequent payments shall be made on or before the first day of each following month.

C. Annual payments of Principal shall be One Million (\$1,000,000) Dollars each ("Annual Principal Payment"). Each Annual Principal Payment shall be made in semi-annual installments, the first of which shall be paid on October 1, 2013, and subsequent semi-annual payments shall be made every six (6) months thereafter. At the end of the Term, the then unpaid balance of principal shall be due and payable on the Maturity Date. Lender, but not Holder, shall have the right to defer payment by Borrower of all or any part of an Annual Principal Payment, in which event any deferred payment of an Annual Principal Payment shall be made by Borrower to Holder within thirty (30) days of a written demand therefore.

All payments received hereunder shall be applied first to the payment of accrued interest and the balance applied to principal. Borrower will make payments required hereunder to the Lender's address indicated in Section 1 above, or at a different place if required by the Lender.

3. Prepayment. Notwithstanding Section 2(C), Borrower may prepay the entire principal balance at any time without penalty.

4. Guaranty. This Note is guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally.

5. Default and Acceleration. The principal unpaid balance, plus accrued interest, shall, at the option of the Lender or any holder of this Note, become due and payable without notice or demand upon Borrower's failure to pay any installment of principal or interest due on this Note. In the event that any amount due under this Note is reduced to judgment, or if Borrower fails to make any payment provided for in this Note when due and is not cured within ten (10) days after written notice is sent to Borrower of such default, the Lender, or any holder of this Note, may, at its option declare the unpaid balance of principal and the accrued unpaid interest due and payable although the time of maturity as expressed herein shall not have arrived, and, regardless whether the Lender so accelerates, the total of the unpaid balance of principal and the then accrued and unpaid interest (past due interest being compounded monthly on the last day of each calendar month to the fullest extent permitted by law) shall then begin accruing interest at the rate stated in Section 1 above, plus four percent (4.0%) per annum (the "Default Rate"), until such time as all past due payments and accrued interest are paid. At that time, the interest rate will revert to that rate provided in Section 1. Borrower acknowledges that the effect of this Default Rate provision could operate to compound some of the interest obligations due, and Borrower hereby expressly consents to such compounding should it occur.

6. Attorneys' Fees and Costs. Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or an attorney be retained by the Lender for collection, Borrower agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement, including any fees incurred in connection with such proceedings or collection of this Note and/or enforcement of the Lender's rights with respect to the administration, supervision, preservation or protection of, or realization upon, any property securing payment hereof, whether or not an action is filed in connection therewith.

7. Miscellaneous.

a. The failure of the Lender to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Borrower to the Lender, or constitute a waiver by the Lender of, or otherwise affect any of, the Lender's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

b. The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

c. Borrower waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest, notice of nonpayment and any other notice or formality and any right of offset.

d. All titles used in this Note are intended solely for convenience and reference: said titles shall not affect any terms, provisions, or meanings of this Note.

e. No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by a duly authorized officer of the Lender, and then only to the extent therein specifically set forth.

f. All rights and remedies provided to the Lender or the holder of this Note shall be cumulative and shall be in addition to all other rights and remedies provided at law or in equity and all such rights and remedies may be exercised singly, successively and/or concurrently.

g. Time is of the essence hereof. Interest not paid when due shall earn interest as principal.

h. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Note.

i. All notices given to or made upon Borrower shall be deemed to have been given or made when deposited in the U.S. Mail and addressed to Borrower at the address indicated below.

IN WITNESS WHEREOF, this Note has been executed effective the date and place above written.

Jeffrey Lawrence Graves Canarelli Irrevocable Trust,
Stacia Leigh Lemke Irrevocable Trust,
Alyssa Lawren Graves Canarelli Irrevocable Trust.

By _____
Lawrence D. Canarelli, family trustee of each

EXHIBIT D

PAYMENT GUARANTY

This Payment Guaranty ("Guaranty") is made as of _____, 2013, by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally (the "Guarantor") in favor of the Scott Lyle Graves Canarelli Irrevocable Trust, Edward C. Lubbers, family trustee ("Lender").

Factual Background

- A. Guarantor agreed to execute this Guaranty to induce Lender to accept two (2) promissory notes (the "Notes"), one made by SJA Acquisitions, a Nevada limited liability company ("LLC Purchaser"), and one made by Jeffrey Lawrence Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee, Stacia Leigh Lemke Irrevocable Trust, Lawrence D. Canarelli, family trustee and Alyssa Lawren Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Corp Purchasers"). LLC Purchaser and Corp Purchasers may be referred to as Borrowers or Borrower.
- B. The LLC Purchaser has executed a Note in the amount of Fourteen Million Eight Hundred One Thousand Nine Hundred Thirteen Dollars (\$14,801,913.00) (the "LLC Note").
- C. The Corp Purchasers have executed a Note in the amount of Eight Million Four Hundred Fifty Four Thousand Eight Hundred Six One Dollars (\$8,454,861.00) (the "Corp Note").
- D. Lender would not accept the Notes without this Guaranty, and each person constituting Guarantor, has received good and valuable consideration for its agreements set forth herein.

Guaranty

1. Guaranty of Notes. Guarantor unconditionally guarantees to Lender the full payment of each Note, and unconditionally agrees to pay Lender the full amount of each Note. This is a guaranty of payment, not of collection. If Borrower defaults in the payment when due of either Note or any part of it and such default is not cured within thirty (30) days after written demand, Guarantor shall in lawful money of the United States pay to Lender or order, on demand, all sums due and owing on the Note, including all interest, charges, fees and other sums, costs and expenses.

2. Rights of Lender. Guarantor authorizes Lender to perform any or all of the following acts at any time in its sole discretion, all without notice to Guarantor and without affecting Guarantor's obligations under the Guaranty:

(a) Lender may alter any terms of the Note or any part of it by agreement with Borrowers or one of them or pursuant to any other provision of either Note, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Note or any part of it.

(b) Lender may apply any payments or recoveries from Borrowers, Guarantor or any other source, to Borrower's obligations under Borrower's Note in such manner, order and priority as

Lender may elect, whether or not those obligations are guaranteed by this Guaranty or secured at the time of the application.

(c) Lender may release Borrowers or one of them of its liability for the Note or any part of it.

3. Guaranty to be Absolute. Guarantor expressly agrees that until each Note is paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor shall not be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

(b) Any waiver, extension, modification, forbearance, delay or other act or omission of Lender, or its failure to proceed promptly or otherwise as against either Borrower or Guarantor;

(c) Any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrowers or one of them; or

(d) Any dealings occurring at any time between Borrower or one of them and Lender, whether relating to the Notes or otherwise.

4. Guarantor's Waivers. Guarantor waives:

(a) All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Lender to the fullest extent permitted by law;

(b) Any right it may have to require Lender to proceed against Borrowers or one of them, or pursue any other remedy in Lender's power to pursue;

(c) Any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrowers;

(d) Any defense based on: (i) any legal disability of Borrowers or one of them, (ii) any release, discharge, modification, impairment or limitation of the liability of Borrowers to Lender from any cause, whether consented to by Lender or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships ("Insolvency Proceeding") and (iii) any rejection or disaffirmance of either Note, or any part of either Note, or any security held for it, in any such Insolvency Proceedings;

(e) Any defense based on any action taken or omitted by Lender in any Insolvency Proceeding involving Borrowers or one of them, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender to Borrowers in any Insolvency Proceeding, and the taking and holding by Lender of any security for any such extension of credit;

(f) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and of the existence,

creation, or incurring of new or additional indebtedness, and demands and notices of every kind except for any demand or notice by Lender to Guarantor expressly provided for in Section 1;

(g) Any defense based on or arising out of any defense that Borrowers may have to the payment or performance of either Note or any part of either Note.

5. Waivers of Subrogation and Other Rights.

(a) Upon a default by Borrower or one of them, Lender in its sole discretion, without prior notice to or consent of Guarantor, may elect to: (i) compromise or adjust either Note or any part of either Note or make any other accommodation with Borrowers or Guarantor, or (ii) exercise any other remedy against Borrowers or any security. No such action by Lender shall release or limit the liability of Guarantor, who shall remain liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Lender, whether contractual or arising by operation of law or otherwise.

(b) Regardless of whether Guarantor may have made any payments to Lender, Guarantor forever waives: (i) all rights of subrogation, all rights of indemnity, and any other rights to collect reimbursement from Borrowers for any sums paid to Lender, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise, and (ii) all rights to enforce any remedy that Lender may have against Borrowers.

6. Revival and Reinstatement. If Lender is required to pay, return or restore to Borrower or any other person any amounts previously paid on the Notes because of any Insolvency Proceeding of Borrowers, any stop notice or any other reason, the obligations of Guarantors shall be reinstated and revived and the rights of Lender shall continue with regard to such amounts, all as though they had never been paid.

7. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Nevada.

8. Costs and Expenses. If any lawsuit or arbitration is commenced which arises out of, or which relates to this Guaranty or the Notes, the prevailing party shall be entitled to recover from each other party such sums as the court or arbitrator may adjudge to be reasonable attorneys' fees (including allocated costs for services of in-house counsel) in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other situations, including any Insolvency Proceeding, Guarantor agrees to pay all of Lender's costs and expenses, including attorneys' fees which may be incurred in any effort to collect or enforce the Note or any part of it or any term of this Guaranty. From the time(s) incurred until paid in full to Lender, all sums shall bear interest at the interest rate set forth in the Notes.

9. Integration; Modifications. This Guaranty (a) integrates all the terms and conditions mentioned in or incidental to this Guaranty, (b) supersedes all oral negotiations and prior writings with respect to its subject matter, and (c) is intended by Guarantor and Lender as the final expression of the agreement with respect to the terms and conditions set forth in this Guaranty and as the complete and exclusive statement of the terms agreed to by Guarantor and Lender. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in this Guaranty. This Guaranty may not be modified except in a writing signed by both Lender and Guarantor.

10. Miscellaneous. The death or legal incapacity of any Guarantor shall not terminate the obligations of such Guarantor or any other Guarantor under this Guaranty. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several. The illegality or unenforceability of one or more provisions of this Guaranty shall not affect any other provision. Any Guarantor who is married agrees that Lender may look to all of his or her community property and separate property to satisfy his or her obligations under this Guaranty. Time is of the essence in the performance of this Guaranty by Guarantor.

GUARANTOR:

Lawrence D. Canarelli

Heidi Canarelli

EXHIBIT B

**Valuation
Ownership Interests Held By
Scott Lyle Canarelli Irrevocable Trust
Subject To Purchase Agreement
As of March 31, 2013**

**Prepared By:
Western Valuation Advisors
2441 Tech Center Court, Suite 117
Las Vegas, Nevada 89128**

Based on the information presented above, WVA's market value adjustment is to increase the implied Purchase Agreement value by \$71,449. The market value of Woodbridge 1 was estimated at \$7,958,734 as of the date of valuation resulting in a pro-rata value for SCIT's 13.0 percent interest of \$1,034,635 as of March 31, 2013 (See Exhibits 24 and 49).

Market Adjustment to SCIT Value Under Purchase Agreement

Upward market value adjustment of \$9,288.

Note Receivable AWH Ventures

The Purchase Agreement indicated that AWHV owed SCIT a note with a balance of \$4,737,353. On AWHV's March 31, 2013 balance sheet the note balance was indicated to be \$5,637,055. Correspondence with management of AWDI indicated that the note was structured as a letter of credit with interest at 1.7 percent per annum.

The difference in values between the Purchase Agreement and the March 31, 2013 trial balance was due to an adjustment made during the beginning of 2013 to correct overall reporting of the Oakwood Homes asset sale and the sale of land from Thompson River Ranch Land and Investments, LLC and Yampa Telluride Land Investments, LLC, part of the Oakwood Homes asset sale. The difference reflects SCIT's share of income from these two sales.

Accordingly, we have assumed the market value of the note to be \$5,637,055 as of the valuation date.

This increases the Purchase Agreement value by \$899,702.

Summary – Corporate Entity Purchases

Exhibit 49 sets forth a summary of the ownership interests held by

SCIT in the entities discussed above, as well as the enterprise value per the Purchase Agreement, the March 31, 2013 book values, the market values as determined by the appraisals as indicated in Exhibits 14 through 24. The values presented show the value of the entity and SCIT's interest in each respective entity. Finally, Exhibit 49 presents a summary of the difference between the enterprise value per the Purchase Agreement and the market values estimated herein.

As previously mentioned, the value of SCIT's Corporation Sale Interests per the Purchase Agreement was \$9,454,861. The market value of SCIT's Corporation Sale interests was determined to be \$7,581,183. Hence, the market value estimate of SCIT's Corporation Sale Interests in the aforementioned entities is less than the value per the Purchase Agreement by \$1,873,678.

For illustrative purposes, Exhibit 49 also presents the value of each of the "Corporation" entities per the Purchase Agreement (as implied by SCIT's interests), the trial balance book values, and the market values.

SJA Acquisitions, LLC – Purchaser of LLC Entities

Under the Purchase Agreement, SJA Acquisitions, LLC is the purchaser of the LLC entities discussed below.

Brentwood 1, LLC

Brentwood 1, LLC's ("Brentwood") March 31, 2013 balance sheet, as per the trial balance is presented in Exhibit 25. As of March 31, 2013, Brentwood's sole asset was cash totaling \$10,000.

The company did not carry any liabilities resulting in a book equity value of \$10,000 as of March 31, 2013.

The Purchase Agreement also indicated an enterprise value for SCIT's 13.0 ownership interest in Brentwood of \$1,300, implying

The market value estimate discussed in the prior section indicated the market value estimate for the Corporate” Entities totaled \$21,023,654 and the amount allocated to SCIT based on its ownership interest in the various Corporate Entities under the Purchase Agreement totaled \$7,581,183. This is \$1,873,678 less than the value set forth in the Purchase Agreement. The primary difference between the cumulative value set forth in the Purchase Agreement for SCIT’s interests in the Corporate Entities is associated with SCIT’s 10 percent ownership interest in Colorado Land Investments, Inc. which resulted in a significant downward adjustment of approximately \$2.3 million for SCIT’s interest. As indicated in the above report, much of this analysis is based upon information provided by management of AWDI. Nevertheless, there would have to be a significant upward adjustment of over \$1.8 million to produce a market value estimate in excess of the value set forth in the Purchase Agreement.

Given that the market value estimate is not greater than the value set forth under the Purchase Agreement, no adjustment is warranted to the value set forth for the Corporate Entities in the Purchase Agreement.

Summary – LLC Entities Market Analysis

As indicated earlier, the purchaser of the LLC Entities referred to in the Purchase Agreement is SJA Acquisition.

Exhibit 50 presents a summary of the entities that were acquired by SJA Acquisition as set forth in the Purchase Agreement.

As indicated on Exhibit 50, the Enterprise Value set forth in the Purchase Agreement totaled \$117,488,670. The amount allocated to SCIT based on its ownership interest in the various entities comprising the LLC Entities under the Purchase Agreement totaled \$15,801,913.

The market value estimate discussed in the prior section indicated the market value estimate for the “LLC Entities” totaled \$153,717,662 and the amount allocated to SCIT based on its

ownership interest in the various entities comprising the LLC Entities under the Purchase Agreement totaled \$20,513,438. This is \$4,711,525 more than the value set forth in the Purchase Agreement and it appears that an adjustment is warranted given the following language set forth in the Purchase Agreement:

"The LLC Sale Interests Purchase Price and/or the Corporation Sale Interests Purchase Price shall be increased, but not decreased, based on a review of the enterprise value of each LLC and each Corporation by a third party analyst, to be conducted not less than 120 days after the date of this Agreement."

In conclusion, based on the assumptions and information presented in the above report, it is WVA's opinion that no adjustment is warranted to the value set forth in the Purchase Agreement associated with the entities designated as "Corporate Entities" in the Agreement. We have however, determined that the value set forth in the Purchase Agreement for the entities designated as "LLCs" under the Agreement, is \$4,711,525 less than the value we have estimated for SCIT's ownership interest in the LLCs.

Scott Canarelli Irrevocable Trust			
	Purchase Agreement Value	Estimated Market Value	Adjustment
Corp. Sale Interests	\$9,454,861	\$7,581,183	No Adjustment
LLC Sale Interests	\$15,801,913	\$20,513,438	\$4,711,525 Increase

EXHIBIT C



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View Wire Transfer Detail

Fed Wire Transfer (FED)

[Cancel](#)[View History](#)Control Number
97072341PAR Number
170731084275Template ID
SP4061

Repeat Code Nickname

Debit Account Number - Debit Account Name
153795157186 - SJA ACQUISITIONS LLCAmount
\$3,292,846.47Send Date (MM/DD/YYYY)
07/31/2017Beneficiary Bank Information (BBK)
Bank ABA (Routing / Transit Number)
121000246Name
Wells Fargo Bank, N.A.

Address Line 2

Address Line 1
420 MontgomeryCity
San FranciscoState or Territory
CA

Bank Account Number

Beneficiary Information (BNF)

Name
Scott Canarelli Irrevocable TrustAccount Number
7703428800

Address Line 1

Address Line 2

City

State or Territory

Notification Email Address
(If populated, email will be sent)

Beneficiary Details Reference for Beneficiary (RFB)

Originator to Beneficiary Information (OBI)

Bank to Bank Information (BBI)

Bank to Bank Information

Originator Information (ORG)

Name
SJA Acquisitions LLC

Account Number

Address Line 1
250 Pilot Road, Suite 140

Address Line 2

City
Las VegasState or Territory
NV[Cancel](#)[View History](#)[Privacy & Security](#) [Site Map](#)

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Scott Canarelli Irr Trust
Interest Calculation on Valuation Adjustment

Valuation Adjustment \$2,837,847.00

Interest Rate 3.70% 360 Day Year

<u>Date</u>	<u>Interest</u>	<u>Accrual</u>
03/31/13	Beginning Date	
12/31/13		\$78,750.25
12/31/14		\$105,000.34
12/31/15		\$105,000.34
12/31/16		\$105,000.34
07/31/17		\$61,250.20
<hr/>		
Totals		455,001.47

2,837,847.00 +
455,001.47 +
002
3,292,848.47 =

EXHIBIT D



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA EMAIL

July 25, 2017

Mark A. Solomon, Esq.
Dana A. Dwiggin, Esq.
Solomon Dwiggin & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: *The Scott Lyle Canarelli Irrevocable Trust – Case No. P-13-078912-T*

Dear Mark/Dana:

I write regarding the above-referenced matter and, in particular, the Petition to Surcharge Trustee and for related relief you filed on June 27, 2017 (the “Petition”).

Having now had the opportunity to review the Petition, it appears you are no longer seeking (or potentially seeking) to set aside the 2013 Purchase Agreement.¹ In light of the foregoing, please be advised that the Trustee is currently making arrangements to collect and have paid to the SCIT the following amounts contemplated by the Purchase Agreement: (i) \$3 million from SJA Acquisitions, which represents deferred principal payments for 2014, 2015, and 2016; and (ii) \$3 million from the Siblings Trusts, which represents deferred principal payments for 2014, 2015, and 2016. The Trustee expects that payment of the foregoing amounts will be made no later than October 1, 2017, the next due date for a semi-annual principal payment. Submitted herewith are draft letters the Trustee intends to deliver this week to effectuate the above.

In addition, the Trustee will have the purchaser pay \$2,837,847 to the SCIT, which represents the adjustment to the Purchase Price, along with applicable interest.

Collection and payment of the foregoing amounts shall not be deemed an admission of any kind as these actions are instead being undertaken to narrow the issues before the Court in light of the current posture of the legal proceedings. For example, payment of the \$2.837 million adjustment to the Purchase Price shall not be construed as agreement with the contract interpretation engaged in by Western Valuation Advisors. To the contrary, all of our clients’ rights,

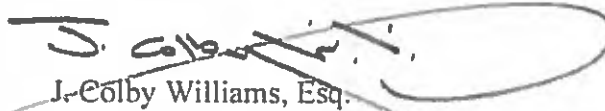
¹ Capitalized terms used herein shall have the same meaning as set forth in the Petition.

Mark A. Solomon, Esq.
Dana A. Dwiggins, Esq.
July 25, 2017
Page 2

positions, claims, and/or defenses are expressly and impliedly reserved and not waived.

Very truly yours,

CAMPBELL & WILLIAMS


J. Colby Williams, Esq.

JCW/

encl. a/s

cc: Ed Lubbers
Elizabeth Brickfield, Esq.
(both via email w/encl.)

The Jeffrey Lawrence Graves Canarelli Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The Stacia Leigh Lemke Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The Alyssa Lawren Graves Canarelli Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The undersigned, Lender under that certain Promissory Note dated March 31, 2013, in the original principal amount of \$8,454,861.00, a copy of which is attached hereto and incorporated herein as Exhibit "A" (the "Note"), hereby notifies the Borrowers under the Note of the following:

1. As of the date of this Notice and until further notice from Lender, Lender shall not defer any future Annual Principal Payments under the Note; and
2. Lender hereby demands that all prior deferred Annual Principal Payments, along with any interest properly incurred thereon pursuant to the terms of the Note, be paid in full to Lender no later than October 1, 2017, the next scheduled principal payment date under the Note.

Dated this ____ day of July, 2017

The Scott Lyle Graves Canarelli Irrevocable Trust

By: Edward C. Lubbers
Its: Trustee

EXHIBIT E

SCOT Scott Lyle Graves

SJAAC061

SJA ACQUISITIONS, LLC

CHECK # 000080

10/31/2017

PO/Inv Nbr	Date	Description	Project ID - Address	PO/Inv Amount	Amount Paid
10-31-17	10/31/17	valuation adj plus intrst		2,191,422.56	2,191,422.56
				CHECK Total	2,191,422.56

CHECK # 000080

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

SJA ACQUISITIONS, LLC
250 Pilot Road, Suite 140
Las Vegas, NV 89119
(702) 736-6434



US Bank

94-169/1212

CHECK #

000080

DATE

10/31/2017

\$ **2,191,422.56

PAY Two Million One Hundred Ninety-One Thousand Four Hundred Twenty-Two and 56/100 US Dollars

PAY TO THE ORDER OF Scott Lyle Graves
Canarelli Irrevocable Trust
250 Pilot Road, Suite 140
Las Vegas, NV 89119

Robert M. Evans
Lord C. H.

THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND COIN REACTIVE INK

⑈000080⑈ ⑆121201694⑆ 153795157186⑈

CONFIDENTIAL

PAGE035

0053
RESP0037466

EXHIBIT F

SJA ACQUISITIONS, LLC

November 13, 2017

HAND DELIVERY

Premier Trust

Mark Dreschler
PREMIER TRUST
4465 South Jones Blvd
Las Vegas, NV 89103

NOV 14 2017

Received

Re: Scott Canarelli Irrevocable Trust Sequestered Account

Dear Mr. Dreschler,

Enclosed please find our check in the amount of \$2,191,422.58, which represents principal in the amount of \$1,873,678.00 and interest in the amount of \$317,744.56 (calculation attached as Exhibit A).

This amount represents the entirety of the "disputed funds" and has been paid to you to hold pursuant to the attached court order (Exhibit B). These funds are to be held in a sequestered trust account and may not be released without a court order. The amount of \$1,873,678.00 of principal represents the excess of the purchase price over Fair Market Value for the minority ownership interests which The Scott Canarelli Irrevocable Trust sold in the May 31, 2013 Agreement (Agreement attached as Exhibit C).

Sincerely,



Lawrence D. Canarelli, President
Investment Manager, Inc., Manager

EXHIBIT A

Scott Canarelli Irr Trust Interest Calculation on Valuation Adjustment

Disputed Funds **\$1,873,678.00**

Interest Rate **3.70%** **360 Day Year**

<u>Date</u>	<u>Interest Accrual</u>
03/31/13	Beginning Date
12/31/13	\$51,994.56
12/31/14	\$69,326.09
12/31/15	\$69,326.09
12/31/16	\$69,326.09
10/31/17	\$57,771.74
<hr/>	
Total	317,744.56

Disputed Funds plus Interest **\$2,191,422.56**

EXHIBIT G

Hand Delivered
3.14.2014

THE SCOTT CANARELLI IRREVOCABLE TRUST

Date: March 12, 2014

To: Lawrence D. Canarelli and Cheryl Corley

Re: Notice to Defer Principal

This letter is addressed to Larry Canarelli on behalf of the Irrevocable Trusts of Jeff, Stacia and Alyssa (Trusts); and to Cheryl Corley as President of H&L Management, Inc., the Manager of H&L Management, LLC, the Manager of SJA Acquisitions, LLC (SJA).

Pursuant to Sections 2 C of the Promissory Notes of each of the Trusts and SJA, Holder does hereby elect to defer the entire Principal payment due April 1, 2104.

Please advise if this notice by US Postal Service will be required. Absent such advice, this notice will be deemed effective.

THE SCOTT CANARELLI IRREVOCABLE TRUST

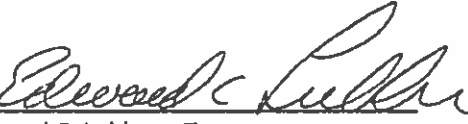
By 
Edward C. Lubbers, Trustee

EXHIBIT H

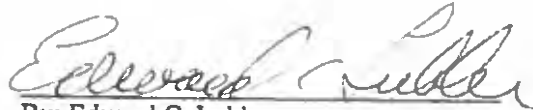
SJA Acquisitions, LLC
c/o Investment Manager, Inc.
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The undersigned, Lender under that certain Promissory Note dated March 31, 2013, in the original principal amount of \$14,801,913.00, a copy of which is attached hereto and incorporated herein as Exhibit "A" (the "Note"), hereby notifies the Borrowers under the Note of the following:

1. As of the date of this Notice and until further notice from Lender, Lender shall not defer any future Annual Principal Payments under the Note; and
2. Lender hereby demands that all prior deferred Annual Principal Payments, along with any interest properly incurred thereon pursuant to the terms of the Note, be paid in full to Lender no later than October 1, 2017, the next scheduled principal payment date under the Note.

Dated this 28 day of July, 2017

The Scott Lyle Graves Canarelli Irrevocable Trust



By: Edward C. Lubbers
Its: Trustee

Exhibit "A"

Exhibit "A"

PROMISSORY NOTE
(LLCs)

\$14,801,913.00

Las Vegas, Nevada
March 31, 2013

1. Principal Obligation and Interest. FOR VALUE RECEIVED, SJA Acquisitions, LLC, a Nevada limited liability company ("Borrower"), unconditionally promises to pay to Scott Lyle Graves Canarelli Irrevocable Trust, Edward C. Lubbers, trustee (the "Lender"), or order or the holder of this Note ("Holder") at 8345 West Sunset Road, Suite 250, Las Vegas, Nevada 89113, or at such other place as the Lender or Holder may designate in writing, in currently available funds of the United States, the principal sum of Fourteen Million Eight Hundred One Thousand Nine Hundred Thirteen Dollars (\$14,801,913.00) ("Principal"), or so much thereof as may be due hereunder, together with interest on the unpaid Principal equal to the interest rate payable by the United States on its 10 Year Bond, as in effect at the date of this Note, plus 200 basis points, but shall be, as of the 1st day of the 61st month following the date of this Note, not less than the interest rate payable by the United States on its 10 Year Bond, as in effect on the 1st day of the 60th month following the date of this Note ("Interest Rate"), in all cases compounded annually. As of the date of this Note, the Interest Rate is 3.70% per annum.

The Interest Rate shall be calculated on the basis of the actual number of days elapsed over a 360 day year. Whenever there is a default by Borrower under this Note, the Interest Rate on the unpaid principal balance shall, at the option of the Lender, be at the Default Rate set forth below.

2. Term and Payment Terms.

A. This Note shall be for Ten (10) Years ("Term"), and all accrued and unpaid interest and all unpaid Principal shall be due and payable on the date which is Ten (10) years from the date of this Note ("Maturity Date").

B. Interest on the unpaid Principal shall be paid monthly in arrears. The first of the monthly installments shall be paid on April 1, 2013, in the amount of Forty Five Thousand Six Hundred Thirty Nine and 23/100 (\$45,639.23) Dollars, and subsequent payments shall be made on or before the first day of each following month.

C. Annual payments of Principal shall be One Million (\$1,000,000) Dollars each ("Annual Principal Payment"). Each Annual Principal Payment shall be made in semi-annual installments, the first of which shall be paid on October 1, 2013, and subsequent semi-annual payments shall be made every six (6) months thereafter. At the end of the Term, the then unpaid balance of principal shall be due and payable on the Maturity Date. Lender, but not Holder, shall have the right to defer payment by Borrower of all or any part of an Annual Principal Payment, in which event any deferred payment of an Annual Principal Payment shall be made by Borrower to Holder within thirty (30) days of a written demand therefore.

All payments received hereunder shall be applied first to the payment of accrued interest and the balance applied to Principal. Borrower will make payments required hereunder to the Lender's address indicated in Section 1 above, or at a different place if required by the Lender.

3. Prepayment. Notwithstanding Section 2 (C), Borrower may prepay the entire Principal balance at any time without penalty.

4. Guaranty. This Note is guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally.

5. Default and Acceleration. The Principal unpaid balance, plus accrued interest, shall, at the option of the Lender or Holder, become due and payable without notice or demand upon Borrower's failure to pay any installment of Principal or interest due on this Note. In the event that any amount due under this Note is reduced to judgment, or if Borrower fails to make any payment provided for in this Note when due and is not cured within ten (10) days after written notice is sent to Borrower of such default, the Lender or Holder may, at its option declare the unpaid balance of Principal and the accrued unpaid interest due and payable although the time of maturity as expressed herein shall not have arrived, and, regardless whether the Lender so accelerates, the total of the unpaid balance of Principal and the then accrued and unpaid interest (past due interest being compounded monthly on the last day of each calendar month to the fullest extent permitted by law) shall then begin accruing interest at the Interest Rate plus four percent (4.0%) per annum (the "Default Rate"), until such time as all past due payments and accrued interest are paid. At that time, the Default Rate will end and the Interest Rate will again be applicable. Borrower acknowledges that the effect of this Default Rate provision could operate to compound some of the interest obligations due, and Borrower hereby expressly consents to such compounding should it occur.

6. Attorneys' Fees and Costs. Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or an attorney be retained by the Lender for collection, Borrower agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement, including any fees incurred in connection with such proceedings or collection of this Note and/or enforcement of the Lender's rights with respect to the administration, supervision, preservation or protection of, or realization upon, any property securing payment hereof, whether or not an action is filed in connection therewith.

7. Miscellaneous.

a. The failure of the Lender to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Borrower to the Lender, or constitute a waiver by the Lender of, or otherwise affect any of, the Lender's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

b. The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

c. Borrower waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest, notice of nonpayment and any other notice or formality and any right of offset.

d. All titles used in this Note are intended solely for convenience and reference; said titles shall not affect any terms, provisions, or meanings of this Note.

e. No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by a duly authorized officer of the Lender, and then only to the extent therein specifically set forth.

f. All rights and remedies provided to the Lender or the holder of this Note shall be cumulative and shall be in addition to all other rights and remedies provided at law or in equity and all such rights and remedies may be exercised singly, successively and/or concurrently.

g. Time is of the essence hereof. Interest not paid when due shall earn interest as principal.

h. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Note.

i. All notices given to or made upon Borrower shall be deemed to have been given or made when deposited in the U.S. Mail and addressed to Borrower at the address indicated below.

IN WITNESS WHEREOF, this Note has been executed effective the date and place above written.

SJA Acquisitions, LLC, a Nevada limited liability company

By H&L Management, LLC, its Manager

By H&L Management, Inc., its Manager

By  _____
Cheryl Concy, President

RECEIPT

I hereby acknowledge receipt of Notice to Borrowers regarding Promissory Note dated March 31, 2013, in the original principal amount of \$14,801,913.00.

Dated July 28, 2017.



Lawrence D. Canarelli,
President of Investment Manager, Inc.

The Jeffrey Lawrence Graves Canarelli Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The Stacia Leigh Lemke Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

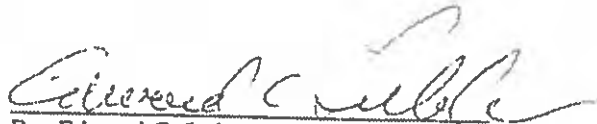
The Alyssa Lawren Graves Canarelli Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The undersigned, Lender under that certain Promissory Note dated March 31, 2013, in the original principal amount of \$8,454,861.00, a copy of which is attached hereto and incorporated herein as Exhibit "A" (the "Note"), hereby notifies the Borrowers under the Note of the following:

1. As of the date of this Notice and until further notice from Lender, Lender shall not defer any future Annual Principal Payments under the Note; and
2. Lender hereby demands that all prior deferred Annual Principal Payments, along with any interest properly incurred thereon pursuant to the terms of the Note, be paid in full to Lender no later than October 1, 2017, the next scheduled principal payment date under the Note.

Dated this 28 day of July, 2017

The Scott Lyle Graves Canarelli Irrevocable Trust



By: Edward C. Lubbers
Its: Trustee

Exhibit "A"

Exhibit "A"

PROMISSORY NOTE

(Corps)

\$8,454,861.00

Las Vegas, Nevada
March 31, 2013

1. Principal Obligation and Interest. FOR VALUE RECEIVED, Jeffrey Lawrence Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee, Stacia Leigh Lemke Irrevocable Trust, Lawrence D. Canarelli, family trustee and Alyssa Lawren Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Borrowers"), severally and unconditionally promise to pay to Scott Lyle Graves Canarelli Irrevocable Trust, Edward C. Lubbers, trustee (the "Lender"), or order or the holder of this Note ("Holder") at 8345 West Sunset Road, Suite 250, Las Vegas, Nevada 89113, Las Vegas, Nevada, or at such other place as the Lender may designate in writing, in currently available funds of the United States, the principal sum of Eight Million Four Hundred Fifty Four Thousand Eight Hundred Sixty One Dollars (\$8,454,861.00) ("Principal"), or so much thereof as may be due hereunder, together with interest on the unpaid Principal equal to the interest rate payable by the United States on its 10 Year Bond, as in effect at the date of this Note, plus 200 basis points, but shall be, as of the 1st day of the 61st month following the date of this Note, not less than the interest rate payable by the United States on its 10 Year Bond, as in effect on the 1st day of the 60th month following the date of this Note ("Interest Rate"), in all cases compounded annually. As of the date of this Note, the Interest Rate, is 3.70% per annum.

The interest rate for this Note shall be calculated on the basis of the actual number of days elapsed over a 360 day year. Whenever there is a default by Borrower under this Note, the interest rate on the unpaid principal balance shall, at the option of the Lender, be at the Default Rate set forth below.

2. Term and Payment Terms.

A. This Note shall be for Ten (10) Years ("Term"), and all accrued and unpaid interest and all unpaid Principal shall be due and payable on the date which is Ten (10) years from the date of this Note ("Maturity Date").

B. Interest on the unpaid Principal shall be paid monthly in arrears. The first of the monthly installments shall be paid on April 1, 2013, in the amount of Twenty Six Thousand Sixty Nine and 15/100 (\$26,069.15) Dollars, and subsequent payments shall be made on or before the first day of each following month.

C. Annual payments of Principal shall be One Million (\$1,000,000) Dollars each ("Annual Principal Payment"). Each Annual Principal Payment shall be made in semi-annual installments, the first of which shall be paid on October 1, 2013, and subsequent semi-annual payments shall be made every six (6) months thereafter. At the end of the Term, the then unpaid balance of principal shall be due and payable on the Maturity Date. Lender, but not Holder, shall have the right to defer payment by Borrower of all or any part of an Annual Principal Payment, in which event any deferred payment of an Annual Principal Payment shall be made by Borrower to Holder within thirty (30) days of a written demand therefore.

All payments received hereunder shall be applied first to the payment of accrued interest and the balance applied to principal. Borrower will make payments required hereunder to the Lender's address indicated in Section 1 above, or at a different place if required by the Lender.

3. Prepayment. Notwithstanding Section 2(C), Borrower may prepay the entire principal balance at any time without penalty.

4. Guaranty. This Note is guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally.

5. Default and Acceleration. The principal unpaid balance, plus accrued interest, shall, at the option of the Lender or any holder of this Note, become due and payable without notice or demand upon Borrower's failure to pay any installment of principal or interest due on this Note. In the event that any amount due under this Note is reduced to judgment, or if Borrower fails to make any payment provided for in this Note when due and is not cured within ten (10) days after written notice is sent to Borrower of such default, the Lender, or any holder of this Note, may, at its option declare the unpaid balance of principal and the accrued unpaid interest due and payable although the time of maturity as expressed herein shall not have arrived, and, regardless whether the Lender so accelerates, the total of the unpaid balance of principal and the then accrued and unpaid interest (past due interest being compounded monthly on the last day of each calendar month to the fullest extent permitted by law) shall then begin accruing interest at the rate stated in Section 1 above, plus four percent (4.0%) per annum (the "Default Rate"), until such time as all past due payments and accrued interest are paid. At that time, the interest rate will revert to that rate provided in Section 1. Borrower acknowledges that the effect of this Default Rate provision could operate to compound some of the interest obligations due, and Borrower hereby expressly consents to such compounding should it occur.

6. Attorneys' Fees and Costs. Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or an attorney be retained by the Lender for collection, Borrower agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement, including any fees incurred in connection with such proceedings or collection of this Note and/or enforcement of the Lender's rights with respect to the administration, supervision, preservation or protection of, or realization upon, any property securing payment hereof, whether or not an action is filed in connection therewith.

7. Miscellaneous.

a. The failure of the Lender to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Borrower to the Lender, or constitute a waiver by the Lender of, or otherwise affect any of, the Lender's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

b. The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

c. Borrower waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest, notice of nonpayment and any other notice or formality and any right of offset.

d. All titles used in this Note are intended solely for convenience and reference; said titles shall not affect any terms, provisions, or meanings of this Note.

e. No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by a duly authorized officer of the Lender, and then only to the extent therein specifically set forth.

f. All rights and remedies provided to the Lender or the holder of this Note shall be cumulative and shall be in addition to all other rights and remedies provided at law or in equity and all such rights and remedies may be exercised singly, successively and/or concurrently.

g. Time is of the essence hereof. Interest not paid when due shall earn interest as principal.

h. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Note.

i. All notices given to or made upon Borrower shall be deemed to have been given or made when deposited in the U.S. Mail and addressed to Borrower at the address indicated below.

IN WITNESS WHEREOF, this Note has been executed effective the date and place above written.

Jeffrey Lawrence Graves Canarelli Irrevocable Trust,
Stacia Leigh Lemke Irrevocable Trust,
Alyssa Lauren Graves Canarelli Irrevocable Trust,

By 
Lawrence D. Canarelli, family trustee of each

RECEIPT

I hereby acknowledge receipt of Notice to Borrowers regarding Promissory Note dated March 31, 2013, in the original principal amount of \$8,454,861.00.

Dated July 28, 2017.

The Jeffrey Lawrence Graves Canarelli
Irrevocable Trust




Lawrence D. Canarelli, Family Trustee

The Stacia Leigh Lemke Irrevocable Trust



Lawrence D. Canarelli, Family Trustee

The Alyssa Lawren Graves Canarelli
Irrevocable Trust



Lawrence D. Canarelli, Family Trustee

July 25, 2017

Via Email & U.S. Mail

SJA Acquisitions, LLC
c/o Investment Manager, Inc.
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The Stacia Leigh Lemke Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The Jeffrey Lawrence Graves Canarelli
Irrevocable Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

The Alyssa Lawrence Graves Canarelli Irrevocable
Trust
Lawrence D. Canarelli, Family Trustee
c/o American West Development
250 Pilot Road, Suite 140
Las Vegas, Nevada 89119

Re: Purchase Price Adjustment Demand

Dear Gentlemen:

This letter shall serve as my demand for payment of the uncontested portion of the Purchase Price adjustment under the Agreement dated May 31, 2013 (the "Adjustment" under the "Agreement"), a copy of which Agreement is attached hereto as Exhibit "A." As you are aware, the Agreement provided that the Purchase Price would be adjusted "based upon a review of the enterprise value of each LLC and each Corporation by a third party analyst"

Pursuant to the March 31, 2013 valuation performed by Stephen Nicolatus, the value of the LLC Sale Interests warranted adjustment upward by \$4,711,525.00, and the value of the Corporate Sale Interests warranted adjustment downward by \$1,873,678.00. The net adjustment under the Agreement is therefore \$2,837,847.00 – the amount demanded by this letter.

Given the ongoing litigation regarding the proper interpretation of the terms of the Agreement, this letter does not demand the disputed differential amount of \$1,873,678.00.

Therefore, in my capacity as Trustee of the Scott Lyle Graves Canarelli Irrevocable Trust, I hereby demand payment of Two Million Eight Hundred Thirty-Seven Thousand Eight Hundred Forty-Seven Dollars and 0/100 (\$2,837,847.00) from: Lawrence D. Canarelli, Family Trustee of the Jeffrey Lawrence Graves Canarelli Irrevocable Trust, the Stacia Leigh Lemke Irrevocable Trust, and the Alyssa Lawrence Graves Canarelli Irrevocable Trust; and Investment Manager Inc., Manager of SJA Acquisitions, LLC, no later than October 1, 2017 .

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Lubbers", written in a cursive style.

Edward Lubbers, Trustee
Scott Lyle Graves Canarelli
Irrevocable Trust

EXHIBIT I

Bank Name
Account Number
Account Name

US Bank Nevada
153795157188 USD
SJA ACQUISITIONS LLC

CREDIT(S)

-- No Data to Report --

DEBIT(S)

Customer Initiated Outgoing Fedwire(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$3,500,000.00	PAR NUMBER: 170731054276 FED REF: 002884 DATE/TIME COMPLETED: 07/31/2017 12:16 32 PM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: PRINCIPAL PAYMENT ORIGINATOR: /000153795157188 SJA ACQUISITIONS LLC 250 PILOT RD STE 140 LAS VEGAS, NV, 89119 IMAD: 20170731L3LF151C002884 SOURCE SPT CONTROL NUMBER: 97071638 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 11 43 26 AM APPROVED BY: STACEY OYAMA ON 07/31/2017 12 16 31 PM
\$3,292,848.47	PAR NUMBER: 170731064275 FED REF: 002885 DATE/TIME COMPLETED: 07/31/2017 12:16 32 PM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR: /000153795157188 SJA ACQUISITIONS LLC 250 PILOT RD STE 140 LAS VEGAS, NV, 89119 IMAD: 20170731J1Q5040C002885 SOURCE SPT CONTROL NUMBER: 97072341 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 11 58 57 AM APPROVED BY: STACEY OYAMA ON 07/31/2017 12 16 31 PM
\$44,097.57	PAR NUMBER: 170731054671 FED REF: 002421 DATE/TIME COMPLETED: 07/31/2017 11 35 16 AM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: MONTHLY INTEREST PAYMENT ORIGINATOR: /000153795157188 SJA ACQUISITIONS LLC 250 PILOT RD STE 140 LAS VEGAS, NV, 89119 IMAD: 20170731L3LF151C002421 SOURCE SPT CONTROL NUMBER: 97070922 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 11 29 28 AM APPROVED BY: STACEY OYAMA ON 07/31/2017 11 35 15 AM
Subtotal:	3 Customer Initiated Outgoing Fedwire(s) \$6,836,946.04

Activity Date: 07/31/2017

Page 19 of 28

Printed on 08/01/2017 at 7:24 AM CDT



Welcome Alexia Agrario | Customer Service | Log Out

SinglePoint®

You have 12 new LaunchPoint messages

Last login Friday 07/28/17 05:28 PM CDT

AWHMENT

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View Wire Transfer Detail

Fed Wire Transfer (FED)

[Approve](#) [History](#) [Cancel](#) [View History](#)**Control Number**

97071838

Template ID

SP4081

Repeat Code Nickname**Debit Account Number - Debit Account Name**

153795157186 - SJA ACQUISITIONS LLC

Amount

\$3,500,000.00

Send Date (MM/DD/YYYY)

07/31/2017

Beneficiary Bank Information (BBK)

Bank ABA (Routing / Transit Number)

121000248

Name

Wells Fargo Bank, N.A.

Address Line 1

420 Montgomery

Address Line 2**City**

San Francisco

State or Territory

CA

Bank Account Number**Beneficiary Information (BNF)****Name**

Scott Canard Irrevocable Trust

Account Number

7703428800

Address Line 1**Address Line 2****City****State or Territory****Notification Email Address**

(If populated, email will be sent)

Beneficiary Details

Reference for Beneficiary (RFB)

Originator to Beneficiary Information (OBI)

Principal Payment

Bank to Bank Information (SBI)

Bank to Bank Information

Originator Information (ORG)**Name**

SJA Acquisitions, LLC

Account Number**Address Line 1**

250 Pilot Road, Suite 140

Address Line 2**City**

Las Vegas

State or Territory

NV

[Approve](#) [History](#) [Cancel](#) [View History](#)

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L8

https://singlepoint.usbank.com/cs70_banking/sbb/common/transact/user/tmupWireTransfe... 7/31/2017

Principal Payments due to Scott Canarelli Irr Trust

	<u>SJA</u> <u>Acquisitions</u> <u>LLC</u>	<u>Stacia Lemke</u> <u>Irr Trust</u>	<u>Jeff Canarelli</u> <u>Irr Trust</u>	<u>Alyssa Canarelli</u> <u>Irr Trust</u>	<u>Totals</u>
Note Amounts	15,801,913.00	2,818,287.00	2,818,287.00	2,818,287.00	24,256,774.00
		(1/3 of \$8,454,861 from each Irr Trust)			
Dated 03/31/13					
Maturity 03/31/23					
Interest Rate	3.70%	1st 5 years			
		Change to US 10 Year Bond Rate + 200 bp on the 1st day of the 6th year			
Principal Payments Due Semi Annually beginning 10/1/13 (May be Deferred by Lender)	500,000.00	500,000.00	500,000.00	500,000.00	2,000,000.00
Payments Made					
06/13/13	(1,000,000.00)	(333,333.33)	(333,333.33)	(333,333.34)	(2,000,000.00)
10/01/13	(500,000.00)	(166,666.67)	(166,666.66)	(166,666.67)	(1,000,000.00)
Totals	(1,500,000.00)	(500,000.00)	(499,999.99)	(500,000.01)	(3,000,000.00)
Note Balances	14,301,913.00	2,318,287.00	2,318,287.01	2,318,286.99	21,256,774.00
		(1/3 of \$6,954,861 from each Irr Trust)			
Payments Owed					
04/01/14	(500,000.00)	(166,666.67)	(166,666.66)	(166,666.67)	(1,000,000.00)
10/01/14	(500,000.00)	(166,666.67)	(166,666.66)	(166,666.67)	(1,000,000.00)
04/01/15	(500,000.00)	(166,666.67)	(166,666.67)	(166,666.66)	(1,000,000.00)
10/01/15	(500,000.00)	(166,666.67)	(166,666.67)	(166,666.66)	(1,000,000.00)
04/01/16	(500,000.00)	(166,666.66)	(166,666.67)	(166,666.67)	(1,000,000.00)
10/01/16	(500,000.00)	(166,666.66)	(166,666.67)	(166,666.67)	(1,000,000.00)
04/01/17	(500,000.00)	(166,666.66)	(166,666.67)	(166,666.67)	(1,000,000.00)
Totals	(3,500,000.00)	(1,166,666.66)	(1,166,666.67)	(1,166,666.67)	(7,000,000.00)

EXHIBIT J

Bank Name US Bank Nevada
Account Number 153750972207 USD
Account Name THE JEFFREY LAWRENCE GRAVES CANAREL

CREDIT(S)

Interest Credit(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$57.59	Bank Reference: I-GEN117073100002995

Subtotal: 1 Interest Credit(s)
\$57.59

Total Credit(s) : 1
\$57.59

DEBIT(S)

Customer Initiated Outgoing Fedwire(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$1,166,666.67	PAR NUMBER: 170731064273 FED REF: 002886 DATE/TIME COMPLETED: 07/31/2017 12 16 32 PM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: PRINCIPAL PAYMENT ORIGINATOR: /000153750972207 THE JEFFREY LAWRENCE GRAVES CANAREL 250 PILOT RD STE 140 LAS VEGAS,NV,89119 IMAD: 20170731J1Q5040C002886 SOURCE: SPT CONTROL NUMBER 97072715 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 12 07 22 PM APPROVED BY: STACEY OYAMA ON 07/31/2017 12 16 30 PM
\$10,000.00	PAR NUMBER: 170728005067 FED REF: 000276 DATE/TIME COMPLETED 07/31/2017 07:28:25 AM REPEAT CODE: SP019382 RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /1889920450 JEFFREY CANARELLI 1590 VILLA RICA DRIVE HENDERSON NV ORIGINATOR TO BENEFICIARY INFO: MONTHLY DISTRIBUTION ORIGINATOR: /000153750972207 THE JEFFREY LAWRENCE GRAVES CANAREL 250 PILOT RD STE 140 LAS VEGAS,NV,89119 IMAD: 20170731J1Q5040C000276 SOURCE: SPT CONTROL NUMBER: 97028495 INITIATED BY: ALEXIA AGRARIO ON 07/27/2017 06 43 56 PM APPROVED BY: STACEY OYAMA ON 07/27/2017 07 43 38 PM
\$8,175.83	PAR NUMBER: 170731028437 FED REF: 001097 DATE/TIME COMPLETED: 07/31/2017 09:17:26 AM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: MONTHLY INTEREST PAYMENT ORIGINATOR: /000153750972207 THE JEFFREY LAWRENCE GRAVES CANAREL 250 PILOT RD STE 140 LAS VEGAS,NV,89119 IMAD: 20170731L3LF151C001097 SOURCE: SPT CONTROL NUMBER: 97058208 INITIATED BY: ALEXIA AGRARIO ON 07/28/2017 06 39 03 PM APPROVED BY: STACEY OYAMA ON 07/31/2017 09 17 25 AM

Activity Date: 07/31/2017

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Subtotal: 3 Customer Initiated Outgoing Fedwire(s)
\$1,184,842.50

Miscellaneous Fee(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$30.00	WT10 WIRE TRANSFER FEE 170731064273 SCOTT CANARELLI IRREVOCABLE TRUST Bank Reference I-GEN117073100002992
\$30.00	WT11 WIRE TRANSFER FEE 170728005067 JEFFREY CANARELLI 1590 VILLA RICA DRIVE Bank Reference I-GEN117073100002993
\$30.00	WT10 WIRE TRANSFER FEE 170731026437 SCOTT CANARELLI IRREVOCABLE TRUST Bank Reference I-GEN117073100002994

Subtotal: 3 Miscellaneous Fee(s)
\$90.00

Total Debit(s) : 6
\$1,184,932.50



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[Approve](#) [Modify](#) [Cancel](#) [View History](#)Control Number
87072715Template ID
6P4008

Repeat Code Nickname

Debit Account Number - Debit Account Name
153750972207 - THE JEFFREY LAWRENCE GRAVES
CANARELLAmount
\$1,165,568 67Send Date (MM/DD/YYYY)
07/31/2017Beneficiary Bank Information (BBK)
Bank ABA (Routing / Transit Number)
121000248Name
Wells Fargo Bank, N.A.Address Line 1
420 Montgomery

Address Line 2

City
San FranciscoState or Territory
CA

Bank Account Number

Beneficiary Information (BNF)
Name
Scott Canarelli Irrevocable TrustAccount Number
7703425800

Address Line 1

Address Line 2

City

State or Territory

Notification Email Address
(If populated, email will be sent)Beneficiary Details
Reference for Beneficiary (RFB)Originator to Beneficiary Information (OBI)
Principal PaymentBank to Bank Information (BBB)
Bank to Bank InformationOriginator Information (ORG)
Name
Jeff L. Graves Canarelli Irrev Trust

Account Number

Address Line 1
250 Pilot Road, Suite 140

Address Line 2

City
Las VegasState or Territory
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Bank Name US Bank Nevada
Account Number 153750972215 USD
Account Name THE STACIA LEIGH LEMKE

CREDIT(S)

Interest Credit(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$57.32	Bank Reference: I-GEN117073100002999

Subtotal: 1 Interest Credit(s)
\$57.32

Total Credit(s) : 1
\$57.32

DEBIT(S)

Customer Initiated Outgoing Fedwire(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$1,186,866.67	PAR NUMBER: 170731064267 FED REF: 002887 DATE/TIME COMPLETED: 07/31/2017 12 18 32 PM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: PRINCIPAL PAYMENT ORIGINATOR: /000153750972215 THE STACIA LEIGH LEMKE 250 PILOT RD STE 140 LA S VEGAS,NV,89119 IMAD: 20170731MMQFMP31002887 SOURCE: SPT CONTROL NUMBER 97072805 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 12 10 41 PM APPROVED BY: STACEY OYAMA ON 07/31/2017 12 18 30 PM
\$10,000.00	PAR NUMBER: 170728005068 FED REF: 000276 DATE/TIME COMPLETED: 07/31/2017 07 28 25 AM REPEAT CODE: SPD19394 RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /0835878582 STACIA LEMKE 2416 LEGACY ISLAND CIRCLE HENDERSON N V ORIGINATOR TO BENEFICIARY INFO: MONTHLY DISTRIBUTION ORIGINATOR: /000153750972215 THE STACIA LEIGH LEMKE 250 PILOT RD STE 140 LA S VEGAS,NV,89119 IMAD: 20170731L3LF151C000276 SOURCE: SPT CONTROL NUMBER 970728500 INITIATED BY: ALEXIA AGRARIO ON 07/27/2017 06 44 31 PM APPROVED BY: STACEY OYAMA ON 07/27/2017 07 43 38 PM
\$8,175.83	PAR NUMBER: 170731054673 FED REF: 002424 DATE/TIME COMPLETED: 07/31/2017 11 35 16 AM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: MONTHLY INTEREST PAYMENT ORIGINATOR: /000153750972215 THE STACIA LEIGH LEMKE 250 PILOT RD STE 140 LA S VEGAS,NV,89119 IMAD: 20170731MMQFMP31002424 SOURCE: SPT CONTROL NUMBER 97070750 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 11 25 17 AM APPROVED BY: STACEY OYAMA ON 07/31/2017 11 35 15 AM

Subtotal: **3 Customer Initiated Outgoing Fedwire(s)**
\$1,184,842.50

Miscellaneous Fee(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$30.00	WT10 WIRE TRANSFER FEE 170731084267 SCOTT CANARELLI IRREVOCABLE TRUST Bank Reference: I-GEN117073100002998
\$30.00	WT11 WIRE TRANSFER FEE 170728005068 STACIA LEMKE 2418 LEGACY ISLAND CIRCLE Bank Reference: I-GEN117073100002997
\$30.00	WT10 WIRE TRANSFER FEE 170731054873 SCOTT CANARELLI IRREVOCABLE TRUST Bank Reference: I-GEN117073100002998

Subtotal: **3 Miscellaneous Fee(s)**
\$90.00

Total Debit(s) : **6**
\$1,184,932.50



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97072903

Template ID

SP4005

Repeat Code Nickname**Debit Account Number - Debit Account Name**
153750972215 - THE STACIA LEIGH LEMKE**Amount**
\$1,166,666.67**Send Date (MM/DD/YYYY)**
07/31/2017**Beneficiary Bank Information (BBK)**
Bank ABA (Routing / Transit Number)
121000248**Name**
Wells Fargo Bank, N.A.**Address Line 1**
420 Montgomery**Address Line 2****City**
San Francisco**State or Territory**
CA**Bank Account Number****Beneficiary Information (BNF)****Name**
Scott Canerelli Irrevocable Trust**Account Number**
7703428800**Address Line 1****Address Line 2****City****State or Territory****Notification Email Address**
(if populated, email will be sent)**Beneficiary Details**
Reference for Beneficiary (RFB)**Originator to Beneficiary Information (OBI)**
Principal Payment**Bank to Bank Information (BSI)**
Bank to Bank Information**Originator Information (ORG)****Name**
Stacia Leigh Lemke Irrev Trust**Account Number****Address Line 1**
250 Pilot Road, Suite 140**Address Line 2****City**
Las Vegas**State or Territory**
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Bank Name US Bank Nevada
Account Number 153750972181 USD
Account Name THE ALYSSA LAWREN GRAVES CANARELLI

CREDIT(S)

Interest Credit(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$59.40	Bank Reference: I-GEN117073100002991

Subtotal: 1 Interest Credit(s)
\$59.40

Total Credit(s) : 1
\$59.40

DEBIT(S)

Customer Initiated Outgoing Fedwire(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$1,166,666.67	PAR NUMBER: 170731064269 FED REF: 002884 DATE/TIME COMPLETED: 07/31/2017 12 16 31 PM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: PRINCIPAL PAYMENT ORIGINATOR: /000153750972181 THE ALYSSA LAWREN GRAVES CANARELLI 250 PILOT R D STE 140 LAS VEGAS NV,89119 IMAD: 2017073111Q73AGC002884 SOURCE: SPT CONTROL NUMBER: 97072788 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 12 09 09 PM APPROVED BY: STACEY OYAMA ON 07/31/2017 12 16 30 PM
\$8,175.83	PAR NUMBER: 170731054672 FED REF: 002422 DATE/TIME COMPLETED: 07/31/2017 11 35 16 AM RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /7703428800 SCOTT CANARELLI IRREVOCABLE TRUST ORIGINATOR TO BENEFICIARY INFO: MONTHLY INTEREST PAYMENT ORIGINATOR: /000153750972181 THE ALYSSA LAWREN GRAVES CANARELLI 250 PILOT R D STE 140 LAS VEGAS,NV,89119 IMAD: 2017073111Q73AGC002422 SOURCE: SPT CONTROL NUMBER: 97070801 INITIATED BY: ALEXIA AGRARIO ON 07/31/2017 11 27 10 AM APPROVED BY: STACEY OYAMA ON 07/31/2017 11 35 15 AM
\$5,000.00	PAR NUMBER: 170728005069 FED REF: 000288 DATE/TIME COMPLETED: 07/31/2017 07:28 29 AM REPEAT CODE: SP35724 RECEIVING BANK: 121000248WELLS SF* BENEFICIARY: /6819477594 ALYSSA CANARELLI NO ADDRESS GIVEN ORIGINATOR TO BENEFICIARY INFO: DISTRIBUTION ORIGINATOR: /000153750972181 THE ALYSSA LAWREN GRAVES CANARELLI 250 PILOT R D STE 140 LAS VEGAS NV,89119 IMAD: 20170731MMQFMP31000288 SOURCE: SPT CONTROL NUMBER: 97028504 INITIATED BY: ALEXIA AGRARIO ON 07/27/2017 06 45 05 PM APPROVED BY: STACEY OYAMA ON 07/27/2017 07 43 37 PM

Activity Date: 07/31/2017

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Subtotal: **3 Customer Initiated Outgoing Fedwire(s)**
\$1,179,842.50

Miscellaneous Fee(s)

<u>Dollar Amount</u>	<u>Transaction Details</u>
\$30.00	WT10 WIRE TRANSFER FEE 170731064269 SCOTT CANARELLI IRREVOCABLE TRUST Bank Reference I-GEN117073100002988
\$30.00	WT10 WIRE TRANSFER FEE 170731054672 SCOTT CANARELLI IRREVOCABLE TRUST Bank Reference I-GEN117073100002989
\$30.00	WT11 WIRE TRANSFER FEE 170728005089 ALYSSA CANARELLI NO ADDRESS GIVEN Bank Reference I-GEN117073100002990

Subtotal: **3 Miscellaneous Fee(s)**
\$90.00

Total Debit(s) : 6
\$1,179,932.50



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97072758Template ID
SP4008

Repeat Code Nickname

Debit Account Number - Debit Account Name
153750972181 - THE ALYSSA LAWREN GRAVES
CANARELLIAmount
\$1,166,666.67Send Date (MM/DD/YYYY)
07/31/2017Beneficiary Bank Information (BBK)
Bank ABA (Routing / Transit Number)
121000248Name
Wells Fargo Bank, N.A.Address Line 1
420 Montgomery

Address Line 2

City
San FranciscoState or Territory
CA

Bank Account Number

Beneficiary Information (BNF)

Name
Scott Canarelli Irrevocable TrustAccount Number
7703428800

Address Line 1

Address Line 2

City

State or Territory

Notification Email Address
(if populated, email will be sent)Beneficiary Details
Reference for Beneficiary (RFB)Originator to Beneficiary Information (OB):
Principal PaymentBank to Bank Information (BSI)
Bank to Bank Information

Originator Information (ORG)

Name
Alyssa L. Canarelli Irrev Trust

Account Number

Address Line 1
250 Pilot Road, Suite 140

Address Line 2

City
Las VegasState or Territory
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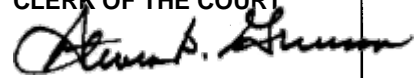
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2



SUPP

Dana A. Dwiggins (#7049)
Tess E. Johnson (#13511)
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485
ddwiggins@sdfnlaw.com
tjohnson@sdfnlaw.com

Attorneys for Scott Canarelli

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

Case No.: P-13-078912-T
Dept. No.: XXVI/Probate

THE SCOTT LYLE GRAVES
CANARELLI IRREVOCABLE TRUST,
dated February 24, 1998.

**SUPPLEMENT TO PETITION TO SURCHARGE TRUSTEE AND FORMER
TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, CONSPIRACY AND AIDING
AND ABETTING; PETITION FOR BREACH OF FIDUCIARY DUTY FOR FAILURE
TO PROPERLY ACCOUNT; and PETITION FOR AN AWARD OF ATTORNEY
FEES, ACCOUNTANT FEES AND COSTS**

Pursuant to NRS 153.031, 163.050, 163.060, 163.110, 164.015, 164.030, 164.115 and 165.135, Scott Lyle Graves Canarelli ("Petitioner"), by and through his attorneys, the law firm of Solomon Dwiggins & Freer, Ltd., hereby submits the instant Supplement to the "Surcharge Petition" previously filed with this Court on June 27, 2017 to **assert additional claims evidence subsequently discovered** in this matter relating to breach of fiduciary duty, fraud, constructive fraud, fraudulent concealment and conspiracy and aiding and abetting of such claims.¹ Consequently, Petitioner requests the following relief from this Court as follows: (1) to surcharge Lawrence Canarelli and Heidi Canarelli, as Former Trustees of The Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust" or "SCIT"), and Edward Lubbers

¹ For the purposes of the instant Supplement, Petitioner will focus on the newly discovered evidence related to not only the claims previously asserted but also those additional claims set forth herein and the procedural history of this matter since the initial filing of Surcharge Petition.

1 (“Lubbers” or “Trustee”), ² for breach of fiduciary duty and fraud relating to not only the
2 valuation at the time of the sale, but also the timing of the sale, of all of the Trust’s interest in
3 certain limited liability companies and corporations; (2) to surcharge Lawrence Canarelli and
4 Heidi Canarelli, as Former Trustees of the Trust (collectively, “Canarellis” or “Former Trustees”),
5 for damages resulting from breach of fiduciary duty and aiding and abetting a breach of fiduciary
6 duty relating to the Purchase Agreement; (3) to surcharge Lubbers for damages resulting from
7 breach of fiduciary duty and aiding and abetting a breach of fiduciary duty relating to the
8 Purchase Agreement; (4) to surcharge the Canarellis and Lubbers (collectively, “Respondents”)
9 for damages resulting from their aiding and abetting and otherwise conspiring against Petitioner
10 to financially harm the Trust to the detriment of Petitioner and to the benefit of the remainder
11 family members; (5) to surcharge Respondents for fraud, fraudulent inducement, constructive
12 fraud and/or negligent misrepresentation relating to the determination of the “purchase price” and
13 misrepresentation of the “financials” that were provided to Western Valuation Advisors for the
14 purposes of determining the “fair market value” of the Purchase Price; (6) to surcharge
15 Respondents for fraud, fraudulent inducement, constructive fraud and/or negligent
16 misrepresentation relating to the timing of the sale; (7) damages resulting from the Canarellis and
17 Lubbers failure to timely account; (8) reimbursement of the legal fees and costs paid to date from
18 the Trust for legal services rendered to Respondents; (9) an award of attorney fees, accountant
19 fees and all costs incurred in pursuing this action and enforcing Petitioner’s rights as a beneficiary
20 of the Trust; and (10) punitive damages against Respondents.

21 While the Respondents “paid” the amount Petitioner contended was due and owing under
22 the express terms of the Purchase Agreement following the filing of the Surcharge Petition, the
23 underlying value of the sale of the Trust’s business interests (“Purchased Entities”) has always
24 been, and continues to be, a significant issue in this litigation. Similarly, the “timing” of the sale
25 is a significant issue in this litigation, as Respondents intentionally sold the Purchased Entities at
26

27 ² As this Court has been informed, Lubbers passed away on April 2, 2018 following a battle
28 with lung cancer. Petitioner filed a Suggestion on Death with this Court on May 8, 2018, as
Respondents had yet to file one and/or substitute the real party in interest in his place and stead.

1 a time when the real estate market was coming out of recession and was on the rise so as to
2 financially harm Petitioner and the Trust.

3 Based on the evidence discovered in this matter subsequent to the filing of the Surcharge
4 Petition, Respondents acted in concert with one another and otherwise conspired to not only
5 breach their respective fiduciary obligations, but acted with intent to defraud and financially harm
6 Petitioner and his children and benefit the remainder of the Canarellis' family by: (1)
7 fraudulently misrepresenting the "purpose" of the sale; (2) intentionally making the Purchase
8 Agreement effective as of March 31, 2013, to financially harm Petitioner and his children; and (3)
9 intentionally selling the assets in 2013 when the real estate market was recovering from the
10 recession so as to financially harm Petitioner and his children.

11 I. STATEMENT OF ADDITIONAL RELEVANT FACTS

12 A. **Former Trustees' Termination of Distributions and Ultimate Resignation.**

13 1. In or about May 2012, the Former Trustees became hostile towards Petitioner and
14 stopped making distributions to Petitioner and/or his family on the ground that Larry and Heidi
15 were "not willing to continue financing [Petitioner's] existence" because "it is against everything
16 that [Larry and Heidi] think is good for [Petitioner]." (Emphasis added). Petitioner thereafter
17 engaged the law firm of Solomon Dwiggins & Freer, Ltd. ("SDF"). After weeks of negotiating
18 with the Independent Trustee (who was then "Lubbers" rather than Larry and Heidi who were still
19 the Family Trustees), the SCIT began directly paying "some" of Petitioner's monthly living
20 expenses. [REDACTED]
21 [REDACTED]

22 2. On or about May 31, 2013, the Former Trustees purportedly entered into an
23 agreement ("Purchase Agreement") without Petitioner's knowledge or consent for the sale of the
24 Trust's interest in the LLCs to SJA Acquisitions, LLC ("SJA")³ and its interest in the
25

26 _____
27 ³ SJA is a Nevada limited liability company established and directly or indirectly controlled
28 by Larry for the benefit of his remaining three children, to wit: Stacia Leigh Lemke, Jeffrey Larry
Graves Canarelli and Alyssa Lawren Graves Canarelli.

Corporations to the Siblings Trusts.⁴ Although the Purchase Agreement was executed on May 31, 2013, **after** Larry and Heidi's resignation as Family Trustees of the Trust, the Purchase Agreement's "effective date" is March 31, 2013, **two months prior to such resignation.**

3. Since October, 2017, Petitioner has requested through discovery supporting records from Respondents, the Siblings' Trusts, SJA and several of the purchased entities to determine the accuracy of the records provided to Mr. Nicolatus. However, to date Respondents have failed to adequately respond to Petitioner's NRCP 34 requests,⁵ instead deferring to the Purchased Entities. In response to the subpoenas Petitioner issued to the Purchased Entities, Larry, acting in his capacity as Family Trustee of the Siblings' Trusts and officer and director of the Purchased Entities, filed a motion to reopen the Bankruptcy of American West Development, Inc. ("AWDI") to hold Petitioner and his counsel in contempt. Such motion was filed despite the fact that the Purchased Entities had no relation whatsoever to the Bankruptcy of AWDI as previously submitted to this Court. Larry, as the Family Trustee of the SCIT, further attempted to stay the instant litigation. After over two (2) months of contentions litigation relating to the same, and tens of thousands of dollars spent in attorneys' fees, this Court and subsequently the Bankruptcy Court denied the relief sought by Larry in his many capacities.

4. Despite such relief being denied, the Purchased Entities have still refused to produce or otherwise respond to the subpoenas, thereby resulting in several motions to compel being filed by Petitioner and which are pending before the Discovery Commissioner.⁶ There is

⁴ Upon information and belief, the Siblings Trusts are mirror irrevocable trusts for the benefit of Petitioner's three siblings, to wit: the Jeffrey Larry Graves Canarelli Irrevocable Trust; the Stacia Leigh Lemke Irrevocable Trust; and the Alyssa Lawrence Graves Canarelli Irrevocable Trust (collectively "Sibling Trusts").

⁵ During an EDCR 2.34 conference on May 10, 2018, Respondents counsel represented that they would supplement their responses to Scott's written discovery by May 31, 2018.

⁶ See Motion to Compel the Siblings' Trusts to Respond to Scott Canarelli's Subpoenas Duces Tecum, filed on May 3, 2018; see also Motion to Compel SJA Acquisitions, LLC to Respond to Scott Canarelli's Subpoenas Duces Tecum, filed on May 3, 2018; Motion to Compel the Purchased Entities to Respond to Scott Canarelli's Subpoenas Duces Tecum, filed on May 3, 2018; Motion to Compel AWH Ventures, Inc. to Respond to Scott Canarelli's Subpoenas Duces Tecum, filed on May 3, 2018.

1 additionally a motion to compel pending before the Discovery Commissioner as it relates to the
2 inadequacy of the Canarellis discovery responses.⁷ Such hearings are currently scheduled for
3 June 6, 2018 and June 13, 2018, respectively. There is additionally a status check set before the
4 Discovery Commissioner on June 13, 2018, on discovery motions previously decided by the
5 Discovery Commissioner.

6 II. LEGAL ARGUMENT

7 A. **Legal Authority.**

8 5. Petitioner incorporates herein by reference the legal authority relating to
9 Respondents' fiduciary obligations and breach thereof as set forth in the Surcharge Petition.
10 In addition to such legal authority, Petitioner submits the following legal authority on fraud,
11 fraudulent concealment, aiding and abetting, conspiracy, constructive fraud, negligent
12 misrepresentation:

13 6. Fraud occurs when a person makes a false representation that the person
14 knows or believes is false with an intent to induce another party to act or refrain from acting
15 in reliance upon the misrepresentation, causing damages.⁸ Further, where a party possesses
16 **an affirmative duty to speak, the omission of a material fact also constitutes a false**
17 **representation.**⁹ Likewise, "a presumption of fraud ... may rise in the case of a confidential

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21 ⁷ See Motion to Compel Lawrence and Heidi Canarelli's Responses to Scott Canarelli's
22 Request for Production of Documents filed on May 9, 2018.

23 ⁸ See, e.g., *Stansfield v. Starkey*, 220 Cal.App.3d 59, 72-73, 269 Cal. Rptr. 337 (1990);
Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992).

24 ⁹ *Quick v. Pearson*, 186 Cal. App. 4th 371, 381, 112 Cal. Rptr. 3d 62, 69 (2010). See also
25 *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (Nev. 2007) ("With respect to the false
26 representation element, the suppression or omission of a material fact which a party is bound in
27 good faith to disclose is equivalent to a false representation, since it constitutes an indirect
28 representation that such fact does not exist.") (citations and internal quotations omitted); *Dow
Chemical Co. v. Mahlum*, 114 Nev. 1468, 1486, 970 P.2d 98, 110 (1998), overruled in part on
other grounds, *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001).

1 relationship from which an undue advantage was gained.”¹⁰

2 7. “To establish a prima facie case of fraudulent concealment under Nevada Law, a
3 plaintiff must offer proof that satisfies five elements: (1) the defendant concealed or suppressed a
4 material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff; (3) the
5 defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff;
6 that is, the defendant concealed or suppressed the fact for the purpose of inducing the plaintiff to
7 act differently than she would have if she had known the fact; (4) the plaintiff was unaware of the
8 fact and would have acted differently if she had known of the concealed or suppressed fact; (5)
9 and, as a result of the concealment or suppression of the fact, the plaintiff sustained damages.”¹¹

10 8. “Constructive fraud is the breach of some legal or equitable duty which,
11 irrespective of moral guilt, the law declares fraudulent because of its tendency to deceive
12 others or to violate confidence.”¹² “Constructive fraud usually arises from a breach of duty

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16 ¹⁰ *Solon v. Lichtenstein*, 39 Cal.2d 75, 82,244 P.2d 907,911 (Cal. 1952) (confidential
17 relationship raised a presumption of fraud and undue influence, and the burden was cast on
18 defendant to show fairness and good faith in all respects.) (internal citation omitted).

19 ¹¹ *Lasao v. Stearns Lending Co.*, 2:10-CV-01864-KJD, 2011 WL 3273923, at *6 (D. Nev.
20 July 29, 2011) (citing *Nevada Power Co. v. Monsanto Co.*, 891 F.Supp. 1406, 1415
21 (D.Nev.1995); see also Nevada Jury Instruction 9.03; *Blanchard v. Blanchard*, 108 Nev. 908, 839
22 P.2d 1320, 1322 (1992) (quoting *Epperson v. Roloff*, 102 Nev. 206, 719 P.2d 799, 803 (1986) (“A
23 defendant may also be found liable for misrepresentation even when the defendant does not make
24 an express misrepresentation, but instead makes a representation which is misleading because it
25 partially suppresses or conceals information.”); *Northern Nevada Mobile Home Brokers v.*
26 *Penrod*, 96 Nev. 394, 610 P.2d 724, 727 (1980) (**once party undertakes to give information, he**
27 **has a duty to speak the whole truth and not by concealments make his statements**
28 **untruthful and misleading**).

¹² *Executive Management, Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 841, 963 P.2d 465, 477
(1998) (Quoting *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 529-30 (1982)); see also
California Civil Code Section 1573 (Constructive fraud is any breach of duty which, without an
actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under
him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
in any such act or omission as the law specially declares to be fraudulent, without respect to
actual fraud).

1 where a relation of trust and confidence exists."¹³ A fiduciary's concealment of material facts
2 operates as a "constructive fraud, whether or not such failure to disclose was accompanied by
3 an actual intent to defraud."¹⁴ Even a negligent misrepresentation by a fiduciary may
4 constitute constructive fraud.¹⁵ Like fraud, when a "superior party obtains a possible benefit
5 through the alleged abuse of the confidential or fiduciary relationship, the aggrieved party is
6 entitled to a presumption that constructive fraud occurred."¹⁶

7 9. Negligent misrepresentation occurs when a person supplies false information
8 to another and such person relies on such false information, causing damages.¹⁷ "Negligent
9 misrepresentation is a species of fraud or deceit specifically requiring a positive assertion or
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13 ¹³ *Barrett v. Bank of America*, 183 Cal.App.3d 1362, 1369, 229 Cal. Rptr. 16, 20 (Cal. App.
14 4 Dist. 1986); See also *Executive Management, Ltd.*, 114 Nev. at 841, 963 P.2d at 477; *Bogovich*
15 *v. Embassy Club of Sedgefield, Inc.*, 712 S.E.2d 257, 2011 WL 1467568, 6 (N.C. Ct. App. 2011)
16 ("Constructive fraud differs from actual fraud in that it is based on a confidential relationship
17 rather than a specific misrepresentation.").

18 ¹⁴ *Vai v. Bank of America NTSA*, 56 Cal.2d 329, 342, 15 Cal. Rptr. 71 (Cal. 1961) (citations
19 omitted) (Party was unaware of fraud when agreement was entered into). See also *Bogovich*, ---
20 S.E.2d ---, 2011 WL 1467568, 6 (One difference between fraud and constructive fraud is that
21 intent to deceive is not an element of constructive fraud).

22 ¹⁵ *Salahutdin v. Valley of California, Inc.*, 24 Cal. App.4th 555, 562, 29 Cal. Rptr. 2d 463
23 (Cal. Ct. App. 1994) ("[A] careless misstatement may constitute constructive fraud even though
24 there is no fraudulent intent.") (citations omitted).

25 ¹⁶ *Bogovich*, 712 S.E.2d at 262.

26 ¹⁷ See *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998) (Citing
27 RESTATEMENT (SECOND) OF TORTS § 552 (1977)) ("One who, in the course of his business,
28 profession or employment, or in any other action in which he has a pecuniary interest, supplies
false information for the guidance of others in their business transactions, is subject to liability for
pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to
exercise reasonable care or competence in obtaining or communicating the information."); *Apollo*
Capital Fund, LLC v. Roth Capital Partners, LLC, 158 Cal. App.4th 226, 243, 70 Cal. Rptr. 3d
199, 213 (Cal. Ct. App. 2007) ("The elements of negligent misrepresentation are (1) the
misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it
to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable
reliance on the misrepresentation, and (5) resulting damage.").



1 assertion of fact."¹⁸ Negligent misrepresentation does not require knowledge of falsity as "a
2 defendant who makes false statements honestly believing that they are true, but without
3 reasonable ground for such belief, may be liable for negligent misrepresentation."¹⁹

4 10. "Aiding and abetting the breach of a fiduciary duty has four required elements: (1)
5 there must be a fiduciary relationship between two parties, (2) that the fiduciary breached, (3) the
6 defendant third party knowingly and substantially participated in or encouraged that breach, and
7 (4) the plaintiff suffered damage as a result of the breach."²⁰

8 11. In Nevada, the elements for a claim of civil conspiracy are: (1) a combination of
9 two or more persons; (2) who intend to accomplish an unlawful objective together; (3) for the
10 purpose of harming another; (4) an explicit or tacit agreement between the alleged conspirators to
11 perform the unlawful objective; (5) an intention to accomplish the unlawful objective; (6)
12 commission of an unlawful act in furtherance of the agreement; and (7) damages.²¹

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15 ¹⁸ *Wilson v. Century 21 Great Western Realty*, 15 Cal. App.4th 298, 306, 18 Cal.
16 Rptr.2d 779, 783 (Cal. App. 1 Dist. 1993) (internal citations and quotations omitted). *See also*
17 *Hatleberg v. Norwest Bank Wisconsin*, 700 N.W.2d 15, 26 (Wis. 2005) (Trustee committed
18 negligent misrepresentations by supplying false information for the guidance of others).

19 ¹⁹ *Wilson*, 15 Cal. App.4th at 306 (internal quotations omitted) citing *Bily v. Arthur*
20 *Young & Co.*, 3 Cal.4th 370, 407, 11 Cal. Rptr.2d 51, 834 P.2d 745 (Cal. 1992).

21 ²⁰ *Guilfoyle v. Olde Monmouth Stock Transfer Co., Inc.*, 130 Nev. Adv. Op. 78, 335
22 P.3d 190, 198 (2014); *In re Amerco Derivative Litig.*, 127 Nev. 196, 223–24, 252 P.3d 681, 700–
23 01 (2011) (citing *Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del.2001)) (expressly adopting the
24 above four factor test applied by Delaware Courts).

25 ²¹ *Guilfoyle v. Olde Monmouth Stock Transfer Co., Inc.*, 130 Nev. Adv. Op. 78, 335
26 P.3d 190, 198 (2014) ("Actionable civil conspiracy arises where two or more persons undertake
27 some concerted action with the intent "to accomplish an unlawful objective for the purpose of
28 harming another," and damage results... Thus, a plaintiff must provide evidence of an explicit or
tacit agreement between the alleged conspirators."); *Consol. Generator-Nevada, Inc. v. Cummins*
Engine Co., Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (An actionable civil
conspiracy "consists of a combination of two or more persons who, by some concerted action,
intend to accomplish an unlawful objective for the purpose of harming another, and damage
results from the act or acts."); *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345
P.3d 1049, 1052 (2015) ("In Nevada... civil conspiracy liability may attach where two or more
persons undertake some concerted action with the intent to commit an unlawful objective, not
necessarily a tort.").

B. Respondents Breached Their Fiduciary Obligations, Aided and Abetted and Otherwise Conspired in a Breach of Fiduciary Duty and engaged in Fraud and Fraudulent Concealment by Entering into the Purchase Agreement.

12. The Purchase Agreement was clearly consummated by the Former Trustees as a retaliatory act upon their explicit statements that neither Larry nor Heidi wanted to “continue to finance” Petitioner’s existence because it was against their beliefs that a man should not be a stay at home father.

13. As previously set forth in the Surcharge Petition, Respondents breached their fiduciary duties by entering into the Purchase Agreement which caused the sale of the Trust’s business interests at the time the market was coming out of a recession. Larry himself acknowledged shortly before signing the Purchase Agreement that the profits of the companies were up by 250% from the prior year. Similarly, the business valuations performed by both Western Valuation Advisors and Houlihan Capital reference the fact that new home sales were increasing. In fact, based on the Houlihan Capital valuation, new home sales increased by eleven percent (11%) between March, 2013 and August, 2013, alone.

14. Notwithstanding the foregoing, the Canarellis attempt to avoid liability because of the “purported resignation” as Co-Family Trustees of the Trust and appointment of Lubbers as their successor, effective as of May 24, 2013, at 5:00 p.m. Such contention is demonstrably false, as the evidence uncovered thus far subsequent to the filing of the Surcharge Petition, unequivocally demonstrates that the sale was consummated during the period of time when the Canarellis were still serving as the Co-Trustees. The fact that the Canarellis “resigned” effective May 24, 2013, so as to allow Lubbers to execute the Purchase Agreement at Larry’s direction is nothing more than form over substance. The Canarellis not only breached their fiduciary duties to Petitioner prior to their resignation by deciding to sell the Purchased Entities and implementing the same, but further conspired to and otherwise aided and abetted Lubbers in his breach of fiduciary duty as a result of his execution of the Purchase Agreement.

15. Discovery disclosed by Respondents thus far include drafts of the purchase agreement and other related documents. These “drafts” specifically identified Larry as the Family Trustees of the SCIT and the signature blocks on such drafts anticipated Larry signing on behalf

1 of the SCIT, as the Seller, and the Siblings' Trust, as the Buyer. The "drafts" were drafted by
2 Lubbers, as the attorney for the Canarellis, in early April, 2013 (based on the evidence produced
3 by Respondents thus far).²² Similarly, "Exhibit A" was created as early as March, 2013 by
4 Robert Evans, agent of Larry and employee of the entities. The entity SJA, the entity created for
5 the purposes of purchasing the LLC interests from the SCIT, was also registered with the Nevada
6 Secretary of State in January, 2013.

7 16. Based on the foregoing evidence, the Canarellis were on both sides of the
8 transaction as the Family Trustee of the SCIT and the Family Trustee of the Siblings Trusts.
9 While the Canarellis may have been "replaced" as the Family Trustees by Lubbers seven (7) days
10 before the agreement was executed, such resignation was for the sole purpose of attempting to
11 avoid a blatant conflict of interest. Consequently, the Canarellis' contention that he and Heidi are
12 not liable to Petitioner because they were no longer trustees at the time of the sale ignores his
13 conduct during the relevant time period. The fact of the matter is that the sale was contemplated
14 in January, 2013, if not sooner, and completely orchestrated and finalized during the time in
15 which the Canarellis were still the Family Trustees.

16 17. While Lubbers may have "signed" on behalf of the SCIT, he had been the Family
17 Trustee for only seven (7) days and he subsequently admitted that he had no personal knowledge
18 of the transactions or assets of the SCIT, despite having served as the Independent Trustee for
19 several years. Indeed, the "file" of Lubbers produced in this litigation contains no financial
20 information of Purchased Entities whatsoever other than valuations and transactions listed on the
21 SCIT's financials.

22 18. Respondents' failure to disclose to Petitioner that Respondents were selling, and in
23 fact, executing the Purchase Agreement, all of the business interests in the Trust at such time to
24 the Siblings Trusts and an entity created by them constitutes fraud and/or fraudulent concealment.
25 Specifically, as Petitioners' fiduciary and Family Trustees of the SCIT, Respondents owed an
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28 ²² See e.g. RESP0086867 – RESP00086882 produced by Respondents on or about April 6,
2018, attached hereto as **Exhibit 1**.

1 affirmative duty to disclose the sale to Petitioner, namely the Purchase Agreement which was
2 a material fact. Respondents' concealment of the Purchase Agreement was intentional and, if
3 Petitioner would have been aware of the materials facts, would not have acquiesced in the
4 sale and otherwise would have objected to the sale. Respondents' concealment has caused
5 damage to the SCIT. Consequently, Respondents are jointly and severally liable for fraud,
6 fraudulent concealment, negligent misrepresentation, constructive fraud, breach of fiduciary
7 duty and conspiracy and otherwise aiding and abetting in the foregoing conduct. As a direct
8 and proximate result of Respondents' acts and omissions, the SCIT and Petitioner, as its grantor
9 and primary beneficiary, have suffered damages, the amount of which will be proven at an
10 evidentiary hearing.

11 19. Petitioner is informed and believes and thereon alleges that the acts, omissions and
12 conduct of Respondents, as set forth herein, were intentional, malicious, fraudulent, oppressive
13 and in violation of Petitioner's rights as the grantor and primary beneficiary of the SCIT and
14 Respondents' fiduciary obligations. As a result, Petitioner is entitled to an award of punitive
15 damages and to an award of attorney's fees and costs, to be borne personally by Respondents.

16 **C. Respondents Fraudulently Represented the Rationale for Entering into the Purchase**
17 **Agreement.**

18 20. The Respondents claim that they sold the interests because Petitioner needed
19 money and that the SCIT could not rely upon distributions from either the LLC or the
20 Corporations because of the Credit Agreement. Specifically, the Purchase Agreement states:

21 D. Pursuant to the Credit Agreement, **Seller . . . is precluded from receiving**
22 **any cash distributions from any of the LLC or the Corporations**, including any
23 distribution that would be attributable to Seller's ownership interest in the LLCs
24 and the Corporations . . .

25 H. Scott has indicated to the Trustee certain needs that he has for available funds
26 to provide for his family and certain concerns he has in regard to management of
27 Seller by the prior Family Trustee.

28 I. The trustee and the Independent Trustee **believe that the restriction on**
distributions currently effect under the Credit Agreement, and likely to be in
effect under a new credit agreement, **will make providing cash to Scott difficult**,
and to make cash available would risk a default under the Credit Agreement.

1 (Emphasis added).

2 21. The discovery produced thus far in this litigation, however, demonstrates that these
3 statements were false. Not only did the SCIT have the liquidity to meet Petitioner's distributions
4 requests, it also received approximately a total of \$1.55 million in distributions from one or more
5 of the Purchased Entities **before** the Purchase Agreement was executed on May 31, 2013.
6 Indeed, contrary to Respondents' representations in the Purchase Agreement, the Purchased
7 Entities routinely made distributions to the SCIT, as evidenced in the trial balances disclosed by
8 Respondents.

9 22. Specifically, discovery produced in the litigation thus far demonstrates that the
10 SCIT, in fact, had the ability to make distributions in the amount requested by Petitioner without
11 the need of selling any of the Purchased Entities and without jeopardizing the Credit Agreement.
12 Representations were made by Respondents' agent(s) that the Trust had the financial wherewithal
13 to invest substantial amounts in cash for the purposes of buying assets to be held in the Trust
14 completely unrelated to the Purchased Entities. Such representations were made on or about July
15 31, 2012, in regards to ranch property in Colorado that Petitioner wanted to purchase for in excess
16 of \$1.5 million by Robert Evans, Respondents' agent. Mr. Evans expressly stated:

17 I am fully aware of the financial situation of the Canarelli Family and Scott
18 Canarelli in particular. **Scott has the available resources to acquire the**
19 **property with cash.**

20 (Emphasis added).²³

21 [REDACTED]

22 [REDACTED]

23 Attached hereto as **Exhibit 2** is a true and correct copy of an email Mr. Evans sent and
28 disclosed by Petitioner as CAN002111-CAN02112.

24. Similarly, discovery in this matter has additionally disclosed that distributions from one or more of the Purchased Entities were made to the SCIT (and presumably the Siblings Trusts), despite Respondents' representations in the Purchase Agreement to the contrary. For example purposes only, despite Respondents' representation as to the restriction on distributions to the trusts, in April and May, 2013, one of the entities subject to the Purchase Agreement distributed approximately \$12 million to its members (the SCIT's share being approximately \$1.55 million).

25. Respondents' representation that the sale was necessary is false statement and constitutes not only a breach of fiduciary duty, aiding and abetting and conspiring to commit a breach of fiduciary duty and also fraud, but also constructive fraud and fraudulent concealment. Consequently, Respondents are jointly and severally liable for such conduct. As a direct and proximate result of Respondents' acts and omissions, Petitioner has suffered damages, the amount of which will be proven at an evidentiary hearing. Petitioner is informed and believes and thereon alleges that the acts, omissions and conduct of Respondents, as set forth herein, were intentional, malicious, fraudulent, oppressive and in violation of Petitioner's rights as the grantor and primary beneficiary of the SCIT and Respondents' fiduciary obligations. As a result, Petitioner is entitled to an award of punitive damages and to an award of attorney's fees and costs, to be born personally by Respondents.

D. Respondents Breached Their Fiduciary Obligations, Aided and Abetted in Such Breach and Otherwise Conspired and Committed Fraud, Constructive Fraud and/or Fraudulent Concealment by Making the Purchase Agreement Effective as Of March 31, 2013.

26. Respondents further intended to cause harm to Petitioner by intentionally making the Purchase Agreement effective as March 31, 2013, despite the fact that it was purportedly signed May 31, 2013. The reason for doing so was to preclude the SCIT from receiving distributions from the entities and to further benefit the Siblings Trust. Specifically, between the time period of March 31, 2013 and May 31, 2013, the SCIT received "in error" \$1,550,380.00 in

1 distributions from certain entities, including CanFam Holdings.²⁴ This, of course, only includes
2 distributions made “in error.” Since Respondents have refused to disclose the financials for the
3 Purchased Entities, Petitioner is unable to determine what, if any, additional distributions were
4 made to the Siblings Trust from the Purchased Entities during this time period that the SCIT
5 would have otherwise been entitled to “but for” Respondents intentionally selecting the effective
6 date as of March 31, 2013.

7 27. Such distributions not only demonstrate the falsity of Respondents’ contention but
8 further demonstrates the rationale for back dating the effective date of the agreement to March 31,
9 2013. Indeed, the Purchase Agreement had not yet even been finalized prior to the distributions
10 being made to the SCIT. Respondents, however, did not want Petitioner to receive any of the
11 benefits of the distributions and intentionally took action to defraud Petitioner by making the
12 “effective date” of the Purchase Agreement prior to the time such distributions were made so as to
13 allow these distributions to be reversed.²⁵

14 28. Respondents’ intentional decision to make the effective date of the Purchase
15 Agreement March 31, 2013, constitutes an intend to defraud Petitioner, a breach of fiduciary duty,
16 aiding and abetting and conspiring to commit a breach of fiduciary duty, fraud, constructive fraud
17 and fraudulent concealment. Consequently, Respondents are jointly and severally liable for such
18 conduct. As a direct and proximate result of Respondents’ acts and omissions, Petitioner has
19 suffered damages, the amount of which will be proven at an evidentiary hearing. Petitioner is
20 informed and believes and thereon alleges that the acts, omissions and conduct of Respondents, as
21 set forth herein, were intentional, malicious, fraudulent, oppressive and in violation of Petitioner’s
22 rights as the grantor and primary beneficiary of the SCIT and Respondents’ fiduciary obligations.

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24 ²⁴ See **Exhibit 3**, attached hereto is the Detail General ledger for the SCIT for the period of
25 April 1, 2013 through June 31, 2013. Such ledger has a handwritten note stating, “these
26 transactions should not have occurred in Scoit [sic] these investments sold effective 3/31/13.”
(Emphasis added).

27 ²⁵ Respondents further caused the SCIT to make capital contributions to at least three (3)
28 different entities in April and May, 2013, despite the Purchase Agreement having an “effective
date” of March 31, 2013. These amounts approximated \$900,000.00.

1 As a result, Petitioner is entitled to an award of punitive damages and to an award of attorney's
2 fees and costs, to be born personally by Respondents.

3 **E. The Financial Information Relied Upon by Western Valuation Advisors is**
4 **Inconsistent with other Financial Information of the SCIT and the Purchased**
5 **Entities.**

6 29. Subsequent to Petitioner learning of the sale in or about July, 2013, a court
7 proceeding was commenced for the purposes of appointing an independent valuation of a third-
8 party analyst to determine the purchase price. The parties later stipulated that the SCIT would
9 retain Stephen Nicolatus of Western Valuation Advisors to conduct a valuation. Despite such
10 stipulation, however, both parties further stipulated to reserve their respective positions as to the
11 determination of the Trustees' actions.²⁶ Thereafter, on December 19, 2013, the parties and their
12 respective counsel met with Stephen Nicolatus of Western Valuation Advisors for the purposes of
13 performing a valuation of the sale of the SCIT's assets pursuant to the Purchase Agreement.
14 Respondents' counsel thereafter sent Mr. Nicolatus a letter identifying the preliminary
15 information that would be provided to Mr. Nicolatus in connection with the valuation.

16 30. After several months following Mr. Nicolatus' retention²⁷, Respondents finally
17 provided the information necessary for the Valuation, which predominantly included:

- 18 a. Real estate appraisals of the land, which was commissioned by the
19 bank in connection with renegotiation of the Term Loan;

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21 ²⁶ See Stipulation and Order Appointing Valuation Expert and Clarifying Order, filed
22 December 2, 2013, p. 3:19-4:7 ("IT IS HEREBY STIPULATED AND AGREED that the
23 wording of the Order regarding the Trustee's agreement to provide the Beneficiary with
24 information and documentation concerning the Purchase Agreement, dated May 31, 2013,
25 contemplates the scope of information and documents that Edward Lubbers, Lawrence Canarelli
26 and Heidi Canarelli shall provide to Scott Canarelli concerning such purchase agreement, *but*
27 *does not establish the standard for the determination of the actions of such Trustees vis-à-vis*
28 *the Purchase Agreement, dated May 31, 2013*, as such standard will be determined at an
appropriate time in the future, if necessary, with *all parties reserving their respective positions*
and right to address the Court on this issue.") (Emphasis added).

²⁷ During this same time period, Larry, in his capacity as Family Trustee of the
Siblings Trusts, retained Houlihan for the purposes of valuing the assets.

- b. Trial Balances of the Purchased Entities for March 1, 2013 – March 31, 2013;
- c. Financial statements of the SCIT;
- d. Purchase Agreement;
- e. Tax returns for the SCIT;
- f. Organizational of the Purchased Entities;
- g. Management contracts for the Purchased Entities; and
- h. Various documents relating to the negotiation of Term Loan.

31. As a result of the limited information provided to him, Mr. Nicolatus submitted several questions to Respondents, which were predominantly responded to by Robert Evans. In preparing the Valuation Report, Mr. Nicolatus **relied on the accuracy** of the March Trial Balances for the Purchased Entities and made no determination as to their truth or accuracy. Specifically, Mr. Nicolatus stated:

In preparing this valuation, we have *used information provided by American West Development, Inc., its representatives, and other sources* referenced in the attached report. It *has been represented that the information is reasonably complete and accurate* and fairly presents the financial position, prospects and related facts of the entities subject to the Purchase Agreement. *It is beyond the scope of this report to ascertain the accuracy or reliability of the information provided*, and we offer no opinion as to such. All of the information made available to us was analyzed and reasonable attempts were made to find additional information which would be helpful in this study.²⁸

(Emphasis added).

32. Mr. Nicolatus' valuation was never contemplated to be binding on the parties and his report is explicit that Nicolatus ***relied on*** the American West entities to provide him information that was "reasonably complete and accurate." Despite Petitioner requesting supporting records from Respondents, the Siblings' Trusts, SJA and several of the purchased entities to determine the accuracy of the records provided to Mr. Nicolatus, to date, the only financial information disclosed relating to the Purchased Entities is a trial balance for 2012, 2013 and partial 2013. As referenced below, such trial balances completely contradict one another and

²⁸ See Valuation Ownership Interests Held by Scott Lyle Canarelli Irrevocable Trust Subject to Purchase Agreement as of March 31, 2013 ("Nicolatus Valuation"), as **Exhibit 12** to the Exhibits to Surcharge Petition, filed June 29, 2017, p. 2 (Emphasis added).

1 cannot be reconciled with the financial information of the Purchased Entities identified on the
2 Trust's financials, including tax returns, balance sheets, profit and loss statements, journal entries,
3 general ledgers, etc.

4 33. Notwithstanding, the limited financials disclosed by Respondents thus far in
5 discovery in connection with the accountings and the purchase price are fraught with
6 inconsistencies and otherwise cannot be reconciled. Specifically, Respondents produced trial
7 balances for the Purchased Entities for the period of January 1, 2012 through December 31, 2012
8 ("2012 PE Trial Balance"). Respondents further disclosed a trial balance for the SCIT ("SCIT
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14 34. Notwithstanding, the 2012 PE Trial Balance for AWH Ventures did not reconcile
15 with the 2012 SCIT Trial Balance; although such trial balances did for some of the other
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21 35. Further evidencing Respondents' manipulation of the financials to harm Petitioner
22 and the SCIT, and for example purposes only, the trial balances for AWH Ventures disclosed by
23 Respondents do not reconcile with one another. Specifically, Respondents disclosed trial
24 balances for the period of: (1) 2012 PE Trial Balances; (2) 2013 PE Trial Balances; and (3)
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27 ²⁹ To demonstrate the same, and for example purposes only, the trial balances for Arizona
28 Land Investments, LLC and Model Renting 2009, LLC, which are encompassed within the 2012
PE Trial Balances, reconcile with the value of the SCIT's interest in such entities as reported on
the 2012 SCIT Compilation.

1 January 1, 2013 – May 31, 2013. The ending balance for December 31, 2012 for assets and
2 liabilities do not match either of the opening balances of the trial balances for January 1, 2013.

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6 36. Mr. Nicolatus opined that the LLC Sale Interests were undervalued by
7 \$4,711,525.00 and that the Corporate Sale Interests were overvalued by \$1,873,678.00);
8 **however, such opinions were based upon the assumption of the accuracy of the March Trial**
9 **Balances.** The Corporate Interests that were determined by Mr. Nicolatus to be “overvalued”

10 While Mr. Nicolatus was
11 only provided the trial balance for AWH Ventures for March 1, 2013 through March 31, 2013, it
12 is not possible to reconcile such amount with either one of the three (3) trial balances referenced
13 above. Indeed, based on the trial balances disclosed, the Trust’s interest in AWH Ventures was
14 not over negative \$12 million. The foregoing evidence not only raises significant concern
15 regarding the veracity of the financials provided to Mr. Nicolatus, but further gives rise to claims
16 relating to breach of fiduciary duty, aiding and abetting and conspiring to commit a breach of
17 fiduciary duty, fraud, fraudulent concealment and constructive fraud.

18 37. Despite the foregoing inconsistencies, Respondents have utterly failed to produce
19 any of the following for the 35 Purchased Entities: Tax Returns; Audited or Unaudited Financial
20 Statements; Compilations; Profit and Loss Statements; Balance Sheets; General Ledgers; or
21 Journal Entries.³⁰ Petitioner asserts that the failure to produce such information is a direct result of
22 Respondents’ manipulation of the financial information submitted to Western Valuation Advisors
23 for the purposes of defrauding Petitioner as to the actual purchase price under the Purchase
24 Agreement.

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28 ³⁰ Respondents contend it is not within their “possession, custody or control,” despite
Larry is also an officer and director of the Purchased Entities.



38. In further evidence of Respondents' fraud and manipulation of the financial information provided to Western Valuation Advisors, the trial balance for Canfam Holdings, LLC for March 1, 2013 – March 31, 2013, only identifies cash in the amount of \$365,327.00. As set forth above, however, the amounts distributed to the SCIT, alone, were \$1,550,380.00, representing thirteen percent (13%) of the total amount distributed. Based on such percentage, CanFam Holdings, LLC distributed approximately \$12 million between April 13, 2013 and May 23, 2013, despite only having \$365,327.00 in cash as of March 31, 2013. These inconsistencies relating to the financial information of the Trust and Purchased Entities (that are currently subject to discovery disputes) will be subject to expert testimony and disclosed in the ordinary course of this litigation, as part of Petitioner's damages.

39. As a direct and proximate result of Respondents' acts and omissions, Petitioner has suffered damages for which Respondents are jointly and severally liable, the amount of which will be proven at an evidentiary hearing. Petitioner is informed and believes and thereon alleges that the acts, omissions and conduct of Respondents, as set forth herein, were intentional, malicious, fraudulent, oppressive and in violation of Petitioner's rights as the grantor and primary beneficiary of the SCIT and Respondents' fiduciary obligations. As a result, Petitioner is entitled

1 to an award of punitive damages and to an award of attorney's fees and costs, to be born
2 personally by Respondents.

3 **F. The Inclusion of the AWH Ventures Receivable of the SCIT in the Value of the**
4 **Corporate Interests Constituted a Breach of Fiduciary Duty, Constructive Fraud,**
5 **Negligent Misrepresentation, Fraud and/or Fraudulent Concealment.**

6 40. In connection with the valuation performed by Western Valuation Advisors,
7 Respondents, directly or indirectly, instructed Mr. Nicolatus and Houlihan to include the AWH
8 Ventures receivable in excess of \$5 million with the combined value of the Corporate Interests.
9 As Mr. Nicolatus opined, based on the financial information provided to him, that the Corporate
10 Interests were overvalued in the Purchase Agreement, no adjustment was made with respect to the
11 same. However, in rendering such opinion and pursuant to Respondents' direction, the
12 "overvalue" determined by Mr. Nicolatus included a shortfall on the AWH Ventures receivable in
13 the amount of \$899,702.00. As this asset was not a business interest, the shortfall should not have
14 been included in such calculation. Such inclusion, however, resulted in further damage to
15 Petitioner in an amount of \$899,702.00, at a minimum. As the underlying source financial
16 information that was provided to Mr. Nicolatus has not yet been disclosed, Petitioner is unable to
17 determine whether there are amounts in addition to \$899,702.00 are owed to him. Indeed, there is
18 inconsistency between the 2012 SCIT Trial Balance and the 2012 PE Trial Balance as to the
19 outstanding amount of the receivable.³²

20 41. Respondents' included the AWH Ventures' receivable within the Corporate
21 Interests valuation in order to defraud Petitioner and such action otherwise constitutes a breach of
22 fiduciary duty, aiding and abetting, conspiracy, fraud, constructive fraud and negligent
23 misrepresentation. As a direct and proximate result of Respondents' acts and omissions,
24 Petitioner has suffered damages for which Respondents are jointly and severally liable, the
25 amount of which will be proven at an evidentiary hearing. Petitioner is informed and believes and
26 thereon alleges that the acts, omissions and conduct of Respondents, as set forth herein, were

27 ³² These inconsistencies relating to the financial information of the Trust and Purchased
28 Entities (that are currently subject to discovery disputes) will be subject to expert testimony and
disclosed in the ordinary course of this litigation, as part of Petitioner's damages.

1 intentional, malicious, fraudulent, oppressive and in violation of Petitioner's rights as the grantor
2 and primary beneficiary of the SCIT and Respondents' fiduciary obligations. As a result,
3 Petitioner is entitled to an award of punitive damages and to an award of attorney's fees and costs,
4 to be born personally by Respondents.

5 **G. Trustee and Former Trustees' Failure to Properly Account.**

6 42. As set forth in detail in the Surcharge Petition, Daniel Gerety, CPA was retained
7 by petitioner for the purposes of analyzing the financial information provided by Respondents,
8 including "audited financial statements" ("SCIT Financials").³³ Based on such information, Mr.
9 Gerety provided three (3) separate opinions over the course of fifteen (15) months, and in
10 summary, opined that there were too many discrepancies between the income tax returns,
11 financial statements and general ledgers, which made it impossible to reconstruct a full
12 Accounting and to reconcile the cash receipts and disbursements of the SCIT. In an effort to
13 resolve his concerns, Mr. Gerety directly communicated with Robert Evans. However, Mr.
14 Gerety was ultimately not provided with the requisite information and this litigation resulted.

15 43. On or about September 27, 2016, the Respondents submitted to Petitioner
16 "Accountings" of the Trust for the time period between 1998 and 2013. These new accountings
17 were compilations (rather than audited financial statements) of the SCIT and, upon information
18 and belief, appear to be based upon the 2012 PE Trial Balance and 2012 SCIT Trial Balance, in
19 part ("SCIT Compilations"). The SCIT Compilations, however, raised more questions than
20 answers. In several instances, the information reported on the SCIT Financials contradicted
21 information reported of the SCIT Compilations, including the receipts and disbursements. Other
22 examples of the contradictions between the 2012 SCIT Financials and 2012 SCIT Compilation,
23 include but are not limited to the following:

24
25 ³³ Such information included the trust agreements, statements of financial condition
26 of the SCIT for the period of 1997-2000, audited statements for the period of 2001-2012, certain
27 compiled financial statements for the periods ending June 30 and September 30, 2013, balance
28 sheets and income statements for the period 2009-2013, income tax returns for the SCIT for 1997-
2012 and income tax returns for the Protection Trust for 2009-2013 (collectively, "Account
Information").

- a. Differences in the beginning balances of related party loans;
- b. Differences in the ending balances of related party loans;
- c. Differences in the beginning values of the Colorado land holdings; and
- d. Differences in the ending values of the Colorado land holdings.

44. Additionally, while the SCIT Compilations purported to value the business interests based on "fair market value" rather than "book value," the SCIT Compilations demonstrated otherwise. Specifically, the 2012 SCIT Compilation identifies an "adjustment to

merely a difference between the beginning and ending balance of the value of the SCIT for 2012.

45. Petitioner subsequently received accountings for the time periods of 2014, 2015 and 2016. The 2015 and 2016 accountings were prepared subsequent of the filing of the Surcharge Petition. As the SCIT no longer held business interests as a result of the Purchase Agreement, the issues relations to such accountings primarily related to: (a) the underlining value of the entities subject to the Purchase Agreement; (b) the timing of the sale of the business interests; (c) loss investment use for deferred principal payments; (d) payment of Respondents' attorneys' fees; and (e) payment of Trustee fees.

46. The foregoing, these inconsistencies relating to the financial information of the Trust and Purchased Entities (that are currently subject to discovery disputes) will be subject to expert testimony and disclosed in the ordinary course of this litigation, as part of Petitioner's damages.

47. In preparing the SCIT Financials and SCIT Compilations, Respondents represented the valuate of the Trust's assets and transactions of the Trust. Such representations were false and such representations amount to not only a breach of fiduciary duty, aiding and abetting and conspiring to commit a breach of fiduciary duty but also fraud, constructive fraud and fraudulent concealment. Consequently, Respondents are jointly and severally liable for such conduct. As a direct and proximate result of Respondents' acts and omissions, Petitioner has suffered damages, the amount of which will be proven at an evidentiary hearing. Petitioner is informed and believes and thereon alleges that the acts, omissions and conduct of Respondents, as set forth herein, were intentional, malicious, fraudulent, oppressive and in violation of Petitioner's

1 rights as the grantor and primary beneficiary of the SCIT and Respondents' fiduciary obligations.
2 As a result, Petitioner is entitled to an award of punitive damages and to an award of attorney's
3 fees and costs, to be born personally by Respondents.

4 WHEREFORE, Petitioner requests that following an evidentiary hearing on this matter,
5 this Court make and enter the following orders:

6 (1) An award of actual damages in an amount to be proven at the time of hearing but
7 in any case, exceeding Fifteen Thousand Dollars (\$15,000.00);

8 (2) An award of punitive/exemplary damages in an amount exceeding Fifteen
9 Thousand Dollars (\$15,000.00);

10 (3) An award of attorneys' fees, costs, and account fees;

11 (4) Any and all declaratory relief appropriate under the circumstances; and

12 (5) For such other orders as the Court deems proper.

13 DATED this 18 day of May, 2018.

14 SOLOMON DWIGGINS & FREER, LTD.

15 By: Tess Johnson

16 DANA A. DWIGGINS, ESQ.

17 Nevada Bar No. 007049

18 TESS E. JOHNSON, ESQ.

19 Nevada Bar No. 13511

20 9060 West Cheyenne Avenue

21 Las Vegas, Nevada 89129

22 *Attorneys for Petitioner, Scott Canarelli*

VERIFICATION

Petitioner, SCOTT LYLE GRAVES CANARELLI, whose mailing address is 12 Highland Creek, Henderson, Nevada 899052, declares under penalties of perjury of the State of Nevada:

That he is the Petitioner who makes the foregoing **SUPPLEMENT TO PETITION TO SURCHARGE TRUSTEE AND FORMER TRUSTEES FOR BREACH OF FIDUCIARY DUTIES, CONSPIRACY AND AIDING AND ABETTING; PETITION FOR BREACH OF FIDUCIARY DUTY FOR FAILURE TO PROPERLY ACCOUNT; and PETITION FOR AN AWARD OF ATTORNEY FEES, ACCOUNTANT FEES AND COSTS** that he has read said petition and knows the contents thereof, and that the same is true of his own knowledge except for those matters stated on information and belief, and that as to such matters he believes it to be true.

DATED this 16th day of May, 2018.



SCOTT LYLE GRAVES CANARELLI

EXHIBIT 1

IN CAMERA

**Purchase Agreement (RESP0086867-
RESP0086882)**

EXHIBIT 1

AGREEMENT

This agreement ("Agreement") is entered into and effective this ____ day of _____, 2013 by and among the Scott Lyle Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Seller") and SJA Acquisitions, LLC, a Nevada limited liability company ("LLC Purchaser"), Jeffrey Lawrence Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee, Stacia Leigh Lemke Irrevocable Trust, Lawrence D. Canarelli, family trustee and Alyssa Lawren Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Corp Purchasers").

RECITALS

- A. Seller is the owner of minority interests in certain limited liability companies ("LLCs") and certain corporations ("Corporations") that comprise the Nevada home building operation commonly known as "American West". The LLCs and The Corporations are listed on Exhibit "A". Exhibit A also shows Seller's ownership interest in each LLC and each Corporation. The Corporations are each taxed as an S Corporation taxpayer.
- B. The LLCs, Corporations and Seller are borrowers under that certain Term Loan Credit Agreement dated as of December 31, 2009 with California Bank & Trust, Wells Fargo Bank, National Association and additional lenders ("Credit Agreement"). The LLCs and the Corporations, under the Credit Agreement, are included in the term, and are referred to as, members of the American West Group of Borrowers. Seller, along with the other owners of the LLCs and the Corporations, are borrowers under the Credit Agreement.
- C. Pursuant to the Credit Agreement, Seller, along with the other borrowers (including the LLCs and the Corporations) are jointly and severally liable for the amount due and owing, at any time, under the Credit Agreement.
- D. Pursuant to the Credit Agreement, Seller, along with the other borrowers (excluding Lawrence D. Canarelli and Heidi Canarelli), is precluded from receiving any cash distributions from any of the LLCs or the Corporations, including any distribution that would be attributable to Seller's ownership interests in the LLCs and the Corporations. Lawrence D. Canarelli and Heidi Canarelli are entitled to limited distributions.
- E. The Credit Agreement matures in October, 2013. The American West Group of Borrowers will not have sufficient cash at maturity to pay off the Credit Agreement. Discussions have begun with certain of the lenders for either an extension of the current Credit Agreement or a new credit agreement.
- F. It is anticipated that a new credit agreement or an extension to the current Credit Agreement will continue to: (1) require Seller to be jointly and severally liable for the full amount due, and (2) prohibit distributions from the LLCs or the Corporations to Seller.
- G. Scott Lyle Graves Canarelli ("Scott") is the grantor and beneficiary of Seller. Lawrence D. Canarelli ("Trustee") and Heidi Canarelli are the family trustees of the Seller, and under the terms of Seller's Trust Agreement, each has the ability to bind Seller, acting alone. Edward C. Lubbers is the Independent Trustee ("Independent Trustee").

H. Scott has indicated to the Independent Trustee certain needs that he has for available funds to provide for his family and certain concerns that he has in regard to management of Seller by Trustee.

I. The Trustee and the Independent Trustee believe that the restriction on distributions currently in effect under the Credit Agreement, and likely to be in effect under a new credit agreement, will make providing cash to Scott difficult, and to make cash available would risk a default under the Credit Agreement.

J. The Trustee and the Independent Trustee believe the unlimited joint and several liability of Seller creates an unacceptable level of risk for Seller, especially in light of the cash needs of Scott and the distribution restriction.

K. In order to avoid joint and several liability under the Credit Agreement, and to provide available funds to Scott, Seller desires to sell Seller's ownership interests in the: (1) LLCs to the LLC Purchaser, and (2) Corporations to the Corp Purchasers (to maintain S corporation tax status). Each such sale shall be pursuant to the terms and provisions of this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS

1. The above recitals are hereby incorporated into this Agreement and, by such incorporation, shall be considered terms and provisions of this Agreement. Exhibit A is hereby incorporated into this Agreement, along with all other exhibits referenced herein.
2. Seller shall sell all of its cash, and all of its ownership interests in the LLCs to the LLC Purchaser, and the LLC Purchaser shall purchase all of Seller's cash and all of the ownership interests of Seller in the LLCs (the "LLC Sale Interests") for the LLC Sale Interests Purchase Price, as defined in Section 3. Seller shall sell all of its ownership interests in the Corporations to the Corp Purchasers, and the Corp Purchasers shall purchase all of the ownership interests of Seller in the Corporations (the "Corporation Sale Interests") for the Corporation Sale Interests Purchase Price, as defined in Section 3.
3. The LLC Sale Interests Purchase Price shall be \$ _____. The Corporation Sale Interests Purchase Price shall be \$ _____.
4. The LLC Sale Interests Purchase Price shall be paid: (a) in cash, on a dollar for dollar basis for Seller's cash, and (b) the balance of the LLC Sale Interests Purchase Price by a promissory note ("LLC Note"), substantially in the form of Exhibit "B", which shall earn interest at the rate of ____% compounded annually, and payable in _____ monthly payments of principal and interest.
5. The Corporation Sale Interests Purchase Price shall be paid by a promissory note ("Corp Note"), substantially in the form of Exhibit "C", which shall earn interest at the rate of ____% compounded annually, and payable in _____ monthly payments of principal and interest.
6. The LLC Note and the Corp Note shall be personally guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally, by a guaranty substantially in the form of Exhibit "D" ("Guaranty").
7. In light of the familiarity of each of the parties with the LLCs, Corporations, LLC Sale Interests, Corporation Sale Interests, the Credit Agreement, power and authority of the individual parties

to enter into, and perform this Agreement, title to the real properties owned and the business of American West, all parties waive warranties and representations from each other. In addition, LLC Purchaser and Corp Purchasers agree to assume all obligations of Seller.

8. The LLC Purchaser and the Corp Purchasers, jointly and severally, agree to indemnify Seller against, and agree to hold Seller harmless from, any and all losses imposed on or suffered by Seller arising out of the current Credit Agreement, or any other obligation of Seller assumed by LLC Purchaser and/or Corp Purchasers.
9. The sales contemplated by this Agreement, and the Guaranty, are conditioned on obtaining advance approval from the lenders (or agent lender, as determined by the lenders) under the current Credit Agreement. It is anticipated that the lenders, in providing consent, will condition their consent, and Seller agrees that it will sell the LLC Sale Interests and the Corporation Sale Interests subject to reasonable conditions imposed by lenders. Seller agrees that the following conditions, if imposed, would be reasonable:
 - A. LLC Purchaser must become a borrower under the Credit Agreement or new credit agreement;
 - B. The LLC Note and the Corp Note will be subordinate to the Credit Agreement or new credit agreement;
 - C. No payment will be permitted on the LLC Note or the Corp Note in the event of an uncured default under the Credit Agreement or new credit agreement;
 - D. Seller, as payee of the LLC Note and Corp Note, shall not be permitted to enforce the Guaranty in the event of an uncured default under the Credit Agreement or new credit agreement.
10. The LLC Purchaser, in regard to the LLCs, and the Corp Purchasers, in regard to the Corporations, shall prepare and file all tax returns that may be necessary to file as a result of the sales contemplated by this Agreement.
11. Lawrence D. Canarelli is entering into this Agreement as Family trustee of Seller and Family Trustee of the Corp Purchasers pursuant to authorization provided in each of the Trusts, as required by NRS 163.060.
12. Miscellaneous.
 - A. Entire Agreement; Amendment. Any and all exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part hereof. This Agreement, including all exhibits hereto, is the entire Agreement between the parties pertaining to all matters agreed upon or understood in connection with the joint venture. There are no oral promises conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition may be made to this Agreement except by a written agreement executed by the parties.
 - B. Further Assurances. The parties hereto shall execute, acknowledge and deliver such other instruments and documents as may be necessary or appropriate to carry out the full intent and purpose of this Agreement.
 - C. Applicable Law. This Agreement and the rights of the parties hereto shall be interpreted, governed and construed in accordance with the laws of the State of Nevada, and venue of any action shall be brought in the U.S. Federal District Court for Nevada, or the State Courts of Nevada, in Clark County.

D. Section Headings. The section headings in this Agreement are inserted only for convenience and reference and the parties intend that they shall be disregarded in interpreting the terms, covenants, conditions and provisions of this Agreement.

E. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited hereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

F. Waiver. Either of the parties shall have the right to excuse or waive performance by the other party of any obligation under this Agreement by a writing signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either party of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

G. Construction. As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context so requires. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party causing this Agreement or any part of this Agreement to be drafted.

H. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same Agreement.

THE NEXT PAGE IS THE SIGNATURE PAGE

In Witness Whereof the parties have executed this Agreement the date first set forth above.

SELLER:

Scott Lyle Graves Canarelli Irrevocable Trust,

By _____

Lawrence D. Canarelli, family trustee

LLC PURCHASER:

SJA Acquisitions, LLC, a Nevada limited liability company

By H&L Management, LLC, its Manager

By H&L Management, Inc., its Manager

By _____

Cheryl Corley, President

CORP PURCHASERS:

Jeffrey Lawrence Graves Canarelli Irrevocable Trust,

Stacia Leigh Lemke Irrevocable Trust,

Alyssa Lawren Graves Canarelli Irrevocable Trust,

By _____

Lawrence D. Canarelli, family trustee of each

EXHIBIT A
LLCs and Corporations
See attached

EXHIBIT B
PROMISSORY NOTE
(LLCs)

\$ _____ .00

Las Vegas, Nevada
_____, 2013

1. Principal Obligation and Interest. FOR VALUE RECEIVED, SJA Acquisitions, LLC, a Nevada limited liability company ("Borrower"), unconditionally promises to pay to Scott Lyle Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee (the "Lender"), or order at _____, Las Vegas, Nevada, or at such other place as the Lender may designate in writing, in currently available funds of the United States, the principal sum of _____ (\$ _____ .00), or so much thereof as may be advanced hereunder, together with interest on the unpaid principal at ____ % per annum.

The interest rate for this Note shall be calculated on the basis of the actual number of days elapsed over a 360 day year. Whenever there is a default by Borrower under this Note, the interest rate on the unpaid principal balance shall, at the option of the Lender, be at the Default Rate set forth below.

2. Payment Terms. Principal and interest shall be paid in _____ (____) monthly installments of _____ DOLLARS (____) each. The final monthly installment shall be in the amount of the then unpaid balance of principal and accrued interest. The first of the monthly installments shall be paid on _____, 2013, and subsequent payments shall be made on or before the first day of each following month.

All payments received hereunder shall be applied first to the payment of accrued interest and the balance applied to principal. Borrower will make payments required hereunder to the Lender's address indicated in Section 1 above, or at a different place if required by the Lender.

3. Prepayment. Borrower may prepay the entire principal balance at any time without penalty.

4. Guaranty. This Note is guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally.

5. Default and Acceleration. The principal unpaid balance, plus accrued interest, shall, at the option of the Lender or any holder of this Note, become due and payable without notice or demand upon Borrower's failure to pay any installment of principal or interest due on this Note. In the event that any amount due under this Note is reduced to judgment, or if Borrower fails to make any payment provided for in this Note when due and is not cured within ten (10) days after written notice is sent to Borrower of such default, the Lender, or any holder of this Note, may, at its option declare the unpaid balance of principal and the accrued unpaid interest due and payable although the time of maturity as expressed herein shall not have arrived, and, regardless whether the Lender so accelerates, the total of the unpaid balance of principal and the then accrued and unpaid interest (past due interest being compounded monthly on the last day of each calendar month to the fullest extent permitted by law) shall then begin accruing interest at the rate stated in Section 1 above, plus four percent (4.0%) per annum (the "Default Rate"), until such time as all past due payments and accrued interest are paid. At that time, the interest rate will revert to that rate provided in Section 1. Borrower acknowledges that the effect of this

Default Rate provision could operate to compound some of the interest obligations due, and Borrower hereby expressly consents to such compounding should it occur.

6. Attorneys' Fees and Costs. Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or an attorney be retained by the Lender for collection, Borrower agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement, including any fees incurred in connection with such proceedings or collection of this Note and/or enforcement of the Lender's rights with respect to the administration, supervision, preservation or protection of, or realization upon, any property securing payment hereof, whether or not an action is filed in connection therewith.

7. Miscellaneous.

a. The failure of the Lender to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Borrower to the Lender, or constitute a waiver by the Lender of, or otherwise affect any of, the Lender's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

b. The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

c. Borrower waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest, notice of nonpayment and any other notice or formality and any right of offset.

d. All titles used in this Note are intended solely for convenience and reference; said titles shall not affect any terms, provisions, or meanings of this Note.

e. No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by a duly authorized officer of the Lender, and then only to the extent therein specifically set forth.

f. All rights and remedies provided to the Lender or the holder of this Note shall be cumulative and shall be in addition to all other rights and remedies provided at law or in equity and all such rights and remedies may be exercised singly, successively and/or concurrently.

g. Time is of the essence hereof. Interest not paid when due shall earn interest as principal.

h. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Note.

i. All notices given to or made upon Borrower shall be deemed to have been given or made when deposited in the U.S. Mail and addressed to Borrower at the address indicated below.

IN WITNESS WHEREOF, this Note has been executed effective the date and place above written.

SJA Acquisitions, LLC, a Nevada limited liability company

By H&L Management, LLC, its Manager

By H&L Management, Inc., its Manager

By _____
Cheryl Corley, President

EXHIBIT C

PROMISSORY NOTE

(Corps)

\$ _____ .00

Las Vegas, Nevada
_____, 2013

1. **Principal Obligation and Interest.** FOR VALUE RECEIVED, Jeffrey Lawrence Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee, Stacia Leigh Lemke Irrevocable Trust, Lawrence D. Canarelli, family trustee and Alyssa Lawren Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Borrowers"), severally and unconditionally promise to pay to Scott Lyle Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee (the "Lender"), or order at _____, Las Vegas, Nevada, or at such other place as the Lender may designate in writing, in currently available funds of the United States, the principal sum of _____ (\$ _____ .00), or so much thereof as may be advanced hereunder, together with interest on the unpaid principal at ____% per annum.

The interest rate for this Note shall be calculated on the basis of the actual number of days elapsed over a 360 day year. Whenever there is a default by Borrower under this Note, the interest rate on the unpaid principal balance shall, at the option of the Lender, be at the Default Rate set forth below.

2. **Payment Terms.** Principal and interest shall be paid in _____ (____) monthly installments of _____ DOLLARS (____) each. The final monthly installment shall be in the amount of the then unpaid balance of principal and accrued interest. The first of the monthly installments shall be paid on _____, 2013, and subsequent payments shall be made on or before the first day of each following month.

All payments received hereunder shall be applied first to the payment of accrued interest and the balance applied to principal. Borrower will make payments required hereunder to the Lender's address indicated in Section 1 above, or at a different place if required by the Lender.

3. **Prepayment.** Borrower may prepay the entire principal balance at any time without penalty.

4. **Guaranty.** This Note is guaranteed by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally.

5. **Default and Acceleration.** The principal unpaid balance, plus accrued interest, shall, at the option of the Lender or any holder of this Note, become due and payable without notice or demand upon Borrower's failure to pay any installment of principal or interest due on this Note. In the event that any amount due under this Note is reduced to judgment, or if Borrower fails to make any payment provided for in this Note when due and is not cured within ten (10) days after written notice is sent to Borrower of such default, the Lender, or any holder of this Note, may, at its option declare the unpaid balance of principal and the accrued unpaid interest due and payable although the

time of maturity as expressed herein shall not have arrived, and, regardless whether the Lender so accelerates, the total of the unpaid balance of principal and the then accrued and unpaid interest (past due interest being compounded monthly on the last day of each calendar month to the fullest extent permitted by law) shall then begin accruing interest at the rate stated in Section 1 above, plus four percent (4.0%) per annum (the "Default Rate"), until such time as all past due payments and accrued interest are paid. At that time, the interest rate will revert to that rate provided in Section 1. Borrower acknowledges that the effect of this Default Rate provision could operate to compound some of the interest obligations due, and Borrower hereby expressly consents to such compounding should it occur.

6. Attorneys' Fees and Costs. Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or an attorney be retained by the Lender for collection, Borrower agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement, including any fees incurred in connection with such proceedings or collection of this Note and/or enforcement of the Lender's rights with respect to the administration, supervision, preservation or protection of, or realization upon, any property securing payment hereof, whether or not an action is filed in connection therewith.

7. Miscellaneous.

a. The failure of the Lender to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Borrower to the Lender, or constitute a waiver by the Lender of, or otherwise affect any of, the Lender's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

b. The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

c. Borrower waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest, notice of nonpayment and any other notice or formality and any right of offset.

d. All titles used in this Note are intended solely for convenience and reference; said titles shall not affect any terms, provisions, or meanings of this Note.

e. No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by a duly authorized officer of the Lender, and then only to the extent therein specifically set forth.

f. All rights and remedies provided to the Lender or the holder of this Note shall be cumulative and shall be in addition to all other rights and remedies provided at law or in equity and all such rights and remedies may be exercised singly, successively and/or concurrently.

g. Time is of the essence hereof. Interest not paid when due shall earn interest as principal.

h. The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Note.

i. All notices given to or made upon Borrower shall be deemed to have been given or made when deposited in the U.S. Mail and addressed to Borrower at the address indicated below.

IN WITNESS WHEREOF, this Note has been executed effective the date and place above written.

Jeffrey Lawrence Graves Canarelli Irrevocable Trust,
Stacia Leigh Lemke Irrevocable Trust,
Alyssa Lawren Graves Canarelli Irrevocable Trust,

By _____
Lawrence D. Canarelli, family trustee of each

EXHIBIT D

PAYMENT GUARANTY

This Payment Guaranty ("Guaranty") is made as of _____, 2013, by Lawrence D. Canarelli and Heidi Canarelli, jointly and severally (the "Guarantor") in favor of the Scott Lyle Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Lender").

Factual Background

- A. Guarantor agreed to execute this Guaranty to induce Lender to accept two (2) promissory notes (the "Notes"), one made by SJA Acquisitions, a Nevada limited liability company ("LLC Purchaser"), and one made by Jeffrey Lawrence Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee, Stacia Leigh Lemke Irrevocable Trust, Lawrence D. Canarelli, family trustee and Alyssa Lawren Graves Canarelli Irrevocable Trust, Lawrence D. Canarelli, family trustee ("Corp Purchasers"). LLC Purchaser and Corp Purchasers may be referred to as Borrowers or Borrower.
- B. The LLC Purchaser has executed a Note in the amount of _____ Dollars (\$_____) (the "LLC Note").
- C. The Corp Purchasers have executed a Note in the amount of _____ Dollars (\$_____) (the "Corp Note").
- D. Lender would not accept the Notes without this Guaranty, and each person constituting Guarantor, has received good and valuable consideration for its agreements set forth herein.

Guaranty

1. Guaranty of Notes. Guarantor unconditionally guarantees to Lender the full payment of each Note, and unconditionally agrees to pay Lender the full amount of each Note. This is a guaranty of payment, not of collection. If Borrower defaults in the payment when due of either Note or any part of it and such default is not cured within thirty (30) days after written demand, Guarantor shall in lawful money of the United States pay to Lender or order, on demand, all sums due and owing on the Note, including all interest, charges, fees and other sums, costs and expenses.

2. Rights of Lender. Guarantor authorizes Lender to perform any or all of the following acts at any time in its sole discretion, all without notice to Guarantor and without affecting Guarantor's obligations under the Guaranty:

(a) Lender may alter any terms of the Note or any part of it by agreement with Borrowers or one of them or pursuant to any other provision of either Note, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Note or any part of it.

(b) Lender may apply any payments or recoveries from Borrowers, Guarantor or any other source, to Borrower's obligations under Borrower's Note in such manner, order and priority as

Lender may elect, whether or not those obligations are guaranteed by this Guaranty or secured at the time of the application.

(c) Lender may release Borrowers or one of them of its liability for the Note or any part of it.

3. Guaranty to be Absolute. Guarantor expressly agrees that until each Note is paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor shall not be released by or because of:

(a) Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

(b) Any waiver, extension, modification, forbearance, delay or other act or omission of Lender, or its failure to proceed promptly or otherwise as against either Borrower or Guarantor;

(c) Any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrowers or one of them; or

(d) Any dealings occurring at any time between Borrower or one of them and Lender, whether relating to the Notes or otherwise.

4. Guarantor's Waivers. Guarantor waives:

(a) All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Lender to the fullest extent permitted by law;

(b) Any right it may have to require Lender to proceed against Borrowers or one of them, or pursue any other remedy in Lender's power to pursue;

(c) Any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrowers;

(d) Any defense based on: (i) any legal disability of Borrowers or one of them, (ii) any release, discharge, modification, impairment or limitation of the liability of Borrowers to Lender from any cause, whether consented to by Lender or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships ("Insolvency Proceeding") and (iii) any rejection or disaffirmance of either Note, or any part of either Note, or any security held for it, in any such Insolvency Proceedings;

(e) Any defense based on any action taken or omitted by Lender in any Insolvency Proceeding involving Borrowers or one of them, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender to Borrowers in any Insolvency Proceeding, and the taking and holding by Lender of any security for any such extension of credit;

(f) All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and of the existence,

creation, or incurring of new or additional indebtedness, and demands and notices of every kind except for any demand or notice by Lender to Guarantor expressly provided for in Section 1;

(g) Any defense based on or arising out of any defense that Borrowers may have to the payment or performance of either Note or any part of either Note.

5. Waivers of Subrogation and Other Rights.

(a) Upon a default by Borrower or one of them, Lender in its sole discretion, without prior notice to or consent of Guarantor, may elect to: (i) compromise or adjust either Note or any part of either Note or make any other accommodation with Borrowers or Guarantor, or (ii) exercise any other remedy against Borrowers or any security. No such action by Lender shall release or limit the liability of Guarantor, who shall remain liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Lender, whether contractual or arising by operation of law or otherwise.

(b) Regardless of whether Guarantor may have made any payments to Lender, Guarantor forever waives: (i) all rights of subrogation, all rights of indemnity, and any other rights to collect reimbursement from Borrowers for any sums paid to Lender, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise, and (ii) all rights to enforce any remedy that Lender may have against Borrowers.

6. Revival and Reinstatement. If Lender is required to pay, return or restore to Borrower or any other person any amounts previously paid on the Notes because of any Insolvency Proceeding of Borrowers, any stop notice or any other reason, the obligations of Guarantors shall be reinstated and revived and the rights of Lender shall continue with regard to such amounts, all as though they had never been paid.

7. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Nevada.

8. Costs and Expenses. If any lawsuit or arbitration is commenced which arises out of, or which relates to this Guaranty or the Notes, the prevailing party shall be entitled to recover from each other party such sums as the court or arbitrator may adjudge to be reasonable attorneys' fees (including allocated costs for services of in-house counsel) in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other situations, including any Insolvency Proceeding, Guarantor agrees to pay all of Lender's costs and expenses, including attorneys' fees which may be incurred in any effort to collect or enforce the Note or any part of it or any term of this Guaranty. From the time(s) incurred until paid in full to Lender, all sums shall bear interest at the interest rate set forth in the Notes.

9. Integration; Modifications. This Guaranty (a) integrates all the terms and conditions mentioned in or incidental to this Guaranty, (b) supersedes all oral negotiations and prior writings with respect to its subject matter, and (c) is intended by Guarantor and Lender as the final expression of the agreement with respect to the terms and conditions set forth in this Guaranty and as the complete and exclusive statement of the terms agreed to by Guarantor and Lender. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in this Guaranty. This Guaranty may not be modified except in a writing signed by both Lender and Guarantor.

10. Miscellaneous. The death or legal incapacity of any Guarantor shall not terminate the obligations of such Guarantor or any other Guarantor under this Guaranty. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several. The illegality or unenforceability of one or more provisions of this Guaranty shall not affect any other provision. Any Guarantor who is married agrees that Lender may look to all of his or her community property and separate property to satisfy his or her obligations under this Guaranty. Time is of the essence in the performance of this Guaranty by Guarantor.

GUARANTOR:

Lawrence D. Canarelli

Heidi Canarelli

EXHIBIT 2

IN CAMERA

**Email from Bob Evans sent and
disclosed by Petitioner as CAN002111-
CAN02112**

EXHIBIT 2

From: Scott Canarelli [scanarelli@aol.com]
Sent: 3/12/2018 11:58:24 AM
To: Erin L. Hansen [ehansen@sdfnlaw.com]; Dana Dwiggin [ddwiggin@sdfnlaw.com]
CC: My iPhone [scanarelli@aol.com]
Subject: Fwd: Scott Canarelli

Sent from my iPhone

Begin forwarded message:

From: "Bob Evans" <BEvans@AmericanWesthomes.com>
Date: August 2, 2012 at 9:36:57 AM PDT
To: "Janson, Rick" <rick@porchlightgroup.com>
Cc: "Scott Canarelli" <SCanarelli@AmericanWesthomes.com>
Subject: RE: Scott Canarelli

I will follow up with Scott on this.

From: Janson, Rick [mailto:rick@porchlightgroup.com]
Sent: Wednesday, August 01, 2012 10:47 AM
To: Bob Evans
Subject: Re: Scott Canarelli

Thank you Bob. Let me see if there is anything else my sellers would like... His relationship to American West Homes is quite a solid letter of reference in and of itself.

I mentioned to Scott that I could get the owners on the phone for a discussion of the financials of running the center - typical costs and sources of revenue, etc. He hinted that someone else involved with his trust might want to be in on that phone call. Who would that be and when would that person be available for a conference call?

Thank you,
~ Rick Janson

On Tue, Jul 31, 2012 at 3:56 PM, Bob Evans <BEvans@americanwesthomes.com> wrote:

Hi Rick,

I can put this in writing if you like.

I am fully aware of the financial situation of the Canarelli Family and Scott Canarelli in particular. Scott has the available resources to acquire the property with cash.

Bob

From: Janson, Rick [mailto:rick@porchlightgroup.com]
Sent: Tuesday, July 31, 2012 3:50 PM
To: Bob Evans
Subject: Re: Scott Canarelli

Hi Bob ~

Thank you for writing.

Many of the interested buyers on this property have claimed to have some resources, and then two months into negotiations bailed as they couldn't get a loan, didn't have sufficient income, etc.

Scott and I spoke at length, and he appears to be very well qualified to purchase the property through his trust. I merely need something from you for my clients verifying that he could, indeed, purchase the property without the necessity of a bank loan.

Thank you,

~ Rick Janson

303.589.2320

On Tue, Jul 31, 2012 at 3:45 PM, Bob Evans <BEvans@americanwesthomes.com> wrote:

Hello Rick,

I just spoke with Scott Canarelli about a property he has been discussing with you. Scott mentioned that you needed a letter from a CPA? I am the Canarelli family in house CPA. Please advise me as to what you need.

You can contact me by e-mail or by phone at 702-736-6434 ext 231.

Bob

EXHIBIT 3

IN CAMERA

**SCIT General Ledger for April 1, 2013
to June 31, 2013**

EXHIBIT 3

Date: Friday, June 21, 2013
 Time: 02:57PM
 User: JACKIE NARES

SCOTT L. GRAVES CANARELLI IRRV
GL Edit - Standard

Period: 08-13 As of: 6/21/2013 Ledger ID: ACTUAL

Page: 1 of 1
 Report: 01810.rpt
 Company: SCOT007

Tran Type	Company ID	Account	Subaccount	Account Description		Subaccount Description			
	Project	Activity	Reference Nbr	Tran Date	Tran Description	Qty	Debits	Credits	
Batch: 020029	Status: B	Auto Rev:	No	Cycle: 0	Nbr Cycles:	0	Jml Type: GJ	Per Entr: 06-13	Per Post: 05-13
								Control Total:	1,550,380.00

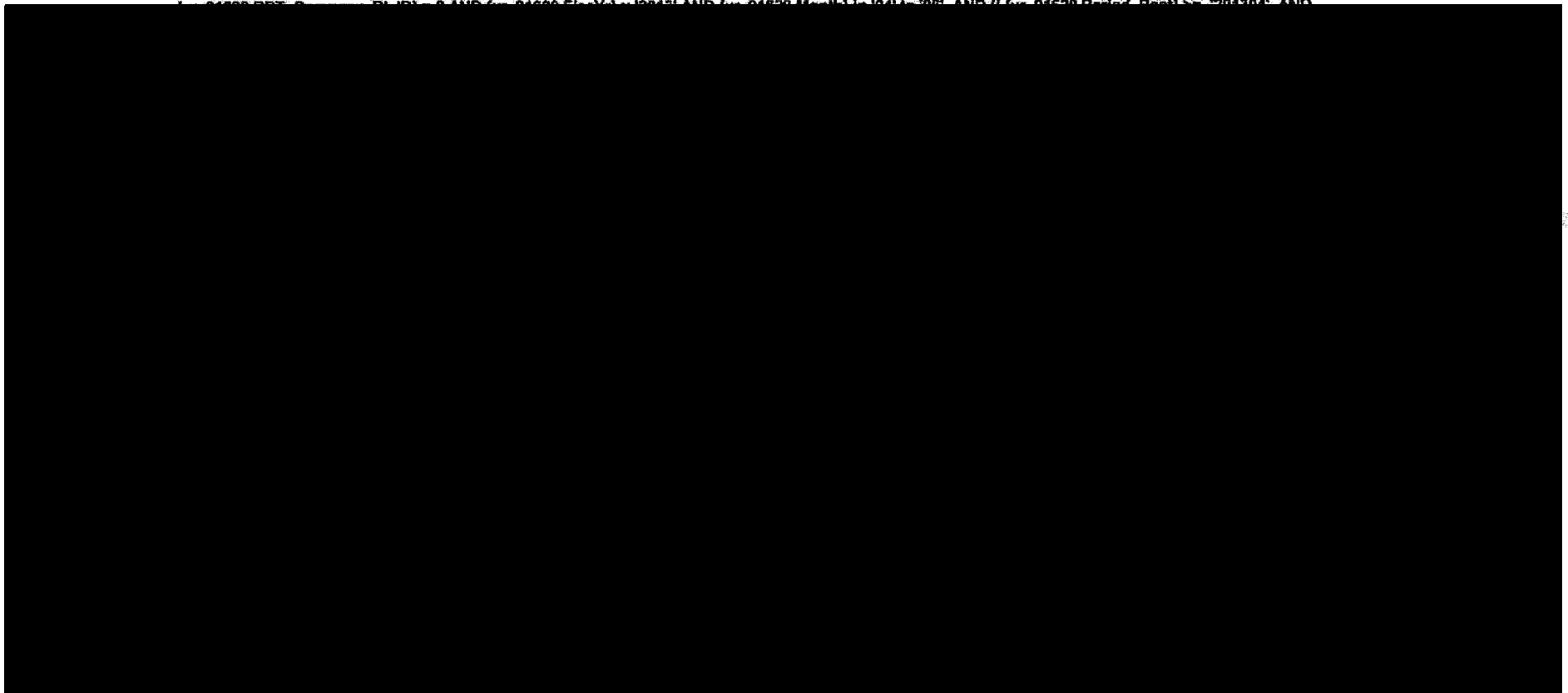
POSTED
 JUN 21 2013
 BY: J. NARES

date: Friday, June 21, 2013
time: 09:23 AM
user: JACKIE NARES

SCOTT L. GRAVES CANARELLI IRRV

Page: 1 of 19
Report: 01620.rpt
Company: SCOT007

Detail General Ledger - Standard
Periods: 04-13 Through 06-13 As of: 6/21/2013 Ledger ID: ACTUAL



These TRANSACTIONS should
Not have occurred in SCOT
These investment sold effective 3/31/13

EXHIBIT 4

IN CAMERA

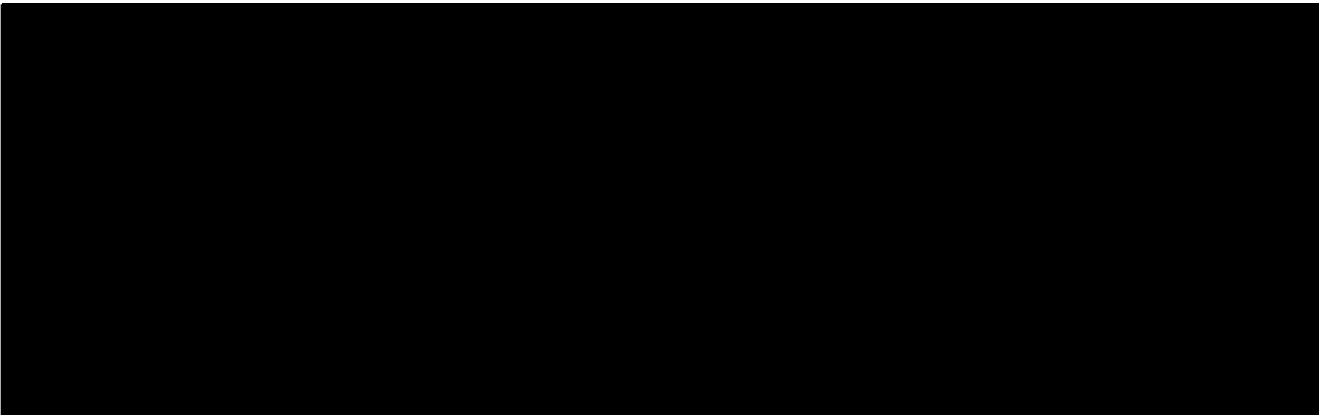
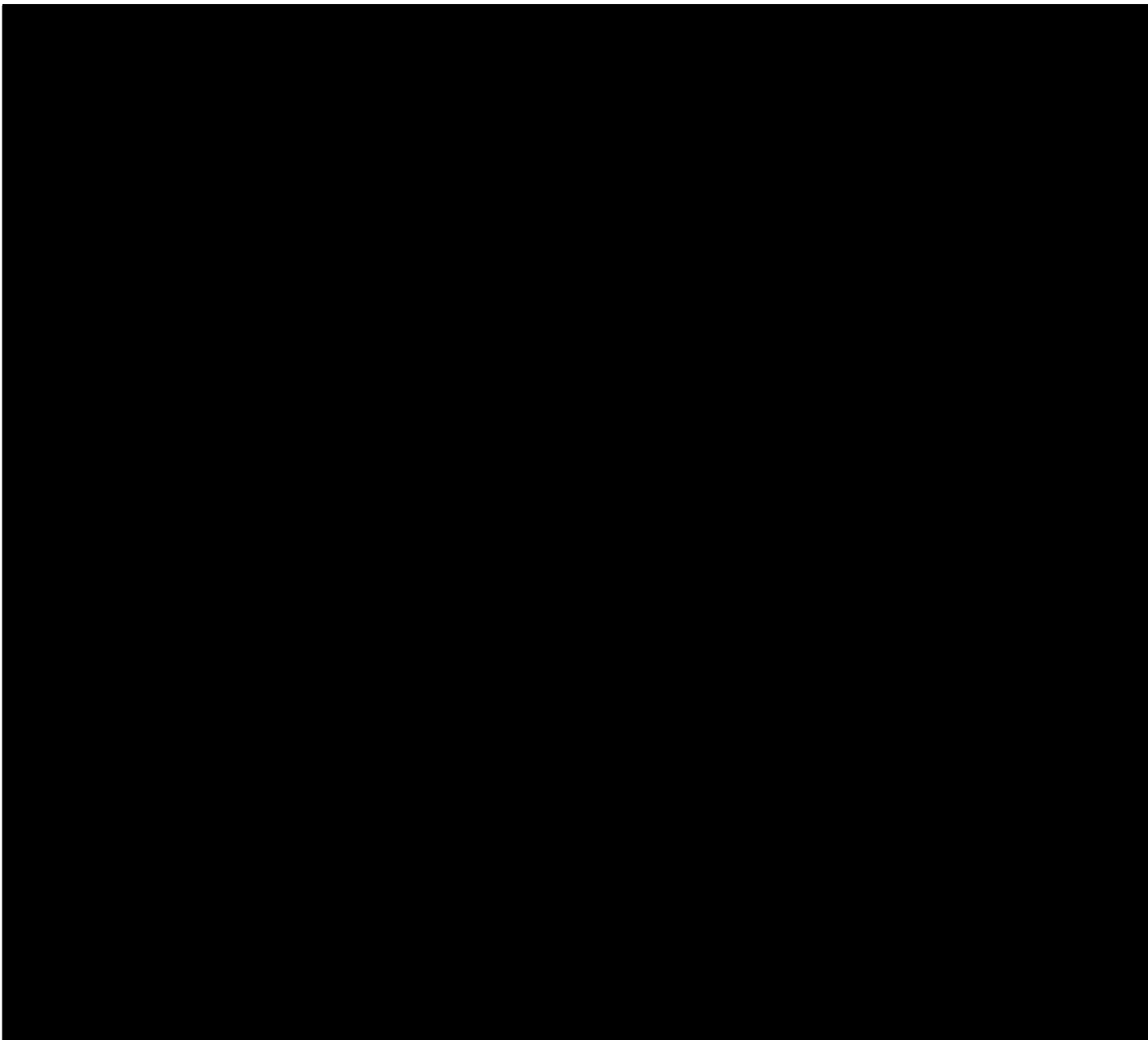
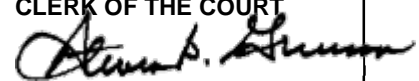


EXHIBIT 4



3



MOT

Dana A. Dwiggins (#7049)
Jeffrey P. Luszeck (#9619)
Tess E. Johnson (#13511)
SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485
ddwiggins@sdfnlaw.com
jluszeck@sdfnlaw.com
tjohnson@sdfnlaw.com
Attorneys for Scott Canarelli

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of

THE SCOTT LYLE GRAVES
CANARELLI IRREVOCABLE TRUST,
dated February 24, 1998.

Case No.: P-13-078912-T
Dept. No.: XXVI/Probate

Hearing Date:
Hearing Time:

Before the Discovery Commissioner

**MOTION FOR DETERMINATION OF PRIVILEGE DESIGNATION OF RESP013284-
RESP013288 AND RESP78899-RESP78900.**

Petitioner Scott Canarelli ("Petitioner" or "Scott"), beneficiary of The Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "SCIT"), by and through his counsel, the law firm of Solomon Dwiggins & Freer, Ltd., hereby submits this Motion for Determination of Privilege Designation as to documents produced by Respondents Lawrence and Heidi Canarelli (the "Canarellis"), and Frank Martin, Special Administrator of the Estate of Edward C. Lubbers ("Lubbers")¹ (collectively the "Respondents") and identified by Bates labels RESP013284-RESP013288 and RESP78899-RESP78900, copies of which are attached hereto for *in camera*

¹ Edward Lubbers died on April 2, 2018 during the pendency of this litigation. See Suggestion of Death Upon the Record Under NRCP 25, filed May 8, 2018. Mr. Martin was appointed as Special Administrator of the Estate of Edward C. Lubbers on or about June 6, 2018. See *In the Matter of the Estate of Edward Lubbers*, Case No. P-18-095584-E. The parties recently stipulated to substitute Mr. Martin in Mr. Lubbers' place. See Stipulation and Order to (1) Substitute Party; (2) Vacate Order Adopting Report and Recommendation; (3) Seal Transcripts, filed June 27, 2018.

1 review as **Exhibit 1** and **Exhibit 2**, respectively. This Motion is filed pursuant to the ESI
2 Protocol entered into between the Parties and agreed to govern the instant litigation. Said
3 protocol allows either party to "claw back" certain documents; provided, however, the non-
4 disclosing party may dispute such claw back and segregate the documents pending a
5 determination by this Court as to the applicability, if any, of the attorney client privilege, work
6 product doctrine, or other applicable privilege.

7 This Motion is made and based on the Memorandum of Points and Authorities set forth
8 herein, all of the papers and pleadings already on file with the Court, and any oral argument that
9 the Court may entertain at the time of hearing.

10 DATED this 13 day of July, 2018.

11 SOLOMON DWIGGINS & FREER, LTD.

12 *Tess Johnson*
13 Dana A. Dwiggins (#7049)
14 Jeffrey P. Luszeck (#9619)
15 Tess E. Johnson (#13511)
16 9060 West Cheyenne Avenue
17 Las Vegas, Nevada 89129

18 *Attorneys for Scott Canarelli*

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27 ///

9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
WWW.SDFNLAW.COM

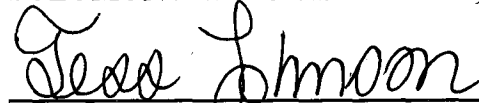
SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the Discovery Commissioner, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101, on November 16, 2018, at 9:00 a.m./~~p.m.~~, or as soon thereafter as counsel can be heard.

DATED this 13 day of July, 2018.

SOLOMON DWIGGINS & FREER, LTD.



Dana A. Dwiggins (#7049)
Jeffrey P. Luszeck (#9619)
Tess E. Johnson (#13511)
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Attorneys for Scott Canarelli

DECLARATION OF TESS E. JOHNSON PURSUANT TO EDCR 2.34

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, TESS E. JOHNSON, ESQ., do hereby declare that the following assertions are true to the best of my knowledge and belief:

1. I am an attorney at the law firm of Solomon Dwiggins & Freer, Ltd., which represents Scott Canarelli in the above-named matter.

2. On or about December 15, 2017, the Parties executed an "ESI Protocol," a copy of which is attached hereto as **Exhibit 3**. The ESI Protocol provides that if there is a dispute regarding the privileged nature of disclosed records and the Parties are unable to settle the dispute in good faith, then the objecting party must file a motion to determine the privileged nature of these records.²

///

///

² See **Exhibit 3**, Section 21.

A. RESP013284-RESP013288.

3. RESP013284-RESP013288 was produced in Respondents' initial production of documents on December 15, 2017. It comprises several handwritten and typed notes by Lubbers, some of which are dated October 14, 2013. On May 16, 2018, I filed a supplement to a petition and attached these documents as an exhibit.

4. On June 5, 2018, almost three (3) weeks after I filed the supplement, Elizabeth Brickfield, counsel for Respondents, sent a letter claiming that RESP013284-RESP013288 is "an attorney-client privileged and attorney work product-protected document" that was inadvertently produced.³ For that reason, she sought to claw back the records pursuant to the ESI Protocol.

5. On June 12, 2018, I responded to Ms. Brickfield's request stating that I challenged her designation of RESP013284-RESP013288 as privileged records.⁴ Over the next week, the Parties exchanged additional correspondence regarding their analysis of the protections applicable to RESP013284-RESP013288.⁵

6. On June 25, 2018, Craig Friedel, another attorney with Solomon Dwiggin & Freer, Ltd., and I conducted an EDCR 2.34 conference via teleconference with Ms. Brickfield, Joel Z. Schwarz and Philip R. Erwin. During the call, Ms. Brickfield asked for our basis for resisting Respondents' claw back of RESP013284-RESP013288. Mr. Friedel advised that the typewritten portion of these records do not appear to be from a meeting that purportedly occurred on October 14, 2013 and that he disagreed that the records are a memorialization of the meeting. In addition, he stated that the attorney-client privilege did not apply because, per the notes, both Larry and Bob Evans were present at the meeting. Mr. Friedel further advised that the records were not work product because litigation was not anticipated at the time Lubbers prepared these

³ See June 5, 2018 letter from Ms. Brickfield attached hereto as **Exhibit 4**.

⁴ See June 12, 2018 letter from Ms. Johnson attached hereto as **Exhibit 5**.

⁵ See June 12, 2018 letter from Ms. Brickfield, without enclosure, attached hereto as **Exhibit 6**; see also June 18, 2018 letter from Ms. Dwiggin attached hereto as **Exhibit 7**.



notes. When Mr. Friedel asked what evidence Ms. Brickfield could provide to demonstrate that these records were privileged, she responded that she would get back to us.

B. RESP78899-RESP78900.

7. RESP78899-RESP78900 was produced with Respondents' first supplemental NRCP 16.1 disclosures on April 6, 2018. These pages comprise of handwritten notes by Lubbers and are dated December 19, 2013 but were a part of a larger batch of documents, RESP078884 – RESP078932, that appeared to also include attorneys' notes.

8. On June 14, 2018, Ms. Dwiggin and I conducted a teleconference with Mr. Williams and Philip Erwin, regarding Respondents' potential disclosure of notes prepared by their counsel contained within RESP078884 – RESP078932. During the call, Mr. Williams confirmed that several pages contained his and another attorney's notes, and that he would review these records to assess the extent that these records would need to be clawed back.

9. On June 18, 2018, I received a letter from Mr. Williams advising that the entirety of RESP078884 – RESP078932 would need to be clawed back because the production included notes prepared by attorneys as well as notes taken by Mr. Lubbers "during the pendency of this action."⁶

10. The Parties exchanged several letters regarding the privileged designation of RESP078884 – RESP078932.⁷ Ultimately, Ms. Dwiggin agreed to allow the claw back of a substantial portion of the records; however, she maintained that notes prepared by Mr. Lubbers in December, 2013, identified as RESP078899 – RESP078900,⁸ did not constitute work product.

⁶ See June 18, 2018 letter from Mr. Williams attached hereto as **Exhibit 8**.

⁷ See June 19, 2018 letter from Ms. Dwiggin attached hereto as **Exhibit 9**; see also June 20, 2018 letter from Mr. Williams attached hereto as **Exhibit 10**; June 25, 2018 letter from Ms. Dwiggin attached hereto as **Exhibit 11**.

⁸ The Bates range of RESP078899 – RESP078900 is not exact because these pages do not have the Bates labels listed on the individual pages. The parties have also identified these pages as pgs. 16-17 of the produced records. See **Exhibits 9, 10 and 11**.



11. On June 28, 2018, Ms. Dwiggin and I conducted a teleconference with Mr. Williams to discuss several matters, including our dispute as to RESP078899 – RESP078900. Despite the Parties' efforts, we were not able to come to an agreement as to whether or not these records were protected as work product.

12. I have made a good faith effort to confer with Respondents' counsel regarding this dispute and have not been able to resolve it.

13. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 13 day of July, 2018.


TESS E. JOHNSON, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner respectfully requests that this Court make a determination pursuant to the ESI Protocol⁹ entered into between the Parties as to the applicability of any privileges asserted by Respondents concerning records that have been disclosed in the above-named matter. Specifically, pursuant to the ESI Protocol, Respondents have sought to claw back several records produced during discovery, including but not limited to the records that are the subject of this Motion: RESP013284-RESP013288 and RESP78899-RESP78900 (collectively, "ESI Disputed Documents"). The ESI Disputed Documents are the only remaining documents that Petitioner has disagreed with Respondents' assertion of privilege or that the Parties were not able to reach a resolution on. Now that Petitioner has disputed Respondents' designation of the ESI Disputed Documents, the burden is on the Respondents to prove that such documents are indeed protected by either the attorney client privilege or attorney work product doctrine.

⁹ The ESI Protocol allows a Party to "claw back" any "protected records" asserted to be disclosed inadvertently and further sets forth procedures if there is a dispute as to any applicable protections.

1 Specifically, documents identified as RESP013284-RESP013288 consist of Lubbers'

10 Moreover, Lubbers was Petitioner's fiduciary and serving as his Trustee at the time the
11 notes were created by Lubbers; therefore, the Lubbers Notes are not protected by the attorney-
12 client privilege. While Petitioner filed an initial Petition in September, 2013 requesting an
13 accounting of the SCIT and an order compelling Lubbers to retain a valuation expert to determine
14 the "purchase price" pursuant to the Purchase Agreement, there was no actual dispute between the
15 Parties. Indeed, Petitioner lacked sufficient information concerning the Purchase Agreement to
16 assert any allegation against Lubbers. Rather, the Petition merely sought information relative to
17 the Purchase Agreement and was otherwise neutral.

18 The Lubbers Notes additionally are not protected by the attorney-client privilege because
19 third-parties participated in the meeting that may be the subject of these notes. Notwithstanding,
20 the Lubbers Notes have been in the possession of third parties to which the privilege does not
21 even arguably apply for an extended period of time.

22 Documents identified as RESP78899-RESP78900 are notes of Lubbers taken during a
23 meeting with Stephen Nicolatus with Western Valuation Advisors, the stipulated business
24 valuator, in December, 2013("Nicolatus Meeting Notes"). The meeting was attending to by
25 Lubbers and his counsel, Petitioner and his counsel and Nicolatus. There were no confidential
26 communications during such meeting and the communications with Nicolatus were never
27 intended to be privileged in any manner. The Lubbers Notes and Nicolatus Meeting Notes are
28



1 similarly not work product because they were not prepared in anticipation of litigation or at the
2 direction of counsel. The fact the Lubbers, himself, is an attorney is of no consequence. Under
3 the law, Lubbers is precluded from acting from Petitioner's fiduciary and his own attorney at the
4 same time.

5 For reasons set forth in more detail below, Petitioner respectfully requests that this Court
6 determine that the ESI Disputed Documents are not protected under either the attorney-client
7 doctrine or the work product doctrine.

8 **II. STATEMENT OF FACTS**

9 **A. RELEVANT BACKGROUND.**

10 This case is a trust matter concerning the administration of the SCIT and the conduct of its
11 Former Trustees, the Respondents. The SCIT is an irrevocable trust intended for Scott's use and
12 benefit as well as the benefit of his children. At the time of the creation on or about February 24,
13 1998, the Canarellis were named as Family Trustees of the SCIT and Corey Addock was named
14 as the Independent Trustee. In or around 2005, however, Addock resigned and Lubbers, a long-
15 time attorney and confidant of the Canarellis, accepted the appointment as the Independent
16 Trustee.

17 In or around 2012, Scott and his father became at odds based upon his decision to be a
18 stay-at-home dad. In retaliation, Larry, acting in capacity as the Family Trust of the SCIT,
19 decided to "cut off" distributions to Petitioner, resulting in Scott's retention of counsel in June,
20 2012.

21 On May 24, 2013, the Canarellis purportedly resigned as Family Trustees of the SCIT and
22 Lubbers was appointed as Family Trustee. On May 31, 2013, ***one (1) week after his appointment***
23 ***as Family Trustee***, Lubbers sold ***all*** of the SCIT's interests to parallel trusts created by
24 Petitioner's siblings ("the Siblings' Trusts") and SJA Acquisitions, LLC ("SJA"), an entity
25 created by the Siblings Trusts. This sale was done without any notice to Petitioner or his counsel,
26 despite the fact that Petitioner was represented by the undersigned counsel.



In defense of the sale, Respondents' claim that Scott made unreasonable monetary demands on the SCIT despite knowing that the SCIT's ownership interests were illiquid and that American West was facing difficulty in the homebuilding market.¹⁰ Respondents further contend that the SCIT was unable to meet Scott's "unreasonable demands" because the Canarellis', the Canarellis' family trust, the SCIT *and the Siblings' Trusts* "were, as borrowers, negotiating to extend and renew a 'Credit Agreement' with a consortium of lenders that would require personal guarantees and *preclude* the Family Entities from making *any cash distributions without lenders pre-approval*."¹¹ Allegedly, since the Respondents were unable to satisfy Scott's "unrealistic and unreasonable demands for cash"¹² they determined that they could only meet such demands "by reducing it to cash."¹³

Such rationale, however, is merely an excuse intended to justify Respondents' retaliatory acts and fraudulent conduct. Following the valuation prepared by Nicolatus and subsequent information learned by Petitioner, the underlining value of the sale, even as determined by Nicolatus, is not only subject to dispute but the rationale in entering into the sale expressly provided for by Respondents in the Purchase Agreement.

B. PETITION TO ASSUME JURISDICTION.

On September 30, 2013, Petitioner filed a Petition to Assume Jurisdiction Over the Scott Lyle Graves Canarelli Irrevocable Trust; to Confirm Edward C. Lubbers as Family and Independent Trustee; for an Inventory and Accounting; to Compel an Independent Valuation of the Trust Assets Subject to the Purchase Agreement, dated May 31, 2013; and to Authorize and Direct the Trustee and Former Trustees to Provide Settlor/Beneficiary With Any and All Information and Documents Concerning the Sale of the Trust's Assets Under Such Purchase

¹⁰ See Objection to Petition to Surcharge Trustee and for Additional Relief, filed August 9, 2017 ("Objection to Surcharge Petition"), ¶¶19-23.

¹¹ *Id.* at ¶24 (Emphasis in original).

¹² *Id.* at ¶23.

¹³ *Id.* at ¶26.

1 Agreement ("Initial Petition").¹⁴ The Initial Petition sought for Lubbers to: (1) provide an
2 inventory; (2) provide an accounting; (3) to conduct a valuation of the Purchase Price as expressly
3 required under the Purchase Agreement; and (4) to provide Petitioner with all information relating
4 to the Purchase Agreement. *The Initial Petition did not set forth any allegations or claims*
5 *against Lubbers (or the Canarellis for that matter) as it related to the Purchase Agreement or*
6 *the preparation of an accounting.* Indeed, Lubbers purportedly only became the Family Trustee
7 of the SCIT less than four (4) months prior to the filing of the Initial Petition and the period of
8 time for him to render an accounting had not yet arisen.

9 Nicolatus was thereafter appointed by this Court as the valuation expert and the valuation
10 was completed on December 31, 2014. Subsequent to this period, however, the Parties primarily
11 focused on the "accountings" submitted for the period of 1998 through 2013 ("Prior
12 Accountings"). Specifically, Petitioner retained Daniel T. Gerety, Esq. in 2014 to review and
13 render an opinion, if any, on the deficiencies of the Prior Accounting. The Parties thereafter
14 worked together for over a two (2) year period in relation to the Prior Accounting, including
15 Gerety rendering three (3) separate opinions on the Prior Accountings, Respondents
16 supplementing financial information to Petitioner and Gerety and Gerety personally meeting and
17 working with Respondents' agent, namely Robert Evans, to resolve the issues set forth in the
18 Gerety opinions. In fact, Gerety continued to meet with Evans until late 2016, before it was
19 concluded by Petitioner that sufficient progress was not being made and that Gerety was not
20 receiving the information he was requesting from Evans to reconcile the Prior Accountings.

21 It was not until late 2015, when Petitioner provided Respondents' counsel with a DRAFT
22 copy of the Surcharge Petition that the potential of any claim against Lubbers was anticipated. In
23 response, the Parties entered into a Tolling Agreement in March, 2016, so as to allow the Parties
24 sufficient time to work together to resolve primarily issues concerning the Prior Accountings.
25 During this time, Petitioner believed, based upon statements made by Lubbers prior to the filing
26 of the Surcharge Petition in June, 2017, that Lubbers performed no due diligence on the Purchase
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28 ¹⁴ See Initial Petition, filed September 30, 2013.

1 Agreement but rather relied upon Larry's representation that it was "fair" to Scott. These beliefs
2 were communicated to Respondents' counsel. However, following the filing of the Surcharge
3 Petition and Petitioner conducting discovery, it was realized that Lubbers' statements were false
4 and that he was intimately involved in the transaction and otherwise conspired with the Canarellis
5 to financially harm Petitioner. Such discovery, including, in part, the Lubbers Notes, resulted in
6 Petitioner filing a Supplement to the Surcharge Petition to specifically assert claims, in part, of
7 fraud, misrepresentation and fraudulent concealment against Respondents.¹⁵

8 **C. ESI PROTOCOL.**

9 On or about December 12, 2017, the Parties executed the ESI Protocol.¹⁶ Along with
10 procedures for the production of electronically stored information, the ESI Protocol provides for
11 clawing back privileged documents. In the event a party disputes another's efforts to claw back
12 documents based on privilege, the party must do as follows:

13 If any party disputes the privilege claim ("Objecting Party"), that Objecting Party
14 shall object in writing by notifying the Producing Party of the Dispute and the
15 basis therefore. The parties thereafter shall meet and confer in good faith
16 regarding the disputed claim within seven (7) court days after service of the
17 written objection. In the event that the parties do not resolve their dispute, the
18 Objecting Party may bring a motion for a determination of whether a privilege
applies within ten (10) court days of the meet and confer session, but may only
contest the asserted privileges on ground other than the inadvertent production of
such document(s).¹⁷

19 Respondents have requested to claw back several documents. However, in light of the
20 circumstances surrounding the creation of the ESI Disputed Documents, Petitioner disputes that
21 these records should be afforded any protection based on the attorney-client privilege and/or the
22 work product doctrine.

23 ///

25 ¹⁵ Respondents have filed a Motion to Dismiss the Supplement to the Surcharge Petition;
26 however, this Court has not heard the motion and briefing is not complete.

27 ¹⁶ See **Exhibit 3.**

28 ¹⁷ *Id.* at Section 21.

III. LEGAL ARGUMENT

A. Respondents Have The Burden Of Proving The ESI Disputed Documents Are Privileged.

Although Petitioner is obligated to file a motion as the challenging party pursuant to the ESI Protocol, that in no way shifts the burden of proving privilege. “The burden of proof is on the party seeking to establish that the privilege applies.”¹⁸ The burden applies to both the attorney client privilege and the work product doctrine.¹⁹ Given that both privileges “obstruct[] the search for truth,” “[they] must be ‘strictly confined within the narrowest possible limits consistent with the logic of [their] principles.’”²⁰

Respondents have asserted that Lubbers Notes are “attorney client privileged and attorney work product protected document,”²¹ and that the Nicolatus Meeting Notes are “protected by the attorney work product doctrine.”²² Consequently, as the party asserting the privileges, Respondents have the burden of demonstrating that these protections apply. While Respondents have proffered arguments via correspondence to contend that the ESI Disputed Documents are

¹⁸ *United States v. Blackman*, 72 F.3d 1418, 1423 (9th Cir. 1995) (citing *Clarke v. American Commerce National Bank*, 974 F.2d 127, 129 (9th Cir.1992)).

¹⁹ *Weil v. Inv./Indicators, Research & Mgmt., Inc.*, 647 F.2d 18, 25 (9th Cir. 1981)(citing *United States v. Bump*, 605 F.2d 548, 551 (10th Cir. 1979); *United States v. Landof*, 591 F.2d 36, 38 (9th Cir. 1978); *In re Horowitz*, 482 F.2d 72, 82 (2d Cir.), cert. denied, 414 U.S. 867, 94 S.Ct. 64, 38 L.Ed.2d 86 (1973)) (“As with all evidentiary privileges, the burden of proving that the attorney-client privilege applies rests not with the party contesting the privilege, but with the party asserting it.”); *see also LightGuard Sys., Inc. v. Spot Devices, Inc.*, 281 F.R.D. 593, 598 (D. Nev. 2012) (citing *Tornay v. U.S.*, 840 F.2d 1424, 1426 (9th Cir.1988) (citing *U.S. v. Hirsch*, 803 F.2d 493, 496 (9th Cir.1986)) (“As in the case of the attorney-client privilege, the party claiming the protection bears the burden of demonstrating the applicability of the work product doctrine.”).

²⁰ *Whitehead v. Nevada Comm'n on Judicial Discipline*, 110 Nev. 380, 414–15, 873 P.2d 946, 968 (1994).

²¹ *See Exhibit 4.*

²² *See Exhibit 10.*

protected, such arguments do not support Respondents' contentions for the reasons set forth herein.

B. THE ATTORNEY-CLIENT PRIVILEGE DOES NOT APPLY.

The attorney client privilege is codified under NRS 49.095. "For this privilege to apply, [1] the communications must be [2] between an attorney and client, [3] for the purpose of facilitating the rendition of professional legal services, and [4] be confidential..."²³ **"Mere facts are not privileged, but communications about facts in order to obtain legal advice are."**²⁴

In this case, there is no evidence that the Typed Memo that is contained within the Lubbers Notes was ever provided to Lubbers' attorney or otherwise discussed with his attorney. Notwithstanding, Respondents' claim that the Typed Memo comprises "Mr. Lubbers' notes from his meeting with his then counsel."²⁵ This representation, however, does not support the protection or consistent with the notes themselves.

Specifically, the face of the Lubbers Notes, themselves, lead one to conclude that the Typed Memo was prepared at a different time than the handwritten notes. Respondents' counsel has absolutely no evidence to support the contention that the Typed Memo and handwritten notes were **both** created during Lubbers' meeting with his counsel. There is additionally no evidence that Lubbers provided the Typed Memo to his attorney at the time, or even discussed the substance of the Typed Memo at the meeting. Indeed, the Typed Memo was contained with Lubbers "hard file," thus evidencing the fact that it was not provided to his then attorney. Presuming, however, that the handwritten notes were taken by Lubbers during his meeting with

²³ *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for County of Clark*, 399 P.3d 334, 341 (Nev. 2017).

²⁴ *Id.*; see also, *Wardleigh v. Second Judicial Dist. Court In & For County of Washoe*, 111 Nev. 345, 352, 891 P.2d 1180, 1184 (1995) ("The Court in *Upjohn* appropriately noted that **only communications and not facts are subject to the privilege**. Thus, relevant facts known by a corporate employee of any status in the corporation would be discoverable even if such facts were related to the corporate attorney as part of the employee's communication with counsel. The communication itself, however, would remain privileged.").

²⁵ See Exhibit 6.

1 his attorney in which Larry and Evans participated, the substance of the handwritten notes do not
2 correlate with the substance of the Typed Memo. There is absolutely no indication that Lubbers
3 ever discussed the topics therein with his attorney. Rather, the face of the document, in part,
4 demonstrates that Lubbers articulated certain questions and provided responses based upon his
5 beliefs.

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] The bottom line is that if Petitioner's counsel was
13 provided an opportunity to ask Lubbers questions on these issues during a deposition, the
14 foregoing facts would not be subject to protection based upon the attorney client privilege or work
15 product doctrine. [REDACTED]
16 [REDACTED]

17 1. **Privilege Does Not Exist as to Conversations Held In the Presence of Third**
18 **Parties.**

19 To the extent the Typed Memo constitutes a memorialization of Lubbers' meeting with his
20 then counsel, the privilege still does not apply to the Lubbers Notes in their entirety because the
21 meeting was in the presence of at least one third party to which the privilege does not extend,
22 namely Larry and/or Evans. The attorney client privilege does not exist as to conversations held
23 in presence of third parties.²⁶ The handwritten notes expressly make notation of the fact that
24 Larry and Evans were in attendance with Lubbers' meeting with his attorney on October 14,
25 2013. At such time, the law firm Lee, Hernandez, Landrum, Garofalo & Blake, APC, only

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28 ²⁶ *Nevada Tax Commission v. Hicks*, 73 Nev. 115, 310 P.2d 852 (1957).

1 appeared in this matter on behalf of Lubbers.²⁷ The engagement letter with the firm also
2 indicates that *only* Lubbers was the client. As Lubbers was the sole Family Trustee and
3 Independent Trustee of the SCIT at such time, there was absolutely no reason for Larry or Evans
4 to participate in such meeting. Not only did the Initial Petition not make allegations against either
5 Respondent for wrongdoing but no claims were asserted in the Initial Petition. Rather, it was a
6 simply straight forward petition that sought Lubbers to render an accounting, obtain a business
7 valuation pursuant to the Purchase Agreement and to further disclose all documents relating to the
8 sale. Neither Larry's nor Evans' participation was necessary in order for Lubbers to comply with

9 [REDACTED]
10 [REDACTED] Therefore, Larry and Evans are "third persons other
11 than those to whom disclosure is in furtherance of the rendition of professional legal services to
12 the client or those reasonably necessary for the transmission of the communication."²⁸ For this
13 reason alone, the participation of Larry and Evans in communications Lubbers had with his
14 counsel constitutes a waiver of the attorney client privilege. Accordingly, this Court should find
15 that the Lubbers Notes are discoverable for all purposes in this litigation.

16 1. **American West's Possession of Lubbers' Boxes Demonstrate Waiver of the**
17 **Privilege.**

18 Discovery in this matter has disclosed that American West employees had access to the
19 ESI Disputed Documents, thus effectively demonstrating a waiver of the attorney client privilege.
20 It is undisputed that the ESI Disputed Documents were contained within Lubbers' hard file that,
21 after being provided to Dickinson Wright, was "returned to" American West in November, 2017.

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23 ²⁷ See Trustee Edward C. lubbers' Response to Petition to Assume Jurisdiction Over the
24 Scott Lyle Graves Canarelli Irrevocable Trust; to Confirm Edward C. Lubbers as Family and
25 Independent Trustee; for an Inventory and Accounting; to Compel an Independent Valuation of
26 the Trust Assets Subject to the Purchase Agreement, dated May 31, 2013; and to Authorize and
27 Direct the Trustee and Former Trustees to Provide Settlor/Beneficiary With Any and All
Information and Documents Concerning the Sale of the Trust's Assets Under Such Purchase
Agreement, filed October 16, 2013.

28 ²⁸ *Wynn Resorts*, 399 P.3d at 341.

1 Indeed, in an email from Tina Goode, the Director of Corporate Administration with American
2 West Development, she not only received the boxes from Ms. Brickfield's office but actually
3 went through the boxes to recover "missing records". Specifically, the email states:

4 I know I will sleep better tonight . . . *we received Ed's boxes back from*
5 *Elizabeth[Brickfield's] office* and our missing e-mail confirming
6 deferring payments along with Ed's memo was in the box . . . ²⁹

7 There is no question, nor should there be, that AWDI is not a party in this action or
8 encompassed within the Lubbers-Renwick attorney client relationship. Under no circumstances is
9 it "reasonably necessary for the transmission of the communication"³⁰ that any AWDI employee
10 be in possession of the Lubbers Notes. To the extent the ESI Disputed Documents, including the
11 Typed Memo, can arguably be considered privileged, such privilege was waived when the ESI
12 Disputed Documents were turned over to a third party not encompassed within the attorney client
13 privilege. Accordingly, AWDI's possession of the ESI Disputed Documents destroys any
14 arguable confidentiality related to the same and warrants this Court's finding that the ESI
15 Disputed Documents are discoverable for all purposes in this litigation.

16 **C. THE WORK PRODUCT DOCTRINE DOES NOT APPLY.**

17 NRCP 26(b)(3) provides that "... a party may obtain discovery of documents and tangible
18 things otherwise discoverable under subdivision (b)(1) of this rule and [1] *prepared in*
19 *anticipation of litigation or for trial* by or for another party or by or for that other party's
20 representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or
21 agent)..." thus, Rule 26 protects documents with "two characteristics: (1) they must be prepared
22 in anticipation of litigation or for trial, and (2) they must be prepared by ...another party or ... for
23 that other party's representative." *Id.*

24 In determining whether work was done in anticipation of litigation, Nevada adopted the
25 "because of" test, which provides that documents are considered to be "prepared in anticipation of

26 ²⁹ See November 18, 2017 email from Ms. Goode attached hereto as **Exhibit 12** (Emphasis
27 added).

28 ³⁰ *Wynn Resorts*, 399 P.3d at 341.

litigation when ‘in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained *because of* the prospect of litigation.”³¹ The Ninth Circuit further discussed this test, stating as follows:

The “because of” standard does not consider whether litigation was a primary or secondary motive behind the creation of a document. Rather, it considers the totality of the circumstances and affords protection when it can fairly be said that the “document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of that litigation[.]”³²

Similarly, “anticipation of litigation” has been held to not being applicable to memoranda when such preparation was not at the request of an attorney.³³

2. The Nicolatus Meeting Notes.

The Nicolatus Meeting Notes relate to a meeting Lubbers participated in with Nicolatus, Petitioner, Mark Solomon, Esq., Evans, Don Campbell, Esq., Hunter Campbell, Esq. and Colby Williams, Esq. in December, 2013.³⁴ As set forth in detail in Section II(B), at the time said meeting occurred Petitioner had only petitioned the Court for an accounting and valuation of the SCIT’s interests sold pursuant to the express terms of the Purchase Agreement. Petitioner lacked sufficient information as to the Purchase Agreement at the time the petitioner was filed and, therefore, absolutely no allegations of wrongful conduct or claims were asserted against either Lubbers or the Canarellis. Petitioner simply wanted information to which he was entitled to as a

³¹ *Id.* at 347-48 (quoting Restatement (Third) of the Law Governing Lawyers § 87 cmt. i (2000)) (Emphasis in original).

³² *Id.* at 348 (quoting *In re Grand Jury Subpoena (Mark Torf/Torf Envtl. Mgmt.)*, 357 F.3d 900, 908 (9th Cir. 2004).

³³ *Ballard v. Eighth Judicial Dist. Court of State In & For Cty. of Clark*, 106 Nev. 83, 85, 787 P.2d 406, 407 (1990) (holding that the “in anticipation of litigation” does not apply to documents prepared **unless created at the request of an attorney**; therefore, investigation was not considered work product).

³⁴ See **Exhibit 2.**

beneficiary of the trust and to which Lubbers not only had an obligation to provide but which Lubbers agreed to provide to Petitioner.

Given Nicolatus and third parties' attendance, this December, 2013 meeting was not controversial in any manner whatsoever and solely related to the neutral valuation of the Purchased Entities that Nicolatus was appointed to appraise. Consequently, in December, 2013, Lubbers was merely acting as the SCIT's Family Trustee and fulfilling his obligation under the Purchase Agreement to obtain an independent valuation.³⁵ These notes would have been created in a substantially similar form regardless of the prospect of litigation. For this reason, the work product doctrine does not apply.

3. The Lubbers Notes.

Regardless of whether this Court finds that the Lubbers Notes constitute work product, Petitioner should nevertheless have access, at a minimum, to the Typed Memo NRCP 26(b)(3) which provides that "upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means."³⁶ Substantial need is determined on a case-by-case basis.³⁷ However, substantial need may exist "when a witness is not available for deposition by the requesting party."³⁸

³⁵ The Purchase Agreement provides that "[t]he LLC Sale Interests Purchase Price and/or the Corporation Sale Interests Purchase Price shall be increased, but not decreased, based upon a review of the enterprise value of each LLC and each Corporation by a third party analyst, to be conducted not less than 120 days after the date of this Agreement." See Exhibits to: Surcharge Petition filed June 29, 2017, p. 2 Sec. 3.

³⁶ *Wardleigh v. Second Judicial Dist. Court In & For Cty. of Washoe*, 111 Nev. 345, 358, 891 P.2d 1180, 1188 (1995).

³⁷ *Cung Le v. Zuffa, LLC*, 321 F.R.D. 636, 641 (D. Nev. 2017).

³⁸ *Gay v. P. K. Lindsay Co., Inc.*, 666 F.2d 710, 713 (1st Cir. 1981) ("[I]t seems well-settled that there is in general no justification for discovery of the statement of a person contained in work product materials when the person is available to be deposed."); *In re Grand Jury Investigation (Sun Co.)*, 599 F.2d 1224, 1232 (3d Cir.1979) (recognizing a "substantial need" exists generally involve unavailable witnesses due to circumstances such as death); *Gargano v.*



1 As set forth above, the Typed Notes merely contain facts that are not privileged or
2 otherwise protected. In light of the fact that Petitioner could have asked Lubbers questions during
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15 Petitioner, however, was precluded from conducting Lubbers deposition because of his
16 health, in part. As this Court is aware of the cause of Lubbers' death, the seriousness of Lubbers'
17 health condition was well known in October, 2017. For the sole purpose of preserving Lubbers'
18 testimony, Petitioner initially noticed Lubbers' deposition for December 4, 2017; however,
19 Respondents repeatedly continued his deposition based on his health condition. While Petitioner
20 and his counsel were cognizant of the fact that Lubbers was suffering from the side effects of
21 strenuous chemotherapy, Lubbers was a material witness and Petitioner was amenable to
22 providing any accommodation to Lubbers in order to allow him to be the most comfortable during
23

24 *Metro-N.*, 222 F.R.D. 38, 40 (D. Conn. 2004) (citing *Almaguer v. Chicago, Rock Island, and*
25 *Pacific Railroad Co.*, 55 F.R.D. 147, 150 (D.Neb.1972)); *see also United States v. Nobles*, 422
26 U.S. 225, 248, 95 S. Ct. 2160, 2174 (1975) ("Where a witness is available to be deposed, courts
27 often hold that work product containing information about the witness' prior statements is not
28 discoverable because that information is available through other means."); *Hickman v. Taylor*,
329 U.S. 495, 512, 67 S. Ct. 385 (1947) (stating that disclosure of documents otherwise protected
by the work product doctrine "might be justified where the witnesses are no longer available . .
").



1 the deposition (including limited the deposition to short periods of time). Respondents refused
2 each proposal made and, as a result, Petitioner was forced to file a motion to compel Lubbers'
3 deposition. The Discovery Commissioner postponed the deposition set for March 5 -7, however,
4 based upon Lubbers' representation that his condition was not terminal. Unfortunately, Lubbers
5 passed away within the month and Petitioner was deprived of obtaining Lubbers' testimony.

6 There exists substantial need as a result of these unfortunate circumstances; therefore,
7 warranting the disclosure of the Lubbers Notes, or, at a minimum, the Typed Memo. Lubbers
8 was a material witness in this case. He was the Trustee of the SCIT at the time of the sale and he
9 executed the Purchase Agreement on behalf of the SCIT. There is no other available means for
10 Petitioner to obtain Lubbers' testimony concerning the factual circumstances surrounding the

11 [REDACTED]
12 [REDACTED] Since Lubbers signed the Purchase Agreement (despite only being the
13 "Family Trustee" for seven (7) days prior to its execution), the reasons he ultimately signed the
14 Purchase Agreement are directly relevant to not only the claims asserted in the initial Surcharge
15 Petition but also the Supplemental Surcharge Petition. Such admissions by Lubbers is also
16 necessary for Petitioner to cross examine Larry and Evans on the reasons for entering into the

17 [REDACTED]
18 [REDACTED] Petitioner has absolutely no other means of obtaining such testimony, let
19 alone being "unable without undue hardship to obtain the substantial equivalent of the materials
20 by other means" as required under NRCP 26(b)(3).

21 Moreover, Respondents have not contended, and cannot contend based upon the
22 unavailability of Lubbers, that the Typed Memo was prepared at the request of an attorney.
23 Indeed, the Typed Memo appeared to be prepared before Lubbers initially met with and retained
24 an attorney. Indeed, Lubbers only initially met with an attorney on October 14, 2013 and signed
25 the engagement letter on October 17, 2013. Therefore, by definition, the Typed Memo was not
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1 prepared at the request of an attorney. Under such circumstances, the Typed Memo is not
2 privileged under NRCP(b)(3) and does not constitute work product.³⁹

3 [REDACTED]
4 [REDACTED]
5 [REDACTED] Petitioner is unable to
6 obtain substantial equivalent evidence of the admissions through other means. Any denial to
7 Petitioner utilizing Lubbers' admissions will thwart Petitioner's ability to prove fraud, conspiracy,
8 fraudulent concealment, etc. Based on the foregoing, this Court should find that the ESI Disputed
9 Documents are discoverable for all purposes and not protected by the attorney client privilege or
10 the work product doctrine.

11 **IV. CONCLUSION**

12 For the above reasons, Petitioner Scott Canarelli respectfully requests that this Court find
13 that the ESI Disputed Documents be deemed discoverable and not subject to either the attorney
14 client privilege or the work product doctrine.

15 DATED this 13 day of July, 2018.

16 SOLOMON DWIGGINS & FREER, LTD.

17
18 Dana A. Dwiggins (#7049)

19 Jeffrey P. Luszeck (#9619)

20 Tess E. Johnson (#13511)

21 9060 West Cheyenne Avenue

22 Las Vegas, Nevada 89129

23 Telephone No: (702) 853-5483

24 Attorneys for Scott Canarelli

25
26 ³⁹ See *Ballard*, 106 Nev. at 85; see also NRCP 26(b)(3) (stating that protected documents
27 include those prepared "by ... [the] other party's attorney, consultant, surety, indemnitor, insurer,
28 or agent"); see also *Goff v. Harrah's Operating Co., Inc.*, 240 F.R.D. 659, 660-61 (D.Nev.2007)
(applying a parallel federal rule).

CERTIFICATE OF SERVICE

PURSUANT to NRCP 5(b), I HEREBY CERTIFY that on July 13th, 2018, I served a true and correct copy of the **MOTION FOR DETERMINATION OF PRIVILEGE DESIGNATION OF RESP013284-RESP013288 AND RESP78899-RESP78900** to the following in the manner set forth below:

Via:

- ☐ Hand Delivery
☐ U.S. Mail, Postage Prepaid
☐ Certified Mail, Receipt No.: _____
☐ Return Receipt Request
☒ E-Service through the Odyssey eFileNV/Nevada E-File and Serve System, as follows:

J. Colby Williams, Esq.
Campbell & Williams
700 S. Seventh Street
Las Vegas, NV 89101
Email: jcw@campbellandwilliams.com

Elizabeth Brickfield, Esq.
Var E. Lordahl, Esq.
Dickinson Wright, PLLC
8363 W. Sunset Road, Suite 200
Las Vegas, NV 89113
Email: ebrickfield@dickinsonwright.com
vlordahl@dickinsonwright.com

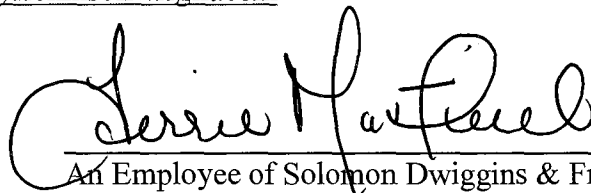
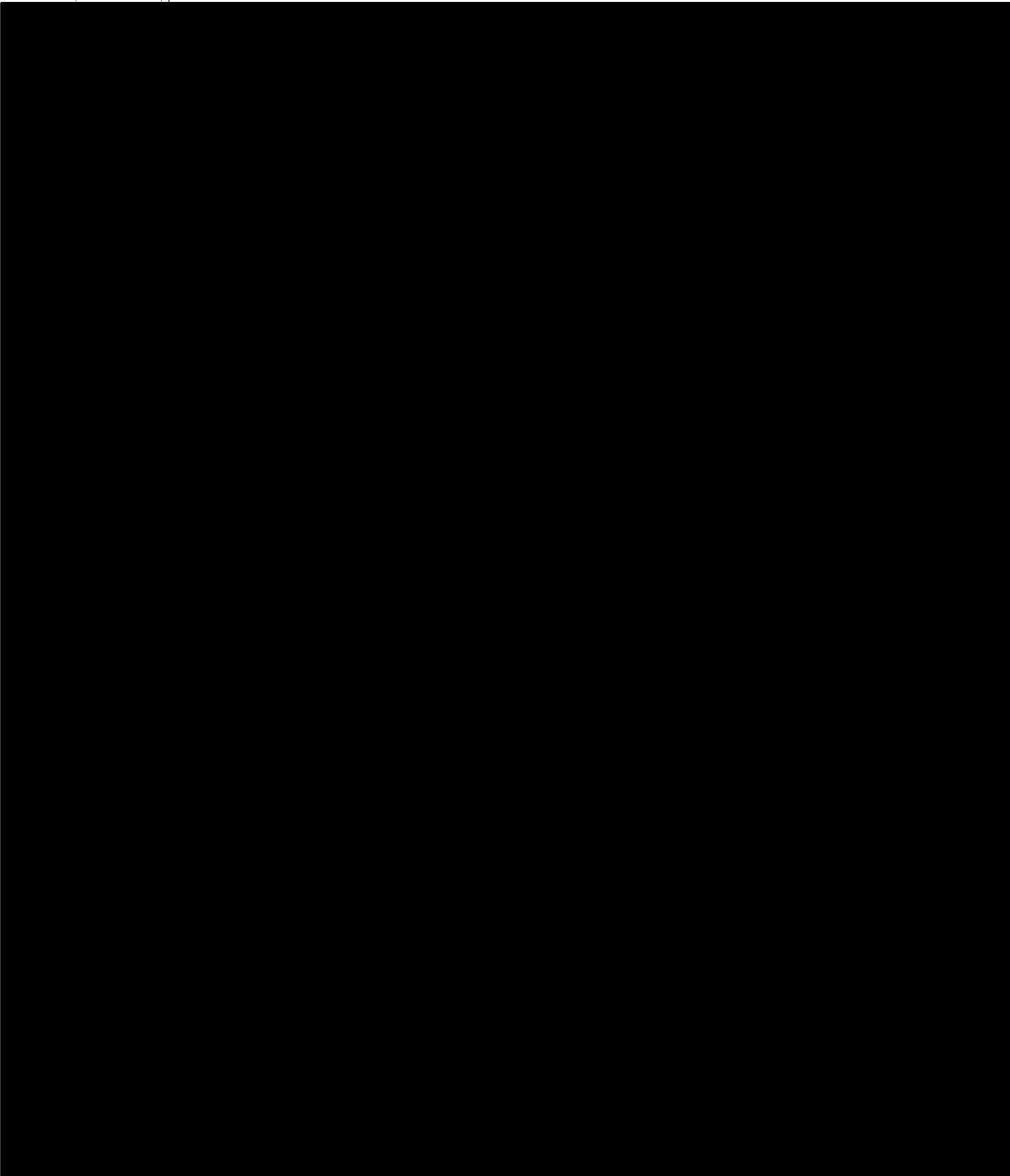

An Employee of Solomon Dwiggin & Freer, Ltd.

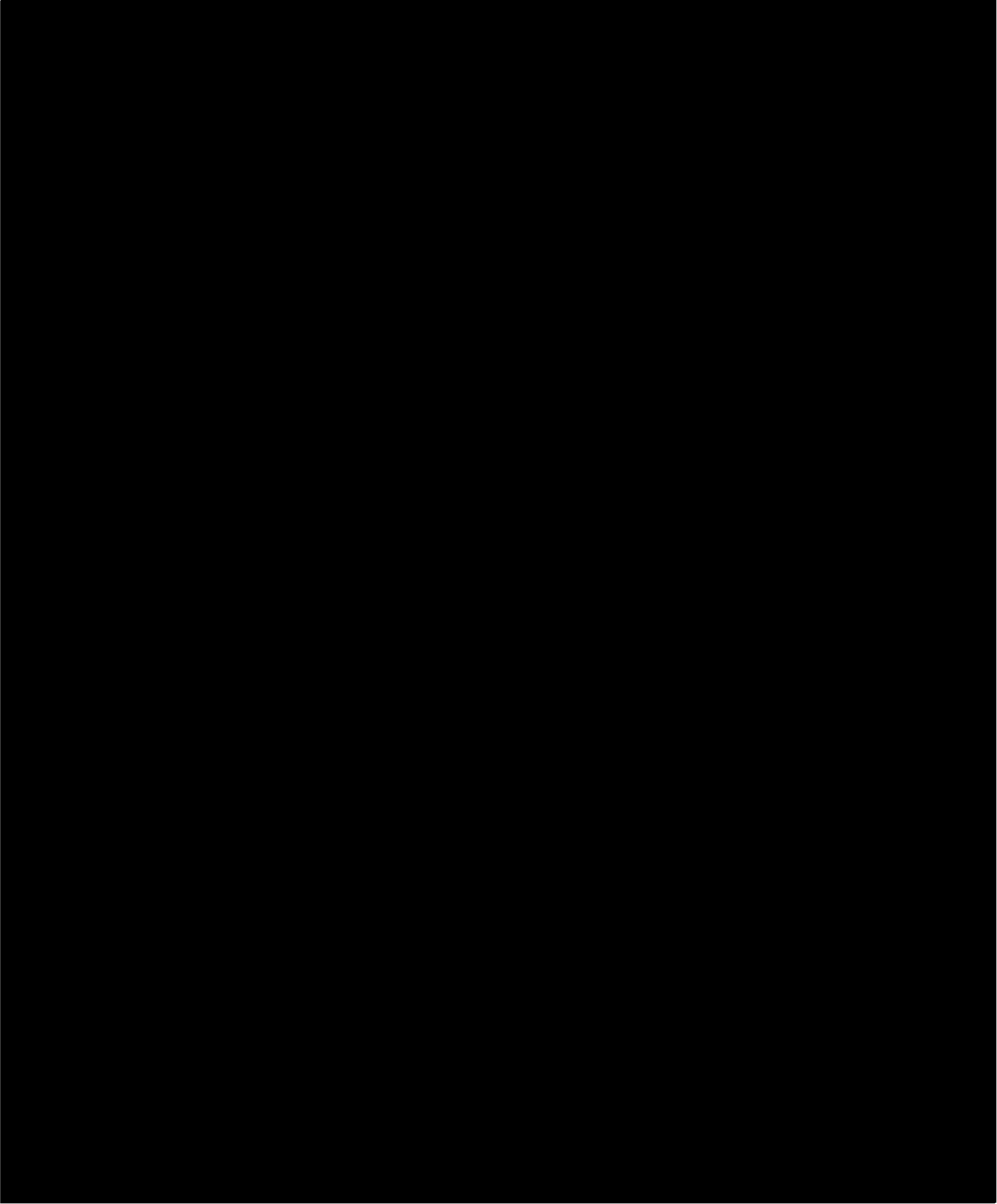
EXHIBIT 1

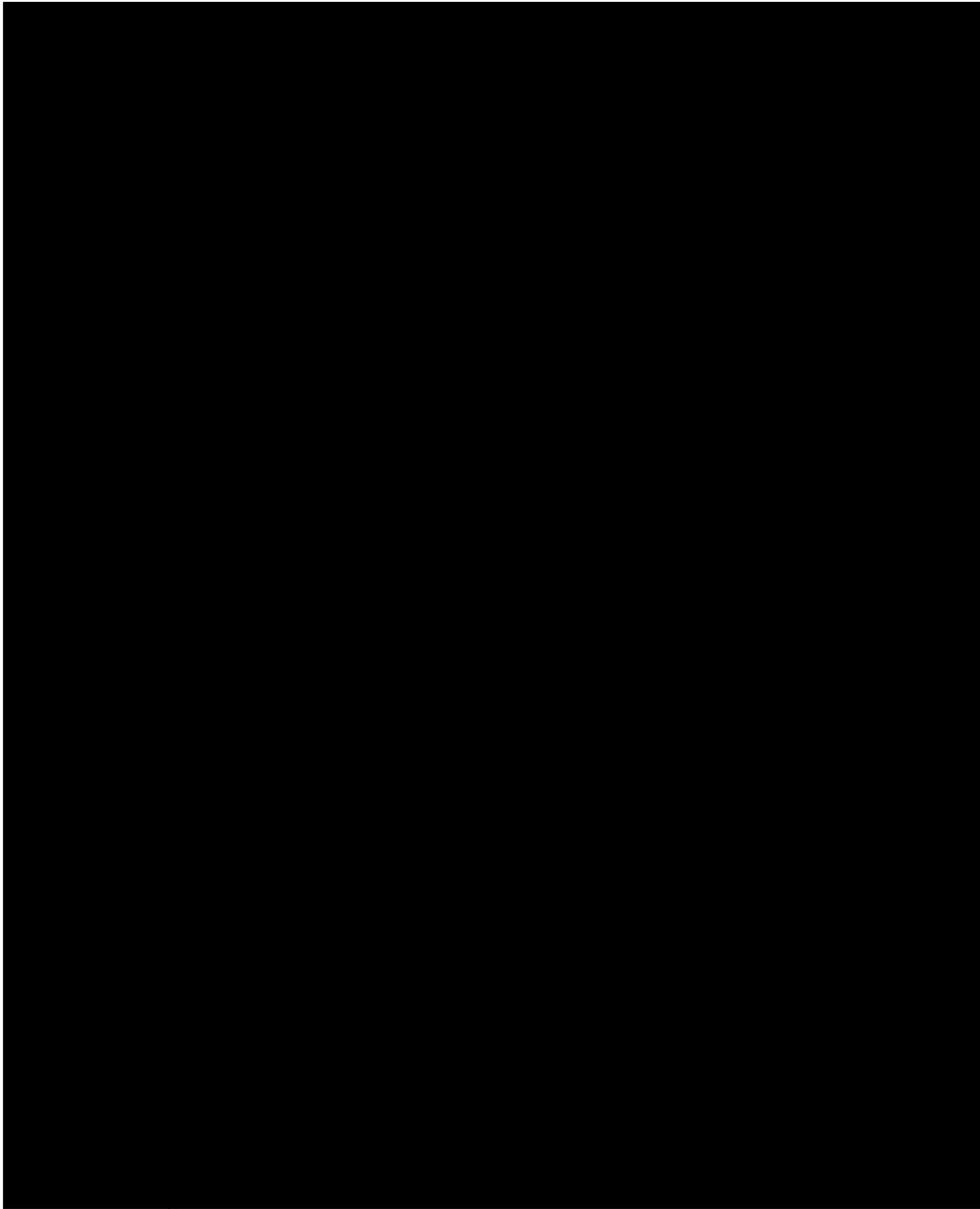
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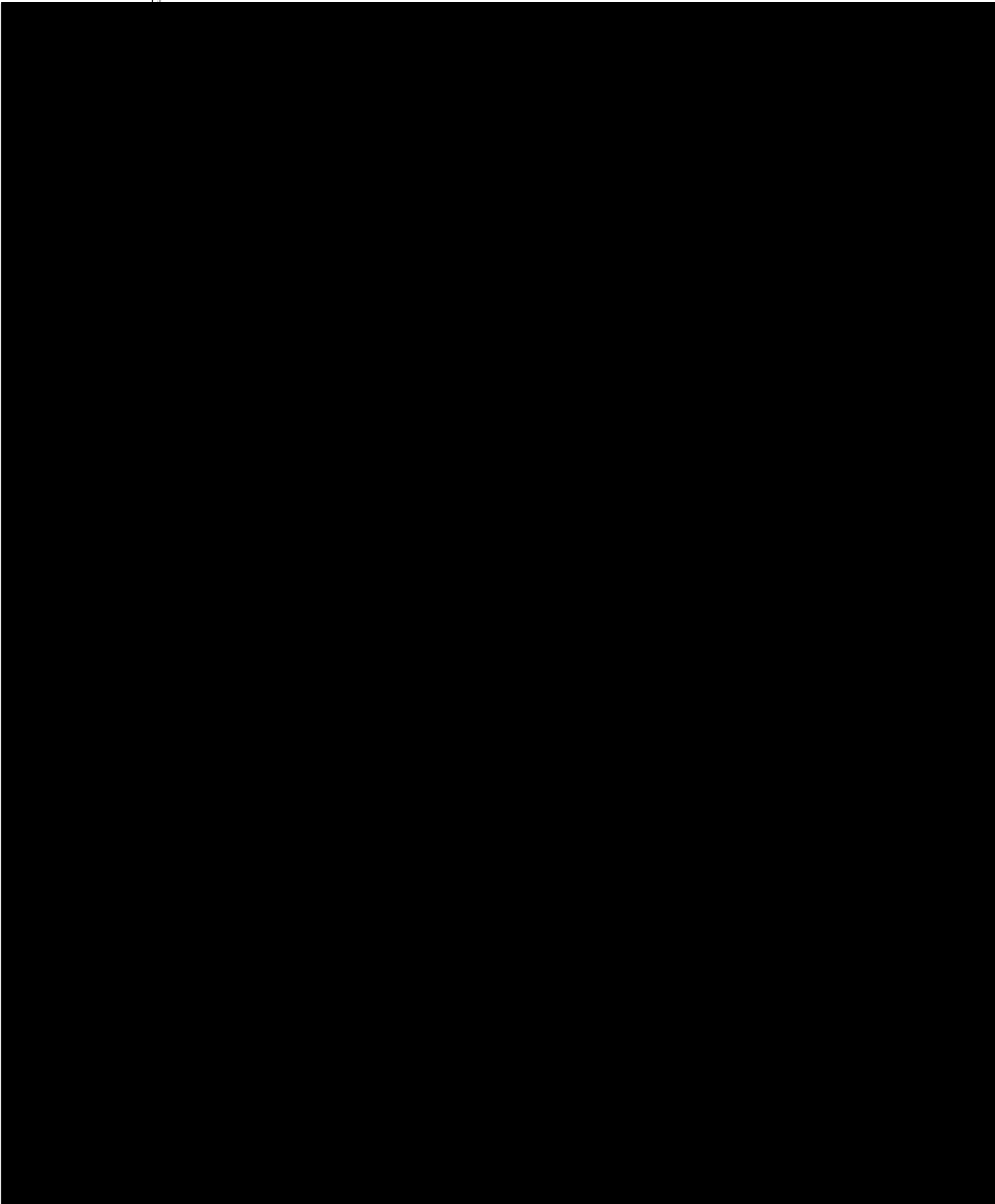
**BATES LABEL
RESP013284-RESP013288**

EXHIBIT 1









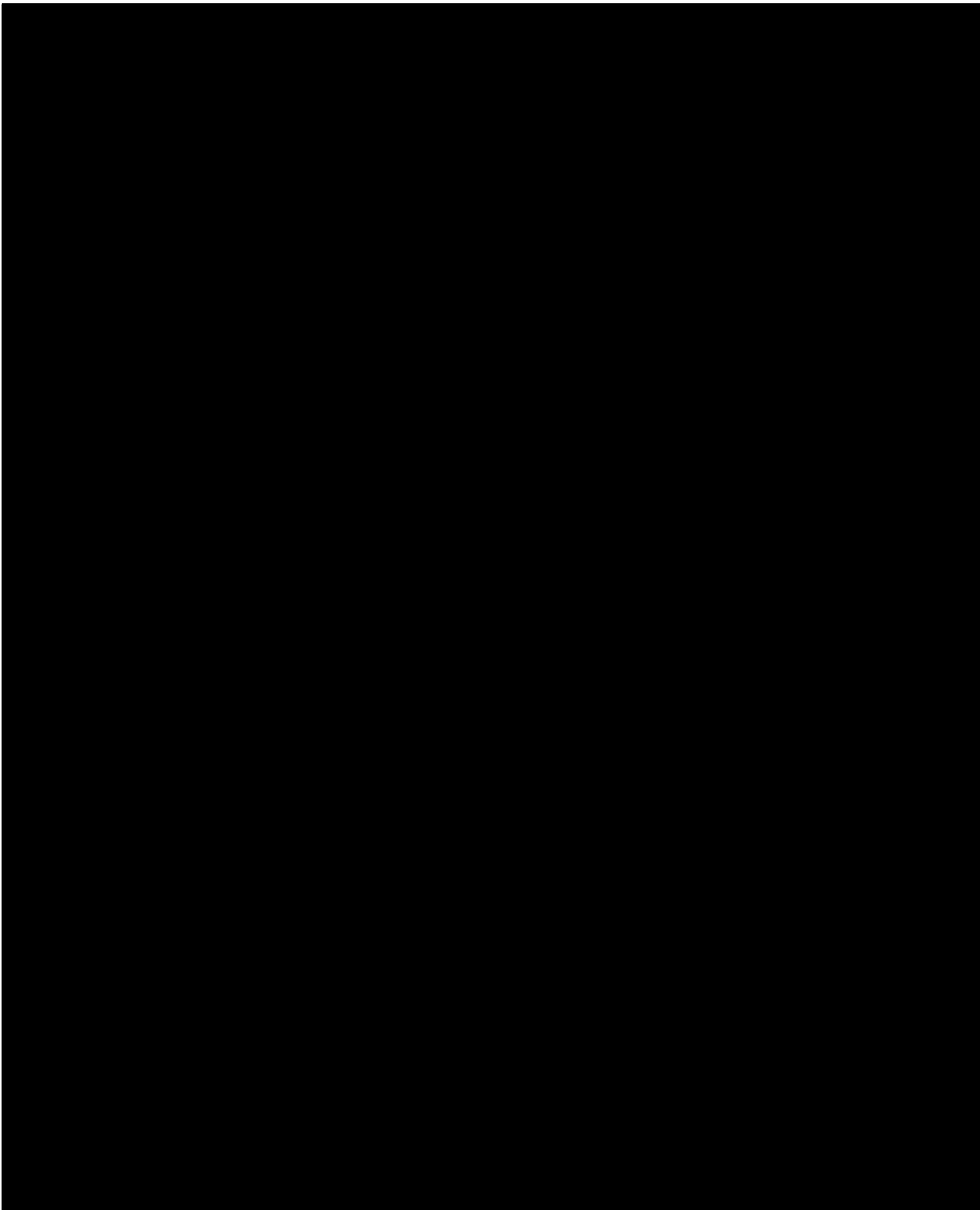
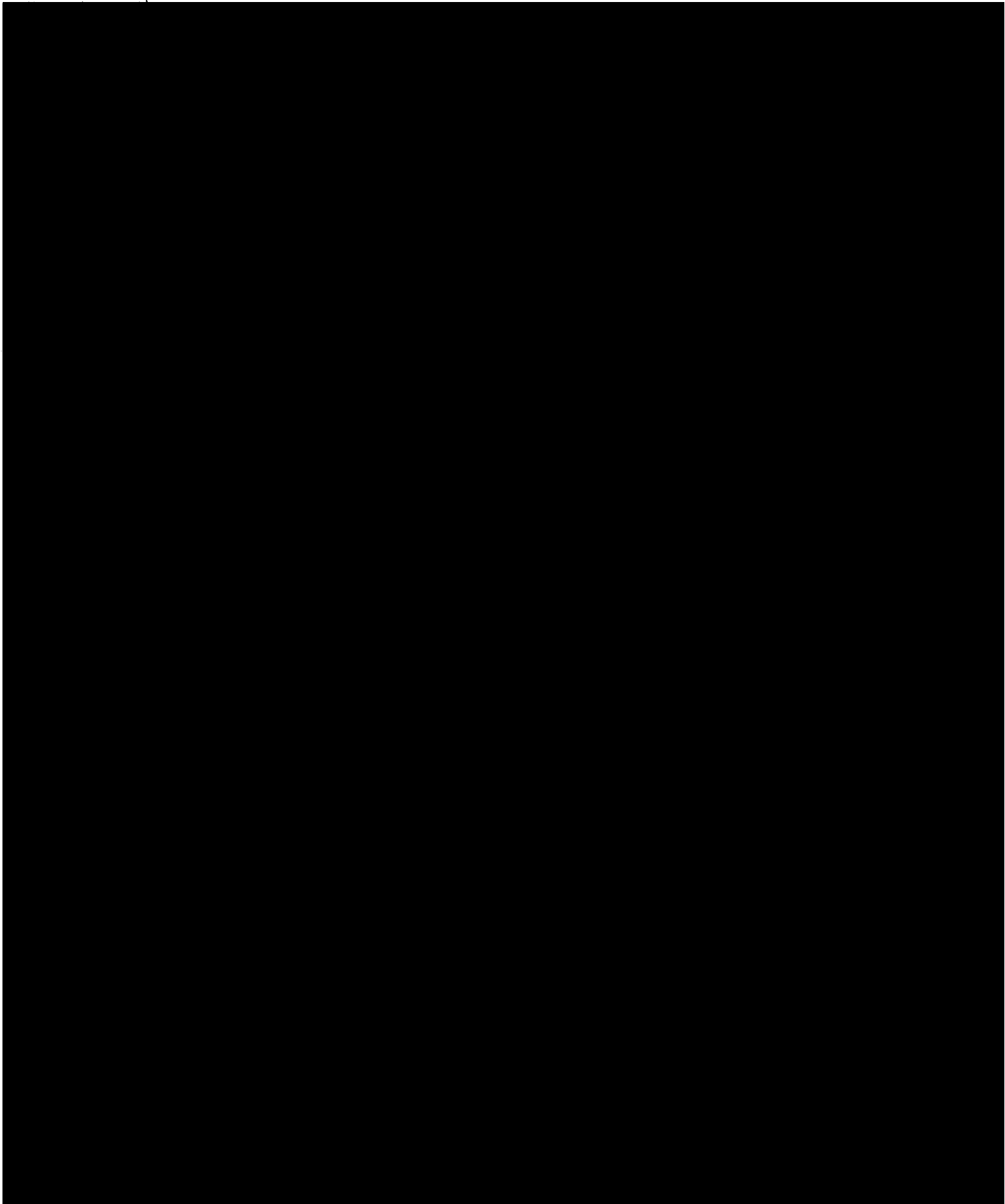


EXHIBIT 2

IN CAMERA

**BATES LABEL
RESP78899-RESP78900**

EXHIBIT 2



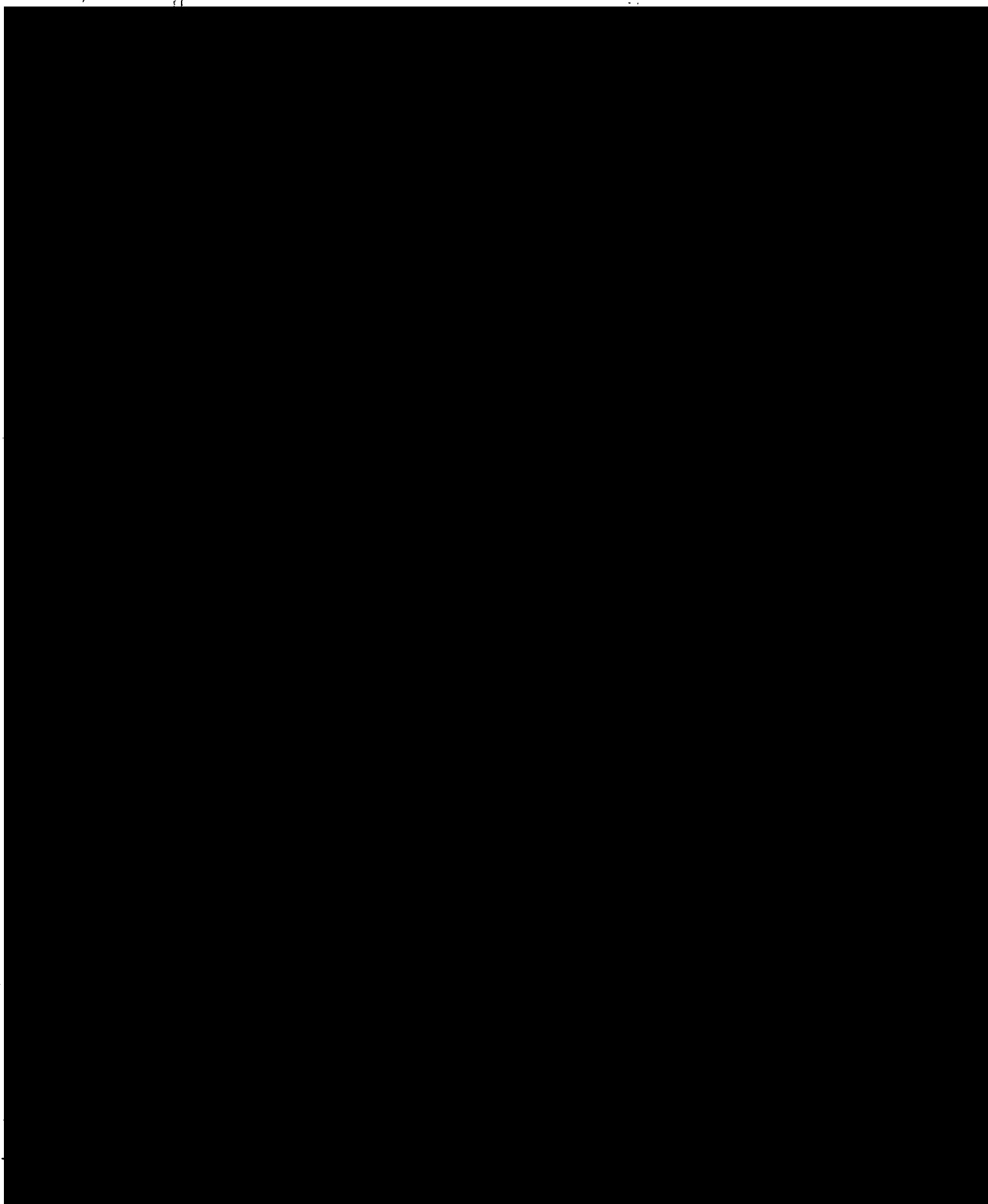


EXHIBIT 3

EXHIBIT 3

ESI PROTOCOL

Scott Lyle Graves Canarelli, by and through his attorneys, the law firm of Solomon Dwiggins & Freer, Ltd., and Lawrence Canarelli and Heidi Canarelli, former trustees of The Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust"), and Edward Lubbers, former trustee of the Trust, by and through their attorneys, the law firm of Campbell & Williams and the law firm of Dickinson Wright, hereby stipulate to the following protocol as set forth for the production of Discoverable Documents and Electronically Stored Information ("ESI"). As used in this document, the term "Discoverable Documents and Electronically Stored Information" means discoverable documents and data existing in electronic form consistent with Nevada Rule of Civil Procedure 34(a), including by way of example and not by way of limitation (where relevant and not privileged) e-mail, calendars, word processing documents, spreadsheets, electronic slide presentations, databases, and other reasonably accessible electronically stored information relevant to the subject matter of this case pursuant to NRCP 26(b)(1).

Any party, any person or non-party producing or disclosing ESI pursuant to the terms set forth below is referred to as the "Producing Party," and the party or any person or non-party receiving or being given access to ESI is referred to as the "Receiving Party."

1. **Electronic Discovery.** Discovery of electronically stored information shall proceed in the following sequenced fashion:

(a) After receiving requests for document production, the Producing Party shall conduct a reasonable and good faith search for responsive documents and electronically stored information. A Producing Party will disclose to a Requesting Party the existence of those sources of electronically stored information that it believes contain responsive information and that are not reasonably accessible, and, to the extent necessary, the Parties will meet and confer concerning such information that has been identified as not reasonably accessible, but a Producing Party shall not have an obligation initially to search or produce from sources of electronically stored information that it identifies as not reasonably accessible because of undue

burden or cost in accordance with NRCP 26(b)(2) and no such obligation will exist unless and until a showing of good cause is made by the Requesting Party that such searches and production are necessary pursuant to NRCP 26(b)(2);

(b) The Producing Party retains its right to argue that certain sources of electronically stored information are not reasonably accessible because of undue burden or cost and further retain its right to seek cost shifting, as appropriate, in the event a Requesting Party demands and shows good cause supporting production from sources that were deemed by the Producing Party as not reasonably accessible; and

(c) On-site inspections of electronic media under NRCP 34(a) shall not be permitted, unless (i) otherwise agreed to by the parties; or (ii) absent exceptional circumstances where good cause and specific need have been demonstrated and it is so ordered by the Court.

2. **General Format of Production.** Subject to the provisions of paragraph 4, documents that originally existed in electronic form that are produced in these proceedings shall be produced in electronic image form (described below) in the manner provided herein. Documents that originally existed in paper form may be produced in an electronic image form in the manner provided herein, produced in a paper form or made available for initial examination as outlined in paragraph 3. Notwithstanding the foregoing provisions of this paragraph, the Producing Party reserves the right to request that an alternative format or method of production be used for certain documents and, in that event, the parties will meet and confer to discuss alternative production requirements, concerns, formats, methods and costs associated with same.

3. **Initial Examination of Records.** The Producing Party reserves the right to make certain sets of documents available for initial examination by the Requesting Party. The Requesting Party will select those documents it wishes to have produced. The Producing Party reserves the right to review and screen for privilege or protection any document that is selected for production. The Producing Party may withhold from that production any privileged document and identify the privileged document on a privilege log as outlined in paragraph 17 herein. The parties agree that the Producing Party is not waiving, and the Requesting Party will

not argue that the Producing Party has waived, any claims of attorney-client privilege, attorney work product protection, or any other privilege or protection, including protections enumerated in the Stipulated Confidentiality Agreement and Protective Order, by making documents available for examination. In the event the Producing Party becomes aware of an inadvertent disclosure/production of privileged information or a privileged document, the Stipulated Confidentiality Agreement and Protective Order (entered into concurrently herewith) shall govern.

4. **Document Image Format.** The Producing Party shall make good faith efforts to conform to the specifications in this section based on the party's technological capabilities. Document images produced in electronic form will be produced in single- or multi-page Tagged Image File Format ("TIFFs" or ".tiff format"). All images generated from hard copy documents shall be scanned as black and white images at-least 300 d.p.i. resolution and shall be saved and produced in a Group 4 compression single- or multi-page "TIFF" format and reflect the full and complete information contained on the original document. All images generated from native electronic documents shall be saved electronically (or "printed") in a Group 4 compression single-or multi-page "TIFF" image that reflects the full and complete information contained on the original document. All images generated from short message service (SMS) and multimedia messaging service (MMS) shall be produced in searchable .txt files or saved electronically (or "printed") in a Group 4 compression single-or multi-page "TIFF" image that reflects the full and complete information contained in the SMS or MMS. Documents that present imaging or other formatting problems shall be promptly identified and the parties shall meet and confer to attempt to resolve the problems.

Meta-data for documents generated from native electronic documents shall be provided as set forth in paragraph 11. The parties shall meet and confer to the extent reasonably necessary to facilitate the import and use of the produced materials with commercially available document management or litigation support software (such as Relativity or Concordance).

Notwithstanding the foregoing provisions of this paragraph, the parties recognize that as the case progresses it may be appropriate to allow the parties to produce certain files (*e.g.*, Excel, Lotus 123, or other spreadsheets; e-mails; reports from databases) in either (i) native electronic form or (ii) in a Group 4 compression single-or multi-page "TIFF" image, due to undue burden or cost for a Producing Party. Thus, the parties agree to meet and confer in such circumstances in order to reach a reasonable, alternative form of production.

5. **Document Unitization.** If hard copy documents are scanned into an electronic form, the unitization of the document and any attachments shall be maintained to the extent possible as it existed in the original when creating the image file. For documents that contain affixed notes, the pages will be scanned both with and without the notes and those pages will be treated as part of the same document. The relationship of documents in a document collection (*e.g.*, cover letter and enclosures, e-mail and attachments, binder containing multiple documents, or other documents where a parent-child relationship exists between the documents) shall be maintained through the scanning or conversion process.

6. **Color.** If an original document contains color, the Producing Party shall honor reasonable requests for either the production of an original document for inspection and copying or production of a color image of the document. The Requesting Party agrees to pay for reasonable costs associated with the color scanning and production of color images of documents already produced.

7. **Duplicates.** Where a party has more than one identical copy of an electronic document (*i.e.*, the documents are visually the same and contain the same electronic text), the Producing Party need only produce a single copy of that document. Furthermore, the parties are not required to produce multiple instances of an electronic message sent to multiple recipients, provided that all of the recipients (including "blind carbon copy" recipients) can be identified from documents or electronically stored information produced pursuant to this protocol and, as described in the remainder of this paragraph, and no information is missing from the electronic message. However, the foregoing is without prejudice to a party's ability to seek production of

multiple instances of an electronic message sent to one or multiple recipients where relevant Attachments to e-mail shall be produced pursuant to this ESI Protocol.

8. **Bates Numbering.** Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically "burned" onto the image at a location that does not unreasonably obliterate, conceal, or interfere with any information from the source document. No other legend or stamp will be placed on the document image other than a confidentiality legend (where applicable), redactions, the Bates Number identified above, and any other internal tracking number that the Producing Party may choose to use. The confidential legend shall be "burned" onto the document's image at a location that does not unreasonably obliterate or obscure any information from the source document.

9. **File Naming Conventions.** Each page image file shall be named with the unique Bates Number of the page of document, followed by the extension ".TIF" when available. In the event the Bates Number contains a symbol and/or character that cannot be included in a file name, the symbol and/or character will be omitted from the file name. Each native file shall retain its original file name, followed by the document-type extension (e.g., ".DOC", ".PDF", ".XLS", ".HTM", etc.)

10. **Production Media.** A Producing Party shall produce documents that it produces in an electronic image form pursuant to paragraph 2 on CD-ROM, DVD, external hard drive, File Transfer Protocol ("FTP") or such other readily accessible computer or electronic media as the parties may hereafter agree upon (the "Production Media"). Information that shall be identified on the physical Production Media shall include: (1) a reference to this case number, (2) the Producing Party's name, and (3) the production date. The Bates Number range(s) of the materials on the Production Media shall also be contained on the Production Media, and where not practicable to do so may be provided in an accompanying letter. If the Producing Party encrypts or "locks" the production, the Producing Party shall include with the production an explanation of how to decrypt the files.

The Producing Party agrees to produce the electronic discovery in TIFF format per

paragraph 4, with OCR text files and the appropriate document breaks contained in a Relativity or Concordance .dat load file. Additionally, all pages will be scanned from paper using the standard Group IV, 2-Dimension single page Tagged Image File Format (TIFF), or JPEG when necessary for color photographs, or black and white pages requiring grey scale.

11. Meta-Data. To the extent a Producing Party extracts any of the below metadata fields associated with its production, the Producing Party will produce those metadata fields to the Requesting Party with a load file with each production:

- (a) Subject line
- (b) Sent date
- (c) From
- (d) Recipients(s)/To
- (e) Copyee(s)/CC
- (f) Blind copyee(s)/BCC
- (g) File Name
- (h) Author
- (i) Document Date
- (j) Document Type
- (k) File Extension
- (l) Last Modified Date
- (m) Track Changes
- (n) Starting Bates (Beginning document Bates number);
- (o) Ending Bates (Ending document Bates number);
- (p) Begin Attach (Beginning Bates number for any attachment or range of attachments);
- (q) End Attach (Ending Bates number for any attachment or range of attachments); and
- (r) Source (custodian/location from which document was collected).

Alternatively, a Producing Party can satisfy its obligations under subparagraphs p. and q. above by providing information sufficient to identify any attachments to the documents produced. The meta-data listed above shall be labeled and produced on Production Media and shall be provided in a manner suitable for importing the information in a commercially available document management or litigation support software such as Relativity or Concordance.

For avoidance of doubt, the obligation to produce metadata pursuant to this paragraph is triggered only where such metadata information is available and extraction would not constitute an undue burden or expense. Where such metadata information is not available and/or not capable of extraction without undue burden/expense, this paragraph shall not impose any obligations on any Producing Party.

12. Search Terms and Custodians. The parties shall meet and confer on search terms to be used for electronic documents to identify electronic documents that will be reviewed for possible production pursuant to this Document Production Protocol. The parties shall also meet and confer on custodians for electronic documents to identify electronic documents that will be reviewed for possible production pursuant to this Document Production Protocol.

13. Databases. To the extent a response to discovery requires production of discoverable electronic information contained in a database, the parties shall meet and confer about the extent of the Producing Party's obligations in relation to the same.

14. Production of Other Electronic Documents. This Order only applies to the production of the following categories of electronic documents: databases, e-mails (and any associated attachments), word processing documents, spreadsheets, presentations, and imaged documents (in any format). The parties shall meet and confer to agree on the form of any production of electronic documents other than the foregoing.

15. Exceptions to Protocol. If the forms of production allowed by this protocol present an undue burden or cost for a Producing Party, the parties shall meet and confer to agree on a reasonable, alternative form of production. Any party may file a motion to seek individual relief from this protocol.

16. **Use of Documents.** When documents produced in accordance with this Order are used in any Proceeding herein, including depositions, hearings, or trial, the image copy of documents as described in Paragraph 4 shall be the copy used. Extracted text shall not be used in any Proceeding as a substitute for the image of any document.

17. **Privilege Logs.** The Producing Parties will produce privilege logs in Excel, Word, or a similar electronic format that allows text searching and organization of data. A Producing Party will produce a privilege log within 120 days after the completion of its document production. The production of a privilege log for a custodian will be not less than 30 days prior to a custodian's deposition. The parties may modify the deadlines for production of privilege logs by agreement.

When there is a chain of privileged e-mails, the Producing Party must log each e-mail contained within the chain separately. Distinct claims of privilege within an email chain must be separately identified, and parties shall be required to produce any non-privileged emails or information contained within the chain. To the extent available, the privilege log will contain the following metadata fields: the custodian, document type (*e.g.*, email, Word document, Excel spreadsheet, etc.), date last modified or sent, file name, and, if an email or email chain, the sender(s) and the recipient(s) (to, cc, and bcc). The Producing Party will also include on the log control number, privilege description, and privilege assertion. If a party redacts a responsive document, that party will provide a redaction log identifying each document that contains a redaction and the reason for the redaction. The production of a privilege log for a custodian will be not less than ten (10) days prior to a custodian's deposition. The parties may modify the deadlines for production of privilege logs by agreement.

18. **Costs of Production.** The parties reserve the right to seek cost shifting as appropriate at a later time.

19. **Discovery and Admissibility.** Nothing in this Order shall be construed to affect the discoverability or admissibility of any document or data. All objections to the discoverability or admissibility of any document or data are preserved and may be asserted at any time.

20. **Confidentiality.** The confidentiality of ESI produced in accordance with the instant Document Production Protocol is governed by the Stipulated Confidentiality Agreement and Protective Order, entered into concurrently herewith.

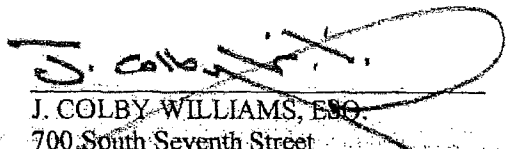
21. **Effect of Disclosure of Privileged Information.** The Receiving Party hereby agrees to promptly return, sequester, or destroy any Privileged Information disclosed or produced by Disclosing or Producing Party upon request by Disclosing or Producing Party regardless of whether the Receiving Party disputes the designation of Privileged Information. The Receiving Party may sequester (rather than return or destroy) such Privileged Information only if it contends that the information itself is not privileged or otherwise protected and it challenges the privilege designation, in which case it may only sequester the information until the claim of privilege or other protection is resolved. If any party disputes the privilege claim ("Objecting Party"), that Objecting Party shall object in writing by notifying the Producing Party of the dispute and the basis therefore. The parties thereafter shall meet and confer in good faith regarding the disputed claim within seven (7) court days after service of the written objection. In the event that the parties do not resolve their dispute, the Objecting Party may bring a motion for a determination of whether a privilege applies within ten (10) court days of the meet and confer session, but may only contest the asserted privileges on ground other than the inadvertent production of such document(s). In making such a motion, the Objecting Party shall not disclose the content of the document(s) at issue, but may refer to the information contained on the privilege log. Nothing herein shall relieve counsel from abiding by applicable ethical rules regarding inadvertent disclosure and discovery of inadvertently disclosed privileged or otherwise protected material. The failure of any party to provide notice or instructions under this Paragraph shall not constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney work product, or other ground for withholding production as to which the Disclosing or Producing Party would be entitled in this action.

22. **Inadvertent Production of Non-Discoverable Documents.** If a Producing Party inadvertently produces a document that contains no discoverable information, the Producing

Party may request in writing that the Receiving Party return the document, and the Receiving Party will return the document. A Producing Party may not request the return of a document pursuant to this section if the document contains any discoverable information.

Dated this 15th day of December, 2017

CAMPBELL & WILLIAMS


J. COLBY WILLIAMS, ESQ.
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Dated this ___ day of December, 2017

DICKINSON WRIGHT PLLC

ELIZABETH BRICKFIELD, ESQ.
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Telephone: (702) 550-4400
Facsimile: (702) 382-1661

*Attorneys for Edward Lubbers and Lawrence
and Heidi Canarelli, Former Trustees*

Dated this ___ day of December, 2017

SOLOMON DWIGGINS & FREER, LTD

DANA A. DWIGGINS, ESQ.
ALEXANDER G. LEVEQUE, ESQ.
TESS E. JOHNSON, ESQ.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Attorneys for Petitioner, Scott Canarelli

Party may request in writing that the Receiving Party return the document, and the Receiving Party will return the document. A Producing Party may not request the return of a document pursuant to this section if the document contains any discoverable information.

Dated this __ day of December, 2017

CAMPBELL & WILLIAMS

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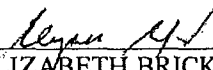
J. COLBY WILLIAMS, ESQ.
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

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ALEXANDER G. LEVEQUE, ESQ.
TESS E. JOHNSON, ESQ.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Dated this 15 day of December, 2017

DICKINSON WRIGHT PLLC

Attorneys for Petitioner, Scott Canarelli




ELIZABETH BRICKFIELD, ESQ.
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Telephone: (702) 550-4400
Facsimile: (702) 382-1661

*Attorneys for Edward Lubbers and Lawrence
and Heidi Canarelli, Former Trustees*

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CAMPBELL & WILLIAMS


J. COLBY WILLIAMS, ESQ.
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

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SOLOMON DWIGGINS & FREER, LTD

DANA A. DWIGGINS, ESQ.
ALEXANDER G. LEVEQUE, ESQ.
TESS E. JOHNSON, ESQ.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

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DICKINSON WRIGHT PLLC

ELIZABETH BRICKFIELD, ESQ.
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Telephone: (702) 550-4400
Facsimile: (702) 382-1661

Attorneys for Petitioner, Scott Canarelli

*Attorneys for Edward Lubbers and Lawrence
and Heidi Canarelli, Former Trustees*

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CAMPBELL & WILLIAMS

J. COLBY WILLIAMS, ESQ.
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Dated this 15 day of December, 2017

DICKINSON WRIGHT PLLC

Elizabeth Brickfield
ELIZABETH BRICKFIELD, ESQ.
8363 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Telephone: (702) 550-4400
Facsimile: (702) 382-1661

*Attorneys for Edward Lubbers and Lawrence
and Heidi Canarelli, Former Trustees*

Dated this 15 day of December, 2017

SOLOMON DWIGGINS & FREER, LTD

Dana A. Dwiggins
DANA A. DWIGGINS, ESQ.
ALEXANDER G. LEVEQUE, ESQ.
TESS E. JOHNSON, ESQ.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: (702) 853-5483
Facsimile: (702) 853-5485

Attorneys for Petitioner, Scott Canarelli

EXHIBIT 4

EXHIBIT 4



8363 WEST SUNSET ROAD, SUITE 200
LAS VEGAS, NV 89113-2210
TELEPHONE: (702) 550-4400
FACSIMILE: (844) 670-6009
<http://www.dickinsonwright.com>

ELIZABETH BRICKFIELD
EBRICKFIELD@DICKINSONWRIGHT.COM
(702) 550-4464

June 5, 2018

VIA E-MAIL and U.S. Mail
ddwiggins@sdfnvlaw.com
tjohnson@sdfnvlaw.com

Dana Dwiggins, Esq.
Tess Johnson, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, NV 89129

Re: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust")
District Court Case No. P-13-078912-T

Dear Counsel:

In reviewing your recently-filed Supplement to Petition and the Errata thereto, we see that you have attached as an exhibit document Bates No. **RESP013284-RESP013288**. This document is clearly an attorney-client privileged and attorney work product-protected document which was inadvertently produced by Respondents. By **Friday, June 8, 2018**, please:

- (1) Confirm your agreement that the document is privileged and that you will enter into a stipulation to redact all references to the document from your pleading and seal the exhibit in the already-filed pleading; and
- (2) Return the document to us and confirm that all copies in your possession have been destroyed.

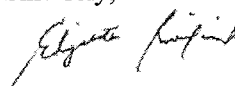
Separately, in reviewing documents for Respondents' supplemental disclosure of today's date, we have identified detailed billings from your firm to Scott which were provided to Mr. Lubbers. We have not reviewed these documents, copies of which are being sent to you on a second separate FTP link. Please review the documents and advise us of your position regarding the documents at your earliest convenience.

Lastly, in response to your letter dated June 1, 2018, the Documents Bates Nos. RESP0087114-RESP0087115 were inaccurately designated as responsive to certain requests for production to Lubbers. As we advised you on May 10, 2018, those documents are not responsive and, in addition, are communications with counsel during the course of litigation. As such, they have been removed from Lubbers' most recent supplemental responses. Moreover, as we previously discussed, the parties in this matter are not seeking, and accordingly have not been logging, communications with their counsel during the course of the litigation. Thus, there is no need for Respondents to provide the records or amend their privilege log.

Dana Dwiggins, Esq.
Tess Johnson, Esq.
June 5, 2018
Page 2

Thank you for your prompt attention to this matter.

Sincerely,



Elizabeth Brickfield

JZS:lms

cc: Joel Z. Schwarz, Esq.
J. Colby Williams, Esq.
Jennifer Braster, Esq.

EXHIBIT 5

EXHIBIT 5



SOLOMON | DWIGGINS | FREER LTD

TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Dwiggin
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Craig D. Friedel
Tess E. Johnson
Justin W. Wilson

Direct Dial (702) 589-3512
tjohnson@sdfnlaw.com

June 12, 2018

Via EMAIL ONLY

Elizabeth Brickfield, Esq.
Joel Z. Schwarz, Esq.
Dickinson Wright
8636 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Email: ebrickfield@dicksonwright.com
jschwarz@dickinsonwright.com

Re: *Scott Lyle Graves Canarelli Irrevocable Trust*, Case No. P-13-078912-T

Dear Ms. Brickfield,

I am in receipt of your June 5, 2018 letter wherein you seek to claw back records identified by Bates Nos. RESP013284-RESP013288. Respectfully, these records are not "clearly" privileged and I see no reason to redact prior filings or return the document to you based on an unsupported claim.

Therefore, I challenge your claim that the above-named records are subject to the attorney/client privilege and/or the work product doctrine. Please advise if you wish to proceed under the provisions of the ESI protocol with this dispute. If you have any questions, please feel free to contact me at the number listed above.

Sincerely,

Tess E. Johnson

cc: client
Colby Williams, Esq., *via email only*

EXHIBIT 6

EXHIBIT 6



8363 WEST SUNSET ROAD, SUITE 200
LAS VEGAS, NV 89113-2210
TELEPHONE: (702) 550-4400
FACSIMILE: (844) 670-6009
<http://www.dickinsonwright.com>

JOEL Z. SCHWARZ
JSCHWARZ@DICKINSONWRIGHT.COM
(702) 550-4436

June 12, 2018

VIA E-MAIL and U.S. Mail

ddwiggins@sdfnlaw.com

tjohnson@sdfnlaw.com

Dana Dwiggins, Esq.
Tess Johnson, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, NV 89129

Re: Scott Lyle Graves Canarelli Irrevocable Trust, dated February 24, 1998 (the "Trust")
District Court Case No. P-13-078912-T

Dear Counsel:

On June 5, 2018, we sent you the enclosed letter requesting the return of the inadvertently produced but clearly attorney-client privileged and attorney work product protected document with Bates No. **RESP013284-RESP013288**, whose return we requested by June 8, 2018.

On June 12, 2018 you responded that these records are not "clearly privileged" and challenged the claim.

I am writing to again request that you immediately confirm the privileged nature of this document and act accordingly by returning the document, withdrawing the exhibit and sealing the record.

Although you state that the document is not "clearly privileged", the privileged nature of this document is self-evident. It is the second page of a five page document dated October 14, 2013 comprising Mr. Lubbers' notes from his meeting with his then counsel, David Lee and Charlene Renwick. The notes are dated October 14, 2013 and set out the strategy discussed at the meeting. There are also references and discussions within the notes which correspond directly to sections of Scott Canarelli's petitions. Two days later, October 16, 2013, Mr. Lee and Ms. Renwick filed responses for Mr. Lubbers consistent with the notes.

At a minimum, you had an ethical obligation not simply to sequester the document, but also to advise Respondents' counsel that these documents had been disclosed so as to allow Respondents to assert the privilege. *See* NRPC 4.4(b); *Merits Incentives, LLC, v. Eighth Jud. Dist. Ct.*, 127 Nev. 689, 262 P.3d 720 (2011). Instead, you unilaterally disclosed a portion of the document as an exhibit to the Supplement to Petition, a rogue filing you electronically served on May 18th. You are exacerbating the problem by refusing to act consistent with Respondents' privilege assertion for this inadvertently disclosed document. *See* ESI Protocol ¶ 21 (stating, in part, "[t]he Receiving Party hereby agrees to promptly return, sequester, or destroy any Privileged Information disclosed or produced by Disclosing or Producing

Dana Dwiggins, Esq.
Tess Johnson, Esq.
June 12, 2018
Page 2

Party upon request by Disclosing or Producing Party *regardless of whether the Receiving Party disputes the designation of Privileged Information.*") (emphasis added).

When we realized that the detail of your billings which Scott Canarelli disclosed to Ed Lubbers were in our possession, we wrote you that we had not reviewed the records and asked that you advise us of your position. On June 8th, 2018, Ms. Johnson requested that we destroy the billing records. We have done so. Conversely, you have not returned **RESP013284-RESP013288** nor have you redacted it from your pleading and moved to seal it in these proceedings. We again request that you immediately confirm the privileged nature of this document and act accordingly.

Please advise us by June 13, 2018, how you intend to proceed so we can hold an EDCR 2.34 conference and, if necessary, seek the judicial return of the document. If we are compelled to move the return of this clearly privileged document, we will seek sanctions.

Sincerely,



Elizabeth Brickfield

cc: Joel Z. Schwarz, Esq.
J. Colby Williams, Esq.
Jennifer Braster, Esq.

EXHIBIT 7

EXHIBIT 7



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TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Craig D. Friedel
Tess E. Johnson
Justin W. Wilson

Direct Dial (702) 589-3505
ddwiggins@sdfnlaw.com

June 18, 2018

Via EMAIL ONLY

Elizabeth Brickfield, Esq.
Joel Z. Schwarz, Esq.
Dickinson Wright
8636 West Sunset Road, Suite 200
Las Vegas, Nevada 89113
Email: ebrickfield@dicksonwright.com
jschwarz@dickinsonwright.com

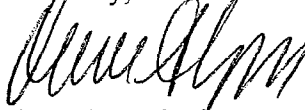
Re: *Scott Lyle Graves Canarelli Irrevocable Trust*, Case No. P-13-078912-T

Dear Ms. Brickfield and Mr. Schwarz,

This letter is in response to your June 12, 2018 letter, wherein you restate your demand that I "immediately confirm the privileged nature of this document" and return the records to your office. Having reviewed RESP013284-RESP013288 yet again, I disagree with your contention that these records are protected. Notwithstanding your unsupported claims, even if a privilege ever applied to these documents, which we assert it did not, such protection has been waived.

As a result of the dispute as to RESP013284-RESP013288, I will instruct my office to sequester the document until a determination is made as to the privileged nature of these records. At this time, I request that you advise as to your availability to conduct a meet and confer **by Monday June 25, 2018**, pursuant to the ESI Protocol.

Sincerely,



Dana A. Dwiggins

cc: client
Colby Williams, Esq., Philip R. Erwin, Esq., *via email only*

EXHIBIT 8

EXHIBIT 8



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA EMAIL
ddwiggins@sdfnvlaw.com

June 18, 2018

Dana A. Dwiggins, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: *The Scott Lyle Graves Canarelli Irrevocable Trust – Case Nos. P-13-078912-T*

Dear Dana:

This letter follows our telephone conversation from last Thursday, wherein you notified me of a potential inadvertent disclosure of attorney-client and/or work product protected information. As a threshold matter, I would like to thank you for notifying me of the potential inadvertent disclosure.

I have now had an opportunity to review the subject documents, which comprise 49 pages and are labeled (at least in the Relativity review platform) with Bates Nos. RESP0078884 – RESP0078932. The documents consist predominantly of attorney's notes taken during the pendency of this action by me and Hunter Campbell while he was an attorney with our firm. I have additionally confirmed that certain of the documents comprise notes taken by Edward Lubbers during the pendency of this action. It is our position that all of the documents are protected by the attorney-client privilege and/or work product doctrine and should not have been produced.

Accordingly, pursuant to Paragraph 21 of the ESI Protocol agreed to in this action, we request that you immediately return or destroy the documents referenced above. Pursuant to the ESI Protocol, the inadvertent disclosure of the subject documents by Respondents does not constitute a waiver, or estoppel, as to any claim of attorney client privilege, attorney work product, or other ground for withholding production as to which Respondents would be entitled in this matter. *See id.* If you contend that the information contained in any of the documents is not privileged or otherwise protected, please sequester those documents until the claim of privilege is resolved and notify Respondents in writing of the basis for your objection. *See id.*

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

Dana Dwiggins, Esq.
June 18, 2018
Page 2

Thank you for your attention to this matter. Please confirm as soon as possible that you will return, destroy or sequester the subject documents.

Very truly yours,

CAMPBELL & WILLIAMS



J. Colby Williams, Esq.

JCW/

cc: Philip R. Erwin, Esq.
Elizabeth Brickfield, Esq./Joel Schwarz, Esq.
Tess E. Johnson, Esq./Jeffrey P. Luszeck, Esq.
(all via e-mail).

EXHIBIT 9

EXHIBIT 9



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TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Diggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Christopher J. Fowler
Craig D. Friedel
Tess E. Johnson

June 19, 2018

Direct Dial (702) 589-3505
Email ddwiggins@sdfnvlaw.com

Via EMAIL ONLY

Colby Williams, Esq.
Phil Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Email: jcw@cwlawlv.com

**Re: Scott Lyle Graves Canarelli Irrevocable Trust ("Trust")
Case No. P-13-078912-T**

Dear Colby and Phil:

This letter in response to your letter dated June 18, 2018, in regards to the disclosures you and I spoke about on the telephone last Thursday, June 14, 2018. As a preliminary matter, the documents appear to start with Bate Nos. RESP0078884, however, each of the pages are not individually bated; therefore, I am referencing herein the page number of the 49 pages in total.

I am in agreement that your notes and Hunter Campbell's notes, which I understand to be Pages 1-15, 18-41 and 45-49 are privileged and, therefore, I agree to destroy the same. As to Pages 16-17 and 42-44, please confirm which of those documents are Mr. Lubbers' or any other individual's notes based on the handwriting. It is my understanding based on our conversation that these latter pages are not notes of any of the attorneys with your firm. If I am mistaken as to any of the foregoing categories, please clarify.

To the extent the notes consisting of Pages 16-17 and 42-44 are either Mr. Lubbers (or possibly Mr. Evans), I do not understand the basis for your objection. The notes appear to be taken at a group meeting; therefore, do not constitute "confidential communications" between an attorney and his client.

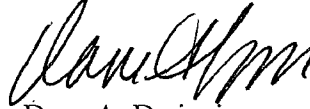
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Colby Williams, Esq.
June 19, 2018

As I mentioned, I am willing to delete the link entirely from our database and allow you to resend those documents that are not privileged in a separate link. However, in light of your position that Pages 16-17 and 42-44 are privileged, I am be sequestering all of the documents until such time as we are otherwise able to reach an agreement or the Court addresses the same. In the interim, I have instructed those attorneys at my firm with access to the database not to review the documents, print or otherwise make copies of the same.

If you have any questions, please contact me at the number listed above.

Sincerely,



Dana A. Dwiggins

cc: client
Elizabeth Brickfield, Esq.

EXHIBIT 10

EXHIBIT 10



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

VIA EMAIL

June 20, 2018

ddwiggins@sdfnvlaw.com

Dana A. Dwiggins, Esq.
Solomon Dwiggins & Freer, Ltd.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Re: *The Scott Lyle Graves Canarelli Irrevocable Trust – Case Nos. P-13-078912-T*

Dear Dana:

Thank you for your letter dated June 19, 2018 wherein you agreed to destroy documents 1-15, 18-41, and 45-49 (contained within Bates Nos. RESP0078884 – 78932) in response to the clawback letter we sent on June 18. As it relates to the documents you have challenged and agreed to sequester, *i.e.*, 16-17 and 42-44, I can confirm that documents 42 and 44 reflect handwritten notes taken by Hunter Campbell while he was an attorney at our firm during the pendency of the above matter. Document 43 also reflects Mr. Campbell's handwritten notes, but they actually appear to be notes taken in connection with a different client wholly unrelated to the above matter. With this clarification, I trust you will likewise agree to destroy these documents. Please confirm.

Documents 16-17 reflect Edward Lubbers' handwritten notes taken on or about December 19, 2013, which was during the pendency of the above-referenced matter. It is our position that these documents are protected by the attorney work product doctrine. As you know, the doctrine protects documents prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative. *See Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 133 Nev. Adv. Op. 52, 399 P.3d 334, 347 (2017). While Mr. Lubbers may have arguably prepared the notes during a group meeting in his capacity as a party in the litigation (as opposed to his capacity as an attorney), work product protection still attaches. *Cf., Mega Mfg., Inc. v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 2014 WL 2527226, at *2 (Nev. May 30, 2014) ("Whether an attorney is involved or directs an investigation is not dispositive for deciding whether the fruit of that investigation is work product."); *Wulz v. Bank of China Ltd.*, 304 F.R.D. 384, 393-94 (S.D.N.Y. 2015). Mr. Lubbers thereafter shared his notes with counsel and would have had no reason to prepare the notes in a similar form but for the existence of the pending action. Under

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101

PHONE: 702/382-5222
FAX: 702/382-0540

Dana A. Dwiggins, Esq.

June 20, 2018

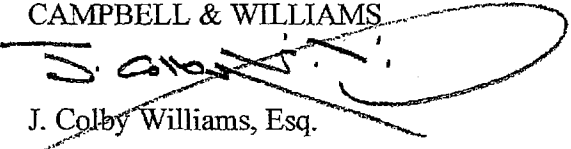
Page 2

the totality of the circumstances, we believe the notes are subject to protection, were inadvertently produced, and should be returned or destroyed under the parties' ESI Protocol. The foregoing is not a full expression of our position on this matter.

In light of the foregoing, please advise whether you will agree to return or destroy Mr. Lubbers' notes or, alternatively, you wish to discuss this matter further.

Very truly yours,

CAMPBELL & WILLIAMS


J. Colby Williams, Esq.

JCW/

cc: Philip R. Erwin, Esq.
Elizabeth Brickfield, Esq./Joel Schwarz, Esq.
Tess E. Johnson, Esq./Jeffrey P. Luszeck, Esq.
(all via e-mail).

EXHIBIT 11

EXHIBIT 11



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TRUST AND ESTATE ATTORNEYS

Mark A. Solomon
Dana A. Dwiggins
Alan D. Freer
Brian K. Steadman
Steven E. Hollingworth
Brian P. Eagan
Jeffrey P. Luszeck
Alexander G. LeVeque

Cheyenne West Professional Centre
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129

Telephone: 702.853.5483
Facsimile: 702.853.5485

Ross E. Evans
Jordanna L. Evans
Joshua M. Hood
Christopher J. Fowler
Craig D. Friedel
Tess E. Johnson

June 25, 2018

Direct Dial (702) 589-3505
Email ddwiggins@sdfnvlaw.com

Via EMAIL ONLY

Colby Williams, Esq.
Phil Erwin, Esq.
Campbell & Williams
700 South Seventh Street
Las Vegas, Nevada 89101
Email: jcw@cwlawlv.com

**Re: Scott Lyle Graves Canarelli Irrevocable Trust ("Trust")
Case No. P-13-078912-T**

Dear Colby:

This letter is in response to your June 20, 2018 letter wherein you discuss your position as to the sequestered notes that have been identified as page numbers 16-17 and 42-44. As you have represented that pages 42-44 are Hunter Campbell's written notes, I will agree to destroy these pages. With regard to pages 16-17, which you assert are Mr. Lubbers' handwritten notes, I am not persuaded that these records are protected by the work product doctrine. As you are aware, the party claiming the protection bears the burden of demonstrating the applicability of the work product doctrine.¹

Nevada does protect documents prepared by or for another party or by or for that other party's representative, however, they must *be prepared in anticipation of litigation* or for trial.²

¹ *LightGuard Sys., Inc. v. Spot Devices, Inc.*, 281 F.R.D. 593, 598 (D. Nev. 2012)(citing *Tornay v. U.S.*, 840 F.2d 1424, 1426 (9th Cir.1988)).

² *Wynn Resorts, Limited v. Eighth Judicial District Court of State et al. rel. Cty. Of Clark*, 399 P.3d 334, 337 (2017); *see also Id.* at 348 (quoting *In re Grand Jury Subpoena (Mark Torf/Torf Envtl. Mgmt.) (Torf)*, 357 F.3d 900, 907 (9th Cir. 2004) ("The anticipation of litigation must be

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Colby Williams, Esq.
June 25, 2018

In determining whether work was done in anticipation of litigation, Nevada adopted the “because of” test, which provides that documents are considered to be “prepared in anticipation of litigation when ‘in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained *because of* the prospect of litigation.’”³ The Ninth Circuit further discussed this test, stating

[t]he “because of” standard does not consider whether litigation was a primary or secondary motive behind the creation of a document. Rather, it considers the totality of the circumstances and affords protection when it can fairly be said that the “document was created because of anticipated litigation, and would not have been created in substantially similar form but for the prospect of that litigation[.]”⁴

Mr. Lubbers’ notes relate to a meeting he had with Stephen Nicolatus (the neutral valuator), Scott, Mark Solomon, Bob Evans, Don and Hunter Campbell and yourself in December, 2013. Given Mr. Nicolatus’ attendance, this meeting clearly related to the valuation of the entities sold under the Purchase Agreement. In December, 2013, litigation as to the purchase price of the sold entities was not anticipated, and Mr. Lubbers was merely acting as the SCIT’s Family Trustee and fulfilling his obligation under the Purchase Agreement to get an independent valuation. These notes would have been created in a substantially similar form regardless of the prospect of litigation. For this reason, the work product doctrine does not apply.

Regardless of whether this Court finds that Mr. Lubbers’ notes constitute work product, I am still entitled to these records under NRCP 26(b)(3) which provides that “upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party’s case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” Substantial need is determined on a case-by-case basis.⁵ As you are well aware, I made multiple attempts to depose Mr. Lubbers over five (5) months, offering to accommodate his illness to ensure that his testimony would be preserved. You fought me on this and made representations to this Court that he was not terminal and he passed away before I could

the *sine qua non* for the creation of the document — ‘but for the prospect of that litigation,’ the document would not exist.”).

³ *Id.* at 347-48 (quoting Restatement (Third) of the Law Governing Lawyers § 87 cmt. i (2000))(Emphasis in original).

⁴ *Wynn Resorts*, 399 P.3d at 348 (quoting *Torf*, 357 F.3d at 908).

⁵ *Cung Le v. Zuffa, LLC*, 321 F.R.D. 636, 641 (D. Nev. 2017).

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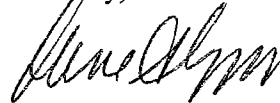
Colby Williams, Esq.
June 25, 2018

depose him. There is no other way for me to obtain Mr. Lubbers' thoughts and impressions regarding the valuation of the entities other than these and his other notes.

On a different note, I instructed our vendor to remove the entire file from our database, including all associated with metadata. It was confirmed this afternoon that it has been removed. Likewise, all hard copies have been destroyed, save and except Mr. Lubbers' notes referenced herein. Such notes will be sequestered pending resolution of our dispute.

At this time, I request that you advise as to your availability to conduct a meet and confer **by Friday, June 29, 2018**, pursuant to the ESI Protocol. If you have any questions, please contact me at the number listed above.

Sincerely,



Dana A. Dwiggins

cc: client
Elizabeth Brickfield, Esq.

EXHIBIT 12


EXHIBIT 12

From: Tina Goode [TGoode@AmericanWestHomes.com]
Sent: 11/18/2017 1:34:25 AM
To: Larry Canarelli [LCanarelli@AmericanWestHomes.com]; Bob Evans [BobEvans@AmericanWestHomes.com]; Teresa OMalley [TOmalley@AmericanWestHomes.com]
CC: Tina Goode [TGoode@AmericanWestHomes.com]
Subject: Email Jackie Nares and Ed - Memo instructing defer payments
Attachments: Defer Payment email and Memo.pdf

I know I will sleep better tonight . . . we received Ed's boxes back from Elizabeth's office and our missing e-mail confirming deferring payments along with Ed's memo was in the box . . .

Have a wonderful weekend!!

Tina Goode
Director, Corporate Administration

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P (702) 736-6434
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