

Case No. 78341

**In the Supreme Court of Nevada**

In the Matter of the Estate of  
MILTON I. SCHWARTZ, deceased.

A. JONATHAN SCHWARTZ, Executor of  
the Estate of MILTON I. SCHWARTZ,

Appellant,

*vs.*

THE DR. MIRIAM AND SHELDON G.  
ADELSON EDUCATIONAL INSTITUTE,

Respondent.

Electronically Filed  
Jan 29 2020 04:17 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPEAL**

from the Eighth Judicial District Court, Clark County  
The Honorable GLORIA J. STURMAN, District Judge  
District Court Case No. 07-P061300-E

**APPELLANT'S  
APPENDIX VOLUME 1  
PAGES 1-250**

DANIEL F. POLSENBERG (SBN 2376)  
JOEL D. HENRIOD (SBN 8492)  
DALE KOTCHKA-ALANES (SBN 13,168)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Pkwy, Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200

ALAN D. FREER (SBN 7706)  
ALEXANDER G. LEVEQUE (SBN 11,183)  
SOLOMON DWIGGINS & FREER, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
(702) 853-5483

*Attorneys for Appellants*

## CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
1	Petition for Probate of Will	10/15/07	1	1–26
2	Order Granting Petition for Probate of Will and Codicils and Issuance of Letters Testamentary	12/10/07	1	27–28
3	Petitioner’s Response to Objection to Petition to Probate Will and for Issuance of Letter Testamentary and Request for All Future Notices to be Properly Served	01/03/08	1	29–60
4	Notice of Entry of Order	01/04/08	1	61–66
5	Notice of Entry of Order	01/29/08	1	67–71
6	Ex Parte Order for Extension of Inventory	05/23/08	1	72–73
7	Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	05/03/13	1	74–159
8	Notice of Entry of Order to Appear and Show Cause	05/14/13	1	160–163
9	Objection to Petition to Compel Distribution, for Accounting, and for Attorneys’ Fees and Ex Parte Petition for Order to Issue Citation to Appear and Show Cause	05/28/13	1	164–230
10	Petition for Declaratory Relief	05/28/13	1 2	231–250 251–298
11	Motion to Dismiss Executor’s Petition for Declaratory Relief	06/12/13	2	299–329
12	Adelson Campus’ Reply in Support of Petition to Compel Distribution, for Accounting and for Attorneys’ Fees & Preliminary Objection to Accounting	06/17/13	2	330–356
13	Recorder’s Transcript of All Pending Motions	06/25/13	2	357–385
14	Opposition to Motion to Dismiss	07/01/13	2	386–398

15	Reply in Support of Motion to Dismiss Executor's Petition for Declaratory Relief	10/02/13	2	399–432
16	Recorder's Transcript of Motions Hearing	10/08/13	2	433–475
17	Notice of Entry of Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery	11/13/13	2	476–479
18	Demand for Jury Trial	11/27/13	2	480–481
19	Motion for Reconsideration	12/02/13	2 3	482–500 501–582
20	Opposition to the Executor's Motion for Reconsideration of the Court's November 12, 2013, Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief without Prejudice & Allowing Limited Discovery	12/09/13	3	583–638
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
23	Notice of Entry of Order Denying Motion for Reconsideration and Re-Setting Discovery Deadline	02/27/14	3	681–684
24	Notice of Entry of Order Regarding Deposit of Funds in Blocked Account at Morgan Stanley	03/07/14	3	685–690
25	Notice of Entry of Order Granting Motion to Modify November 12, 2013 Order and/or Limit Discovery; and Order Denying the Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Application (with notice) Countermotion to Continue the	03/07/14	3	691–696

	February 11, 2014 Hearing to Allow Discovery Commissioner to Resolve Discovery Dispute			
26	Adelson Campus' Motion for Partial Summary Judgment	04/22/14	3 4	697–750 751–772
27	Opposition to Motion for Partial Summary Judgment	05/27/17	4 5	773–1000 1001–1158
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
29	Errata to Opposition to Motion for Partial Summary Judgment	06/03/14	5	1166–1181
30	Adelson Campus' Reply in Support of Motion for Partial Summary Judgment	06/24/14	5 6	1182–1250 1251–1273
31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
33	Notice of Entry of Order Denying the Dr. Miriam and Sheldon C. Adelson Educational Institute's Motion for Partial Summary Judgment	09/05/14	6	1323–1326
34	Opposition to the Adelson Campus' Motion for Reconsideration of Denial of Motion for Partial Summary Judgment	10/06/14	6	1327–1333
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
36	Notice of Entry of Stipulation and Order for Protective Order	03/05/15	6	1377–1389
37	Petition for Partial Distribution	05/19/16	6	1390–1394
38	Errata to Petition for Partial Distribution	06/02/16	6	1395–1410
39	Recorder's Transcript of Proceeding: All Pending Motions	08/03/16	6	1411–1441



40	Recorder's Transcript of Proceedings: Calendar Call	08/18/16	6	1442–1454
41	Recorder's Transcript of Proceeding: Status Check	09/28/16	6	1455–1464
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482
43	Notice of Entry of Order Regarding the Adelson Campus' Motion for Protective Order	05/08/17	6	1483–1486
44	Notice of Filing Petition for a Writ of Mandamus of Prohibition	05/17/17	6	1487
45	Notice of Entry of Stipulation to Stay Matter Pending Petition for Writ of Mandamus or Prohibition	05/24/17	6	1488–1492
46	Motion for Partial Summary Judgment Regarding Fraud	06/04/18	6 7	1493–1500 1501–1523
47	Motion for Partial Summary Judgment Regarding Statute of Limitations	06/04/18	7	1524–1541
48	Motion for Summary Judgment Regarding Breach of Contract	06/04/18	7	1542–1673
49	Opposition to Motion for Partial Summary Judgment Regarding Fraud	07/06/18	7 8	1674–1750 1751–1827
50	Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/06/18	8	1828–1986
51	Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	07/06/18	8 9	1987–2000 2001–2149
52	Errata to Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/10/18	9	2150–2155
53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161

54	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Fraud	08/02/18	9	2162–2177
55	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Statute of Limitations	08/02/18	9	2178–2209
56	Reply in Support of Motion for Summary Judgment Regarding Breach of Contract	08/02/18	9	2210–2245
57	The Estate's Pretrial Memorandum	08/06/18	9 10	2246–2250 2251–2263
58	The Estate's Pretrial Memorandum	08/06/18	10	2264–2274
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
62	Recorder's Transcript of Hearing on Motions in Limine and Motions for Summary Judgment	08/09/18	10 11	2417–2500 2501–2538
63	The Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract and Ex Parte Application for an Order Shortening Time	08/14/18	11	2539–2623
64	Supplement to the Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract	08/14/18	11	2624–2646

65	Recorder's Transcript of Proceedings, Pretrial Conference, All Pending Motions	08/15/18	11 12	2647–2750 2751–2764
66	The Adelson Campus' Opposition to the Estate's Motion for Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Contract and Countermotion to Strike the 8/14/18 Declaration of Jonathan Schwartz and All Attached Exhibits in Support	08/16/18	12	2765–2792
67	Recorder's Transcript of Proceedings, Pretrial Conference – Day 2, All Pending Motions	08/16/18	12	2793–2868
68	Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	08/31/18	12	2869–2902
69	Trial Transcripts (Rough Drafts)	09/03/18	12 13 14 15 16 17 18	2903–3000 3001–3250 3251–3500 3501–3750 3751–4000 4001–4250 4251–4304
70	Opposition to Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	09/03/18	18	4305–4333
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
72	Recorder's Partial Transcript: Jury Instructions	09/04/18	18	4342–4367
73	Recorder's Partial Transcript of Jury Trial: Closing Arguments	09/04/18	18	4368–4467
74	Amended Jury List	09/05/18	18	4468
75	Jury Instructions	09/05/18	18 19	4469–4500 4501–4512

76	Verdict Form	09/05/18	19	4513–4516
77	Proposed Jury Instructions Not Used at Trial	09/05/18	19	4517–4520
78	Proposed Verdict Form Not Used at Trial	09/05/18	19	4521–4525
79	Judgment on Jury Verdict	10/04/18	19	4526–4532
80	Recorder’s Transcript of Proceedings, Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims, The Estate’s Motion for Judgment as a Matter of Law Regarding Construction of Will	10/04/18	19	4533–4554
81	Notice of Entry of Order Denying the Adelson Campus’ Motion to Strike Jury Demand on Order Shortening Time	10/05/18	19	4555–4558
82	Notice of Entry of Order Denying the Adelson Campus’ Motion for Summary Judgment Regarding Breach of Contract	10/05/18	19	4559–4562
83	Notice of Entry of Order Denying the Estate’s Motion for Reconsideration of the Court’s Order Granting Summary Judgment on the Estate’s Claim for Breach of Oral Contract and the Adelson Campus’ Countermotion to Strike the August 14, 2018 Declaration of Jonathan Schwartz an All Attached Exhibits in Support	10/05/18	19	4563–4566
84	Notice of Entry of Judgment on Jury Verdict	10/05/18	19	4567–4575
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute’s Verified Memorandum of Costs	10/11/18	19	4576–4579
86	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute’s Verified Memorandum of Costs (Volume 1 of 2)	10/11/18	19 20	4580–4750 4751–4842

87	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute's Verified Memorandum of Costs (Volume 2 of 2)	10/11/18	20 21	4843–5000 5001–5123
88	Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	10/16/18	21	5124–5167
89	The Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	10/22/18	21 22	5168–5250 5251–5455
90	Adelson Campus' Post-Trial Brief on Outstanding Claims	11/16/18	22 23	5456–5500 5501–5555
91	Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	11/16/18	23	5556–5693
92	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	11/21/18	23 24	5694–5750 5751–5788
93	The Adelson Campus' Opposition to the Estate's Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	11/21/18	24	5789–5803
94	The Estate's Reply to Adelson Campus's Opposition to Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	12/21/18	24	5804–5816
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	12/21/18	24	5817–5857

96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
99	Judgment on A. Jonathan Schwartz's Petition for Declaratory Relief	02/20/19	24	5994–5995
100	Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute's Petition to Compel Distribution, for Accounting and for Attorneys' Fees	02/20/19	24	5996–5997
101	Notice of Entry of Order Denying the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	02/20/19	24 25	5998–6000 6001
102	Notice of Entry of Judgment on A. Jonathan Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Construction Trust	02/21/19	25	6002–6010
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015
104	Appendix of Exhibits to Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25 26	6016–6250 6251–6478
105	The Adelson Campus' Motion to Re-Tax and Settle Costs	03/06/19	26	6479–6489
106	Notice of Appeal	03/08/19	26 27	6490–6500 6501–6510
107	Case Appeal Statement	03/08/19	27	6511–6515

108	Notice of Appeal	03/22/19	27	6516–6517
109	Case Appeal Statement	03/22/19	27	6518–6521
110	The Estate’s Opposition to the Adelson Campus’ Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
111	The Adelson Campus’ Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
112	Recorder’s Transcript of Pending Motions	04/11/19	27	6554–6584
113	Notice of Entry of Order	07/25/19	27	6585–6595
114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
115	Notice of Appeal	08/16/19	27	6598–6599
116	Case Appeal Statement	08/16/19	27	6600–6603
117	Notice of Posting Supersedeas Bond on Appeal	08/19/19	27	6604–6606
118	Trial Exhibit 3		27	6607–6609
119	Trial Exhibit 4		27	6610–6611
120	Trial Exhibit 5		27	6612–6620
121	Trial Exhibit 6		27	6621
122	Trial Exhibit 9		27	6622–6625
123	Trial Exhibit 14		27	6626–6628
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
127	Trial Exhibit 38		27	6648–6649
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
134	Trial Exhibit 61		27 28	6714–6750 6751–6799
135	Trial Exhibit 62		28	6800–6867
136	Trial Exhibit 111		28	6868–6869

137	Trial Exhibit 112		28	6870
138	Trial Exhibit 113		28	6871
139	Trial Exhibit 114		28	6872
140	Trial Exhibit 115		28	6873
141	Trial Exhibit 118		28	6874–6876
142	Trial Exhibit 128		28	6877
143	Trial Exhibit 130		28	6878–6879
144	Trial Exhibit 134		28	6880–6882
145	Trial Exhibit 139		28	6683–6884
146	Trial Exhibit 149		28	6885–6998
147	Trial Exhibit 158		28	6999
148	Trial Exhibit 159		28	7000
149	Trial Exhibit 162		28	7001
150	Trial Exhibit 165		29	7002
151	Trial Exhibit 384		29	7003–7007
152	Trial Exhibit 1116A		29	7008



**ALPHABETICAL TABLE OF CONTENTS TO APPENDIX**

<b>Tab</b>	<b>Document</b>	<b>Date</b>	<b>Vol.</b>	<b>Pages</b>
26	Adelson Campus' Motion for Partial Summary Judgment	04/22/14	3 4	697–750 751–772
90	Adelson Campus' Post-Trial Brief on Outstanding Claims	11/16/18	22 23	5456–5500 5501–5555
30	Adelson Campus' Reply in Support of Motion for Partial Summary Judgment	06/24/14	5 6	1182–1250 1251–1273
12	Adelson Campus' Reply in Support of Petition to Compel Distribution, for Accounting and for Attorneys' Fees & Preliminary Objection to Accounting	06/17/13	2	330–356
74	Amended Jury List	09/05/18	18	4468
86	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute's Verified Memorandum of Costs (Volume 1 of 2)	10/11/18	19 20	4580–4750 4751–4842
87	Appendix of Exhibits to the Dr. Miriam and Sheldon G. Adelson Education Institute's Verified Memorandum of Costs (Volume 2 of 2)	10/11/18	20 21	4843–5000 5001–5123
104	Appendix of Exhibits to Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25 26	6016–6250 6251–6478
107	Case Appeal Statement	03/08/19	27	6511–6515
109	Case Appeal Statement	03/22/19	27	6518–6521
116	Case Appeal Statement	08/16/19	27	6600–6603
18	Demand for Jury Trial	11/27/13	2	480–481
29	Errata to Opposition to Motion for Partial Summary Judgment	06/03/14	5	1166–1181
52	Errata to Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/10/18	9	2150–2155

38	Errata to Petition for Partial Distribution	06/02/16	6	1395–1410
6	Ex Parte Order for Extension of Inventory	05/23/08	1	72–73
99	Judgment on A. Jonathan Schwartz’s Petition for Declaratory Relief	02/20/19	24	5994–5995
79	Judgment on Jury Verdict	10/04/18	19	4526–4532
100	Judgment on the Dr. Miriam and Sheldon G. Adelson Educational Institute’s Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	02/20/19	24	5996–5997
75	Jury Instructions	09/05/18	18 19	4469–4500 4501–4512
68	Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	08/31/18	12	2869–2902
46	Motion for Partial Summary Judgment Regarding Fraud	06/04/18	6 7	1493–1500 1501–1523
47	Motion for Partial Summary Judgment Regarding Statute of Limitations	06/04/18	7	1524–1541
19	Motion for Reconsideration	12/02/13	2 3	482–500 501–582
48	Motion for Summary Judgment Regarding Breach of Contract	06/04/18	7	1542–1673
11	Motion to Dismiss Executor’s Petition for Declaratory Relief	06/12/13	2	299–329
88	Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	10/16/18	21	5124–5167
106	Notice of Appeal	03/08/19	26 27	6490–6500 6501–6510
108	Notice of Appeal	03/22/19	27	6516–6517
115	Notice of Appeal	08/16/19	27	6598–6599

102	Notice of Entry of Judgment on A. Jonathan Schwartz's, Executor of the Estate of Milton I. Schwartz, Claims for Promissory Estoppel and Revocation of Gift and Construction Trust	02/21/19	25	6002–6010
84	Notice of Entry of Judgment on Jury Verdict	10/05/18	19	4567–4575
4	Notice of Entry of Order	01/04/08	1	61–66
5	Notice of Entry of Order	01/29/08	1	67–71
113	Notice of Entry of Order	07/25/19	27	6585–6595
17	Notice of Entry of Order Denying Adelson Campus' Motion to Dismiss Executor's Petition for Declaratory Relief Without Prejudice & Allowing Limited Discovery	11/13/13	2	476–479
23	Notice of Entry of Order Denying Motion for Reconsideration and Re-Setting Discovery Deadline	02/27/14	3	681–684
82	Notice of Entry of Order Denying the Adelson Campus' Motion for Summary Judgment Regarding Breach of Contract	10/05/18	19	4559–4562
81	Notice of Entry of Order Denying the Adelson Campus' Motion to Strike Jury Demand on Order Shortening Time	10/05/18	19	4555–4558
33	Notice of Entry of Order Denying the Dr. Miriam and Sheldon C. Adelson Educational Institute's Motion for Partial Summary Judgment	09/05/14	6	1323–1326
101	Notice of Entry of Order Denying the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	02/20/19	24 25	5998–6000 6001
83	Notice of Entry of Order Denying the Estate's Motion for Reconsideration of the Court's Order Granting Summary	10/05/18	19	4563–4566

	Judgment on the Estate's Claim for Breach of Oral Contract and the Adelson Campus' Countermotion to Strike the August 14, 2018 Declaration of Jonathan Schwartz and All Attached Exhibits in Support			
25	Notice of Entry of Order Granting Motion to Modify November 12, 2013 Order and/or Limit Discovery; and Order Denying the Dr. Miriam and Sheldon G. Adelson Educational Institute's Ex Parte Application (with notice) Countermotion to Continue the February 11, 2014 Hearing to Allow Discovery Commissioner to Resolve Discovery Dispute	03/07/14	3	691–696
24	Notice of Entry of Order Regarding Deposit of Funds in Blocked Account at Morgan Stanley	03/07/14	3	685–690
43	Notice of Entry of Order Regarding the Adelson Campus' Motion for Protective Order	05/08/17	6	1483–1486
8	Notice of Entry of Order to Appear and Show Cause	05/14/13	1	160–163
36	Notice of Entry of Stipulation and Order for Protective Order	03/05/15	6	1377–1389
45	Notice of Entry of Stipulation to Stay Matter Pending Petition for Writ of Mandamus or Prohibition	05/24/17	6	1488–1492
44	Notice of Filing Petition for a Writ of Mandamus of Prohibition	05/17/17	6	1487
117	Notice of Posting Supersedeas Bond on Appeal	08/19/19	27	6604–6606
9	Objection to Petition to Compel Distribution, for Accounting, and for Attorneys' Fees and Ex Parte Petition for Order to Issue Citation to Appear and Show Cause	05/28/13	1	164–230

70	Opposition to Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims	09/03/18	18	4305–4333
27	Opposition to Motion for Partial Summary Judgment	05/27/17	4 5	773–1000 1001–1158
49	Opposition to Motion for Partial Summary Judgment Regarding Fraud	07/06/18	7 8	1674–1750 1751–1827
50	Opposition to Motion for Partial Summary Judgment Regarding Statute of Limitations	07/06/18	8	1828–1986
51	Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	07/06/18	8 9	1987–2000 2001–2149
14	Opposition to Motion to Dismiss	07/01/13	2	386–398
34	Opposition to the Adelson Campus’ Motion for Reconsideration of Denial of Motion for Partial Summary Judgment	10/06/14	6	1327–1333
20	Opposition to the Executor’s Motion for Reconsideration of the Court’s November 12, 2013, Order Denying Adelson Campus’ Motion to Dismiss Executor’s Petition for Declaratory Relief without Prejudice & Allowing Limited Discovery	12/09/13	3	583–638
2	Order Granting Petition for Probate of Will and Codicils and Issuance of Letters Testamentary	12/10/07	1	27–28
10	Petition for Declaratory Relief	05/28/13	1 2	231–250 251–298
37	Petition for Partial Distribution	05/19/16	6	1390–1394
1	Petition for Probate of Will	10/15/07	1	1–26
7	Petition to Compel Distribution, for Accounting and for Attorneys’ Fees	05/03/13	1	74–159
3	Petitioner’s Response to Objection to Petition to Probate Will and for Issuance of Letter Testamentary and	01/03/08	1	29–60

	Request for All Future Notices to be Properly Served			
91	Post-Trial Brief Regarding the Parties' Equitable Claims and for Entry of Judgment	11/16/18	23	5556–5693
77	Proposed Jury Instructions Not Used at Trial	09/05/18	19	4517–4520
78	Proposed Verdict Form Not Used at Trial	09/05/18	19	4521–4525
73	Recorder's Partial Transcript of Jury Trial: Closing Arguments	09/04/18	18	4368–4467
72	Recorder's Partial Transcript: Jury Instructions	09/04/18	18	4342–4367
13	Recorder's Transcript of All Pending Motions	06/25/13	2	357–385
62	Recorder's Transcript of Hearing on Motions in Limine and Motions for Summary Judgment	08/09/18	10 11	2417–2500 2501–2538
16	Recorder's Transcript of Motions Hearing	10/08/13	2	433–475
112	Recorder's Transcript of Pending Motions	04/11/19	27	6554–6584
39	Recorder's Transcript of Proceeding: All Pending Motions	08/03/16	6	1411–1441
41	Recorder's Transcript of Proceeding: Status Check	09/28/16	6	1455–1464
80	Recorder's Transcript of Proceedings, Motion for Judgment as a Matter of Law Regarding Breach of Contract and Mistake Claims, The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	10/04/18	19	4533–4554
67	Recorder's Transcript of Proceedings, Pretrial Conference – Day 2, All Pending Motions	08/16/18	12	2793–2868
65	Recorder's Transcript of Proceedings, Pretrial Conference, All Pending Motions	08/15/18	11 12	2647–2750 2751–2764

40	Recorder's Transcript of Proceedings: Calendar Call	08/18/16	6	1442–1454
56	Reply in Support of Motion for Summary Judgment Regarding Breach of Contract	08/02/18	9	2210–2245
15	Reply in Support of Motion to Dismiss Executor's Petition for Declaratory Relief	10/02/13	2	399–432
97	Reply in Support of Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	01/04/19	24	5924–5941
35	Reporter's Transcript of Proceedings	10/08/14	6	1334–1376
98	Reporter's Transcription of Proceedings	01/10/19	24	5942–5993
114	Stipulation and Order Regarding Trial Transcripts	08/05/19	27	6596–6597
31	Supplement to Opposition to Motion for Partial Summary Judgment	07/02/14	6	1274–1280
61	Supplement to Opposition to Motion for Summary Judgment Regarding Breach of Contract and Countermotion for Advisory Jury	08/08/18	10	2387–2416
28	Supplement to Petition for Declaratory Relief to Include Remedies of Specific Performance and Mandatory Injunction	05/28/17	5	1159–1165
64	Supplement to the Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract	08/14/18	11	2624–2646
60	Supplement to the Estate's Opposition to Motion for Partial Summary Judgment Regarding Fraud	08/08/18	10	2353–2386
105	The Adelson Campus' Motion to Re- Tax and Settle Costs	03/06/19	26	6479–6489

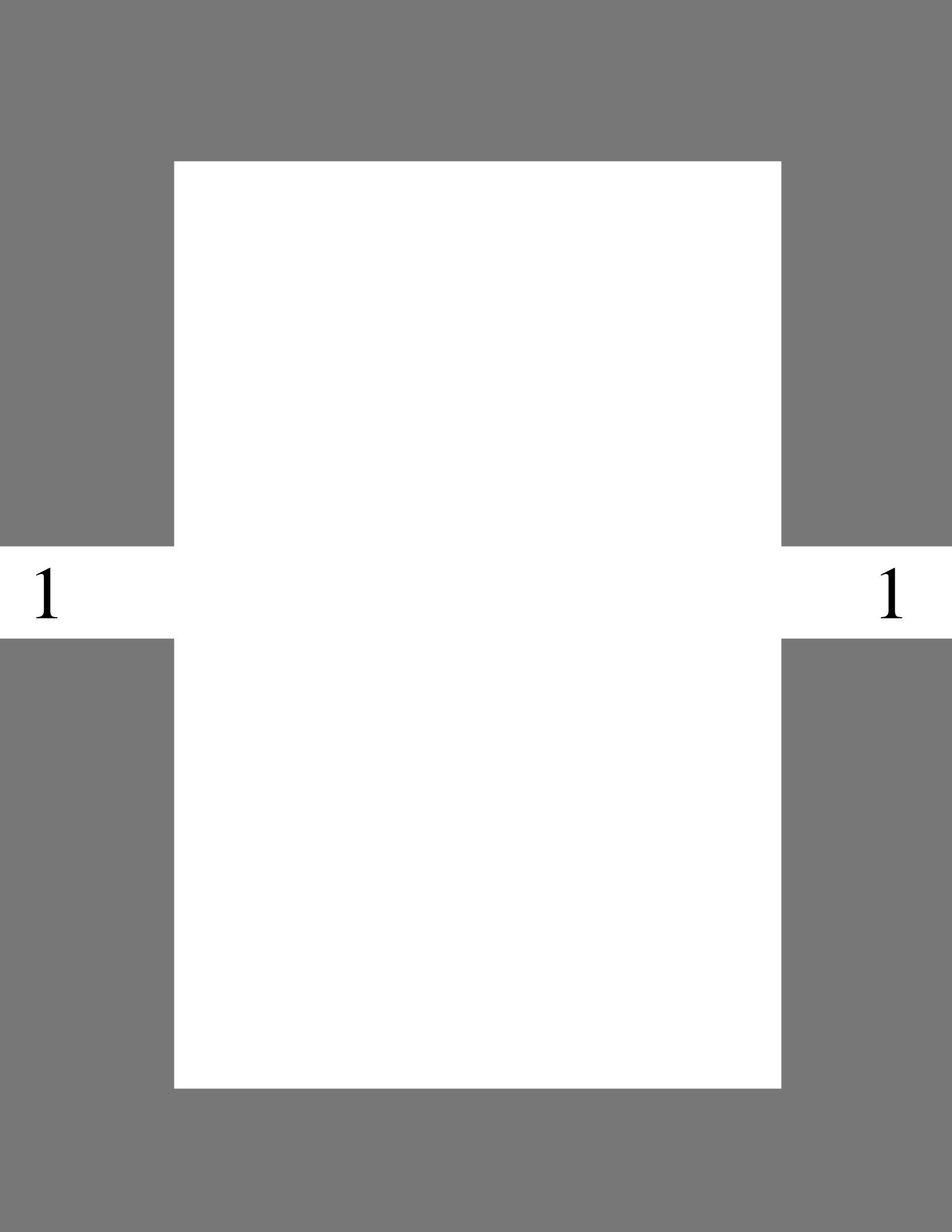
53	The Adelson Campus' Opposition to the Estate's Countermotion for Advisory Jury	07/23/18	9	2156–2161
66	The Adelson Campus' Opposition to the Estate's Motion for Reconsideration of the Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Contract and Countermotion to Strike the 8/14/18 Declaration of Jonathan Schwartz and All Attached Exhibits in Support	08/16/18	12	2765–2792
93	The Adelson Campus' Opposition to the Estate's Motion to Retax Costs Pursuant to NRS 18.110(4) and to Defer Award of Costs Until All Claims are Fully Adjudicated	11/21/18	24	5789–5803
59	The Adelson Campus' Pre-Trial Memorandum	08/07/18	10	2275–2352
54	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Fraud	08/02/18	9	2162–2177
55	The Adelson Campus' Reply in Support of Motion for Partial Summary Judgment Regarding Statute of Limitations	08/02/18	9	2178–2209
111	The Adelson Campus' Reply in Support of Motion to Re-Tax and Settle Costs	04/04/19	27	6547–6553
92	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	11/21/18	23 24	5694–5750 5751–5788
95	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Opposition to the Estate's Post-Trial	12/21/18	24	5817–5857



	Brief Regarding the Parties' Equitable Claims and for Entry of Judgment			
85	The Dr. Miriam and Sheldon G. Adelson Educational Institute's Verified Memorandum of Costs	10/11/18	19	4576–4579
71	The Estate's Motion for Judgment as a Matter of Law Regarding Construction of Will	09/03/18	18	4334–4341
89	The Estate's Motion for Post-Trial Relief from Judgment on Jury Verdict Entered October 4, 2018	10/22/18	21 22	5168–5250 5251–5455
63	The Estate's Motion for Reconsideration of: The Court's Order Granting Summary Judgment on the Estate's Claim for Breach of Oral Contract and Ex Parte Application for an Order Shortening Time	08/14/18	11	2539–2623
110	The Estate's Opposition to the Adelson Campus' Motion to Re-Tax and Settle Costs	03/25/19	27	6522–6546
57	The Estate's Pretrial Memorandum	08/06/18	9 10	2246–2250 2251–2263
58	The Estate's Pretrial Memorandum	08/06/18	10	2264–2274
94	The Estate's Reply to Adelson Campus's Opposition to Motion for Post-Trial Relief from Judgment on Jury Verdict Entered on October 4, 2018	12/21/18	24	5804–5816
96	The Estate's Response to the Adelson Campus' Post-Trial Brief on Outstanding Claims	12/21/18	24	5858–5923
32	Transcript for Motion for Summary Judgment	07/09/14	6	1281–1322
21	Transcript of Proceeding: Motion for Reconsideration	12/10/13	3	639–669
42	Transcript of Proceedings: Motion for Protective Order on Order Shortening Time	04/19/17	6	1465–1482

22	Transcription of Discovery Commissioner Hearing Held on January 29, 2014	01/29/14	3	670–680
136	Trial Exhibit 111		28	6868–6869
152	Trial Exhibit 1116A		29	7008
137	Trial Exhibit 112		28	6870
138	Trial Exhibit 113		28	6871
139	Trial Exhibit 114		28	6872
140	Trial Exhibit 115		28	6873
141	Trial Exhibit 118		28	6874–6876
142	Trial Exhibit 128		28	6877
143	Trial Exhibit 130		28	6878–6879
144	Trial Exhibit 134		28	6880–6882
145	Trial Exhibit 139		28	6683–6884
123	Trial Exhibit 14		27	6626–6628
146	Trial Exhibit 149		28	6885–6998
147	Trial Exhibit 158		28	6999
148	Trial Exhibit 159		28	7000
149	Trial Exhibit 162		28	7001
150	Trial Exhibit 165		29	7002
124	Trial Exhibit 17		27	6629–6638
125	Trial Exhibit 22		27	6639–6645
126	Trial Exhibit 28		27	6646–6647
118	Trial Exhibit 3		27	6607–6609
127	Trial Exhibit 38		27	6648–6649
151	Trial Exhibit 384		29	7003–7007
119	Trial Exhibit 4		27	6610–6611
128	Trial Exhibit 41		27	6650–6675
129	Trial Exhibit 43		27	6676–6679
130	Trial Exhibit 44		27	6680–6682
120	Trial Exhibit 5		27	6612–6620
131	Trial Exhibit 51		27	6683–6684
132	Trial Exhibit 52		27	6685–6686
133	Trial Exhibit 55		27	6687–6713
121	Trial Exhibit 6		27	6621
134	Trial Exhibit 61		27 28	6714–6750 6751–6799

135	Trial Exhibit 62		28	6800–6867
122	Trial Exhibit 9		27	6622–6625
69	Trial Transcripts (Rough Drafts)	09/03/18	12 13 14 15 16 17 18	2903–3000 3001–3250 3251–3500 3501–3750 3751–4000 4001–4250 4251–4304
76	Verdict Form	09/05/18	19	4513–4516
103	Verified Memorandum of Costs of A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz	02/27/19	25	6111–6015



1

1

ORIGINAL

000001

u

FILED

OCT 15 4 33 PM '07

CLERK OF THE COURT

1 PPW  
2 Steven J. Oshins, Esq., Bar No. 5732  
3 Heidi C. Freeman, Esq., Bar No. 8458  
4 Kristen E. Simmons, Esq., Bar No. 9187  
5 Oshins & Associates  
6 1645 Village Center Circle, Suite 170  
7 Las Vegas, NV 89134  
8 (702)341-6000  
9 Attorneys for Petitioner

DISTRICT COURT

CLARK COUNTY, NEVADA

P61300

11 In the Matter of the Estate of  
12 MILTON I. SCHWARTZ,  
13 Deceased

Case No. P

PETITION FOR PROBATE OF WILL AND CODICILS  
AND FOR ISSUANCE OF LETTERS TESTAMENTARY

15 Date of Hearing: November 9, 2007  
16 Time of Hearing: 9:30 a.m.

17 The Petitioner, A. JONATHAN SCHWARTZ, hereby submits his Petition praying for  
18 probate of the Will of MILTON I. SCHWARTZ dated February 5, 2004, as well as the First  
19 Codicil to Will dated January 27, 2006 and Second Codicil to Will dated July 21, 2006, and for  
20 the issuance of Letters Testamentary. The Petitioner declares that:

21 1. The decedent, MILTON I. SCHWARTZ, died August 9, 2007, as a resident of  
22 Clark County, Nevada. A certified copy of the decedent's death certificate is attached hereto and  
23 incorporated herein by this reference.

24 2. Jurisdiction is proper under NRS 136.010 because the decedent died as a resident  
25 of Clark County, Nevada.

26 3. The decedent left a Will dated February 5, 2004 and two Codicils to said Will  
27 dated January 27, 2006 and July 21, 2006, respectively. The original Will and First Codicil have  
28 been filed with the Court Clerk, and a conformed copy of the Will and First Codicil are attached

RECEIVED

OCT 15 2007

CLERK OF THE COURT

000001

000001

hereto and incorporated herein by this reference. The original Second Codicil can not be located. However, to the best of Petitioner's knowledge and belief the Second Codicil was never revoked or destroyed by the decedent. A true and correct copy of the Second Codicil is attached hereto and incorporated herein by this reference. Petitioner respectfully requests that the true and correct copy of the Second Codicil be entered into probate. The decedent's Will and Codicils are proved by self-proving affidavits, which are attached to said Will and Codicils and Affidavits of Attesting Witnesses and/or Notary which will be filed in these proceedings.

4. Petitioner, A. JONATHAN SCHWARTZ, is the son of the decedent. The Petitioner is entitled to appointment as Executor because the decedent nominated him in his Will. The Petitioner is of sound mind and legal age, and has never been convicted of a felony.

5. That the character of the estate is personal property, tangible and intangible, the same being the decedent's separate property. To the best of the Petitioner's knowledge, the character and estimated value of the assets subject to administration in Nevada is in excess of \$200,000.00.

6. Petitioner's address is 2293 Duneville Street, Las Vegas, NV 89146.

7. Bond should be waived as provided in Paragraph 4.2 of the decedent's Will.

8. The beneficiaries named in the decedent's Will and the decedent's heirs under NRS Chapter 134 are:

EILEEN JOANNA ZARIN 9 Steven Lane Kings Point, NY 11024	Daughter/Adult
ROBIN SUE LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Daughter/Adult
SAMUEL SCHWARTZ 351 Woodlake Drive Marlton, NJ 08053	Son/Adult
A. JONATHAN SCHWARTZ 2293 Duneville Street Las Vegas, NV 89146	Son/Adult

THE MILTON I. SCHWARTZ HEBREW ACADEMY 9700 Millpointe Road Las Vegas, NV 89134	Beneficiary
MICHAEL LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
ZACHARY LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
BENJAMIN LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
JOSHUA LANDSBURG 1028 Bobwhite Drive Cherry Hill, NJ 08003	Beneficiary/Grandson/Adult
FRANCES A. MARTEL 253 Vista Del Parque Redondo Beach, CA 90277	Beneficiary/Ex-Wife/Adult
THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST, A. JONATHAN SCHWARTZ, Trustee 2293 Duneville Street Las Vegas, NV 89146	Beneficiary
LAS VEGAS JEWISH FEDERATION (a/k/a Jewish Federation of Las Vegas) 2317 Renaissance Drive Las Vegas, NV 89119	Disinherited Beneficiary
LAS VEGAS FEDERATION DAY SCHOOL c/o Jewish Federation of Las Vegas 2317 Renaissance Drive Las Vegas, NV 89119	Disinherited Beneficiary
ABIGAIL RICHLIN SCHWARTZ Address unknown	Disinherited Beneficiary/ Ex-wife/Adult

9. No beneficiary named in the Will to whom the estate is to be distributed is deceased.

1 WHEREFORE, Petitioner prays for an order of the Court providing that:

2 A. The decedent's Will dated February 5, 2004 and two Codicils to said Will dated  
3 January 27, 2006 and July 21, 2006, respectively, be admitted to probate.

4 B. The Petitioner be appointed as Executor to act for the Estate.

5 C. Letters Testamentary be issued to Petitioner upon the filing of the oath of office,  
6 as required by law.

7 D. Bond be waived as provided in Paragraph 4.2 of the decedent's Will.

8 Dated this 17<sup>th</sup> day of OCTOBER, 2007.

9  
10 By: 

11 STEVEN J. OSHINS, ESQ., Bar No. 5732  
12 1645 Village Center Circle, Suite 170  
13 Las Vegas, NV 89134  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



000005

Certified Copy of Death Certificate

000005

000005

000005

**STATE OF NEVADA - DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS  
CERTIFICATE OF DEATH**

STATE FILE NUMBER

TYPE OR  
PRINT IN  
PERMANENT  
BLACK INK

DECEDENT

IF DEATH  
OCCURRED IN  
INSTITUTION SEE  
HANDBOOK  
REGARDING  
COMPLETION OF  
RESIDENCE  
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF  
DEATH

CONDITIONS IF  
ANY WHICH  
GAVE RISE TO  
IMMEDIATE  
CAUSE  
-> STATING THE  
UNDERLYING  
CAUSE LAST

1a. DECEASED-NAME FIRST Milton		1b. MIDDLE I		1c. LAST SCHWARTZ		2. DATE OF DEATH (Mo/Day/Year) August 09, 2007		3a. COUNTY OF DEATH Clark	
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas		3c. HOSPITAL OR OTHER INSTITUTION - Name (If not either, give street and number) Valley Hospital Medical Center		3e. If Hosp. or Inst. Indicate DOA, OP/Emer. Rm. Inpatient (Specify) Inpatient		4. SEX Male			
5. RACE (e.g., White, Black, American Indian) (Specify) White		6. Was Decedent of Hispanic Origin? No If yes, specify Mexican, Cuban, Puerto Rican, etc. Non-hispanic		7a. AGE-Last birthday (Years) 85		7b. UNDER 1 YEAR MOS   DAYS		7c. UNDER 1 DAY HOURS   MINS	
8. DATE OF BIRTH (Mo/Day/Yr) December 07, 1921		9a. STATE OF BIRTH (If not U.S.A., name country) New York		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 12		11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Divorced	
12. SURVIVING SPOUSE (if wife, give maiden name)		13. SOCIAL SECURITY NUMBER 052-12-9515		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired) Entrepreneur		14b. KIND OF BUSINESS OR INDUSTRY Various			
15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER 2293 Dunneville Street		15e. INSIDE CITY LIMITS (Specify Yes or No) No	
16. FATHER - NAME (First Middle Last Suffix) Samuel SCHWARTZ				17. MOTHER - NAME (First Middle Last Suffix) Gussie KOPPELMAN					
18a. INFORMANT - NAME (Type or Print) Jonathan SCHWARTZ				18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip) 440 Pinnacle Heights Las Vegas, Nevada 89146					
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Removal from State				19b. CEMETERY OR CREMATORY - NAME New Montefiore Cemetery				19c. LOCATION City or Town State Farmingdale New York	
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON SIGNATURE AUTHENTICATED				20b. FUNERAL DIRECTOR LICENSE 50		20c. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2697 E Eldorado Ln Las Vegas NV 89120			
TRADE CALL - NAME AND ADDRESS Riverside Nausau North Chapel 55 N. Station Plaza Great Neck NY 11020									
21a. To the best of my knowledge death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <i>[Signature]</i>					22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)				
21b. DATE SIGNED (Mo/Day/Yr) 8/10/07					21c. HOUR OF DEATH 17:17				
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)					22d. PRONOUNCED DEAD (Mo/Day/Yr)				
22e. PRONOUNCED DEAD AT (Hour)									
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Oscar Batugal MD 2501 W Charleston Las Vegas Nevada 89102								23b. LICENSE NUMBER 8269	
24a. REGISTRAR (Signature) <i>[Signature]</i>					24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) AUG 10 2007		24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)									
PART I (a) <i>Respiratory failure</i> DUE TO, OR AS A CONSEQUENCE OF: (b) <i>Respiratory pneumonia</i> DUE TO, OR AS A CONSEQUENCE OF: (c)									
PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I. <i>Bowel obstruction</i>									
26. AUTOPSY (Specify Yes or No) No		27. WAS CASE REFERRED TO CORONER (Specify Yes or No) No							
28a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST. (Specify)		28b. DATE OF INJURY (Mo/Day/Yr)		28c. HOUR OF INJURY		28d. DESCRIBE HOW INJURY OCCURRED			
28e. INJURY AT WORK (Specify Yes or No)		28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)		28g. LOCATION		STREET OR R.F.D. No.		CITY OR TOWN	STATE

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED  
SEAL OF THE SOUTHERN NEVADA  
HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.  
Registrar of Vital Statistics

By:

Date Issued: AUG 14 2007

Conformed Copy of Last Will and Testament

# LAST WILL AND TESTAMENT

OF

MILTON I. SCHWARTZ

FILED

OCT 11 4 23 PM '07

I, MILTON I. SCHWARTZ, domiciled in Clark County, Nevada, and a citizen of the United States, being of sound and disposing mind memory, do hereby make, publish and declare this to be my LAST WILL AND TESTAMENT, and hereby revoke any and all Wills and Codicils at any time heretofore made by me.

## FIRST: MARITAL AND FAMILY STATUS

I am married to ABIGAIL SCHWARTZ and any references to my "spouse" or my "wife" herein is to her. I have four (4) children now living, whose names and dates of birth are:

EILEEN JOANNA ZARIN	July 21, 1948
ROBIN SUE LANDSBURG	January 15, 1951
SAMUEL SCHWARTZ	June 8, 1953
A. JONATHAN SCHWARTZ	August 5, 1970

The terms "my child" and "my children" as used in this Will shall refer to the aforementioned children. The term "descendants" as used in this Will shall mean the blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted who was a minor at the date of adoption, that child or his descendants shall be considered as descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

## SECOND: BEQUESTS

2.1 Written Directions. I may leave one or more written directions disposing of items of personal and household articles. Each shall be effective only if (i) executed by me with all the formalities of a deed (i.e., witnessed and notarized), and (ii) delivered to the Trustees of the trust referred to in ARTICLE THIRD hereof prior to my death. Each may be dated before or after the date of this Will, but none shall be effective insofar as I have expressly revoked it by a similarly executed and delivered written instrument. If such a direction exists, (i) it shall be given effect as though its provisions were written here (in this Section) in this Will, and (ii) it shall take precedence over any contrary disposition of the same item or items of property in this Will (or in any Codicil hereto, unless such Codicil expressly overrides such direction). If there be more than one such unrevoked direction, to the extent they are in conflict, the one bearing the most recent date shall control.

2.2 Personal and Household Articles Not Subject to Written Directions. Subject to the foregoing provisions of Section 2.1, I give my jewelry, clothing, household furniture and furnishings, personal automobiles, and any other tangible articles of a personal nature; or my interest in any such property, not otherwise specifically disposed of by this will, or in any other manner, together with any insurance on the property, to my descendants who survive me, per stirpes, such descendants to make their shares as they shall agree. My Executor shall represent any beneficiary under age 18 in matters relating to any distribution under this Section 2.2, including selection of the assets that shall constitute that beneficiary's share, and my Executor in my Executor's discretion sell for the beneficiary's account any part of the beneficiary's share. Any property or its proceeds distributable to a beneficiary under age 18 pursuant to this Section 2.2 may be delivered without bond to any suitable person with whom the beneficiary resides or who has care of the beneficiary.

I direct that the expense of packing, shipping and delivering such property to said legatee, at said legatee's

Testator's Initials

*MS*

residence or place of business, shall be paid by my Executor as an administration expense of my estate.

2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise and bequeath the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy"). This gift is to be in the form of securities (stocks, bonds or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price as directed by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns, or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage. In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.

2.4 Landsburg Grandson's Gift. I hereby give, devise and bequeath the total sum of one hundred eighty thousand dollars (\$180,000.00); forty five thousand dollars (\$45,000.00) each to the following of my grandchildren upon my death in recognition of my appreciation and pride that I experienced upon hearing each of the following grandchildren chant a portion of the Torah at Benjamin Landsburg's Bar Mitzvah: Michael Landsburg; Zachary Landsburg; Benjamin Landsburg; Joshua Landsburg.

2.5 Distribution of Trust Assets of THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST. I created THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST on August 21, 1991 (herein, "MIS 1991 Trust"), which presently owns the home in which I reside commonly known as 2120 Silver Avenue, Las Vegas, Nevada (herein, the "home"). Under the terms of the MIS 1991 Trust, if I should die prior to the 13 years and 7 month term, I give, devise and bequeath the home to my wife, ABIGAIL SCHWARTZ, if she survives me, provided that she is married to and living with me at the time of my death.

2.6 Frances A. Martel. I hereby direct my Executor or the Successor-Trustee of the Milton I. Schwartz Revocable Family Trust, dated January 29, 1986 (herein, my "Executor") as the case may be, to give, devise and bequeath the sum of one thousand dollars (\$1,000.00) per month, each month, to Frances A. Martel (herein, "Martel") for so long as she shall live.

2.7 Termination of Gifts. I hereby terminate and revoke any gift to the following: Las Vegas Jewish Federation or any successor thereto; Las Vegas Jewish Federation Day School in Formation or any successor thereto. In the event that the revocation of these gifts in section 2.8 hereof shall be challenged in any way, I hereby give, devise and bequeath the sum of one dollar only (\$1.00) to each organization.

### THIRD: RESIDUARY BEQUESTS

3.1 Residue to Trust. I give, devise and bequeath the residue of my estate to A. JONATHAN SCHWARTZ as Successor-Trustee, or any successor Trustees, of the trust designated as "THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST" established January 29, 1986 and amended earlier today, of which I am the Grantor and the original Trustee. I direct that the residue of my estate shall be added to, administered and distributed as part of that trust, according to the terms of that trust and any amendments made to it before my death. To the extent permitted by law, it is not my intention to create a separate trust by this Will or to subject the trust or the property added to it by this Will to the jurisdiction of the Probate Court.

3.2 Incorporation by Reference. If the disposition in Section 3.1 is not operative or is invalid for any reason, or if the trust referred to in that Section fails or has been revoked, then I hereby incorporate by reference the terms of that trust, including any amendments thereto, and I give, devise and bequeath the residue of my estate to the Trustee named therein as Trustee, to be held, administered and distributed as provided in that instrument.

Testator's Initials

1389

FOURTH: EXECUTOR

4.1 Appointment of Executor. I nominate, constitute and appoint A. JONATHAN SCHWARTZ, or in the event of his death, Robin Sue Landsburg, as Executor of this Will. If both shall for any reason fail to qualify or cease to act as such Executor, then I nominate Eileen Joanna Zarin as Executor in their place and stead. The term "my Executor" as used in this Will shall include any personal representative of my estate.

4.2 Waiver of Bond. No bond shall be required of any Executor nominated in this Will.

4.3 Appointment of Ancillary Fiduciaries. Should ancillary administration be necessary or advantageous in any jurisdiction and should my Executor be unable and or unwilling to act as my ancillary fiduciary, I nominate, constitute and appoint as ancillary fiduciary such qualified person or trust institution as my Executor shall from time to time designate (with retained right of removal) in a writing filed in the court having ancillary jurisdiction. Furthermore, all my ancillary fiduciaries shall at all times be subject to the directions of my Executor and the residuary estate of each ancillary administration shall be transmitted to my Executor as promptly as possible.

4.4 Election of Simplified Unsupervised Administration. If independent administration without certain court proceeding and supervision is to any extent permitted under the laws of any jurisdiction in which any part of my estate is being administered, I hereby elect such simplified mode(s) of administration and direct; to the greatest extent possible, settlement of my estate without the intervention of or accountings to any courts.

4.5 General Powers. In addition to, and not in limitation of the Executor's common law and statutory powers, and without order or approval of any court, I give and grant to my Executor the rights and powers to take any action desirable for the complete administration of my estate, including the power to determine what property is covered by general descriptions contained in this Will, the power to sell on behalf of my estate, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law.

4.6 Power Regarding Tax Returns. My Executor is authorized to file an income tax return for me and to pay all or any portion of the taxes due thereon. If any additional assessment shall be made on account of any income tax return which I have filed, my Executor is authorized to pay the additional assessment. The exercise of authority hereunder by my Executor shall be conclusive and binding on all persons.

4.7 Power to Make Tax Elections. My Executor has the authority to make the following choices

- (a) Elect any valuation date for purposes of federal estate tax permitted by law which my Executor deems to be to the best advantage of the family considered as a whole rather than the advantage of those interested only in my estate, even to the extent of making the election in such a way that the federal estate tax is greater rather than less a result of such election, provided that in my Executor's discretion such is likely to be for the best advantage, present and future, of the family taken as a whole.
- (b) Choose the methods of payment of federal estate taxes or state estate or inheritance taxes.
- (c) Determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or as federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss the beneficiary suffers as a result of the use of such deduction for one or the other of these purposes.
- (d) Join with my spouse or the estate of my spouse in filing a joint income or gift tax return or returns for any arrears for which I have not filed returns prior to my death.
- (e) Consent that any gifts made by me or my spouse have been made one-half by me and one-half by my spouse for gift tax purposes even though these actions may subject my estate to additional tax liabilities.

Testator's Initials JS

- (f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.
- (g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

4.8 Power to Select Property to be Distributed. I authorize my Executor, on any preliminary or final distribution of property in my estate, to partition, allot, and distribute my estate in kind, including undivided interests in my estate or any part of it, or partly in cash and partly in kind, or entirely in cash, in my Executor's absolute discretion. Any distribution or division in kind may be made on a proportionate or a non-proportionate basis so long as the respective assets allocated or distributed have equivalent or proportionate fair market values.

4.9 Power to Employ. My Executor may employ and compensate from my estate accountants, brokers, attorneys, investment advisors, custodians and others whose services are, in my Executor's discretion, necessary or convenient to the administration of the estate created herein. My Executor is expressly authorized to employ and compensate any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the administration of my estate.

4.10 Continuance of Business. (a) I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interests of my estate, or to sell or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my Executor in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

4.10 (b) In connection with the business interests known as Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation, Nevada Star Cab Corporation, Besdew Limited Partnership, National Automotive, Ltd., Star Limousine, L.L.C. and all affiliates and related entities, and any successor companies thereto, and all real estate related thereto (herein "YCS"); as well as the real property commonly known as Jennifer Park, Jonathan Park, Michael Park, as well as any other real estate held by the Grantor's estate or real estate or investments invested in as proceeds from the sale of these properties; any investments whether equities, stocks, bonds, limited partnerships, cash or investments invested in as proceeds from the sale of these investments (herein, "investments"); the management of Americab, Roland Garage, all affiliates and related entities (herein "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab; as well as any other real estate or businesses of which the Grantor or his estate held or holds an interest in, the Grantor specifically nominates, constitutes and appoints his son, Executor, and Trustee, **A. JONATHAN SCHWARTZ** (herein, "JONATHAN"), to serve and represent his, his family's, estate's and Revocable Trust's interests, with respect thereto. **A. JONATHAN SCHWARTZ** is fully familiar with the details of these business interests and most capable of continuing the management of their affairs. Insofar as the Grantor has personally performed management duties and functions in the past, represented his or his family's interest at Board Meetings, TSA or TA Meetings, **JONATHAN** is hereby designated to continue in those capacities subject to the following conditions:

4.10 (c) In connection with management duties performed by **A. JONATHAN SCHWARTZ** for the Grantor, the Grantor's estate and Revocable Trust's interest in YCS and any successor companies thereto, and all real estate related thereto; **A. JONATHAN SCHWARTZ** shall receive a ninety three thousand eight hundred forty six (\$93,846.00) annual salary, increased by 2% each year (herein, "YCS Salary"). The YCS Salary shall be paid from a combination of both the Payroll and Director's Fees customarily received by the Grantor during his life. Furthermore, **A. JONATHAN SCHWARTZ** shall receive any medical insurance or other benefits as a Director of YCS as the Grantor received during his lifetime.

Testator's Initials LSH

4.10 (d) **JONATHAN'S** management, control and decision making authority of YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, **JONATHAN** must receive two additional votes of the Grantor's three remaining children or their representatives.

4.10 (e) Notwithstanding any provision herein contained to the contrary, all stock held or managed by Milton I. Schwartz at the time of his death or held in the Milton I. Schwartz Revocable Family Trust (January 29, 1986) in YCS, shall continue to be held, after Milton I. Schwartz's death, in the name of the Milton I. Schwartz Revocable Family Trust (January 29, 1986), A. Jonathan Schwartz, Trustee. **JONATHAN'S** duties as described within this section 4.02 shall continue for his lifetime or permanent disability.

4.10 (f) Notwithstanding any provision herein contained to the contrary, to the extent that the primary assets of YCS are sold, comprised of the entity names and transportation operations so that there are no further operations of YCS or its successors, and if the sales proceeds are distributed out to the respective owners of YCS, the Trustee shall distribute out said sales proceeds to each of the four family units as to twenty-five percent (25%) to each family unit.

4.10 (g) **JONATHAN'S** management, control and decision making authority on behalf of my estate's interest in YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, **JONATHAN** must receive two additional votes of my three remaining children or their representatives.

4.10 (h) With regard to the management of Jennifer Park, Jonathan Park and all other income producing properties in which I or my estate holds an interest, **JONATHAN** shall receive a management fee in the amount of three percent (3%) of the annual base rent generated by the respective property, as he has received during my life, for property management services.

4.10 (i) In connection with **JONATHAN'S** property management services of the property commonly known as Michael Park, **JONATHAN** shall receive monthly compensation of one thousand six hundred sixty seven dollars (\$1,667.00) as he has received during my life.

4.10 (j) **JONATHAN** shall serve as President of Americab, Roland Garage, all affiliates and related entities (herein, "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab.

4.11 Distribution to Minors. In the event any person entitled to receive distributions hereunder shall be a minor, or an incompetent, the distributions to that person shall be to the natural guardian of the legally appointed guardian, conservator or other fiduciary of the person or estate of that person (including, but not limited to, a custodian for the beneficiary under the Uniform Transfers to Minors Act in the state in which the beneficiary or custodian resides or any other state of competent jurisdiction), to be held and used exclusively for the benefit of that person. My Executor shall not be required to see to the application of any funds so paid or applied and the receipt of that guardian, conservator or other fiduciary of the person or estate of that person shall be complete acquittance of my Executor.

4.12 Power to Disclaim. My Executor is authorized to disclaim all or any portion of any bequest, devise or trust interest provided for me under any will or trust instrument. In particular, I authorize my Executor to exercise this authority in order to obtain advantageous results considering, in the aggregate, the taxes to be imposed on my spouse's estate and mine, even though this may cause some beneficiaries of my estate to receive less than they would otherwise have received.

4.13 Power to Transact with Trusts. My Executor is hereby authorized to purchase any property, and to make loans and advances, or to otherwise deal with, the Trustee of any trust, including, but not limited to, trusts wherein the Executor and Trustee shall be the same parties.

#### FIFTH: TESTAMENTARY DECLARATIONS

5.1. Revocation of Spouse's Right to Receive Annuity Payments. Pursuant to the provisions of Section 4.01 of each of THE ROBIN SUE LANDSBURG 1993 RETAINED ANNUITY TRUST, THE EILEEN JOANNA ZARIN 1993 RETAINED ANNUITY TRUST, THE SAMUEL SCHWARTZ 1993 RETAINED ANNUITY TRUST and THE

Testator's Initials Wd



A. JONATHAN SCHWARTZ 1993 RETAINED ANNUITY TRUST, my wife has the right to receive certain annuity payments, subject to my power of revocation. I hereby revoke my wife's right to receive any such annuity payments.

5.2 Non-exercise of Powers of Appointment. I refrain from exercising any testamentary power of appointment that I may have at the time of my death.

5.3 Presumption of Survivorship. For purposes of this Will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within 90 days' after my death.

5.4 Confirmation of Gifts. I hereby ratify and confirm all gifts made by me prior to my death, and I direct that none of those gifts should be deemed or construed to be an advancement to any beneficiary nor shall any gift be taken into account in the settlement of my estate.

5.5 Premarital Agreement. On January 26, 1993 I entered into a Premarital Agreement with my wife. I have made provisions in the trust referred to in ARTICLE THIRD hereof to carry out the provisions of said Agreement. I hereby direct my Executor to take any further actions necessary or appropriate to carry out the terms of said Agreement. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement in lieu of any other bequests or legacies to Abigail Schwartz, only to the extent agreed to in writing by Abigail Schwartz and myself, or as ordered in a judgment of a court of competent jurisdiction. Abigail Schwartz shall have no further interest in my estate, Will or trusts.

5.5 (b) Abigail Schwartz Outstanding Loan. As of January 7, 2004, an outstanding Promissory Note (herein, the "Note") existed between my wife and myself whereby my wife owes me or my estate two hundred thirty thousand dollars (\$230,000.00). To the extent that any balance is left remaining on the Note at the time of my death, any amounts to be paid to my wife from my estate, in accordance with our Premarital Agreement, shall be reduced by the amount of the balance on the Note.

#### SIXTH: MISCELLANEOUS

6.1 Incontestability. In the event any person authorized to receive any property hereunder commences, prosecutes, promotes, intervenes in, contributes to or voluntarily participates in, directly or indirectly, or counsels or aids any other person to commence, prosecute, promote, intervene in, contribute to or voluntarily participate in, directly or indirectly, any proceeding or action in any court, agency, tribunal or other forum wherein the person authorized to receive property or the counseled person (1) seeks to void, nullify or set aside all or any part of my Will; (2) seeks to void, nullify or set aside any trust of which I am a grantor or trustee, or both; or (3) makes a claim which is based upon any alleged act or omission by me, individually, or in my capacity as trustee, executor, partner, officer or director, or in any other capacity; or (4) directly or indirectly contests or calls into question the discretionary decisions of the Executor or Trustee hereunder, then I revoke any share or interest in my estate given under this Will or in the trust referred to in ARTICLE THIRD hereof to the person making the claim, to the counseling person, and to the descendants of each of them, and such share or interest shall be immediately disposed of by termination of the appropriate trust or trust or otherwise, as if such claimant or counseling person had predeceased me without descendants. This provision shall remain in effect from my death until no trust under the trust referred to in ARTICLE THIRD hereof is in existence, whether or not the administration of my estate has been completed. If any provision of this Article is held to be unenforceable or void for any reason, the remaining provisions shall be fully effective.

6.2 Tax Contribution. I direct that every specific and general gift, devise or bequest given under this Will or any Codicil hereto shall be delivered free of all estate and inheritance taxes and that such taxes be paid out of the residue of my estate. I further direct that no legatee, devisee or beneficiary hereunder, or beneficiary under any of my life insurance policies, or any surviving joint tenant, or any trustee of any private trust of mine which shall be in existence at the time of my death, shall be called upon to make any contributions toward the payment of any estate or inheritance taxes.

6.3 No Interest on Specific Bequests. I direct that no interest be paid on any specific bequest herein.

Testator's Initials

JS

6.4 Severability If any part or parts of this Will shall be invalid, illegal or inoperative, it is my intention that the remaining parts shall stand and be effective and operative.

6.5 Gender and Number. As used in this Will, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

6.6 Headings. The headings, titles and subtitles in this Will have been inserted for convenient reference, and shall be ignored in its construction.

IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> day of February,

2004.

MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us that the foregoing instrument, consisting of seven (7) pages, including the affidavit signed by us as witnesses, was his Will dated January \_\_, 2004, and requested us to act as witnesses to it. He thereupon signed this Will in our presence all of us being present at the same time. We now at his request, in his presence, and in the presence of each other, subscribe our names as witnesses.

[Signature]  
Residing At:

1465 Verde Triandos Dr.  
Henderson, NV 89012

Beverley J. Jones  
Residing At:

1911 Surf Drive  
Henderson, NV 89015

STATE OF NEVADA )  
 ) ss.:  
COUNTY OF CLARK )

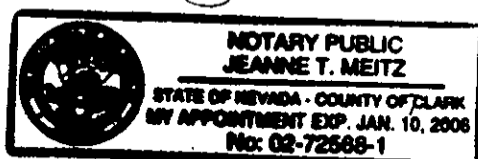
Then and there personally appeared the within named Richard B. Newman and Beverley J. Jones who, being duly sworn, depose and say:

That they witnessed the execution of the within Will of the within named Testator, MILTON I. SCHWARTZ; that the Testator subscribed the Will and declared the same to be his Will in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution appeared to be of full age and of sound mind and memory and under no constraint; and that they make this Affidavit at the request of the Testator.

[Signature]  
SUBSCRIBED and SWORN to before me

This 5<sup>th</sup> day of February, 2004.

Jeanne T. Meitz  
Notary Public



Conformed Copy of First Codicil to Last Will and Testament

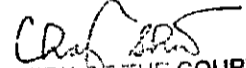
FIRST CODICIL **FILED**

TO

OCT 11 4 23 PM '07

LAST WILL &amp; TESTAMENT

OF

  
CLERK OF THE COURT**MILTON I. SCHWARTZ**  
(Will dated February 5<sup>th</sup>, 2004)

I, MILTON I. SCHWARTZ, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the First Codicil to my Last Will and Testament dated February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 in every respect. If any part of the Will or my First Codicil is inconsistent, this First Codicil dated January 27, 2006 shall govern (hereinafter, the "First Codicil").

NOW, THEREFORE, I, MILTON I. SCHWARTZ, being of sound and disposing mind and memory and having heretofore executed my Last Will & Testament, bearing the date of February 5, 2004 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the First Codicil to my Last Will and Testament:

I.

I hereby amend Article "Second", Section 2.5 of my Will entitled "Bequests" as follows:

The purpose of the Milton I. Schwartz 1991 Irrevocable Trust, dated August 21, 1991 has been satisfied (hereinafter, "MIS 1991 Trust") as follows: My wife, Abigail Richlin Schwartz (hereinafter, "Abigail") has relinquished all rights to that certain property located at 2120 Silver Avenue, Las Vegas, NV 89102 (hereinafter, the "Residence"). I, Milton I. Schwartz, no longer have any duty to purchase the Residence from the MIS 1991 Trust and gift it to Abigail. Abigail has accepted a payment of One Million Dollars (\$1,000,000.00) less a debt owed from Abigail to me in the amount of Two Hundred Thirty Thousand Dollars (\$230,000.00) for a total payment from me to Abigail in the amount of Seven Hundred Seventy Thousand Dollars (\$770,000.00) (hereinafter, "Consideration"). The Consideration was paid to Abigail August of 2004. Therefore, I hereby cancel, revoke, repudiate and terminate section 2.5 of Article Second of my Will. Abigail shall have no rights to ownership of the Residence. Notwithstanding the foregoing, provided Abigail and I are married and living together at my death, Abigail shall have the right to live at the Residence for a period of one year rent free from the date of my death. Should Abigail choose not to inhabit the residence personally, any right to occupy the Residence shall terminate.

## II.

I hereby amend Article Fourth, entitled "Executor", section 4.10 (c) only, of my Will as follows:

In connection with management duties performed by **A. JONATHAN SCHWARTZ** for or on behalf of the Grantor, the Grantor's estate and the Milton I. Schwartz Revocable Trust, dated January 29, 1986, Ninth Amendment dated February 5, 2004 (hereinafter, "Revocable Trust") or any successor entity thereto regarding Yellow, Checker, Star Cab Companies



(hereinafter, "YCS") and any successor companies thereto, and all real estate related thereto; A. **JONATHAN SCHWARTZ** shall receive that Payroll, Director's fees, medical insurance and all other benefits (hereinafter "YCS Director's Salary") customarily received by me (Milton I. Schwartz) as a Director of YCS during my life. To the extent that the Board of Directors of YCS amends or changes the YCS Director's Salary after my death, A. **JONATHAN SCHWARTZ's** YCS Salary shall be amended to equal that of the respective YCS Directors. If any portion of this First Codicil shall conflict with the Revocable Trust, this First Codicil shall govern.

### III.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 as follows:

On January 26, 1993 I entered into a Premarital Agreement (hereinafter, the "Premarital Agreement") with my wife, Abigail Richlin Schwartz (hereinafter, "Abigail") which was amended October 26, 1994, (hereinafter, the "October 1994 Amendment"), was the subject of a Reconciliation Agreement dated December 24, 1996 (hereinafter, the "Reconciliation Agreement"), was amended April 9, 1997 (hereinafter, the "1997 Amendment") and amended October of 2004 (hereinafter, the "October 2004 Amendment"). I hereby affirm, ratify confirm and republish the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment by reference as if set forth in full hereinafter. I hereby direct my Executor to take any action necessary or appropriate to carry out the terms of the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement, the

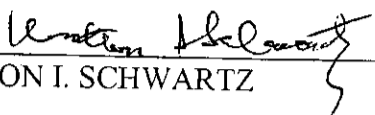
Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment in lieu of any other bequests or legacies to Abigail, only to the extent agreed to in writing by Abigail and myself. Abigail shall have no further interest in my estate, Will or trusts other than what is provided for in the Premarital Agreement, the Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment.

IV.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 (b) as follows:

As of January 2006, Abigail Schwartz currently has no outstanding loans to me or my estate. The balance on the Note has been satisfied in full.

I subscribe my name to this FIRST CODICIL this 27 day of January, 2006.

  
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us, the undersigned, that this instrument, consisting of five (5) pages, including the page signed by us as witnesses, was his FIRST CODICIL to LAST WILL AND TESTAMENT, and requested that we act as witnesses to it. He thereupon signed this First Codicil in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

William P SHRANKO, residing at 2012 Fort Halifax Henderson NV  
 Witness Name Witness Address 89052

Sheila L. Robertson, residing at 4174 Don Bonito, LVNV 89121  
 Witness Name Witness Address

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

Then and there personally appeared the within named William R Shranko and Sheila L Robertson who, being duly sworn, depose and say:

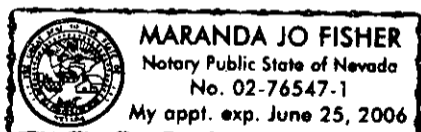
That they witnessed the execution of the within First Codicil to Last Will and Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the First Codicil and declared the same to be the First Codicil to his Last Will and Testament in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution of the First Codicil appeared to them to be of sound mind and memory; and that they make this Affidavit at the request of the Testator.

William P Shranko  
 Witness Signature

Sheila L Robertson  
 Witness Signature

SUBSCRIBED and SWORN to before me  
 this 27<sup>th</sup> day of January, 2006.

Maranda Jo Fisher  
 NOTARY PUBLIC in and for said County and State.





True and Correct Copy of Second Codicil to Last Will and Testament

SECOND CODICIL  
TO  
LAST WILL & TESTAMENT  
OF

**MILTON I. SCHWARTZ**  
(Will dated February 5<sup>th</sup>, 2004)  
(First Codicil dated January 27, 2006)

I, MILTON I. SCHWARTZ, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the Second Codicil to my Last Will and Testament dated February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I executed a currently effective First Codicil to my Will dated January 27, 2006 ("First Codicil").

WHEREAS, I married Abigail Richlin Schwartz ("Abigail") on January 28, 1993.

WHEREAS, Abigail and I are parties to both a valid and enforceable Premarital Agreement dated January 26, 1993 (the "Premarital Agreement"), and a Reconciliation Agreement dated December 24, 1996 ("Reconciliation Agreement"), an Addendum to Reconciliation Agreement dated April 9, 1997 ("Addendum to Reconciliation"), a Second Addendum To Reconciliation Agreement dated October 1, 1999 ("Second Addendum To Reconciliation Agreement") and an Addendum to Premarital Agreement dated October 28, 2004 ("Addendum to Premarital Agreement"), all of which shall be incorporated as if set forth in full

herein by reference and referred to as the "Marital Agreements". I hereby ratify, confirm and republish the Marital Agreements except as modified below herein.

WHEREAS, I executed an Affidavit dated March 30, 2006 stating my decision to divorce Abigail which shall be incorporated by reference as if set forth in full herein ("Affidavit").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 and my First Codicil in every respect. Notwithstanding the foregoing, if any part of the Will or my First Codicil dated January 26, 2006 is inconsistent, this Second Codicil dated July 26, 2006 shall govern and control (hereinafter, the "Second Codicil").

NOW, THEREFORE, I, MILTON I. SCHWARTZ, being of sound and disposing mind and memory and having heretofore executed my Last Will & Testament, bearing the date of February 5, 2004 and my First Codicil dated January 27, 2006 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the Second Codicil to my Last Will and Testament:

I.

I informed my wife, Abigail Richlin Schwartz ("Abigail") of my decision to divorce her on March 29, 2006. Due to my decision to divorce Abigail, and because we are not living together as husband and wife, I hereby cancel, revoke and terminate any bequest or gift to Abigail whatsoever within my Will, First Codicil, Premarital Agreement, the Reconciliation Agreement, the Addendum to Reconciliation Agreement, the Second Addendum to Reconciliation Agreement, the Addendum to Premarital Agreement, and any other written agreements that may exist between Abigail and myself. Abigail shall share in no part of the various trusts created by me. There are no oral agreements between Abigail and myself. Abigail

shall share in no part of my estate whatsoever.

II.

Notwithstanding the terms of section 4.9 of my Will, to the extent that my Executor is also a Director of Yellow, Checker, Star Cab Companies (hereinafter, "YCS") and receives Director's Fees, Director's Salary and other direct pecuniary payments as a Director in the amount of \$272,000.00 or more annually, my Executor shall receive no compensation for his or her role as Executor. The foregoing calculation of Director's Fees, Salary and pecuniary payments (\$272,000.00) (hereinafter, "Director's Salary") shall not include any benefits, financial or otherwise, attributable to travel expenses, health insurance, sports box benefits, and any distributions of cash flow or profits as an owner or shareholder of YCS, National Automotive, Besdew or any successors thereto. However, my Executor is authorized to employ any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the administration of my estate, but said firm or affiliate of my Executor shall be uncompensated therefor while a Director of YCS receiving the Director's Salary. In the event that my estate is no longer an owner of YCS or the Director receives substantially less than the foregoing Director's Salary, my Executor is expressly authorized to employ and compensate any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the

///

///

INTENTIONALLY LEFT BLANK

///

administration of my estate.

I subscribe my name to this SECOND CODICIL this 21 day of July, 2006.

MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us, the undersigned, that this instrument, consisting of five ( 5 ) pages, including the page signed by us as witnesses, was his SECOND CODICIL to LAST WILL AND TESTAMENT, and requested that we act as witnesses to it. He thereupon signed this Second Codicil in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

Witness Name LMH, residing at 1410 W. Scales Way  
Witness Address

Julia Fuchs residing at 4174 Don Beruto  
Witness Name Witness Address

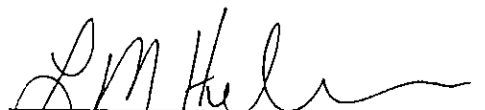
STATE OF NEVADA )

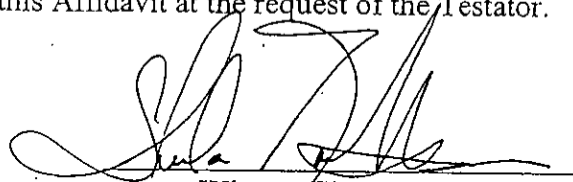
)SS.

COUNTY OF CLARK )

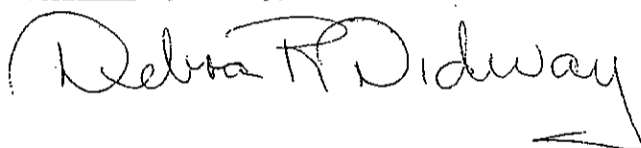
Then and there personally appeared the within  
named Lynn Henderson and  
Sheila Robertson who, being duly sworn, depose and say:  
That they witnessed the execution of the within Second Codicil to Last Will and

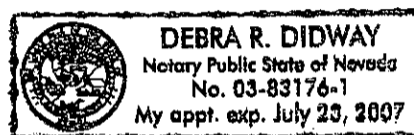
Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the Second Codicil and declared the same to be the Second Codicil to his Last Will and Testament in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution of the Second Codicil appeared to them to be of sound mind and memory; and that they make this Affidavit at the request of the Testator.

  
Witness Signature

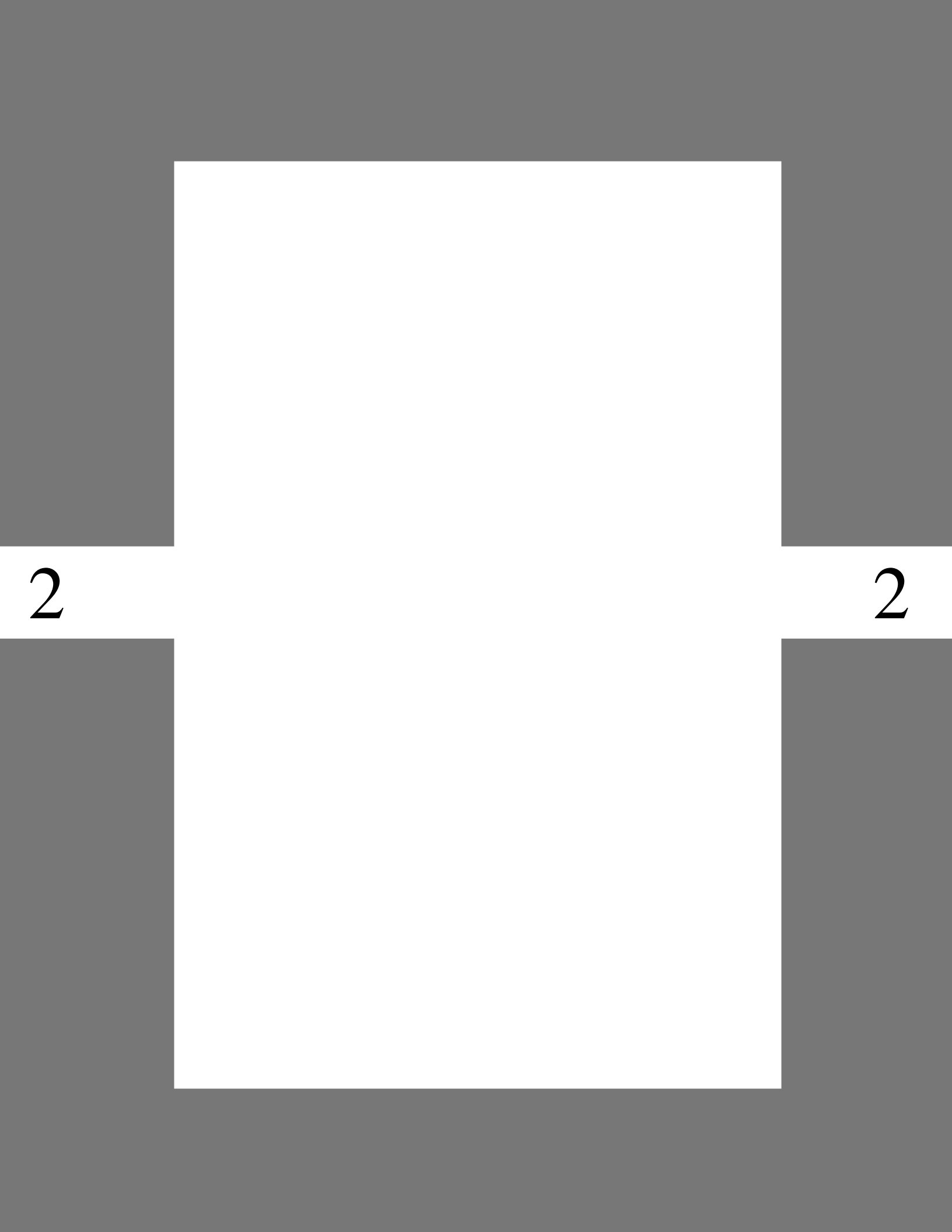
  
Witness Signature

SUBSCRIBED and SWORN to before me  
this 21st day of July, 2006.





NOTARY PUBLIC in and for said County and State



2

2

ORIGINAL

000027

FILED

DEC 10 10 57 AM '07

CLERK OF THE COURT

1 ORDR  
2 Steven J. Oshins, Esq., Bar No. 5732  
3 Heidi C. Freeman, Esq., Bar No. 8458  
4 Kristen E. Simmons, Esq., Bar No. 9187  
5 Oshins & Associates  
6 1645 Village Center Circle, Suite 170  
7 Las Vegas, NV 89134  
8 (702)341-6000  
9 Attorneys for Petitioner

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 In the Matter of the Estate of  
11 MILTON I. SCHWARTZ,  
12 Deceased

Case No. P61300

ORDER GRANTING PETITION FOR PROBATE OF  
WILL AND CODICILS AND ISSUANCE OF LETTERS  
TESTAMENTARY

Date of Hearing: December 7, 2007  
Time of Hearing: 9:30 a.m.

15 The Petition of A. JONATHAN SCHWARTZ praying for probate of the decedent's Will  
16 and Codicils and for Letters Testamentary has been heard and considered at a regular hearing.  
17 After considering the petition, the law, and the evidence,

18 **THE COURT HEREBY FINDS THAT:**

- 19 A. Due notice of the hearing on the petition was given as required by law.  
20 B. The decedent, MILTON I. SCHWARTZ, died August 9, 2007 as a resident of  
21 Clark County, Nevada. A certified copy of the decedent's death certificate has been filed in  
22 these proceedings.  
23 C. Jurisdiction is proper under NRS 136.010 because the decedent died as a resident  
24 of Clark County, Nevada having assets subject to jurisdiction of this Court.  
25 D. The decedent had a Will dated February 5, 2004 and two Codicils to said Will  
26 dated January 27, 2006 and July 21, 2006, respectively. The original Will and First Codicil have  
27 been filed with the Court Clerk. A true and correct copy of the Second Codicil was submitted  
28 with the Petition for Probate of Will and Codicils and Issuance of Letters Testamentary.

RECEIVED

DEC 10 2007

CLERK OF THE COURT

000027



1 E. The decedent's Will and Codicils were proved by self-proving affidavits and  
2 Affidavits of Attesting Witness and/or Notary that have been filed in these probate proceedings.

3 F. Petitioner, A. JONATHAN SCHWARTZ, is entitled to appointment as Executor  
4 because the decedent nominated the Petitioner as Executor in his Will. Petitioner qualifies to be  
5 Executor because he is of sound mind, of legal age and has never been convicted of a felony.

6 G. Petitioner's address is 2293 Duneville Street, Las Vegas, NV 89146.

7 H. Bond shall be waived as provided in Paragraph 4.2 of the decedent's Will.

8 **IT IS THEREFORE ORDERED AND DECREED THAT:**

9 1. The decedent's Will dated February 5, 2004 and two Codicils to said Will dated  
10 January 27, 2006 and July 21, 2006, respectively, are hereby admitted to probate.

11 2. The Petitioner is hereby appointed Executor for the Estate.

12 3. Letters Testamentary shall be issued to Petitioner upon the filing of the oath of  
13 office, as required by law.

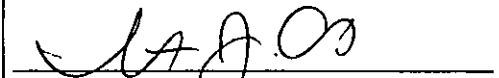
14 4. Bond shall be waived as provided in Paragraph 4.2 of the decedent's Will.

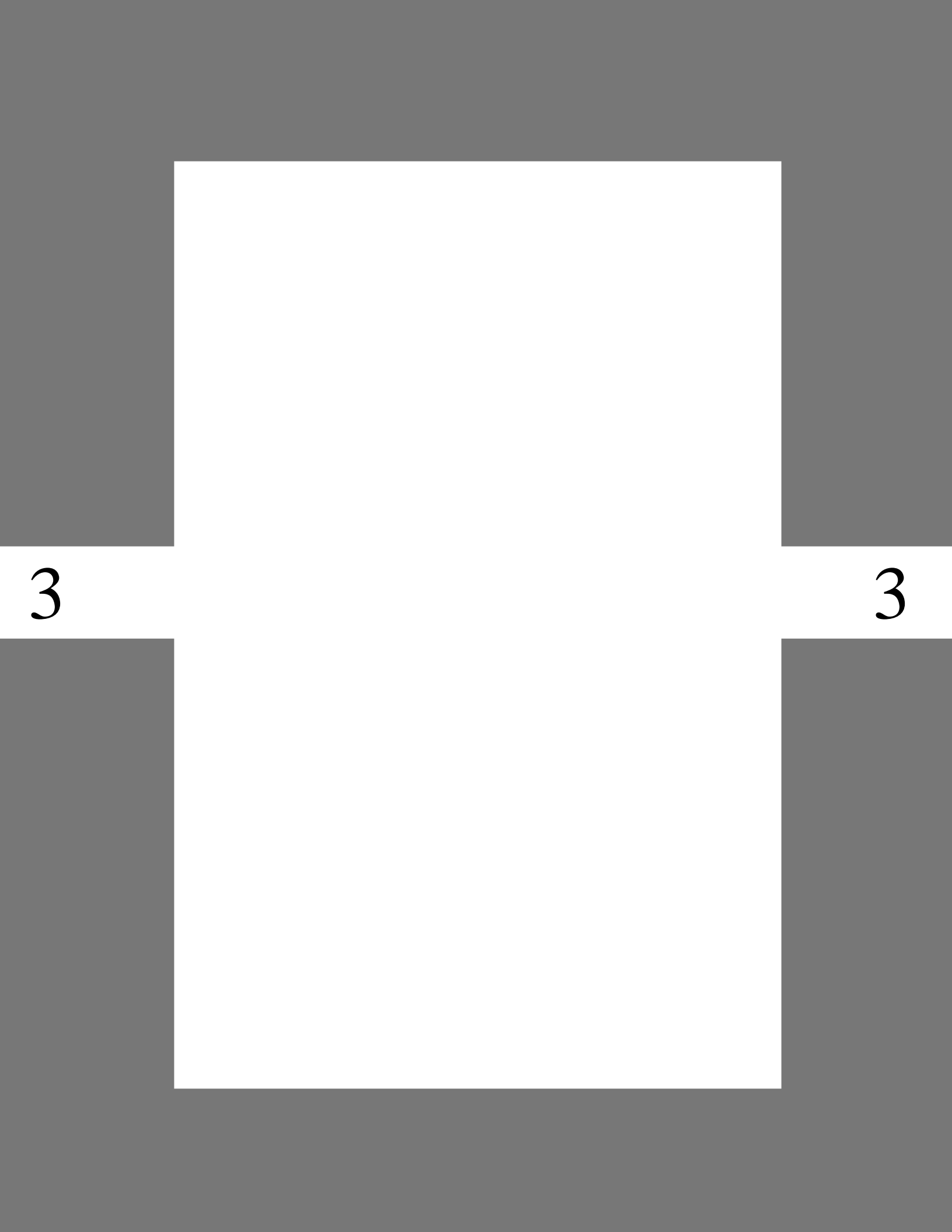
15 Dated this 7<sup>th</sup> day of December, 2007.

16 

17 DISTRICT COURT JUDGE

18 Submitted by:

19   
20 STEVEN J. OSHINS, ESQ.  
21 State Bar No. 5732  
22 OSHINS & ASSOCIATES  
23 1645 Village Center Circle, Suite 170  
24 Las Vegas, Nevada 89134  
25 (702)341-6000  
26  
27  
28



3

3

ORIGINAL

CLERK OF THE COURT

JAN 3 1 52 PM '08

FILED

FREDERIC I. BERKLEY, ESQ.  
Nevada Bar No.: 1798  
BERKLEY, GORDON & GOLDSTEIN, LLP  
8330 West Sahara Avenue, Suite 290  
Las Vegas, NV 89117  
Tel: 702-227-0700  
Fax: 702-227-0799

Attorneys for The Estate of  
Milton I. Schwartz

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased.

CASE NO.: P61300  
DEPT. NO.: Probate Commissioner

**PETITIONER'S RESPONSE TO OBJECTION TO PETITION TO PROBATE WILL  
AND FOR ISSUANCE OF LETTER TESTAMENTARY AND REQUEST FOR ALL  
FUTURE NOTICE TO BE PROPERLY SERVED**

**STATEMENT OF FACTS**

The Decedent, MILTON I. SCHWARTZ, died on August 9, 2007. A Petition for Probate of Will and Codicils and for Issuance of Letters Testamentary was filed on October 15, 2007. The Decedent left a Will dated February 5, 2004 and two Codicils to said Will dated January 27, 2006 and July 21, 2006 respectively. The original Will and First Codicil have been filed with the Court Clerk. The original Second Codicil cannot be located. A true and correct copy of the Second Codicil was attached to the Petition for Probate of Will and Codicils and for Issuance of Letters Testamentary. The Second Codicil contains self-proving Affidavits of two subscribing witnesses. In addition, on October 15, 2007, both a witness (Sheila Robertson) and the Notary (Debra R. Didway) filed Affidavits confirming that the Second Codicil was signed by Milton I. Schwartz in their presence.

The Decedent was formerly married to ABIGAIL RICHLIN SCHWARTZ. The marriage ended by a Decree of Divorce dated January 24, 2007. Abigail Richlin Schwartz filed an Objection to Petition to Probate Will and Codicils and for Issuance of Letters Testamentary and Request for

BERKLEY, GORDON & GOLDSTEIN, LLP  
8330 WEST SAHARA AVENUE, SUITE 290  
LAS VEGAS, NEVADA 89117  
TELEPHONE (702) 227-0700  
FACSIMILE (702) 227-0799

RECEIVED

JAN - 3 2008

CLERK OF THE COURT

all Future Notices to be Properly Served. Abigail Richlin Schwartz' Objection focuses primarily on whether the Second Codicil to the Will has been proven pursuant to NRS 136.230 et. seq. What follows is the Petitioner's Response.

# I.

## THE VALIDITY OF THE SECOND CODICIL HAS BEEN PROVEN PURSUANT TO NRS 136.240

Abigail Richlin Schwartz was formerly married to the Decedent Milton I. Schwartz, which marriage ended after a hotly contested divorce trial before the Honorable T. Arthur Ritchie, Jr. Pursuant to his Findings of Fact, Conclusions of Law and Decree of Divorce filed on January 24, 2007,<sup>1</sup> Judge Ritchie concluded that Abigail Richlin Schwartz was not entitled to any portion of Milton I. Schwartz's estate. At page 5 of Judge Ritchie's decision, he concluded:

"This court reviewed the parties Premarital Agreement and post-marital agreements, considered the parties' testimony, and concludes that Abigail Schwartz' contract claims lack merit and should be denied. This court considered the Premarital Agreement and the testimony of the parties and concludes that the parties expressly agreed that Abigail Schwartz was not entitled to a portion of Milton Schwartz' estate unless they were married and living together at the time of Mr. Schwartz' death."

Abigail Richlin Schwartz was awarded spousal support of \$5,000 per month for a period of seven (7) years. Judge Ritchie specifically held however that spousal support shall cease upon the death of either party or upon the re-marriage of Abigail Schwartz pursuant to NRS 125.150(5). Thus, Abigail's spousal support payments terminated upon Milton Schwartz' death on August 9, 2007.

Abigail Richlin Schwartz is not a beneficiary of Milton Schwartz' estate, nor is she a creditor. Nevertheless she has filed the instant Objection alleging that the validity of the Second Codicil to the Will has not been proven pursuant to NRS 136.240. Her reading of that statute however is demonstrably wrong.

Under NRS 136.240 (3):

"In addition, no will may be proved as a lost or destroyed will unless it is proved to have been in existence at the death of the person whose will it is claimed to be, or is shown to have been fraudulently

<sup>1</sup> A copy of which is attached hereto as Petitioner's Exhibit "1."

1 destroyed in the lifetime of that person, nor unless its provisions are  
2 clearly and distinctly proved by at least two credible witnesses."

3 Abigail asserts that the Second Codicil should not be admitted to Probate since "there has  
4 been no evidence presented to this Court proving that the Second Codicil was in existence at the time  
5 of the death of Milton I. Schwartz nor was it demonstrated that the Second Codicil was fraudulently  
6 destroyed." (See Objection at page 5, lines 22 through 26). The same argument was made and  
7 rejected in the leading case construing the requirements for proving a lost or destroyed will in Irvine  
8 v. Doyle, 101 Nev. 698, 710 P.2d 1366 (1985). In that case, the question presented for review to the  
9 Nevada Supreme Court was whether NRS 136.240 (3) requires a lost Will to be in actual physical  
10 existence at the time of the testator's death in order to be admitted to probate. In that case, the  
11 respondent argued that the word "existence" in the statute required that a will be in actual physical  
12 existence at the time of the testator's death to be admitted into Probate. In rejecting the respondent's  
13 position, the Nevada Supreme Court noted that the problem with that construction was that a testator  
14 could die thinking his affairs were in order only to have his desires frustrated by a legal technicality.  
15 The Court noted that to ignore a testator's desires when the testator has done all in his power to  
16 comply with the laws concerning wills would be an injustice. The Court pointed to a number of  
17 jurisdictions who had statutes similar to NRS 136.240 (3) and who have construed the term  
18 "existence" to mean "legal existence." The Court noted:

19 "A will is said to be in legal existence if it has been validly executed  
20 and has not been revoked by the testator. Thus, a will lost or  
21 destroyed without the testator's knowledge could be probated because  
22 it was in legal existence at the testator's death." See In re Eder's  
Estate, 29 P.2d 631 (Colo. 1934); In re Estate of Enz, 515 P.2d 1133  
(Colo. Ct. App. 1973); In re Havel's Estate, 194 N.W. 633 (Minn.  
1923); Matter of Estate of Wheadon, 579 P.2d 930 (Utah 1978)."  
Irvine, supra at 702.

23 The Court in Irvine specifically adopted the following statement from the New York Court of  
24 Appeals in In re Fox' Will, 174 N.E.2d 499 504 (N.Y. 1961):

25 "By requiring proof that a lost or destroyed will was either "in  
26 existence at the time of the testator's death, or was fraudulently  
27 destroyed in his lifetime", the Legislature merely intended to require  
28 proof that either the will had not been destroyed during the testator's  
lifetime or that, if destroyed during his lifetime, it had not been  
destroyed by him or by his authority. In other words, all that section  
143 requires is proof that the testator himself had not revoked the lost  
or destroyed will, proof that would overcome the common-law

BERKLEY, GORDON & GOLDSTEIN, LLP  
8330 WEST SAHARA AVENUE, SUITE 290  
LAS VEGAS, NEVADA 89117  
TELEPHONE (702) 227-0700  
FACSIMILE (702) 227-0799

presumption of revocation.”

The Nevada Supreme Court in Irvine thus made it crystal clear that all that the statute requires is a showing that the Testator himself had not revoked the lost or destroyed Will, or in this case, the lost or destroyed Codicil.

Attached hereto as Exhibits 2 and 3 are the Affidavits of A. Jonathan Schwartz and Susan Pacheco. A Jonathan Schwartz is the son of Milton Schwartz, who is named as Executor in the Will. A Jonathan Schwartz worked with his father and was familiar with his father’s estate planning, including but not limited to his Last Will and Testament and First and Second Codicils. A Jonathan Schwartz’ Affidavit confirms that Milton Schwartz never revoked the Second Codicil any time during his lifetime.

Similarly, Susan Pacheco was Milton’s personal assistant and acted as such for over 20 years, right up until the time of Mr. Schwartz’ death. Ms. Pacheco verifies that Milton Schwartz never revoked the Second Codicil at any time during his life.

Thus, Abigail Richlin Schwartz’ Objection to the Second Codicil as not having been adequately proven, is totally without merit.

## II.

### FUTURE NOTICES

As indicated above, Abigail Richlin Schwartz is not a beneficiary, nor a creditor of Milton Schwartz’ estate. Nevertheless, the former Mrs. Schwartz asks that any future notices be sent to her at 9412 Greenham Circle, Las Vegas, Nevada 89117, where she has allegedly resided since June 2007. Petitioner has no objection to serving her at that address.

Abigail Richlin Schwartz also asks that all future mailings be sent to her personal address “and to her divorce attorneys.” If the former Mrs. Schwartz is to be represented in these proceedings by the Dickerson Law Group, Petitioner will send the notices directly to that law firm in lieu of Mrs. Schwartz’ personal address. It is submitted that in fairness, Mrs. Schwartz should either have notices sent to her personal address or to her attorneys’ address and not both.

...

...

## III.

CONCLUSION

It should be noted that Abigail Richlin Schwartz' objection is purely technical in nature in regard to the Second Codicil and is totally devoid of merit under the *Irvine v. Doyle* decision. What is more, the Court should be aware that whether the Second Codicil is admitted to probate or not is of absolutely no legal significance to Abigail, who is not entitled to any portion of Milton Schwartz' estate with, or without, the Second Codicil. This objection was filed purely to generate more attorneys' fees for the estate of Milton Schwartz and for no other purpose. Petitioner wishes to memorialize that fact in the event that Abigail Richlin Schwartz continues to file unnecessary and frivolous roadblocks to this proceeding for no purpose other than to interfere with the straightforward and orderly process of probating Milton Schwartz' estate.

DATED this 2 day of January, 2008.

BERKLEY, GORDON & GOLDSTEIN, LLP

  
FREDERIC I. BERKLEY, ESQ.

Nevada Bar No.: 1798  
8330 W. Sahara Ave., Ste. 290  
Las Vegas, NV 89117  
702-227-0700  
Attorneys for The Estate of Milton I. Schwartz

BERKLEY, GORDON & GOLDSTEIN, LLP  
8330 WEST SAHARA AVENUE, SUITE 290  
LAS VEGAS, NEVADA 89117  
TELEPHONE (702) 227-0700  
FACSIMILE (702) 227-0799

CERTIFICATE OF MAILING

I hereby certify that I am an employee of BERKLEY, GORDON & GOLDSTEIN, LLP, and on the 9 day of January, 2008, I forwarded via United States Mail, first class postage prepaid, at Las Vegas, Nevada, a true and correct copy of the foregoing PETITIONER'S RESPONSE TO OBJECTION TO PETITION TO PROBATE WILL AND FOR ISSUANCE OF LETTER TESTAMENTARY AND REQUEST FOR ALL FUTURE NOTICE TO BE PROPERLY SERVED, addressed as follows:

Denise L. Gentile, Esq.  
Dickerson Law Group  
1745 Village Center Circle  
Las Vegas, NV 89134

  
An employee of  
BERKLEY, GORDON & GOLDSTEIN, LLP

BERKLEY, GORDON & GOLDSTEIN, LLP  
8330 WEST SAHARA AVENUE, SUITE 290  
LAS VEGAS, NEVADA 89117  
TELEPHONE (702) 227-0700  
FACSIMILE (702) 227-0799



000035

000035

000035

1 DECD  
2  
3  
4  
5  
6  
7

FILED

JAN 24 2 25 PM '07

DISTRICT COURT  
CLARK COUNTY, NEVADA

CLERK OF THE COURT

8 MILTON I. SCHWARTZ,

9 Plaintiff,

10 vs.

11 ABIGAIL R. SCHWARTZ,

12 Defendant.  
13CASE NO. D-354836  
DEPT. NO. "H"FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
DECREE OF DIVORCE

14 Dates of Trial: 1/10/2007 and 1/11/2007

15 Times of Trial: 2:00 p.m. - 5:00 p.m. and 9:00 a.m. - 12:00 noon

16 This matter came on for non-jury trial before T. Arthur Ritchie, Jr., District Court  
 17 Judge, Department H. Milton Schwartz was present with his attorney, Frederic I. Berkley,  
 18 Esq. Abigail R. Schwartz was present with her attorneys, Robert P. Dickerson, Esq. and  
 19 Denise L. Gentile, Esq. The court reviewed the papers and pleadings on file, the evidence  
 20 admitted at trial, and for good cause, makes the following findings of fact, conclusions of law,  
 21 and orders.  
 22

23 I. STATEMENT OF THE CASE

24 Milton Schwartz, age 85, and Abigail Schwartz, age 55, were married on January 28,  
 25 1993. No children were born the issue of their relationship, and they did not adopt children.  
 26 On December 19, 1994, Milton filed a divorce action which was assigned case no. D183099.  
 27  
 28

1 The parties litigated the validity of their Premarital Agreement and obtained a judgment  
2 declaring that it was an enforceable agreement. Instead of proceeding to dissolution,  
3 however, the parties reconciled, and they entered into post-marital agreements. The parties  
4 entered into a Reconciliation Agreement dated December 24, 1996 (Admitted as Exhibit 3),  
5 an Addendum to Reconciliation Agreement on April 9, 1997 (Admitted as Exhibit 4), and a  
6 Second Addendum to Reconciliation Agreement on October 1, 1999 (Admitted as Exhibit 5).  
7

8 Milton Schwartz filed a Complaint for Divorce on April 19, 2006. Abigail Schwartz'  
9 Answer and Counterclaim was filed on June 6, 2006. The parties participated in an early case  
10 conference and filed a Joint Case Conference Report on July 20, 2006.  
11

12 On April 19, 2006, Milton Schwartz filed a motion for exclusive possession of the  
13 marital residence and for other relief. This motion was set for hearing on May 17, 2006.  
14 Abigail Schwartz filed an opposition and countermotion for fees and on May 11, 2006. These  
15 matters came on for hearing on May 17, 2006. The court granted Mr. Schwartz' motion for  
16 exclusive possession of his separate residence effective July 1, 2006, and ordered that the  
17 parties file Affidavits of Financial Condition.  
18

19 On June 16, 2006, Abigail Schwartz filed a motion for temporary spousal support,  
20 attorneys' fees, and for other relief. This motion was set for hearing on July 5, 2006. Milton  
21 Schwartz filed an opposition on June 29, 2006. The court granted Ms. Schwartz' request for  
22 temporary maintenance in the amount of \$6,500.00 per month and continued the matter for  
23 hearing on August 14, 2006 for further proceedings. On that date, the parties and counsel  
24 appeared. The court considered the papers and pleadings on file and the arguments of counsel  
25 and ordered Milton Schwartz to advance Abigail Schwartz \$75,000.00 from his separate  
26 funds for suit money until Abigail Schwartz' CDs matured in January, 2007. The court  
27  
28

1 ordered Abigail Schwartz to repay this sum when the funds are available in January, 2007.  
2 Further, this court ordered that Abigail Schwartz receive \$12,000.00 per month beginning on  
3 September 1, 2006, until trial. The court set a calendar call for December 4, 2006, and a trial  
4 for January 10 and 11, 2007. The order from this hearing was filed on August 28, 2006.  
5

6 On July 24, 2006, Milton Schwartz filed a motion to strike Defendant's Jury Demand.  
7 This motion was set for hearing on September 6, 2006. Abigail Schwartz filed an opposition  
8 on September 5, 2006. This matter came on for hearing on September 6, 2006. The court  
9 granted Mr. Schwartz' motion to strike Defendant's jury demand, and confirmed that this  
10 matter would be resolved by a non-jury trial on January 10 and 11, 2007.  
11

12 On September 25, 2006, Milton Schwartz filed a motion for summary judgment. This  
13 motion was set for hearing on September 6, 2006. Abigail Schwartz filed an opposition and  
14 countermotion to compel performance on the agreements on November 9, 2006. This matter  
15 came on for hearing on November 28, 2006. The court considered the papers and pleadings  
16 on file and the arguments of counsel, denied the motion and the countermotion, and  
17 confirmed that this matter would be resolved by a non-jury trial on January 10 and 11, 2007.  
18

19 The parties participated in a calendar call with the court on December 4, 2006.  
20 Counsel was advised to conduct a pre-trial conference before December 29, 2006.

21 These matters came on for trial on January 10 and 11, 2007. This trial concerned the  
22 parties' premarital and post-marital agreements, Abigail Schwartz' claim for spousal support,  
23 and both parties' claim for attorneys' fees. This court reviewed the evidence and the  
24 documentary proof and with this decision resolves these claims pursuant to applicable Nevada  
25 law. The court considered testimony from three witnesses, Milton Schwartz, Abigail  
26 Schwartz, and Susan Pacheco. The court had an opportunity to observe the witnesses and  
27  
28

1 assess their credibility. The court concludes that the evidence presented at trial was sufficient  
2 to decide this case. This court makes the following findings of fact, conclusions of law, and  
3 orders.  
4

## 5 II. FINDINGS AND CONCLUSIONS

6 This court has jurisdiction over the subject matter and personal jurisdiction over the  
7 parties to this case. This court finds that Milton Schwartz and Abigail Schwartz are residents  
8 of Clark County, Nevada. This court accepted their testimony as credible evidence of the  
9 parties' physical presence in Nevada, and accepted Mr. Schwartz' testimony that he intended  
10 to make Nevada his home before the filing and throughout these proceedings. Further, the  
11 residency allegation was corroborated by the testimony of Susan Pacheco. Milton Schwartz is  
12 entitled to a Decree of Divorce restoring the parties to single, unmarried persons on the no-  
13 fault grounds of incompatibility alleged by Mr. Schwartz and supported by his testimony.  
14 The court finds that Abigail Schwartz' affirmative defenses that Milton Schwartz lacked  
15 capacity to request a divorce, or that Mr. Schwartz did not prove grounds for divorce were not  
16 supported by the evidence. This court concludes that Mr. Schwartz was competent and that  
17 he clearly and sufficiently provided evidence of incompatibility.  
18

19 This court finds that there is no community property or community debt to divide.  
20 With this judgment, this court resolves the dispute concerning Abigail Schwartz' claim for an  
21 interest in Milton Schwartz' separate property, Abigail Schwartz' claim for spousal support,  
22 and both parties' claims for attorneys' fees and costs.  
23

### 24 A. CONTRACT CLAIMS

25 The parties entered into a Premarital Agreement and several post-marital agreements.  
26 Milton Schwartz claims that these agreements protect his property rights, and Abigail  
27 Schwartz claims that the agreements confer an irrevocable, vested interest in a percentage of  
28

1 Mr. Schwartz' estate, and a contract right to life insurance in the amount of ten percent of  
2 Milton Schwarz' estate.

3  
4 This court reviewed the parties' Premarital Agreement and post-marital agreements,  
5 considered the parties' testimony, and concludes that Abigail Schwartz' contract claims lack  
6 merit and should be denied. This court considered the Premarital Agreement and the  
7 testimony of the parties and concludes that the parties expressly agreed that Abigail Schwartz  
8 was not entitled to a portion of Milton Schwartz' estate unless they were married and living  
9 together at the time of Mr. Schwartz' death.

10 The court finds that the terms of the Premarital Agreement and the Reconciliation  
11 Agreement are clear and unambiguous. The court finds that the terms of the Addendum to  
12 Reconciliation Agreement and the Second Addendum to Reconciliation Agreement are  
13 ambiguous concerning whether Abigail Schwartz received an irrevocable or vested interest in  
14 life insurance policies and in Milton Schwarz' estate. The best approach for interpreting an  
15 ambiguous contract is to delve beyond its express terms and "examine the circumstances  
16 surrounding the parties' agreement in order to determine the true mutual intention of the  
17 parties." *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507 (2003). The examination includes not  
18 only the circumstances surrounding the contract's execution, but also the subsequent acts and  
19 declarations of the parties. The court finds that both parties participated in the drafting of the  
20 contracts and had the benefit of counsel. The court considered the testimony of the parties,  
21 and concludes that Abigail Schwartz expressly limited her right to receive any portion of  
22 Milton Schwartz' estate. Milton Schwartz' testimony that the purpose of references to life  
23 insurance was to address Ms. Schwartz' concerns about disputes with his children in the event  
24 of his death during their marriage. The court finds that Milton Schwartz' testimony in this  
25 point was credible. Mr. Schwartz never made Abigail Schwartz a beneficiary on his life  
26 insurance policies, and the parties negotiated another method of payment in the Second  
27 Addendum to Reconciliation Agreement signed in October, 1999. Abigail Schwartz'  
28

1 testimony that she did not intentionally relinquish a known right to make a claim for a portion  
2 of Milton Schwartz estate was not credible.

3 The parties' Premarital Agreement, admitted as Exhibit 1, provides in pertinent part:

4 **EIGHTH:** Upon the occurrence of the marriage of Milton and Abigail,  
5 Abigail shall receive the following from Milton as her sole and separate  
6 property:

- 7 A. One 5.03 diamond solitaire and one wedding band without diamonds;
- 8 B. Milton's residence located at 2120 Silver Avenue, Las Vegas,  
9 Nevada, is presently owned by a Trust and will remain so until  
10 the end of the Trust period, which is approximately eleven (11)  
11 years from the date of this Pre-marital Agreement. At the end of  
12 the Trust period, in approximately eleven (11) years, if Milton is  
13 still alive, and if Milton and Abigail are still married and living  
14 together as husband and wife, Milton agrees to purchase the  
15 residence from the Trust and, at that time, to gift the residence to  
16 Abigail, providing that Milton shall have the right to continue to  
17 live in said residence at all times during his lifetime.
- 18 C. After the marriage, Abigail shall receive a monthly check for  
19 Three Thousand Seven Hundred Dollars (\$3,700.00) to provide  
20 for any and all of her personal living expenses, including, but not  
21 limited to, clothes, beauty parlor, cleaning, car and gasoline,  
22 support of her grandmother, lunches, toiletries, personal travel  
23 and entertainment. ...
- 24 E. Notwithstanding anything to the contrary herein, after the  
25 marriage, Abigail shall be entitled to a two and one-half percent  
26 (2 ½%) interest in Milton's estate **should Milton die while the**  
27 **parties are married and living together as husband and wife**  
28 **at the time of his death.** It is agreed that Abigail's interest in  
Milton's estate shall increase by one-quarter percent (¼%) per  
year on the anniversary date of their marriage so that, in the  
second year of the marriage, Abigail's interest shall be two  
and three-quarter percent (2¾%), in the third year of the  
marriage, Abigail's interest shall be three percent (3%), and so  
forth. If Milton and Abigail are married for ten (10) years  
or longer, **and are living together as husband and wife at the**  
**time of Milton's death,** Abigail will receive a ten percent  
(10%) interest in Milton's estate. It is understood that under no  
circumstances will Abigail's interest in Milton's estate exceed  
ten percent (10%). **It is further understood that Abigail shall**

1                   **only have an interest in Milton's estate as provided for**  
2                   **therein should Milton die while the parties are married and**  
3                   **living together as husband and wife at the time of his death.**

4           F.    On or about December 31, 1994, if the parties are living together  
5                as husband and wife, Milton shall purchase a new automobile for  
6                Abigail at a cost of approximately Fifty Thousand Dollars  
7                (\$50,000.00). Said automobile shall be Abigail's sole and  
8                separate property, and said car shall be traded in for a new car of  
9                the same approximate cost every four (4) years of the marriage  
10              thereafter, so long as the parties are living together as husband  
11              and wife.

12           G.    Abigail shall receive from Milton the sum of Thirty Seven Thousand  
13                Five Hundred Dollars (\$37,500.00) on the first, second, third, fourth,  
14                and fifth anniversary of the marriage, if, and only if, Milton and Abigail  
15                are living together as husband and wife on said anniversary dates.  
16                (Pages 8 -10) (Emphasis added by the court)

17           The parties entered into post-divorce agreements that specifically address the  
18           condition under which Abigail Schwartz would take an interest in Milton Schwartz' estate.

19           The parties' Reconciliation Agreement, admitted as Exhibit 3, provides in pertinent part:

20                   **EIGHTH: Abigail acknowledges that she understands that the only**  
21                   **rights which she has to any part of Milton's estate are as set forth in**  
22                   **Paragraph Eighth (E) of the Premarital Agreement and Amendment**  
23                   **thereto. Abigail further acknowledges that she understands that she will**  
24                   **have an interest in Milton's estate only if Milton should die while the**  
25                   **parties are married and living together as husband and wife at the time of**  
26                   **his death.** Abigail further acknowledges that, in computing her percentage  
27                   interest in Milton's estate, the period between February 20, 1995 to  
28                   September 7, 1996, (nineteen (19) months) shall be deducted when  
                  considering the length of the parties' marriage. Milton acknowledges that it  
                  was, and is, his intention to make Abigail beneficiary of the net worth of his  
                  estate at the time of his death, and Milton agrees to execute appropriate  
                  documents necessary to capture said intention. (Pages 5, 6)(Emphasis added  
                  by the court)

29           The parties' Addendum to Reconciliation Agreement, admitted as Exhibit 4, provides  
30           in pertinent part:

31           A.    The undersigned hereby enter into this Addendum to their Reconciliation  
32                Agreement dated the 24<sup>th</sup> day of December, 1996. In Paragraph Eighth of the



Reconciliation Agreement, reference is made to Milton I. Schwartz's "estate". For this purpose, Milton I. Schwartz's estate is considered to consist of all properties of every kind and nature, whether real, personal, or mixed, wherever they may be situated, including, but not limited to, by reason of the enumeration thereof, all that certain property set forth in the parties' Premarital Agreement and Reconciliation Agreement which are hereby incorporated by reference as if set forth in full herein, as well as all interests, rents, improvements, profits, proceeds from sales, appreciation in value, increases or profits, which may in time accrue or result in any manner to or from or by, collections for, the use of the same in any way. (Page 1)

F. **Abigail shall be assigned an irrevocable interest as beneficiary of an existing life insurance policy to secure her interest in Milton's estate as set forth at Paragraph Eighth (E) of the Premarital Agreement. Abigail shall be the stated 'owner' to the extent of her assigned interest in said policy.** Milton agrees to furnish Abigail with a re-evaluation of his net worth every two (2) years, commencing in January, 1999. Milton will use the same basis for preparation of this re-evaluation of his net worth as he used at the time he prepared and calculated his net worth in the Unaudited Milton I. Schwartz Personal Financial Statement dated February 20, 1992, attached to the Premarital Agreement. **All of the provision of this paragraph shall only take effect if Milton should die while the parties are married and living together as husband and wife at the time of his death.** This Addendum shall not modify, revoke, or supersede any of the language set forth in the Reconciliation Agreement entered into between the parties on December 24, 1996. (Page 2) (Emphasis added by the court)

The parties' Second Addendum to Reconciliation Agreement, admitted as Exhibit 5, provides in pertinent part:

- (1) **Paragraph F of the Addendum to Reconciliation agreement dated April 9, 1997 is hereby amended** to provide that MILTON shall furnish ABIGAIL with a re-evaluation of his net worth every January, commencing January, 2000.
- (2) **Paragraph Eighth of the Reconciliation Agreement is hereby clarified as follows:**
  - (a) **Within thirty (30) days from MILTON'S death, ABIGAIL shall receive a cash distribution in an amount equal to twenty-five percent (25%) of her entitlement pursuant to Paragraph Eighth (E) of the Premarital Agreement and Amendment thereto, as determined by MILTON'S financial statement dated January in the year of MILTON'S death.** (Page 1) (Emphasis added by the court)

1 Based on the findings and conclusions above, Abigail Schwartz' contract claims  
2 against Milton Schwartz' separate property estate are denied.

3 B. SPOUSAL SUPPORT

4 Abigail Schwartz seeks an award of spousal support pursuant to NRS 125.150.  
5 Milton Schwartz offers two defenses to this claim. First, that the parties' Premarital  
6 Agreement signed on January 26, 1993 is valid and binding, and that this Premarital  
7 Agreement contains an express waiver of spousal support; and second, that even if the  
8 Premarital Agreement does not contain an express waiver of support, the facts of this case do  
9 not warrant an award of support.  
10

11 This court concludes that the parties' Premarital Agreement is an ambiguous contract  
12 concerning the issue of spousal support. There is language in the Premarital Agreement  
13 which generally states that the parties are fixing their respective rights and obligations to be  
14 supported by the other in the event of divorce, however, the Premarital Agreement contains  
15 no specific alimony provision or a specific alimony waiver provision. This treatment of  
16 marital rights is in stark contrast to the treatment of separate property rights and inheritance  
17 rights. This court considered the Premarital Agreement and the testimony of the parties and  
18 concludes that the parties did not agree to preclude spousal support claims in the event of  
19 divorce.  
20

21 The parties' Premarital Agreement, admitted as Exhibit 1, provide in pertinent part:  
22

23 Whereas, the parties hereto are about to marry and in anticipation thereof, desire to fix  
24 and determine by premarital agreement the rights and claims that will accrue to each  
25 of them in the estate and property of the other by reason of the marriage and to accept  
26 the provisions of this agreement in lieu of and in full discharge, settlement, and  
27 satisfaction of all such rights and claims, including the right of election to take against  
28 any Last Will and Testament of the other, and including the right to share in property  
acquired during the marriage by the other spouse, and the right to be supported except  
as set forth herein; and ...(Page 1)

1  
2 Whereas, as a condition of marrying, each party desires to voluntarily and irrevocably  
3 fix his or her respective rights and obligations to be supported by the other in the event  
4 of a dissolution of their prospective marriage, as well as their respective rights to an  
5 equitable distribution of property or a distribution of property pursuant to the laws of  
any jurisdiction providing for community property or other rights in marital property  
or property acquired at any time by either spouse; (Pages 3, 4)

6 The best approach for interpreting an ambiguous contract is to delve beyond its  
7 express terms and "examine the circumstances surrounding the parties' agreement in order to  
8 determine the true mutual intention of the parties." *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d  
9 507 (2003). This examination includes not only the circumstances surrounding the contract's  
10 execution, but also the subsequent acts and declarations of the parties. Also, a specific  
11 provision will qualify the meaning of a general provision. Finally, "(a)n interpretation which  
12 results in a fair and reasonable contract is preferable to one that results in a harsh and  
13 unreasonable contract." *Shelton v. Shelton*, id. The court heard the testimony of the parties,  
14 and finds that they never expressly excluded the possibility of post-divorce spousal support.  
15 Abigail Schwartz' testimony that she did not intentionally relinquish a known right to make a  
16 claim for spousal support in the event of divorce was credible. This court concludes that this  
17 interpretation yields a fair and reasonable result, especially in light of the court's holding on  
18 the property dispute. While, Milton Schwartz adequately protected himself from claims to  
19 his property in the event of divorce, the Premarital Agreement is inadequate to prohibit  
20 considering spousal support on the merits of this case. This court concludes that it is both  
21 appropriate and fair to consider these spousal support claims on the merits.  
22  
23

24 **1. Rehabilitative Support**

25 Rehabilitative spousal support pursuant to NRS 125.150 is for obtaining training or  
26 education related to a job, career, or profession. Abigail Schwartz did not present a case for  
27  
28

1 rehabilitative support earmarked for specific education or job training. Abigail Schwartz is a  
2 registered nurse, and this court finds that with some clinical training, Ms. Schwartz could  
3 resume employment as a registered nurse. Abigail Schwartz testified that she has no  
4 intention of returning to nursing because she considers herself too old, and because she has  
5 bad feet. The court finds that Abigail Schwartz failed to provide sufficient evidence to  
6 support a finding that she is physically unable to work as a nurse. Abigail Schwartz testified  
7 that she intends to operate a boarding facility for horses either in Nevada or California  
8 following the divorce. The court finds that Ms. Schwartz is already trained and qualified to  
9 do this job based on her testimony that she currently rides and cares for horses five to seven  
10 days per week. Abigail Schwartz estimated that she could earn approximately \$60,000.00 per  
11 year as a horse border with ten stalls. This court concludes that rehabilitative spousal support  
12 is neither necessary nor appropriate in this case.

13  
14  
15 **2. Just and Equitable Support**

16 Abigail Schwartz seeks just and equitable spousal support. Ms. Schwartz claims that  
17 she should be awarded post-divorce support from Milton Schwartz in the amount of  
18 \$35,000.00 per month or a lump sum award of 2.9 million dollars. Abigail Schwartz argues  
19 that spousal support is required to meet her needs, and to narrow a substantial gap in the  
20 parties' post divorce earnings. Milton Schwartz opposed the just and equitable spousal  
21 support claim and requested that the court order nothing. Mr. Schwartz alleged that Ms.  
22 Schwartz expressly waived support in the parties' Premarital Agreement, and in the  
23 alternative alleged that support is not needed. As stated above, this court rejected the  
24 contract defense to the spousal support claim, and has considered Abigail Schwartz' claim to  
25 just and equitable support on the merits.  
26  
27  
28

1 Nevada has well-settled case law that provides guidelines for the trial court to consider  
2 when making a just and equitable alimony award commonly referred to as "Buchanan  
3 factors". These factors include: the financial condition of the parties; the nature and value of  
4 the parties' respective property; the contribution of each to any property held by them as  
5 tenants in the entirety; the duration of the marriage; the husband's income, his earning  
6 capacity and his age, health and ability to labor; the wife's age, health and ability to earn a  
7 living. *Rodriguez v. Rodriguez*, 116 Nev. 993, 13 P.3d 415 (2000). In determining whether  
8 alimony should be paid as well as the amount thereof, courts are vested with a wide range of  
9 discretion. Much depends upon the facts of the individual case. *Buchanan v. Buchanan*, 90  
10 Nev. 209, 523 P.2d 1 (1974). This court applied this common sense approach and considered  
11 each of these factors.  
12

13  
14 **(a) The financial condition of the parties**

15 Both Milton Schwartz and Abigail Schwartz are in excellent financial condition. The  
16 evidence offered at trial supports a finding that when the parties married in January, 1993,  
17 Milton Schwartz had net worth of 30 million dollars, and Abigail Schwartz had an  
18 approximate net worth of approximately \$30,000. Evidence at trial supports the finding that  
19 Milton Schwartz currently has a net worth of approximately 49 million dollars, and that  
20 Abigail Schwartz currently has a net worth of approximately 3.6 million dollars. Milton  
21 Schwartz' income exceeds 4 million dollars per year. Abigail Schwartz has earning potential  
22 either as a registered nurse or as a horse boarder in the amount of approximately \$60,000.00  
23 per year. Ms. Schwartz receives passive income of \$10,800.00 to \$21,600.00 per year from a  
24 partial ownership interest in rental property, and she can earn investment income of between  
25 \$80,000.00 and \$130,000.00 per year depending on the type of investment.  
26  
27  
28

1                                   **(b) The nature and value of the parties' respective property**

2           As noted above, both parties possess substantial marketable and liquid assets. Abigail  
3 Schwartz has 2.6 million dollars in cash, and she has interest in real property that generates  
4 income, and real and personal property valued at approximately 1 million dollars.  
5

6                                   **(c) The contribution of each to property held by them**

7           The parties' agreed that they would keep their property and corresponding rights  
8 separate. Milton Schwartz established the foundation for his financial success prior to the  
9 parties' marriage, and continued that commercial success during the marriage. Abigail  
10 Schwartz did not work extensively during the marriage. Ms. Schwartz' primary role during  
11 the marriage was to be Mr. Schwartz' companion and support his community and charitable  
12 enterprises. The parties have no children together.  
13

14                                   **(d) The duration of the marriage**

15           The parties in this case have been married for 13 years. The duration is significant in  
16 that spousal support awards have been upheld by the Nevada Supreme Court in marriages of  
17 similar duration.  
18

19                                   **(e) The husband's income, earning capacity, age, health and  
20 ability to labor**

21           Milton Schwartz is a skilled businessman and entrepreneur. Even at age 85, Mr.  
22 Schwartz works five days a week managing his businesses and investments. Mr. Schwartz  
23 described his health as good, however, he has renal disease and undergoes dialysis three times  
24 per week. Tax returns admitted into evidence show that his annual income exceeds 4 million  
25 dollars. The court finds that Milton Schwartz has sufficient income and assets to meet his  
26 needs, and has the ability to pay spousal support  
27  
28

**(f) The wife's income, earning capacity, age, health and ability to labor**

Abigail Schwartz has a college degree and a nursing degree. Ms. Schwartz is 55 years of age, and in good health. Abigail Schwartz is currently unemployed but she has earning potential either as a registered nurse or as a horse boarder in the amount of approximately \$60,000.00 per year. In addition to income from employment, Ms. Schwartz receives passive income of \$10,800.00 to \$21,600.00 per year from a partial ownership interest in rental property. Further, Ms. Schwartz has 2.6 million dollars in cash which can be invested to generate income. While Abigail Schwartz testified that she would only make the most conservative investments in certificates of deposit, this court finds that her passive income from this asset will be between \$80,000.00 and \$130,000.00 per year depending on the type of investment. Therefore, in assessing Abigail Schwartz' claim for spousal support, the court concludes that it is appropriate to impute annual income to her in the amount of \$150,800.00 to \$211,600.00. This court concludes that Abigail Schwartz' earning potential and her passive income is more than sufficient to meet her monthly needs.

**(g) Reasonable post divorce needs**

Whether Ms. Schwartz' budget or historical spending is reasonable is somewhat subjective and is dependent on the facts and circumstances of a particular case. In the case at bar, Abigail Schwartz offered her Affidavit of Financial Condition identifying total monthly expenses of \$24,232.00. Milton Schwartz testified that this budget did not reflect her actual spending during the marriage. The court finds that Mr. Schwartz' testimony on this issue was more credible than Ms. Schwartz' testimony on this issue, and her claim suffered from a lack of supporting evidence. This court finds that factoring lifestyle considerations, the following

////

1 expenses are reasonable under the circumstances of this case.

2	\$3,000.00	Mortgage/ Rent	Earning Potential	\$5,000.00
3	\$600.00	Utilities	Passive Income (avg.)	\$8,750.00
4	\$200.00	Telephone	Rental Income	<u>\$1,800.00</u>
5	\$1,500.00	Food	Total:	\$15,550.00
6	\$1,000.00	Clothing		
7	\$300.00	Dry Cleaning		
8	\$1,000.00	Medical		
9	\$ 700.00	Auto gas/ insurance		
10	\$1,000.00	Social		
11	\$500.00	Charity		
12	\$2,000.00	Personal Care		
13	\$500.00	Housekeeper		
14	\$150.00	Cable		
15	\$130.00	Landscaper		
16	\$90.00	Pool Maintenance		
17	\$600.00	Horse		
18	\$100.00	Dog		
19	<hr/>			
20	\$13,370.00	Total		

21 This court finds the budget above covers essential living expenses, and includes nearly  
22 \$4,000.00 per month in lifestyle related discretionary expenses.

### 23 (b) Station in life / Gaps in income

24 This court concludes that the award of support in this case should not be tied tightly to  
25 actual needs. As the court stated above, if actual needs and ability to pay were the only  
26 consideration, spousal support would be denied. In the case at bar, there remains a significant  
27 gap in income between the parties. This court concludes that it should exercise discretion to  
28 award spousal support to Abigail Schwartz which will allow her to maintain a lifestyle that  
could include travel, shopping, and dining out. The award, together with her income and  
earning potential allows Abigail Schwartz significant room for discretionary expenses. The  
effect of this decision is that the parties are left with substantially more income than their  
needs.



## Summary and Award

A court must award such alimony as appears 'just and equitable,' having regard to the conditions in which the parties will be left by the divorce. *Sprenger v. Sprenger*, 110 Nev.855, 859, 878 P.2d 284, 287 (1994). Alimony is an equitable award serving to meet the post-divorce needs and rights of the former spouse. Cf. *Gardner v. Gardner*, 100 Nev. 1053, 1057, 881 P.2d 645, 647 (1994). It follows from Nevada Supreme Court decisions in this area that two of the primary purposes of alimony, at least in marriages of significant length, are to narrow any large gaps between the post-divorce earning capacities of the parties, and to allow the recipient spouse to live "as nearly as fairly possible to the station in life they enjoyed before the divorce." *Sprenger*, at 860. The individual circumstances of each case will determine the appropriate amount and length of any alimony award. See *Gardner*, 100 Nev. at 1056-58, 881 P.2d at 647-48; *Rutar v. Rutar*, 108 Nev. at 206-08, 827 P.2d at 831-33.

This court concludes that Milton Schwartz shall pay spousal support to Abigail Schwarz in the amount of \$5,000.00 per month for a period of seven (7) years. Payments pursuant to this judgment shall be due on the first day of each month beginning in February 1, 2007. Spousal support shall cease upon the death of either party or upon the remarriage of Abigail Schwartz pursuant to NRS 125.150(5). Further, spousal support payments pursuant to the decree that have not accrued may be terminated or modified upon a showing of changed circumstances pursuant to NRS 125.150(7). The court concludes that this order considers the parties' standards of living, and satisfies the demands of justice and equity in this case.

### 3. Lump Sum Spousal Support

Abigail Schwartz seeks an award of \$2,940,000.00 in lump sum alimony from Milton Schwartz pursuant to NRS 125.150(4). This court has considered whether the facts in this

1 case support an award of lump sum support. The court looked at NRS 125.150 and Nevada  
2 Supreme Court cases, including *Daniel v. Baker*, 106 Nev. 412; 794 P.2d 345 (1990). This  
3 court elects not to exercise discretion to order lump sum alimony in the case at bar. The  
4 material distinction between the case at bar and the *Daniel* case is that Carol Daniel had  
5 almost no assets at the time of divorce, and Thomas Daniel died during the case. Abigail  
6 Schwartz has 2.6 million dollars in cash and other assets valued at approximately 1 million  
7 dollars. The death of Milton Schwartz may reduce the level of extravagance of her lifestyle,  
8 but it will not threaten her ability to meet her needs. This court concludes that the facts of this  
9 case do not support an award of lump sum alimony, and concludes that the amount and  
10 duration of equitable support ordered above is appropriate and consistent with Nevada law.

11  
12  
13 **C. ATTORNEYS FEES/ COSTS**

14 Both Milton Schwartz and Abigail Schwartz seek an award of attorneys' fees and  
15 costs in this judgment. The Nevada Supreme Court held that factors found in *Brunzell v.*  
16 *Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) apply to family law  
17 cases. Two requirements must be met before making an attorney's fees award:

- 18 (1) There must be a legal basis for the award. Fees must be allowed by an  
19 express or implied agreement or when authorized by statute or rule; and  
20 (2) Fees must be appropriate and reasonable. Courts must consider:  
21 (a) The qualities of the advocate;  
22 (b) The character and difficulty of the work performed;  
23 (c) The work actually performed; and  
24 (d) The result obtained.

25 *Miller v. Wilfong*, 121 Nev. Adv. Op. 61, 119 P.3d 727 (9/22/2005).

26 Milton Schwartz seeks an award of fees and costs based on the parties' Reconciliation  
27 Agreement which contained an attorneys' fee provision. Abigail Schwartz seeks an award of  
28 fees based on the relative income and relative financial circumstances of the parties. The

1 court has evaluated these competing claims and concludes that it is appropriate to enter an  
2 order requiring Milton Schwartz to pay a portion of Abigail Schwartz' attorneys' fees and  
3 costs in the amount of \$25,000.00.  
4

5 **Contract Claim**

6 The parties' entered into a Reconciliation Agreement, admitted as Exhibit 3, which  
7 provides in pertinent part:

8 TWENTY-FIRST: Abigail and Milton acknowledge that the pending divorce action  
9 between them has been very costly and that any attempt to modify, revise, contest,  
10 breach, or anticipatorily breach, this Agreement will also result in an enormous  
11 amount of litigation expense. As a result, Milton and Abigail specifically agree that,  
12 in the event that domestic litigation is again commenced between them, then the  
13 prevailing party in the litigation shall be entitled to recover all of his or her reasonable  
attorney's fees and costs incurred in the action. Further, if either party seeks legal  
advice for any purpose during the marriage, said party shall pay for said legal advice  
out of his or her own separate funds.

14 The court concludes that neither party prevailed on all claims made in this case. Abigail  
15 Schwartz did not prevail on her contract claims for a portion of Milton Schwartz' estate, and  
16 Milton Schwartz did not prevail on the spousal support claim. Since neither party is a  
17 prevailing party this court declines to award fees and costs pursuant to the Reconciliation  
18 Agreement.  
19

20 **Statutes and Decisional Law**

21 There is legal basis in statutory authority and in decisional law for an award of  
22 attorneys' fees and costs.

23 NRS 125.150(3) provides, in part, as follows:

24 Whether or not application for suit money has been made under the provisions of NRS  
25 125.040, the court may award a reasonable attorney's fee to either party to an action  
26 for divorce if those fees are in issue under the pleadings.  
27  
28

1 The district court must also consider the disparity in income of the parties in awarding fees.  
2 *Wright v. Osburn*, 114 Nev.1367, 970 P.2d. 1071 (1998). The Nevada Supreme Court found  
3 that, "The wife must be afforded her day in court without destroying her financial position.  
4 This would imply that she should be able to meet her adversary in the courtroom on an equal  
5 basis." *Sargeant v. Sargeant*, 88 Nev. at 227, 495 P.2d 618 (1972).  
6

7 This court finds that both parties have incurred substantial fees and costs in this case.  
8 Abigail Schwartz' Trial Brief represented that she had incurred approximately \$38,000.00 in  
9 attorneys' fees and costs, and that the final bill for fees and costs could approach \$50,000.00.  
10 Counsel for Milton Schwartz offered in closing arguments that Mr. Schwartz had incurred  
11 similar attorneys' fees and costs. The attorneys' fees and costs incurred by both parties were  
12 reasonable and necessary to advance the parties' claims and defenses. The court finds that  
13 both parties were assisted capably by their counsel at trial.  
14

15 This court was persuaded that the disparity in the parties' net worth warrants an award  
16 of attorneys' fees and costs. Milton Schwartz has a net worth of approximately 49 million  
17 dollars. Abigail Schwartz has a net worth of less than 4 million dollars. While Ms. Schwartz  
18 has adequate liquid assets to pay the attorneys fees and costs due her counsel without  
19 destroying her financial position, the fiscal impact of paying similar fees is disproportional.  
20 This court concludes that a payment of \$25,000.00 is fair and equitable, and accomplished the  
21 statutory and decisional law considerations.  
22

23 The court recognized the need to make monies available for attorneys' fees and costs  
24 by making a pretrial allocation to Abigail Schwartz. This court accepted Abigail Schwartz'  
25 pre-trial claim that her liquid assets were in certificates of deposit and that she needed an  
26 advance of capital to pay her attorneys' fees and costs. Pursuant to the court's order  
27  
28

1 following the August 14, 2006 hearing, Milton Schwartz advanced \$75,000.00 of his separate  
2 funds to Abigail Schwartz until her certificate of deposit matured on January 18, 2007. At  
3 the conclusion of the trial, Abigail Schwartz was ordered to return these funds to Mr.  
4 Schwartz on or about January 18, 2007. If these funds have not been returned, they are to be  
5 returned forthwith.  
6

7 \*\*\*\*\*

8 **DECREE OF DIVORCE**

9 **WHEREFORE, IT IS HEREBY ORDERED** that an absolute Decree of Divorce is  
10 granted and the parties are restored to the status of single, unmarried persons.

11 **IT IS FURTHER ORDERED** that there is no community property to divide.

12 **IT IS FURTHER ORDERED** that there is no community debt to divide.

13 **IT IS FURTHER ORDERED** that Milton Schwartz shall pay spousal support to  
14 Abigail Schwarz in the amount of \$5,000.00 per month for a period of seven (7) years.  
15 Payments pursuant to this judgment shall be due on the first day of each month beginning in  
16 February 1, 2007. Spousal support shall cease upon the death of either party or upon the  
17 remarriage of Abigail Schwartz pursuant to NRS 125.150(5). Further, spousal support  
18 payments pursuant to the decree that have not accrued may be terminated or modified upon a  
19 showing of changed circumstances pursuant to NRS 125.150(7).  
20

21 **IT IS FURTHER ORDERED** that because there is no community debt, Milton  
22 Schwartz and Abigail Schwartz shall pay all debts they have incurred individually.  
23

24 **IT IS FURTHER ORDERED** that Milton Schwartz shall pay a portion of  
25 Abigail Schwartz' attorneys' fees and costs in the amount of \$25,000.00. Mr. Schwartz shall  
26  
27  
28

1 pay this amount to Ms. Schwartz upon the entry of this judgment. Except for this award, the  
2 parties shall bear their own attorneys' fees and costs incurred in this matter.  
3

4 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction to enter any  
5 orders that may be necessary to give legal effect to this decision.

6 DATED this 24 day of January, 2007.

7  
8   
9 DISTRICT COURT JUDGE

10 T. ARTHUR RITCHIE, JR.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 Schwartz.dec  
28



## EXHIBIT 2

AFFIDAVIT OF A. JONATHAN SCHWARTZ

STATE OF NEVADA

COUNTY OF CLARK

) ss

A. JONATHAN SCHWARTZ, being duly sworn, deposes and says:

Your Affiant is the son of Milton Schwartz, who died on August 9, 2007. Your Affiant was nominated as Executor of the Estate of Milton Schwartz in his Last Will and Testament, dated February 5, 2004, and is the Petitioner herein.

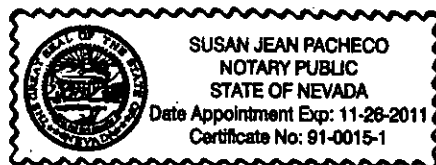
That during his father's lifetime, your Affiant worked with his father and was familiar with his father's estate planning, including, but not limited to his Last Will and Testament and First and Second Codicils. Your Affiant can attest to the fact that his father never indicated any intention to revoke the Second Codicil to his Will, which was part of his estate plan. Although your Affiant has been unable to locate the original Second Codicil, to the best of your Affiant's knowledge and belief, the Second Codicil was never revoked or destroyed by his father at any time during his lifetime.

Further, Affiant sayeth not.

*A. Jonathan Schwartz*  
A. Jonathan Schwartz

SUBSCRIBED and SWORN to before me  
this 2nd day of January, 2008.

*Susan Jean Pacheco*  
NOTARY PUBLIC in and for said  
County and State







## EXHIBIT 3

AFFIDAVIT OF SUSAN PACHECO

STATE OF NEVADA }  
COUNTY OF CLARK } ss

SUSAN PACHECO, being duly sworn, depose and says:

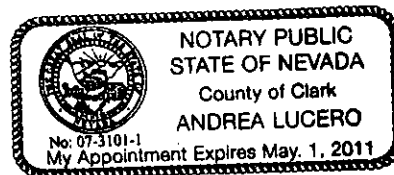
Your Affiant served as Milton Schwartz' personal assistant for over 20 years, right up until the time of Mr. Schwartz' death on August 9, 2007. As his personal assistant, your Affiant generally saw Mr. Schwartz five days per week and was substantially involved in all aspects of Mr. Schwartz' business dealings.

That at no time during his lifetime did Milton Schwartz ever make any statements to your Affiant indicating that he wished to revoke the Second Codicil to his Last Will and Testament. To the best of your Affiant's knowledge and belief, the Second Codicil was never revoked or destroyed by Milton Schwartz during his lifetime. Although your Affiant has been unable to locate the original Second Codicil, your Affiant is quite sure that if Mr. Schwartz had wished to revoke same, he would most certainly have mentioned that to your Affiant.

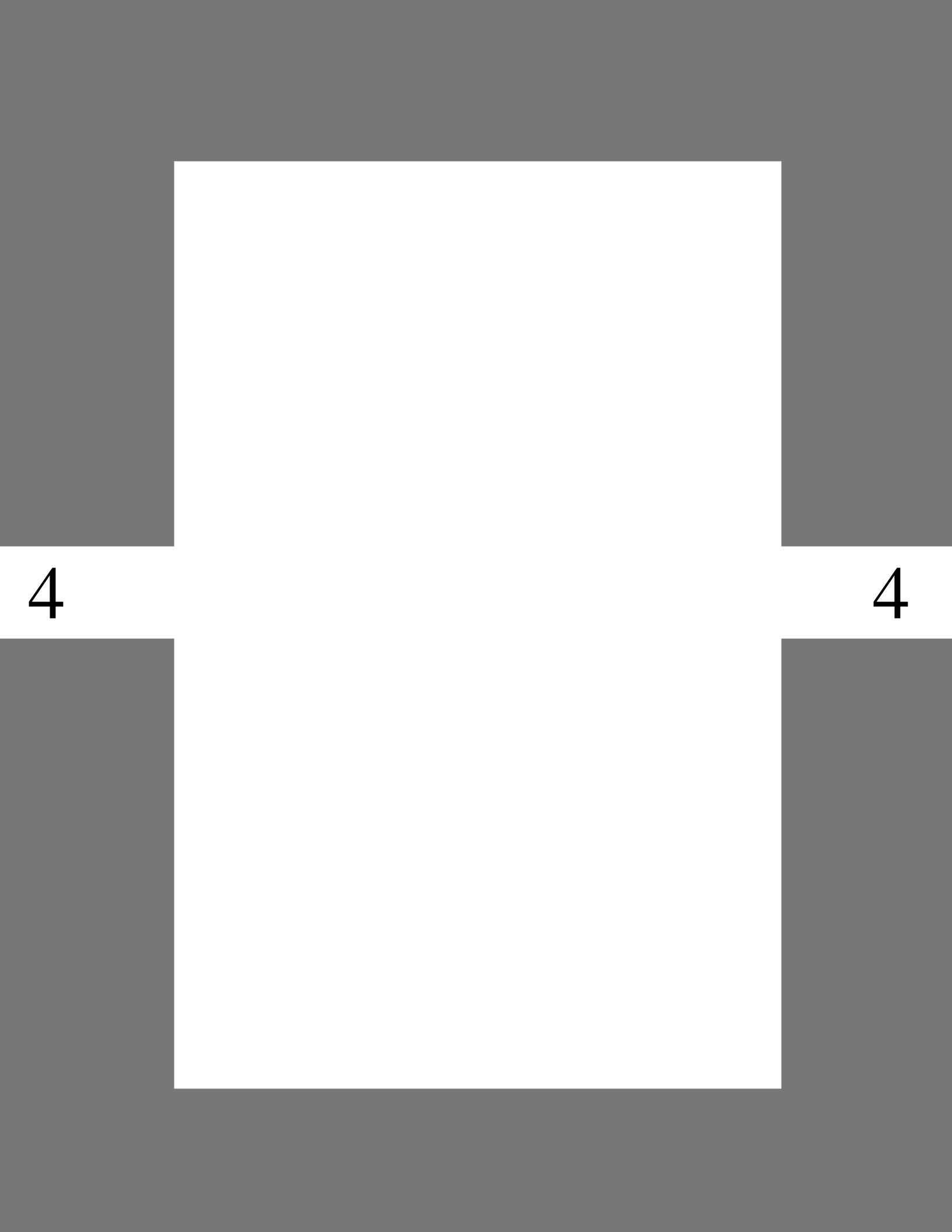
Further, Affiant sayeth not.

Susan Pacheco  
Susan Pacheco

SUBSCRIBED and SWORN to before me  
this 2<sup>nd</sup> day of January, 2008.



Andrea Lucero  
NOTARY PUBLIC in and for said  
County and State



4

4

ORIGINAL

000061

1 NEOJ  
2 THE DICKERSON LAW GROUP  
3 DENISE L. GENTILE, ESQ.  
4 Nevada Bar No. 004271  
5 KATHERINE L. PROVOST, ESQ.  
6 Nevada Bar No. 008414  
7 1745 Village Center Circle  
8 Las Vegas, Nevada 89134  
9 (702) 388-8600

FILED

JAN 4 4 31 PM '08

CLERK OF THE COURT

10 Attorneys for ABIGAIL RICHLIN  
11 SCHWARTZ

DISTRICT COURT  
FAMILY DIVISION

CLARK COUNTY, NEVADA

12 In the Matter of the Estate of

13 MILTON I. SCHWARTZ,  
14 Deceased.

Case No. P61300

Dept. No.  
Probate Commissioner

Date of Hearing: 12/14/07  
Time of Hearing: 9:30 a.m.

17 NOTICE OF ENTRY OF ORDER

18 TO: THE ESTATE OF MILTON I. SCHWARTZ;

19 TO: STEVEN J. OSHINS, ESQ., of Oshins & Associates, LLC, Attorneys for the  
20 Estate of Milton I. Schwartz; and

21 TO: FREDERICK I. BERKLEY, ESQ., of Berkley, Gordon, & Goldstein, LLP.,  
22 Attorneys for The Estate of Milton I. Schwartz,  
23

24 ...

25 ...

26 ...

27 ...

28 ...

RECEIVED

JAN 04 2008

CLERK OF THE COURT

000061  
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
(702) 388-8600 ♦ Fax: (702) 388-0210

000061

000061

1 PLEASE TAKE NOTICE that an **ORDER** was entered in the above-entitled  
2 matter on December 20, 2007, a copy of which is attached hereto.

3 DATED this 4th day of January 2008.

4 THE DICKERSON LAW GROUP

5 

6 DENISE L. GENTILE, ESQ.  
7 Nevada Bar No. 004271  
8 KATHERINE L. PROVOST, ESQ.  
9 Nevada Bar No. 008414  
10 1745 Village Center Circle  
11 Las Vegas, Nevada 89134  
12 Attorneys for Defendant  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

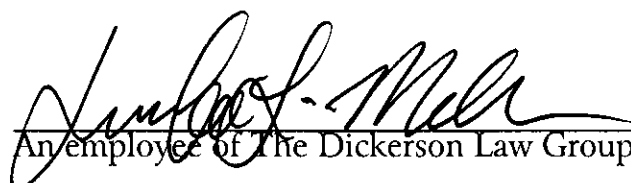
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
(702) 388-8600 ♦ Fax: (702) 388-0210

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am this date depositing a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER in the U.S. Mail, postage prepaid, to the following at his last known address on the 4<sup>th</sup> day of January 2008:

Steven J. Oshins, Esq.  
Oshins & Associates, LLP  
1645 Village Center Circle, Suite 170  
Las Vegas, Nevada 89134

Frederic I. Berkley  
Berkley, Gordon, & Goldstein, LLP  
8330 West Sahara Avenue,  
Suite 290  
Las Vegas, Nevada 89117

  
An employee of The Dickerson Law Group

THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
(702) 388-8600 ♦ Fax: (702) 388-0210

1 ORDR  
 2 THE DICKERSON LAW GROUP  
 3 DENISE L. GENTILE, ESQ.  
 Nevada Bar No. 004271  
 4 KATHERINE L. PROVOST, ESQ.  
 Nevada Bar No. 008414  
 5 1745 Village Center Circle  
 Las Vegas, Nevada 89134  
 (702) 388-8600

FILED  
 DEC 20 10 51 AM '07

CLERK

6 Attorneys for ABIGAIL RICHLIN  
 7 SCHWARTZ

8  
 9 DISTRICT COURT  
 FAMILY DIVISION

10 CLARK COUNTY, NEVADA

11 CASE NO. P61300

12 In the Matter of the Estate of

DEPT. NO.  
 Probate Commissioner

13 MILTON I. SCHWARTZ,

Date of Hearing: 12/14/07  
 Time of Hearing: 9:30 a.m.

14  
 15 Deceased.

16  
 17  
 18 ORDER

19 This matter having come before the Honorable Commissioner Thomas Biggar,  
 20 on the 14<sup>th</sup> day of December, 2007, on the OBJECTION TO PETITION TO  
 21 PROBATE WILL AND FOR ISSUANCE OF LETTERS TESTAMENTARY AND  
 22 REQUEST FOR ALL FUTURE NOTICES TO BE PROPERLY SERVED (the  
 23 "Objection"). ABIGAIL RICHLIN SCHWARTZ ("Abigail"), former wife of the  
 24 deceased, MILTON I. SCHWARTZ, and contingent creditor of the estate, being  
 25 present and represented by counsel, KATHERINE L. PROVOST, ESQ., of THE  
 26 DICKERSON LAW GROUP, and no one appearing on behalf of the Estate, and the  
 27 Court having reviewed all of the pleadings and papers on file herein, having heard the  
 28

1 oral arguments of counsel, and good cause appearing therefor, makes the following  
2 findings and orders:

3 THE COURT FINDS that Abigail timely objected to the Petition to Probate  
4 Will and for Issuance of Letters Testamentary ("the Petition") at the hearing held in  
5 this case on December 7, 2007, and filed her written Objection to the Petition on  
6 December 13, 2007, as directed and within the time period prescribed by this Court.

7 THE COURT FURTHER FINDS that the Order Granting Petition for Probate  
8 of Will and Codicils and Issuance of Letters Testamentary, entered on December 10,  
9 2007, was therefore wrongfully entered.

10 Based upon these findings, IT IS HEREBY ORDERED that the Order Granting  
11 Petition for Probate of Will and Codicils and Issuance of Letters Testamentary, entered  
12 by this Court on December 10, 2007, is hereby rescinded.

13 IT IS FURTHER ORDERED that this matter is continued until January 11,  
14 2008 at 9:30 a.m. to allow the Estate the opportunity to respond to the Objection, and  
15 to provide this Court with additional evidence to assist this Court with its  
16 determination as to the validity of the Second Codicil to the Will.

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28



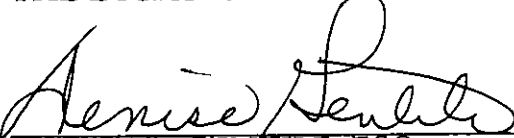
1 IT IS FURTHER ORDERED that all future notices to Abigail in these  
2 proceedings, either as a creditor or beneficiary of the Estate, shall be served upon her  
3 attorneys, THE DICKERSON LAW GROUP, at their offices locate at 1745 Village  
4 Center Circle, Las Vegas, Nevada 89134.

5 DATED this 19 day of December 2007.

6 **KATHY A. HARDCASTLE**

7  
8 DISTRICT COURT JUDGE *b*

9  
10 Submitted by:  
11 THE DICKERSON LAW GROUP

12   
13 DENISE L. GENTILE, ESQ.

14 Nevada Bar No. 004271

15 KATHERINE L. PROVOST, ESQ.

16 Nevada Bar No. 008414

17 1745 Village Center Circle

18 Las Vegas, Nevada 89134

19 Attorneys for ABIGAIL RICHLIN SCHWARTZ  
20  
21  
22  
23  
24  
25  
26  
27  
28

5

5

ORIGINAL

000067

CC23  
Steven J. Oshins, Esq., Bar No. 5732  
Heidi C. Freeman, Esq., Bar No. 8458  
Kristen E. Simmons, Esq., Bar No. 9187  
Oshins & Associates  
1645 Village Center Circle, Suite 170  
Las Vegas, NV 89134  
(702)341-6000  
Attorneys for Petitioner

FILED

JAN 29 3 53 PM '08

*C. R. [Signature]*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of  
MILTON I. SCHWARTZ,  
Deceased

Case No. P61300  
NOTICE OF ENTRY OF ORDER

Date of Hearing: N/A  
Time of Hearing: N/A

PLEASE TAKE NOTICE that an Order titled "ORDER GRANTING PETITION FOR  
PROBATE OF WILL AND CODICILS AND ISSUANCE OF LETTERS TESTAMENTARY"  
was entered in the above-entitled case on January 23, 2008, a copy of which is attached hereto  
and made a part hereof.

Dated this 29<sup>th</sup> day of January, 2008.

*Kristen E. Simmons*  
KRISTEN E. SIMMONS, ESQ.  
Nevada Bar Number 9187

RECEIVED

JAN 29 2008

CLERK OF THE COURT

000067

1 ORDR  
2 Steven J. Oshins, Esq., Bar No. 5732  
3 Heidi C. Freeman, Esq., Bar No. 8458  
4 Kristen E. Simmons, Esq., Bar No. 9187  
5 Oshins & Associates  
6 1645 Village Center Circle, Suite 170  
7 Las Vegas, NV 89134  
8 (702)341-6000  
9 Attorneys for Petitioner

FILED

JAN 23 10 32 AM '08

CLERK COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of

Case No. P61300

MILTON I. SCHWARTZ,

ORDER GRANTING PETITION FOR PROBATE OF  
WILL AND CODICILS AND ISSUANCE OF LETTERS  
TESTAMENTARY

Deceased

Date of Hearing: January 11, 2007

Time of Hearing: 9:30 a.m.

The Petition of A. JONATHAN SCHWARTZ praying for probate of the decedent's Will  
and Codicils and for Letters Testamentary has been heard and considered at a regular hearing.  
After considering the petition, the law, and the evidence,

**THE COURT HEREBY FINDS THAT:**

- A. Due notice of the hearing on the petition was given as required by law.
- B. The decedent, MILTON I. SCHWARTZ, died August 9, 2007 as a resident of  
Clark County, Nevada. A certified copy of the decedent's death certificate has been filed in  
these proceedings.
- C. Jurisdiction is proper under NRS 136.010 because the decedent died as a resident  
of Clark County, Nevada having assets subject to jurisdiction of this Court.
- D. The decedent had a Will dated February 5, 2004 and two Codicils to said Will  
dated January 27, 2006 and July 21, 2006, respectively. The original Will and First Codicil have  
been filed with the Court Clerk. A true and correct copy of the Second Codicil was submitted  
with the Petition for Probate of Will and Codicils and Issuance of Letters Testamentary.

1 E. The decedent's Will and Codicils were proved by self-proving affidavits and  
2 Affidavits of Attesting Witness and/or Notary that have been filed in these probate proceedings.

3 F. Petitioner, A. JONATHAN SCHWARTZ, is entitled to appointment as Executor  
4 because the decedent nominated the Petitioner as Executor in his Will. Petitioner qualifies to be  
5 Executor because he is of sound mind, of legal age and has never been convicted of a felony.

6 G. Petitioner's address is 2293 Duneville Street, Las Vegas, NV 89146.

7 H. Bond shall be waived as provided in Paragraph 4.2 of the decedent's Will.

8 **IT IS THEREFORE ORDERED AND DECREED THAT:**

9 1. The decedent's Will dated February 5, 2004 and two Codicils to said Will dated  
10 January 27, 2006 and July 21, 2006, respectively, are hereby admitted to probate.

11 2. The Petitioner is hereby appointed Executor for the Estate.

12 3. Letters Testamentary shall be issued to Petitioner upon the filing of the oath of  
13 office, as required by law.

14 4. Bond shall be waived as provided in Paragraph 4.2 of the decedent's Will.

15 Dated this 11<sup>th</sup> day of January, 2008.

16 **KATHY A. HARDY**

17 DISTRICT COURT JUDGE

18 Submitted by:

19 Kristen E. Simmons  
20 KRISTEN E. SIMMONS, ESQ.  
21 State Bar No. 9187  
22 OSHINS & ASSOCIATES  
23 1645 Village Center Circle, Suite 170  
24 Las Vegas, Nevada 89134  
25 (702)341-6000  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## CERTIFICATE OF MAILING

I certify that a true and correct copy of the *Notice of Entry of Order* was placed in an envelope with first-class postage prepaid and that said envelope was then placed in the United States Mail on this 29<sup>th</sup> day of January, 2008, addressed to the following interested party:

EILEEN JOANNA ZARIN  
9 Steven Lane  
Kings Point, NY 11024

ROBIN SUE LANDSBURG  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

SAMUEL SCHWARTZ  
351 Woodlake Drive  
Marlton, NJ 08053

A. JONATHAN SCHWARTZ  
2293 Duneville Street  
Las Vegas, NV 89146

THE MILTON I. SCHWARTZ HEBREW ACADEMY  
9700 Millpointe Road  
Las Vegas, NV 89134

MICHAEL LANDSBURG  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

ZACHARY LANDSBURG  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

BENJAMIN LANDSBURG  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

1 JOSHUA LANDSBURG  
2 1028 Bobwhite Drive  
3 Cherry Hill, NJ 08003

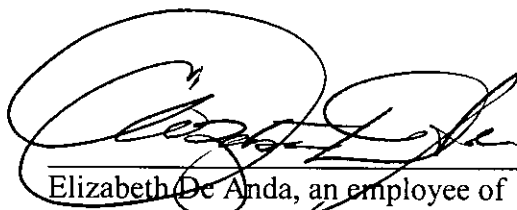
4 FRANCES A. MARTEL  
5 253 Vista Del Parque  
6 Redondo Beach, CA 90277

7 THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST,  
8 A. JONATHAN SCHWARTZ, Trustee  
9 2293 Duneville Street  
Las Vegas, NV 89146

10 LAS VEGAS JEWISH FEDERATION  
11 (a/k/a Jewish Federation of Las Vegas)  
12 2317 Renaissance Drive  
Las Vegas, NV 89119

13 LAS VEGAS FEDERATION DAY SCHOOL  
14 c/o Jewish Federation of Las Vegas  
15 2317 Renaissance Drive  
Las Vegas, NV 89119

16  
17 ABIGAIL RICHLIN SCHWARTZ  
18 c/o The Dickerson Law Group  
19 Robert P. Dickerson, Esq.  
1745 Village Center Circle  
Las Vegas, NV 89134

20  
21  
22   
23 Elizabeth De Anda, an employee of  
24 Oshins & Associates, LLC  
25  
26  
27  
28

6

6



ORIGINAL

000072

ORDR  
Steven J. Oshins, Esq., Bar No. 5732  
Heidi C. Freeman, Esq., Bar No. 8458  
Kristen E. Simmons, Esq., Bar No. 9187  
Oshins & Associates, LLC  
1645 Village Center Circle, Suite 170  
Las Vegas, NV 89134  
(702)341-6000  
Attorneys for Petitioner

FILED  
MAY 23 10 53 AM '08  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of

Case No. P61300

MILTON I. SCHWARTZ,

**EX PARTE ORDER FOR EXTENSION OF  
INVENTORY**

Deceased

Date of Hearing: N/A

Time of Hearing: N/A

The Petition of A. JONATHAN SCHWARTZ praying for a forty-five (45) day Extension of Inventory has been considered ex parte. After considering the petition, the law, and the evidence,

**THE COURT HEREBY FINDS THAT:**

A. A. JONATHAN SCHWARTZ is the Executor of the Estate and the Trustee of The Milton I. Schwartz Revocable Family Trust.

B. The Petitioner is currently determining which assets of the decedent need to go through probate.

**IT IS THEREFORE ORDERED AND DECREED THAT:**

1. The Petitioner be granted a forty-five (45) day extension to file the Inventory.

Dated this 21 day of May, 2008.

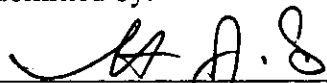
  
DISTRICT COURT JUDGE

RECEIVED  
MAY 23 2008  
CLERK OF THE COURT

000072

000072

Submitted by:



STEVEN J. OSHINS, ESQ.

State Bar No. 5732

OSHINS & ASSOCIATES

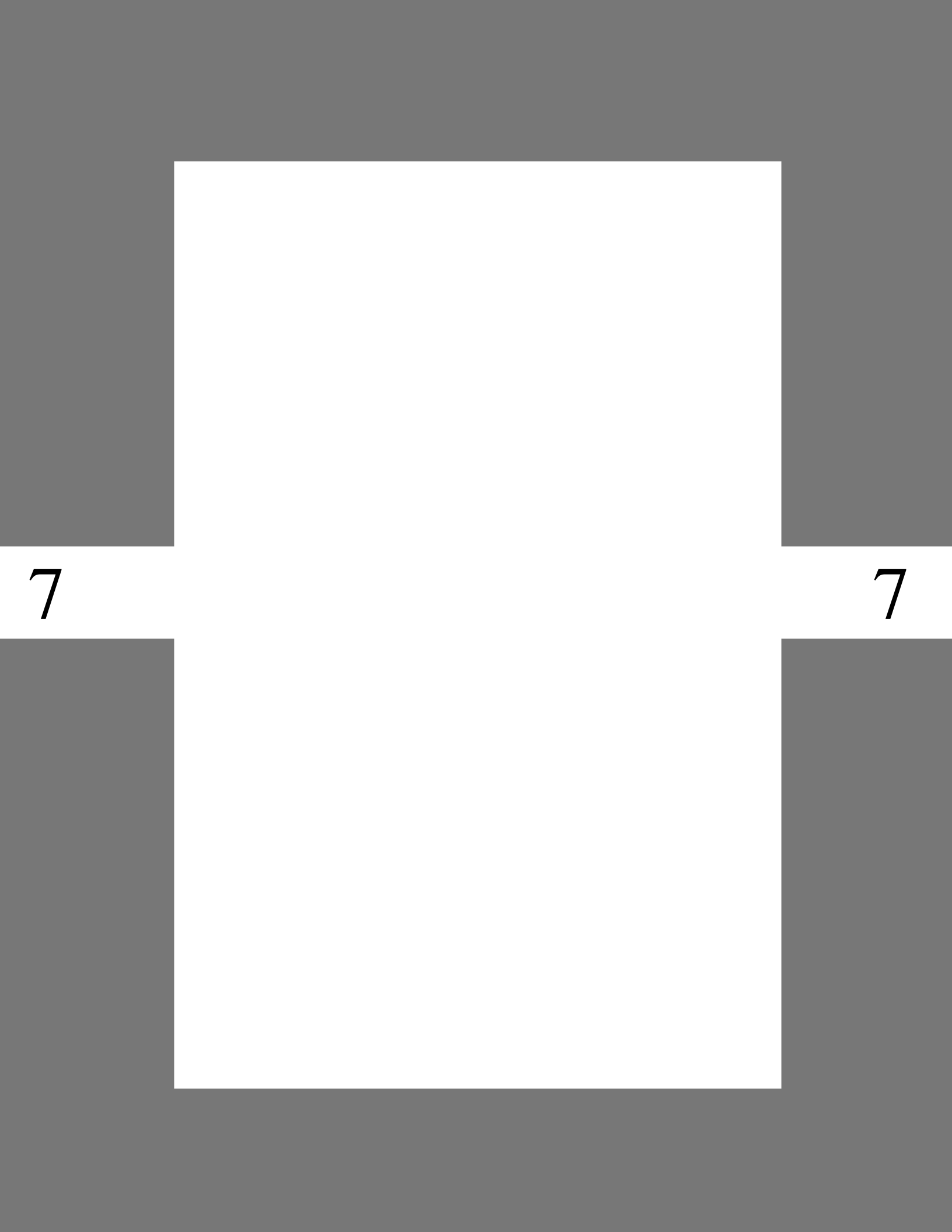
1645 Village Center Circle, Suite 170

Las Vegas, Nevada 89134

(702)341-6000

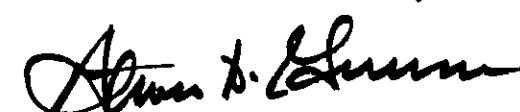
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

000073



7

7



CLERK OF THE COURT

**PET**  
Maximiliano D. Couvillier, III (SBN #7661)  
mcouvillier@lionelsawyer.com  
Ketan D. Bhirud (SBN #10515)  
kbhirud@lionelsawyer.com  
Kendal L. Davis (SBN #11946)  
kdavis@lionelsawyer.com  
LIONEL SAWYER & COLLINS  
1700 Bank of America Plaza  
300 South Fourth Street, Suite 1700  
Las Vegas, Nevada 89101  
(702) 383-8888 (Telephone)  
(702) 383-8845 (Fax)

Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute

DISTRICT COURT

Clark COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased

Case No. P061300  
Dept. No.: 26/Probate

**PETITION TO COMPEL  
DISTRIBUTION, FOR ACCOUNTING  
AND FOR ATTORNEYS' FEES**

1. Pursuant to the terms of Milton I. Schwartz's Will, as amended and restated, and NRS §§ 151.010, 137.080, 137.120, 150.080, and 150.105, the Dr. Miriam and Sheldon G. Adelson Educational Institute ("Adelson Campus" or "Petitioner"), devisee of the will of the Decedent in the above-referenced Estate, by and through its attorneys, Maximiliano D. Couvillier, III, Ketan D. Bhirud, and Kendal L. Davis, of the law firm of Lionel Sawyer & Collins, petitions this Court for an order compelling the Executor of the Estate of Milton I. Schwartz ("the Executor"), to distribute the \$500,000.00 gift ("Gift") for scholarships that is provided for by Milton I. Schwartz's Will, plus accrued interest.

2. In the event that the Executor claims that there is somehow insufficient funds to distribute the Gift, Petitioner petitions this Court for an accounting, which the Executor has *never filed* during the almost 6 years that this matter has been pending.

3. Finally, Petitioner requests its attorneys' fees and costs in connection with these

1 proceedings. Because of his malfeasance and total lack of diligence, and to preclude the  
2 Executor from depleting the assets of the Estate, the Court should hold the Executor *personally*  
3 responsible for the attorneys' fees and costs incurred by both the Petitioner and the Executor.

4 **PROCEDURAL HISTORY & PRELIMINARY STATEMENT**

5 4. This probate matter has been pending for almost 6 years. Milton I. Schwartz  
6 passed away on August 9, 2007. The Executor filed the Petition for Probate of Will and Codicils  
7 on October 15, 2007. The Letters Testamentary were issued on January 1, 2008. The Executor  
8 *has never filed an accounting* as required by NRS §§ 150.080 and 150.105. The Executor has  
9 *never filed the report* required by NRS 143.035(2). The Executor filed an initial inventory on  
10 July 7, 2008, and an amended inventory on January 8, 2009.

11 5. In his Last Will and Testament ("Will") dated February 5, 2004, Mr. Schwartz  
12 bequeathed the \$500,000.00 Gift to Petitioner. Both inventories filed by the Executor showed  
13 sufficient assets to make the Gift. The Executor has also represented to the Petitioner that there  
14 are sufficient funds in the Estate to make the Gift.<sup>1</sup> The Executor, however, wrongfully refuses  
15 to make such Gift unless Petitioner meets the Executor's host of personal conditions; personal  
16 conditions which are not in Milton I. Schwartz's Will.

17 6. Petitioner is a non-profit educational institute. It has attempted for a couple of  
18 years to obtain the Gift from the Executor without this Court's intervention in order to preserve  
19 its resources and the resources of Estate so as to maximize the scholarships from the Gift which  
20 stand to benefit many deserving children. The Executor, however, remains unreasonable and  
21 unresponsive. As such, the Court's intervention is necessary to rectify the Executor's  
22 malfeasance.

23 7. To the extent that the Executor changes his tune and suddenly claims that there  
24 are insufficient funds to make the Gift, Petitioner requests the Court to compel the Executor to  
25 submit an accounting.

26 8. The Court should further hold the Executor personally liable for procuring the

27  
28 <sup>1</sup> Declaration of Paul Schiffman at ¶ 23, attached hereto as Exhibit 1.

1 accounting and for Petitioner's attorneys' fees and costs. The Executor's personal liability is  
 2 appropriate because of his gross breach of responsibilities and diligence in administering the  
 3 Estate, and to preserve the resources of the Estate and the Petitioner.

#### 4 MEMORANDUM OF POINTS AND AUTHORITIES

##### 5 I. 6 FACTS

###### 7 A. The Petitioner and Mr. Schwartz's Gift

8 9. When Milton I. Schwartz ("Mr. Schwartz") passed away on August 9, 2007, he  
 9 left behind an estate worth approximately \$39 million.<sup>2</sup> Mr. Schwartz's Will bequeathed a  
 10 \$500,000.00 Gift to the Petitioner, which was then known as "The Milton I. Schwartz Hebrew  
 11 Academy" and was previously known as "The Hebrew Academy."<sup>3</sup>

12 10. Indeed, since its modest inception in 1980, the school has gone through several  
 13 different corporate names. The seeds for what is today known as The Dr. Miriam and Sheldon  
 14 G. Adelson Education Institute began when "The Hebrew Academy" opened at the original  
 15 Temple Beth Sholom in eastern Las Vegas.<sup>4</sup> In 1988, the school moved west near the corner of  
 16 Lake Mead Boulevard and Hills Center Drive, and thereafter changed names several times  
 17 between "The Hebrew Academy" and "The Milton I. Schwartz Hebrew Academy."<sup>5</sup> The school  
 18 was initially a very modest educational enterprise; its campus was primarily a single building and  
 19 provided education to preschool through eighth grade children.<sup>6</sup>

22 <sup>2</sup> <http://www.lasvegassun.com/news/2009/oct/23/multi-million-dollar-battle-waged-over-estate-milt/>

23 <sup>3</sup> A courtesy copy of Mr. Schwartz's Will is attached hereto as Exhibit 2. The Will was  
 24 previously filed with the Court on October 15, 2007, as part of the Executor's Petition for  
 Probate of Will and Codicils.

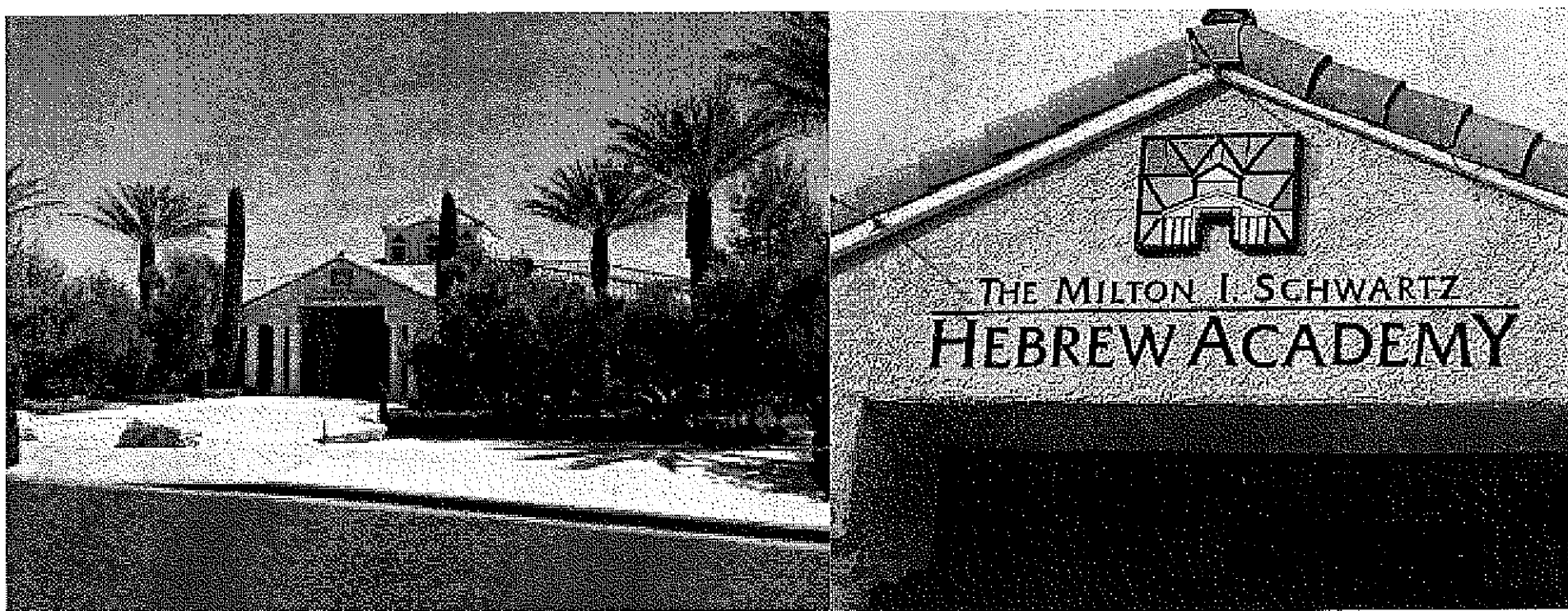
25 <sup>4</sup> Exhibit 1 at ¶ 7; *see also* Articles of Incorporation dated February 27, 1980, attached  
 hereto as Exhibit 3.

26 <sup>5</sup> *Id.* at ¶ 8; *see also* August 22, 1990 Certificate of Amendment of the Articles of  
 27 Incorporation, attached hereto as Exhibit 4; October 19, 1994 Certificate of Amendment of the  
 Articles of Incorporation, attached hereto as Exhibit 5; *See* March 21, 1997 Certificate of  
 Amendment of the Articles of Incorporation, attached hereto as Exhibit 6.

28 <sup>6</sup> *Id.* at ¶ 9.

11. Over the years, the school grew considerably, primarily due to the generous financial contributions of Dr. Miriam and Sheldon G. Adelson.<sup>7</sup> By 2006, it was no longer a single school for young children, but had expanded to include a high school and expanded from a single building to a multi-building campus.<sup>8</sup> And, in 2008, the corporate name was changed to "The Dr. Miriam and Sheldon G. Adelson Educational Institute."<sup>9</sup> Today, the Petitioner operates an accredited private educational institution with a state-of-the-art campus that is spread over several acres and includes three separate schools, numerous buildings, a large auditorium, athletic fields and facilities, a gymnasium and an indoor Olympic swimming pool.<sup>10</sup> The three schools are known as follows:

- (1) the school for 9th through 12th graders is known as the Adelson Upper School;
- (2) the middle school for 5th through 8th graders is known as the Adelson Middle School; and
- (3) the lower school for preschool through 4<sup>th</sup> graders is known as The Milton I. Schwartz Hebrew Academy and is housed in the building identified as "The Milton I. Schwartz Hebrew Academy," as depicted in the following true and correct pictures of the building:<sup>11</sup>



<sup>7</sup> *Id.* at ¶ 10.

<sup>8</sup> *Id.* at ¶ 11.

<sup>9</sup> *Id.* at ¶ 12; *see also* March 21, 2008 Certificate of Amendment of the Articles of Incorporation, attached hereto as Exhibit 7.

<sup>10</sup> *Id.* at ¶ 13.

<sup>11</sup> *Id.* at ¶¶ 14-15.

**B. The Will Imposes Only Two Conditions on the Gift**

12. The express language of the Will imposes *only two conditions* on the Gift. The *first* condition requires the \$500,000.00 or portions thereof to be applied to any mortgages held by the school at the time of Mr. Schwartz's death for which he was a guarantor. The *second and last* condition requires the Gift to be used for scholarships to educate Jewish children only.

The Will provides:

2.3 The Milton I. Schwartz Hebrew Academy. *I hereby give, devise and bequeath the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy").* This gift is to be in the form of securities (stocks, bonds, or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price as directed by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage. In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, *the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.*<sup>12</sup>

13. Mr. Schwartz executed a First Codicil to his Will on January 27, 2006, and Second Codicil on June 21, 2006, but neither Codicil concerned the Gift.<sup>13</sup>

**C. The Only Two Conditions of the Gift Are Satisfied**

**(1) There Is No Mortgage Guaranteed by Milton I. Schwartz**

14. At the time of Milton I. Schwartz's death, the school had an outstanding mortgage of over \$1.8 million, which was personally guaranteed by Mr. Schwartz up to \$1 million.<sup>14</sup> The

<sup>12</sup> See Exhibit 2 at §2.3.

<sup>13</sup> See First Codicil to Last Will and Testament dated January 27, 2006, attached hereto as Exhibit 8; *see also* Second Codicil to Last Will and Testament dated July 21, 2006, attached hereto as Exhibit 9. The First and Second Codicils were previously filed with the Court on October 15, 2007, as part of the Executor's Petition for Probate of Will and Codicils.

<sup>14</sup> See Exhibit 1, at ¶ 16; *see also* Promissory Note dated December 7, 2006, attached



1 school, however, continued to make payments under said mortgage and did not make any  
 2 impositions upon Mr. Schwartz's Estate.<sup>15</sup> The \$1.8 million mortgage was paid off and the  
 3 guaranty by Mr. Schwartz was extinguished on November 2, 2010 from the proceeds of a portion  
 4 of a generous \$25 million donation made by the Adelsons.<sup>16</sup> The Adelsons made another  
 5 unprecedented \$50 million gift and the school has been able to pay off all its debt.<sup>17</sup>

6 (2) *The School Is Prepared to Implement the Gift to Fund Scholarships*

7 15. Once the school receives the Gift, it is prepared to establish the "Milton I.  
 8 Schwartz Scholarship" to be used for the education of Jewish children only.<sup>18</sup>

9 **D. Mr. Schwartz's Death and the Executor's Refusal to Distribute the Gift**

10 16. Mr. Schwartz passed away on August 9, 2007.<sup>19</sup> On October 15, 2007, the  
 11 Executor opened this matter and submitted a Petition for Probate of Will and Codicils. After this  
 12 Court entered an Order granting the Petition, this Court issued the Letters Testamentary on  
 13 January 30, 2008.<sup>20</sup> The Executor has not made the Gift and refuses to make the Gift.<sup>21</sup>

14 17. The Petitioner has made numerous request to the Executor to make the Gift, most  
 15 recently on March 13, 2013.<sup>22</sup> On each occasion the Executor has represented to the Petitioner  
 16 that there are sufficient funds in the Estate to make the Gift, but refuses to make the Gift unless  
 17 Petitioner meets the Executor's *personal* conditions.<sup>23</sup> The Executor's outrageous personal  
 18 demands include that (1) "all letter-head, stationery, correspondence, promotional material,  
 19 websites, business cards, fundraisers, advertisements, etc. (hereinafter, 'Media') associated with  
 20 the Schools shall clearly and prominently identify the *Milton I. Schwartz Hebrew Academy* as

21  
 22 hereto as Exhibit 10.

23 <sup>15</sup> *Id.* at ¶ 17.

<sup>16</sup> *Id.* at ¶ 18.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at ¶ 19.

25 <sup>19</sup> See Certificate of Death, attached hereto as Exhibit 11. The Certificate of Death was  
 previously filed with the Court on October 15, 2007, as part of the Executor's Petition for  
 Probate of Will and Codicils.

26 <sup>20</sup> See Letters Testamentary, attached hereto as Exhibit 12.

27 <sup>21</sup> Exhibit 1 at ¶ 21.

<sup>22</sup> *Id.* at ¶ 22.

<sup>23</sup> *Id.* at ¶ 23.

grades Pre-K through Fourth in perpetuity"; and (2) "All Media shall depict a logo bearing the name, the Milton I. Schwartz Hebrew Academy (in bold, all capital letters), no smaller than any other logo located on the face of said Media."<sup>24</sup> **None of the Executor's conditions, however, are included in the Will.** The only relevant conditions are described above and have been satisfied.

18. The Executor claims that there are certain, purported "agreements" which contain such conditions to the Gift.<sup>25</sup> No such "agreements" exist. Petitioner has made countless demands, and the Executor has never produced any such purported "agreements."<sup>26</sup> Instead, the Executor offered Petitioner an illusory document, captioned "Settlement Agreement," which sets forth his personal conceptions, some of which are mentioned above.<sup>27</sup> Importantly, the Executor drafted this so-called "Settlement Agreement" long *after* the Will and Mr. Schwartz's death, and *after* Petitioner school requested distribution of the Gift. Moreover, the Executor's caption of the document as a "settlement" is a gross misnomer. The document is merely an attempt to extort Petitioner by withholding the Gift until the Executor's *personal* and onerous demands are satisfied. There is no consideration, no mutual releases. The Executor does not provide the school with any new benefit in exchange for his slew of personal requests. **The Gift is already provided for by the Will and all conditions of the Will have been met.**

### III. LEGAL ARGUMENT

#### A. This Court Should Compel the Executor to Distribute \$500,000.00 Gift to the Petitioner in Accordance with the Will Plus Interest

19. NRS 151.010 provides as follows:

1. At any time after the lapse of 3 months from the issuing of letters, the personal representative or any heir or

<sup>24</sup> See Email from Jonathan Schwartz to Victor Chaltiel and Paul Schiffman, attached hereto as Exhibit 13; and Proposed Settlement Agreement Between the Estate of Milton I. Schwartz and the Milton I. Schwartz Hebrew Academy, attached hereto as Exhibit 14. Notably, although the Proposed Settlement Agreement makes numerous demands of the Adelson Educational Campus, the Agreement does not actually release any claims even after full performance.

<sup>25</sup> *Id.* at ¶ 24.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at ¶ 25; see also proposed "Settlement Agreement" attached hereto as Exhibit 14.

devisee, or the assignee, grantee or successor in interest of any heir or devisee, may petition the court to distribute a share of the estate, or any portion thereof, to any person entitled thereto, upon the person giving a bond, with approved security, for the payment of the person's proportion of the debts of the estate.

2. The court may dispense with a bond if it is made to appear that the bond is unnecessary.

20. The Letters Testamentary were issued on January 30, 2008, and thus, more than 3 months have passed since the issuances of the letters.<sup>28</sup> As was explained above, the Will provides the \$500,000.00 Gift to Petitioner with the only conditions that (1) the Gift or portions thereof be applied to any mortgages held by the school at the time of Mr. Schwartz's death for which he was a guarantor; and (2) the Gift be used for scholarships to educate Jewish children only.

21. There is no current mortgage guaranteed by Mr. Schwartz and the school has agreed to use the Gift to fund scholarships for Jewish children only.<sup>29</sup> Therefore, this Court should order the Executor to distribute the \$500,000.00 Gift to the Petitioner. Additionally, because there are no competing claims to the Gift, a bond is not necessary.

22. Because of the Executor's almost 6 year delay in making the distribution, Petitioner request that the Court award income on the \$500,000.00 pursuant to NRS 164.800 or, to the extent that there is no income or that income is nominal, that the Court impute income through an award of interest at the statutory rate.<sup>30</sup>

**B. The Executor Did Not Contest the Validity of the Will and the Gift, and Cannot Do So Now**

23. NRS 137.080 provides as follows:

After a will has been admitted to probate, any interested person other than a party to a contest before probate or a person who had actual notice of the previous contest in time to have joined therein may, at any time within 3 months after the order is entered admitting the will to probate, contest the admission or the validity of the will.

<sup>28</sup> See Exhibit 12.

<sup>29</sup> See Exhibit 1, at ¶¶ 18-19.

<sup>30</sup> See *Jordan v. State, Dep't of Motor Vehicles*, 121 Nev. 44, 59, 110 P.3d 30, 41, 42 (2005) ("Nevada courts also possess inherent powers of equity . . .").

1 The contestant must file with the court in which the will  
2 was proved a petition containing the allegations of the  
3 contestant against the validity of the will or against the  
sufficiency of the proof, and requesting that the probate be  
revoked.

4 24. NRS 137.120 provides as follows:

5 If no person contests the validity of a will or of the probate  
6 thereof, within the time specified in NRS 137.080, the  
probate of the will is conclusive.

7 25. The Executor did not contest the validity of the Will, including the Gift, within  
8 the time frame required by NRS 137.080. Therefore, the Executor is now precluded by NRS  
9 137.120 from contesting the Gift or the Will.

10 **C. To the Extent the Executor Suddenly Claims There Are Insufficient Funds**  
11 **Available for the Gift, the Court Should Compel the Executor to File an Accounting**

12 26. NRS 150.080 provides as follows:

13 Within 6 months after the appointment of a personal  
14 representative, or sooner if required by the court, upon its  
own motion or upon the petition of an interested person, a  
personal representative shall file with the clerk the first,  
verified account, showing:

15 1. The amount of money received and expended by the  
16 personal representative.

17 2. The claims filed or presented against the estate,  
18 giving the name of each claimant, the nature of his or her  
claim, when it became due or will become due, whether it  
19 was allowed or rejected by the personal representative, or  
not yet acted upon.

20 3. All other matters necessary to show the condition of  
the estate.

21 27. NRS 150.105 provides as follows:

22 Until all remaining property is delivered pursuant to an  
23 order of final distribution, a personal representative shall  
24 file with the court, annually, an account showing the  
income the personal representative has received, what  
25 expenditures he or she has made, what property has been  
disbursed, or sold and at what price, and the nature and  
26 value of the property remaining on hand.

27 28. NRS 143.035(1) requires the Executor to use reasonable diligence in performing  
28 his duties and administering the Estate. The Executor has not been reasonably diligent. The

1 probate matter has been pending for almost six years. The Executor has not filed the report  
2 required by NRS 143.035(2).

3 29. The Executor has also failed to provide either the initial accounting or the annual  
4 accountings required by statute. Thus, the Court should order the Executor to comply with NRS  
5 150.080 and NRS 150.105 and provide an accounting, which Executor should personally pay for  
6 given his gross malfeasance, and in order to preserve the assets of the Estate and of Petitioner (a  
7 non-profit education entity).

8 **D. This Court Should Suspend the Executor's Letters Testamentary**

9 30. Petitioner does not wish to become involved in the administration of the Estate.  
10 However, to the extent that the Executor refuses to make the distribution, Petitioner requests that  
11 the Court remove the Executor or suspend his Letters Testamentary to preclude him from using  
12 and depleting the assets of the Estate.

13 31. NRS 141.090 provides that

14 If a court has reason to believe, from its own knowledge or from  
15 credible information, that a personal representative: . . .

16 **6. *Has unreasonably delayed the performance of necessary acts***  
17 ***in any particular as personal representative***, the court may, by an  
18 order entered upon the minutes, suspend the powers of the personal  
19 representative until the matter can be investigated, or take such  
20 other action as it deems appropriate under the circumstances.<sup>31</sup>

21 32. Thereafter, "[i]f an order of suspension is entered, the clerk shall issue a citation,  
22 reciting the order of suspension, to the personal representative to appear before the court at a  
23 time stated, as fixed by the court, to show cause why the letters of the personal representative  
24 should not be revoked."<sup>32</sup>

25 33. Pursuant to NRS 141.095, "[a]fter receipt of notice of a proceeding to suspend or  
26 remove a person as personal representative, the person shall not act except to account, correct  
27 misfeasance of administration, or preserve the estate."<sup>33</sup> Accordingly, Petitioner requests that  
28 this Court enter an order prohibiting the Executor from acting except to account, correct

<sup>31</sup> NRS § 141.090(6) (2011) (emphasis added).

<sup>32</sup> NRS § 141.110(1) (2011).

<sup>33</sup> NRS § 141.095 (2011).

1 misfeasance of administration, or preserve the estate until the date and time of his court  
2 appearance pursuant to this Court's citation.

3 34. The Adelson Campus requests the Executor's suspension for the sole purpose of  
4 seeking payment of the Gift because the Adelson Campus has no confidence in the Executor's  
5 ability to make the Gift. The Adelson Campus has no interest in becoming involved in the  
6 subsequent probate proceedings regarding the Executor's possible suspension.

7 35. Therefore, this Court should suspend the Executor's Letters Testamentary  
8 pursuant to NRS 141.090.

9  
10 **IV.  
CONCLUSION**

11 36. For the foregoing reasons, this Court should order the Executor:

12 (a) to distribute the \$500,000.00 Gift to Petitioner (plus interest accrued since  
13 August 9, 2007), and ultimately to the numerous children who stand to benefit from the  
14 scholarships to be funded by the Gift;

15 (b) personally liable for Petitioner's attorney's fees and costs incurred in  
16 connection with its petition; and

17 (c) personally liable for the Executor's attorney's fees and costs incurred in  
18 connection with this petition.

19 37. To the extent that the Executor claims that there are insufficient funds to make the  
20 distribution, the Court should compel the Executor to file an accounting, and that Executor be  
21 personally liable for procuring such accounting.

22 LIONEL SAWYER & COLLINS

23 By: K. D. Bhurud  
24 Maximiliano D. Couvillier, III (SBN #7661)  
25 Ketan D. Bhurud (SBN #10515)  
Kendal L. Davis (SBN #11946)

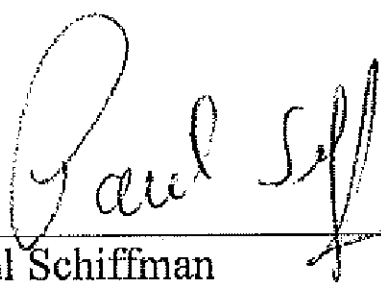
26 Attorneys for The Dr. Miriam and Sheldon G.  
27 Adelson Educational Institute  
28

VERIFICATION

I, Paul Schiffman, hereby declare under penalty of perjury under the laws of the State of Nevada:

I am Head of School at The Dr. Miriam and Sheldon G. Adelson Educational Institute, the Petitioner named in the foregoing Petition to Compel Distribution, for Accounting, and for Attorneys' Fees. I have read the same and know the contents thereof. The Petition is true to the best of my own personal knowledge, except for any matters stated upon information and belief; and as to those statements, I believe them to be true.

Dated: May 2, 2013

  
Paul Schiffman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 3, 2013, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing **PETITION TO COMPEL DISTRIBUTION, FOR ACCOUNTING AND FOR ATTORNEYS' FEES** enclosed in a sealed envelope upon which first class postage was paid, addressed as follows:

Steven J. Oshins, Esq.  
OSHINS & ASSOCIATES  
645 Village Center Circle  
Las Vegas, NV 89134

Attorneys for Executor

Eileen Joanna Zarin  
9 Steven Lane  
King Point, NY 11024

Samuel Schwartz  
351 Woodlake Drive  
Marlton, NJ 08053

Zachary Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Joshua Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

The Milton I. Schwartz Revocable Family  
Trust, A. Jonathan Schwartz, Trustee  
2293 Duneville Street  
Las Vegas, NV 89146

Robert P. Dickerson, Esq.  
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, NV 89134

Attorneys for Abigail Richlin Schwartz

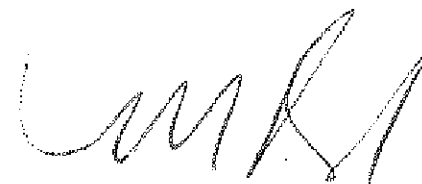
Robin Sue Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Michael Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Benjamin Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Frances A. Martel  
235 Vista Del Parque  
Redondo Beach, CA 90277

Medicaid Estate Recovery  
1050 E. William Street, Suite 435  
Carson City, NV 89701-3199



An Employee of Lionel Sawyer & Collins



# Exhibit 1

# Exhibit 1

1 **DEC**  
 2 Maximiliano D. Couvillier, III (SBN #7661)  
 3 mcouvillier@lionelsawyer.com  
 4 Ketan D. Bhirud (SBN #10515)  
 5 kbhirud@lionelsawyer.com  
 6 Kendal L. Davis (SBN #11946)  
 7 kdavis@lionelsawyer.com  
 8 LIONEL SAWYER & COLLINS  
 9 1700 Bank of America Plaza  
 10 300 South Fourth Street, Suite 1700  
 11 Las Vegas, Nevada 89101  
 12 (702) 383-8888 (Telephone)  
 13 (702) 383-8845 (Fax)

14 Attorneys for The Dr. Miriam and  
 15 Sheldon G. Adelson Educational Institute

16 **DISTRICT COURT**

17 **Clark COUNTY, NEVADA**

18 In the Matter of the Estate of

19 **MILTON I. SCHWARTZ,**

20 **Deceased**

21 Case No. P061300  
 22 Dept. No.: 26/Probate

23 **DECLARATION OF PAUL SCHIFFMAN**

24 Paul Schiffman, pursuant to NRS 53.045, declares as follows:

25 1. I am Head of School at The Dr. Miriam and Sheldon G. Adelson Educational  
 26 Institute ("Petitioner") and have held that position since July 15, 2006.

27 2. I make this Declaration in support of the Petitioner's Petition to Compel  
 28 Scholarship Gift from the Estate of Milton I. Schwartz, and If Necessary, Petition for Account  
 (the "Petition").

3. In my capacity as Head of School, I am the sole employee of the Board of  
 Trustees and am responsible for the daily operation of Petitioner's campus. Specifically, I am  
 responsible for developing and cascading the organization's strategy to the staff, and  
 implementing appropriate practices to align personnel with company goals.

4. As a result of my employment responsibilities and my performance thereof, I  
 have knowledge of the facts set forth herein which are known by me to be true and correct. I am  
 competent to testify if called as a witness.

1           5.     It is Petitioner's practice and procedure to maintain records and to record  
2 transactions, acts, conditions, and events at or about the time such transactions, acts, conditions  
3 or events occur. It is the standard operating procedure to preserve all such documents in a place  
4 of safe keeping, that has in fact been done, and I have personal access to and the power to  
5 exercise control over these books and records.

6           6.     I have personally reviewed Petitioner's business records which are attached to the  
7 Petition. As part of my duties for Petitioner, I monitor Petitioner's finances and oversee  
8 construction. In that capacity, I am personally familiar with the manner in which Petitioner's  
9 documents, books, files, and records are prepared and maintained. The records which are  
10 attached to the Petition are true and correct copies of business records kept and maintained in the  
11 course of Petitioner's regularly conducted business activity.

12           7.     The seeds for what is today known as "The Dr. Miriam and Sheldon G. Adelson  
13 Educational Institute" ("Adelson Campus") began when "The Hebrew Academy" opened at the  
14 original Temple Beth Sholom in eastern Las Vegas. Attached to the Petition as Exhibit 3 is a  
15 true and correct copy of the Articles of Incorporation dated February 27, 1980.

16           8.     In 1988, the school moved west near the corner of Lake Mead Boulevard and  
17 Hills Center Drive, and thereafter changed names several times between "The Hebrew Academy"  
18 and "The Milton I. Schwartz Hebrew Academy." Attached to the Petition as Exhibits 4, 5, and 6,  
19 respectively, are the August 22, 1990 Certificate of Amendment of the Articles of Incorporation;  
20 the October 19, 1994 Certificate of Amendment of the Articles of Incorporation; and the March  
21 21, 1997 Certificate of Amendment of the Articles of Incorporation.

22           9.     The school was initially a very modest educational enterprise; its campus was  
23 primarily a single building and provided education to preschool through eighth grade children.

24           10.    Over the years, the school grew considerably, primarily due to the generous  
25 financial contributions of Dr. Miriam and Sheldon G. Adelson.

26           11.    By 2006, it was no longer a single school for young children, but had expanded to  
27 include a high school and expanded from a single building to a multi-building campus.

28

1           12. In 2008, the corporate name was changed to "The Dr. Miriam and Sheldon G.  
2 Adelson Educational Institute." Attached to the Petition as Exhibit 7 is a true and correct copy of  
3 the March 21, 2008 Certificate of Amendment of the Articles of Incorporation.

4           13. Today, the Petitioner operates an accredited private educational institution with a  
5 state-of-the-art campus that is spread over several acres and includes three separate schools,  
6 numerous buildings, a large auditorium, athletic fields and facilities, a gymnasium and an indoor  
7 Olympic swimming pool.

8           14. The three schools are known as follows:

9               (1) the school for 9th through 12th graders is known as the Adelson Upper  
10 School;

11               (2) the middle school for 5th through 8th graders is known as the Adelson Middle  
12 School;

13               (3) the lower school for preschool through 4<sup>th</sup> graders is known as The Milton I.  
14 Schwartz Hebrew Academy and is housed in the building identified as "The Milton I.  
15 Schwartz Hebrew Academy."

16           15. True and correct pictures of the "The Milton I. Schwartz Hebrew Academy" are  
17 attached included in the Petition in Section I.A.


18           16. At the time of Milton I. Schwartz's ("Mr. Schwartz") death, the school had an  
19 outstanding mortgage of over \$1.8 million, which was personally guaranteed by Mr. Schwartz up  
20 to \$1 million. A true and correct copy of the Promissory Note evidencing that debt is attached to  
21 the Petition as Exhibit 10.

22           17. The school, however, continued to make payments under said mortgage and did  
23 not make any impositions upon Mr. Schwartz's Estate.

24           18. The \$1.8 million mortgage was paid off and the guaranty by Mr. Schwartz was  
25 extinguished on November 2, 2010, from the proceeds of a portion of a generous \$25 million  
26 donation made by the Adelsons. The Adelsons made another unprecedented \$50 million gift and  
27 the school has been able to pay off all its debt.

28

\*\*\*

  
Paul Schiffman

# Exhibit 2

# Exhibit 2

# LAST WILL AND TESTAMENT

OF

MILTON I. SCHWARTZ

FILED

OCT 11 4 23 PM '07

I, MILTON I. SCHWARTZ, domiciled in Clark County, Nevada, and a citizen of the United States, being of sound and disposing mind memory, do hereby make, publish and declare this to be my LAST WILL AND TESTAMENT, and hereby revoke any and all Wills and Codicils at any time heretofore made by me.

## FIRST: MARITAL AND FAMILY STATUS

I am married to ABIGAIL SCHWARTZ and any references to my "spouse" or my "wife" herein is to her. I have four (4) children now living, whose names and dates of birth are:

EILEEN JOANNA ZARIN	July 21, 1948
ROBIN SUE LANDSBURG	January 15, 1951
SAMUEL SCHWARTZ	June 8, 1953
A. JONATHAN SCHWARTZ	August 5, 1970

The terms "my child" and "my children" as used in this Will shall refer to the aforementioned children. The term "descendants" as used in this Will shall mean the blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted who was a minor at the date of adoption, that child or his descendants shall be considered as descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or either of the adopting parents.

## SECOND: BEQUESTS

2.1 Written Directions. I may leave one or more written directions disposing of items of personal and household articles. Each shall be effective only if (i) executed by me with all the formalities of a deed (i.e., witnessed and notarized), and (ii) delivered to the Trustees of the trust referred to in ARTICLE THIRD hereof prior to my death. Each may be dated before or after the date of this Will, but none shall be effective insofar as I have expressly revoked it by a similarly executed and delivered written instrument. If such a direction exists, (i) it shall be given effect as though its provisions were written here (in this Section) in this Will, and (ii) it shall take precedence over any contrary disposition of the same item or items of property in this Will (or in any Codicil hereto, unless such Codicil expressly overrides such direction). If there be more than one such unrevoked direction, to the extent they are in conflict, the one bearing the most recent date shall control.

2.2 Personal and Household Articles Not Subject to Written Directions. Subject to the foregoing provisions of Section 2.1, I give my jewelry, clothing, household furniture and furnishings, personal automobiles, and any other tangible articles of a personal nature; or my interest in any such property, not otherwise specifically disposed of by this will, or in any other manner, together with any insurance on the property, to my descendants who survive me, per stirpes, such descendants to make their shares as they shall agree. My Executor shall represent any beneficiary under age 18 in matters relating to any distribution under this Section 2.2, including selection of the assets that shall constitute that beneficiary's share, and my Executor in my Executor's discretion sell for the beneficiary's account any part of the beneficiary's share. Any property or its proceeds distributable to a beneficiary under age 18 pursuant to this Section 2.2 may be delivered without bond to any suitable person with whom the beneficiary resides or who has care of the beneficiary.

I direct that the expense of packing, shipping and delivering such property to said legatee, at said legatee's

Testator's Initials

*MIS*

residence or place of business, shall be paid by my Executor as an administration expense of my estate.

2.3 The Milton I. Schwartz Hebrew Academy. I hereby give, devise and bequeath the sum of five hundred thousand dollars (\$500,000.00) to the Milton I. Schwartz Hebrew Academy (the, "Hebrew Academy"). This gift is to be in the form of securities (stocks, bonds or cash) with the largest profit so that my estate can take advantage of the low cost basis and increased price as directed by my Executor in his sole discretion. If, at the time of my death, there is a bank or lender mortgage (the "mortgage") upon which I, my heirs, assigns, or successors in interest are obligated as a guarantor on behalf of the Hebrew Academy, the \$500,000.00 gift shall go first to reduce and or expunge the mortgage. In the event that the lender will not release my estate or my heirs, successors or assigns, no gift shall be given to the Hebrew Academy. In the event that no mortgage exists at the time of my death, the entire \$500,000.00 amount shall go to the Hebrew Academy for the purpose of funding scholarships to educate Jewish children only.

2.4 Landsburg Grandson's Gift. I hereby give, devise and bequeath the total sum of one hundred eighty thousand dollars (\$180,000.00); forty five thousand dollars (\$45,000.00) each to the following of my grandchildren upon my death in recognition of my appreciation and pride that I experienced upon hearing each of the following grandchildren chant a portion of the Torah at Benjamin Landsburg's Bar Mitzvah: Michael Landsburg; Zachary Landsburg; Benjamin Landsburg; Joshua Landsburg.

2.5 Distribution of Trust Assets of THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST. I created THE MILTON I. SCHWARTZ 1991 IRREVOCABLE TRUST on August 21, 1991 (herein, "MIS 1991 Trust"), which presently owns the home in which I reside commonly known as 2120 Silver Avenue, Las Vegas, Nevada (herein, the "home"). Under the terms of the MIS 1991 Trust, if I should die prior to the 13 years and 7 month term, I give, devise and bequeath the home to my wife, ABIGAIL SCHWARTZ, if she survives me, provided that she is married to and living with me at the time of my death.

2.6 Frances A. Martel. I hereby direct my Executor or the Successor-Trustee of the Milton I. Schwartz Revocable Family Trust, dated January 29, 1986 (herein, my "Executor") as the case may be, to give, devise and bequeath the sum of one thousand dollars (\$1,000.00) per month, each month, to Frances A. Martel (herein, "Martel") for so long as she shall live.

2.7 Termination of Gifts. I hereby terminate and revoke any gift to the following: Las Vegas Jewish Federation or any successor thereto; Las Vegas Jewish Federation Day School in Formation or any successor thereto. In the event that the revocation of these gifts in section 2.8 hereof shall be challenged in any way, I hereby give, devise and bequeath the sum of one dollar only (\$1.00) to each organization.

### THIRD: RESIDUARY BEQUESTS

3.1 Residue to Trust. I give, devise and bequeath the residue of my estate to A. JONATHAN SCHWARTZ as Successor-Trustee, or any successor Trustees, of the trust designated as "THE MILTON I. SCHWARTZ REVOCABLE FAMILY TRUST" established January 29, 1986 and amended earlier today, of which I am the Grantor and the original Trustee. I direct that the residue of my estate shall be added to, administered and distributed as part of that trust, according to the terms of that trust and any amendments made to it before my death. To the extent permitted by law, it is not my intention to create a separate trust by this Will or to subject the trust or the property added to it by this Will to the jurisdiction of the Probate Court.

3.2 Incorporation by Reference. If the disposition in Section 3.1 is not operative or is invalid for any reason, or if the trust referred to in that Section fails or has been revoked, then I hereby incorporate by reference the terms of that trust, including any amendments thereto, and I give, devise and bequeath the residue of my estate to the Trustee named therein as Trustee, to be held, administered and distributed as provided in that instrument.

Testator's Initials

MS



FOURTH: EXECUTOR

4.1 Appointment of Executor. I nominate, constitute and appoint A. JONATHAN SCHWARTZ, or in the event of his death, Robin Sue Landsburg, as Executor of this Will. If both shall for any reason fail to qualify or cease to act as such Executor, then I nominate Eileen Joanna Zarin as Executor in their place and stead. The term "my Executor" as used in this Will shall include any personal representative of my estate.

4.2 Waiver of Bond. No bond shall be required of any Executor nominated in this Will.

4.3 Appointment of Ancillary Fiduciaries. Should ancillary administration be necessary or advantageous in any jurisdiction and should my Executor be unable and or unwilling to act as my ancillary fiduciary, I nominate, constitute and appoint as ancillary fiduciary such qualified person or trust institution as my Executor shall from time to time designate (with retained right of removal) in a writing filed in the court having ancillary jurisdiction. Furthermore, all my ancillary fiduciaries shall at all times be subject to the directions of my Executor and the residuary estate of each ancillary administration shall be transmitted to my Executor as promptly as possible.

4.4 Election of Simplified Unsupervised Administration. If independent administration without certain court proceeding and supervision is to any extent permitted under the laws of any jurisdiction in which any part of my estate is being administered, I hereby elect such simplified mode(s) of administration and direct; to the greatest extent possible, settlement of my estate without the intervention of or accountings to any courts.

4.5 General Powers. In addition to, and not in limitation of the Executor's common law and statutory powers, and without order or approval of any court, I give and grant to my Executor the rights and powers to take any action desirable for the complete administration of my estate, including the power to determine what property is covered by general descriptions contained in this Will, the power to sell on behalf of my estate, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law.

4.6 Power Regarding Tax Returns. My Executor is authorized to file an income tax return for me and to pay all or any portion of the taxes due thereon. If any additional assessment shall be made on account of any income tax return which I have filed, my Executor is authorized to pay the additional assessment. The exercise of authority hereunder by my Executor shall be conclusive and binding on all persons.

4.7 Power to Make Tax Elections. My Executor has the authority to make the following choices

(a) Elect any valuation date for purposes of federal estate tax permitted by law which my Executor deems to be to the best advantage of the family considered as a whole rather than the advantage of those interested only in my estate, even to the extent of making the election in such a way that the federal estate tax is greater rather than less a result of such election, provided that in my Executor's discretion such is likely to be for the best advantage, present and future, of the family taken as a whole.

(b) Choose the methods of payment of federal estate taxes or state estate or inheritance taxes.

(c) Determine whether any or all of the expenses of administration of my estate shall be used as federal estate tax deductions or as federal income tax deductions. No beneficiary under this Will shall have any right to recoupment or restoration of any loss the beneficiary suffers as a result of the use of such deduction for one or the other of these purposes.

(d) Join with my spouse or the estate of my spouse in filing a joint income or gift tax return or returns for any arrears for which I have not filed returns prior to my death.

(e) Consent that any gifts made by me or my spouse have been made one-half by me and one-half by my spouse for gift tax purposes even though these actions may subject my estate to additional tax liabilities.

Testator's Initials JS

- (f) Allocate in my Executor's sole discretion, any portion of my exemption under Sec. 2631(a) of the Internal Revenue Code, as amended, to any property as to which I am the transferor, including any property transferred by me during life as to which I did not make an allocation prior to my death.
- (g) Exercise any other options or elections afforded by the tax law of the United States or of any other jurisdiction. My Executor may exercise this authority in my Executor's sole discretion; regardless of any other provisions in this Will or the effect on any other provisions of this Will or the effect on any person interested in my estate. No beneficiary under this Will shall be entitled to a compensating adjustment even though the exercise of these tax powers affects the size or composition of my estate or of any disposition under this Will. The determination of my Executor with respect to the exercise of the election shall be conclusive upon all affected persons.

4.8 Power to Select Property to be Distributed. I authorize my Executor, on any preliminary or final distribution of property in my estate, to partition, allot, and distribute my estate in kind, including undivided interests in my estate or any part of it, or partly in cash and partly in kind, or entirely in cash, in my Executor's absolute discretion. Any distribution or division in kind may be made on a proportionate or a non-proportionate basis so long as the respective assets allocated or distributed have equivalent or proportionate fair market values.

4.9 Power to Employ. My Executor may employ and compensate from my estate accountants, brokers, attorneys, investment advisors, custodians and others whose services are, in my Executor's discretion, necessary or convenient to the administration of the estate created herein. My Executor is expressly authorized to employ and compensate any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the administration of my estate.

4.10 Continuance of Business. (a) I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interests of my estate, or to sell or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my Executor in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

4.10 (b) In connection with the business interests known as Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation, Nevada Star Cab Corporation, Besdew Limited Partnership, National Automotive, Ltd., Star Limousine, L.L.C. and all affiliates and related entities, and any successor companies thereto, and all real estate related thereto (herein "YCS"); as well as the real property commonly known as Jennifer Park, Jonathan Park, Michael Park, as well as any other real estate held by the Grantor's estate or real estate or investments invested in as proceeds from the sale of these properties; any investments whether equities, stocks, bonds, limited partnerships, cash or investments invested in as proceeds from the sale of these investments (herein, "investments"); the management of Americab, Roland Garage, all affiliates and related entities (herein "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab; as well as any other real estate or businesses of which the Grantor or his estate held or holds an interest in, the Grantor specifically nominates, constitutes and appoints his son, Executor, and Trustee, **A. JONATHAN SCHWARTZ** (herein, "JONATHAN"), to serve and represent his, his family's, estate's and Revocable Trust's interests, with respect thereto. **A. JONATHAN SCHWARTZ** is fully familiar with the details of these business interests and most capable of continuing the management of their affairs. Insofar as the Grantor has personally performed management duties and functions in the past, represented his or his family's interest at Board Meetings, TSA or TA Meetings, **JONATHAN** is hereby designated to continue in those capacities subject to the following conditions:

4.10 (c) In connection with management duties performed by **A. JONATHAN SCHWARTZ** for the Grantor, the Grantor's estate and Revocable Trust's interest in YCS and any successor companies thereto, and all real estate related thereto; **A. JONATHAN SCHWARTZ** shall receive a ninety three thousand eight hundred forty six (\$93,846.00) annual salary, increased by 2% each year (herein, "YCS Salary"). The YCS Salary shall be paid from a combination of both the Payroll and Director's Fees customarily received by the Grantor during his life. Furthermore, **A. JONATHAN SCHWARTZ** shall receive any medical insurance or other benefits as a Director of YCS as the Grantor received during his lifetime.

Testator's Initials LSH

4.10 (d) JONATHAN'S management, control and decision making authority of YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, JONATHAN must receive two additional votes of the Grantor's three remaining children or their representatives.

4.10 (e) Notwithstanding any provision herein contained to the contrary, all stock held or managed by Milton I. Schwartz at the time of his death or held in the Milton I. Schwartz Revocable Family Trust (January 29, 1986) in YCS, shall continue to be held, after Milton I. Schwartz's death, in the name of the Milton I. Schwartz Revocable Family Trust (January 29, 1986), A. Jonathan Schwartz, Trustee. JONATHAN'S duties as described within this section 4.02 shall continue for his lifetime or permanent disability.

4.10 (f) Notwithstanding any provision herein contained to the contrary, to the extent that the primary assets of YCS are sold, comprised of the entity names and transportation operations so that there are no further operations of YCS or its successors, and if the sales proceeds are distributed out to the respective owners of YCS, the Trustee shall distribute out said sales proceeds to each of the four family units as to twenty-five percent (25%) to each family unit.

4.10 (g) JONATHAN'S management, control and decision making authority on behalf of my estate's interest in YCS shall be limited only by the following: In the event that the primary assets of YCS (the taxicab and transportation operations) are to be sold, in order to provide consent to such a sale, JONATHAN must receive two additional votes of my three remaining children or their representatives.

4.10 (h) With regard to the management of Jennifer Park, Jonathan Park and all other income producing properties in which I or my estate holds an interest, JONATHAN shall receive a management fee in the amount of three percent (3%) of the annual base rent generated by the respective property, as he has received during my life, for property management services.

4.10 (i) In connection with JONATHAN'S property management services of the property commonly known as Michael Park, JONATHAN shall receive monthly compensation of one thousand six hundred sixty seven dollars (\$1,667.00) as he has received during my life.

4.10 (j) JONATHAN shall serve as President of Americab, Roland Garage, all affiliates and related entities (herein, "Americab"), and all related real estate and any successor companies thereto or companies or investments, invested in as proceeds from the sale of Americab.

4.11 Distribution to Minors. In the event any person entitled to receive distributions hereunder shall be a minor, or an incompetent, the distributions to that person shall be to the natural guardian of the legally appointed guardian, conservator or other fiduciary of the person or estate of that person (including, but not limited to, a custodian for the beneficiary under the Uniform Transfers to Minors Act in the state in which the beneficiary or custodian resides or any other state of competent jurisdiction), to be held and used exclusively for the benefit of that person. My Executor shall not be required to see to the application of any funds so paid or applied and the receipt of that guardian, conservator or other fiduciary of the person or estate of that person shall be complete acquittance of my Executor.

4.12 Power to Disclaim. My Executor is authorized to disclaim all or any portion of any bequest, devise or trust interest provided for me under any will or trust instrument. In particular, I authorize my Executor to exercise this authority in order to obtain advantageous results considering, in the aggregate, the taxes to be imposed on my spouse's estate and mine, even though this may cause some beneficiaries of my estate to receive less than they would otherwise have received.

4.13 Power to Transact with Trusts. My Executor is hereby authorized to purchase any property, and to make loans and advances, or to otherwise deal with, the Trustee of any trust, including, but not limited to, trusts wherein the Executor and Trustee shall be the same parties.

#### FIFTH: TESTAMENTARY DECLARATIONS

5.1 Revocation of Spouse's Right to Receive Annuity Payments. Pursuant to the provisions of Section 4.01 of each of THE ROBIN SUE LANDSBURG 1993 RETAINED ANNUITY TRUST, THE EILEEN JOANNA ZARIN 1993 RETAINED ANNUITY TRUST, THE SAMUEL SCHWARTZ 1993 RETAINED ANNUITY TRUST and THE

Testator's Initials ledg

A. JONATHAN SCHWARTZ 1993 RETAINED ANNUITY TRUST, my wife has the right to receive certain annuity payments, subject to my power of revocation. I hereby revoke my wife's right to receive any such annuity payments.

5.2 Non-exercise of Powers of Appointment. I refrain from exercising any testamentary power of appointment that I may have at the time of my death.

5.3 Presumption of Survivorship. For purposes of this Will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within 90 days' after my death.

5.4 Confirmation of Gifts. I hereby ratify and confirm all gifts made by me prior to my death, and I direct that none of those gifts should be deemed or construed to be an advancement to any beneficiary nor shall any gift be taken into account in the settlement of my estate.

5.5 Premarital Agreement. On January 26, 1993 I entered into a Premarital Agreement with my wife. I have made provisions in the trust referred to in ARTICLE THIRD hereof to carry out the provisions of said Agreement. I hereby direct my Executor to take any further actions necessary or appropriate to carry out the terms of said Agreement. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement in lieu of any other bequests or legacies to Abigail Schwartz, only to the extent agreed to in writing by Abigail Schwartz and myself, or as ordered in a judgment of a court of competent jurisdiction. Abigail Schwartz shall have no further interest in my estate, Will or trusts.

5.5 (b) Abigail Schwartz Outstanding Loan. As of January 7, 2004, an outstanding Promissory Note (herein, the "Note") existed between my wife and myself whereby my wife owes me or my estate two hundred thirty thousand dollars (\$230,000.00). To the extent that any balance is left remaining on the Note at the time of my death, any amounts to be paid to my wife from my estate, in accordance with our Premarital Agreement, shall be reduced by the amount of the balance on the Note.

#### SIXTH: MISCELLANEOUS

6.1 Incontestability. In the event any person authorized to receive any property hereunder commences, prosecutes, promotes, intervenes in, contributes to or voluntarily participates in, directly or indirectly, or counsels or aids any other person to commence, prosecute, promote, intervene in, contribute to or voluntarily participate in, directly or indirectly, any proceeding or action in any court, agency, tribunal or other forum wherein the person authorized to receive property or the counseled person (1) seeks to void, nullify or set aside all or any part of my Will; (2) seeks to void, nullify or set aside any trust of which I am a grantor or trustee, or both; or (3) makes a claim which is based upon any alleged act or omission by me, individually, or in my capacity as trustee, executor, partner, officer or director, or in any other capacity; or (4) directly or indirectly contests or calls into question the discretionary decisions of the Executor or Trustee hereunder, then I revoke any share or interest in my estate given under this Will or in the trust referred to in ARTICLE THIRD hereof to the person making the claim, to the counseling person, and to the descendants of each of them, and such share or interest shall be immediately disposed of by termination of the appropriate trust or trust or otherwise, as if such claimant or counseling person had predeceased me without descendants. This provision shall remain in effect from my death until no trust under the trust referred to in ARTICLE THIRD hereof is in existence, whether or not the administration of my estate has been completed. If any provision of this Article is held to be unenforceable or void for any reason, the remaining provisions shall be fully effective.

6.2 Tax Contribution. I direct that every specific and general gift, devise or bequest given under this Will or any Codicil hereto shall be delivered free of all estate and inheritance taxes and that such taxes be paid out of the residue of my estate. I further direct that no legatee, devisee or beneficiary hereunder, or beneficiary under any of my life insurance policies, or any surviving joint tenant, or any trustee of any private trust of mine which shall be in existence at the time of my death, shall be called upon to make any contributions toward the payment of any estate or inheritance taxes.

6.3 No Interest on Specific Bequests. I direct that no interest be paid on any specific bequest herein.

Testator's Initials

JS

6.4 Severability If any part or parts of this Will shall be invalid, illegal or inoperative, it is my intention that the remaining parts shall stand and be effective and operative.

6.5 Gender and Number. As used in this Will, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

6.6 Headings. The headings, titles and subtitles in this Will have been inserted for convenient reference, and shall be ignored in its construction.

IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> day of February, 2004.

Milton I. Schwartz  
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us that the foregoing instrument, consisting of seven (7) pages, including the affidavit signed by us as witnesses, was his Will dated January \_\_, 2004, and requested us to act as witnesses to it. He thereupon signed this Will in our presence all of us being present at the same time. We now at his request, in his presence, and in the presence of each other, subscribe our names as witnesses.

[Signature]  
Residing At:  
1465 Verde Triandos Dr.  
Henderson, NV 89012

Beverly J. Jones  
Residing At:  
1511 Surf Drive  
Henderson, NV 89015

STATE OF NEVADA )  
 ) ss.:  
COUNTY OF CLARK )

Then and there personally appeared the within named Richard B. Newman and Beverly J. Jones who, being duly sworn, depose and say:

That they witnessed the execution of the within Will of the within named Testator, MILTON I. SCHWARTZ; that the Testator subscribed the Will and declared the same to be his Will in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution appeared to be of full age and of sound mind and memory and under no constraint; and that they make this Affidavit at the request of the Testator.

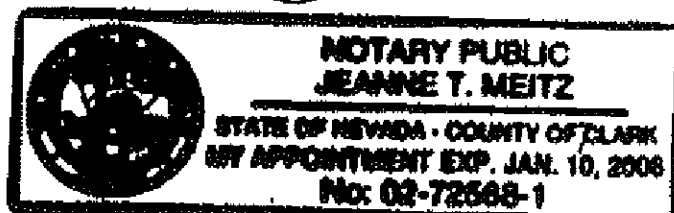
[Signature]

Beverly J. Jones

SUBSCRIBED and SWORN to before me

This 5<sup>th</sup> day of January, 2004.

Jeanne T. Meitz  
Notary Public



# Exhibit 3

# Exhibit 3

**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

Organizational fee: \$1.00  
BY: George Rudian  
Suite 610  
302 E. Carson Av.  
Las Vegas, Nevada 89101

FEB 27 1980

ARTICLES OF INCORPORATION

WIL SWACINER, SECRETARY OF STATE

OF

THE HEBREW ACADEMY

S

KNOW ALL MEN BY THESE PRESENTS:

THAT, pursuant to the provisions of N.R.S. 81.290 to 81.340 we, the undersigned, have this day associated ourselves together for the purpose of engaging in certain educational, religious, scientific and charitable activities, as follows:

ARTICLE I

NAME

This corporation shall be known as:

THE HEBREW ACADEMY

ARTICLE II

PURPOSE

This corporation is, and shall at all times be, a non-profit corporation organized solely for educational, religious, scientific and charitable purposes, which shall include, but not necessarily be limited to the following:

A. To conduct private schools providing both secular education and special Judaic studies, from the grade school through the high school level, for children of Jewish families as well as for non-Jewish children whose families desire to expose them to the benefits of inter-cultural education.

B. To afford its students the opportunity of absorbing the Jewish cultural heritage through courses in Hebrew language and Jewish history, literature, customs, law, ethics, and religion.

C. To encourage, inspire, and foster the



1 academic, social, moral and religious growth of its  
2 students, to the end that each child may achieve his  
3 own maximum potential as a human being, and acquire a  
4 sensitivity to the problems, needs, and cultural heritage  
5 of his fellow human beings of all races, nationalities,  
6 faiths, and creeds.

7 D. To foster in its students an appreciation  
8 for learning and intellectual achievement.

9 E. To provide scholarships and other forms of  
10 financial aid to worthy students whose families are  
11 financially unable to pay for their tuition in whole, or  
12 in part.

### 13 ARTICLE III

#### 14 PRINCIPAL OFFICE

15 The County in this State where the principal office for  
16 the transaction of the business of the corporation is to be located  
17 is the County of Clark, State of Nevada.

### 18 ARTICLE IV

#### 19 TRUSTEES

20 The governing board of the corporation shall be known  
21 as the Board of Trustees and shall consist of eleven (11) members.  
22 The term of office of each trustee shall be one (1) year which  
23 shall coincide with the school year as set forth in the By-Laws  
24 of the corporation.  
25

26 Eight (8) of the Trustees, to be known as the "Member-  
27 ship Trustees", shall be elected at an annual meeting of the  
28 members of the corporation. Every family which has one or more  
29 children enrolled as students in the Hebrew Academy during the  
30 semester in which the annual meeting of the members is held, shall  
31 be considered a member of the corporation, and shall be entitled,  
32 as a member, to cast one (1) vote for each trustee to be elected



1 at the annual meeting, irrespective of the number of children  
2 enrolled in the school.

3 Of the other three (3) Trustees, to be known as the  
4 "Organizational Trustees", one (1) shall be elected annually by the  
5 Board of Trustees of the Jewish Federation, one (1) by the Board  
6 of Trustees of Temple Beth Shalom, and one (1) by the Board of  
7 Trustees of Congregation Ner Tamid, each of which organizations  
8 shall certify to the Board of Trustees of this corporation, the  
9 "Organizational Trustees" so selected.

10 If, for any reason, the Trustees shall not be elected  
11 at the time and in the manner provided herein, or in the By-Laws,  
12 the Trustees then in office shall continue to serve as Trustees  
13 until their successors shall have been elected.

14 The number of Trustees may, from time to time, be  
15 increased or decreased to the number of no fewer than seven (7),  
16 and the method for the election of the Trustees may be changed,  
17 by the By-Laws, or an amendment to the By-Laws, of the corporation  
18 in that regard without the necessity of amending these Articles of  
19 Incorporation.

20 The names and places of residence of the non-organiza-  
21 tional Trustees chosen to serve from the time of incorporation  
22 through the first school year, which Trustees are also the  
23 incorporators signing these Articles of Incorporation, are as  
24 follows:

- |    |                             |                       |
|----|-----------------------------|-----------------------|
| 25 | (1) DENNIS SABBATH          | (5) GEORGE RUDIAK     |
| 26 | 300 S. Fourth St., #1505    | 302 E. Carson, #610   |
|    | Las Vegas, NV 89101         | Las Vegas, NV 89101   |
| 27 | (2) ARNE ROSENCRANTZ        | (6) KALMAN APPEL      |
| 28 | 309 Rosemary Lane           | 1413 S. 17th Street   |
|    | Las Vegas, NV 89107         | Las Vegas, NV 89104   |
| 29 | (3) CAROLYN GOODMAN         | (7) GERT RENTCHLER    |
| 30 | 2000 Bannies Lane           | 1201 S. Rancho Dr.    |
|    | Las Vegas, NV 89102         | Las Vegas, NV 89102   |
| 31 | (4) ALVIN D. BLUMBERG, M.D. | (8) MELANIE GREENBERG |
| 32 | 4330 S. Burnham, #140       | 1530 Bonita Avenue    |
|    | Las Vegas, NV 89109         | Las Vegas, NV 89104   |

GEORGE RUDIAK  
CHARTERED  
ATTORNEY AT LAW  
LAS VEGAS, NEVADA

## POWERS OF CORPORATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

9  
10  
11  
12  
13  
14  
15  
16

17  
18  
19  
20

21  
22  
23  
24

25  
26  
27  
28

29  
30  
31  
32

1 ARTICLE VI

2 DISSOLUTION

3 Upon the dissolution of the Corporation, the Board of  
 4 Trustees, after paying, or making provision for payment, of all  
 5 the debts, obligations, and liabilities of the Corporation, shall  
 6 dispose of all the remaining assets of the Corporation exclusively  
 7 for the purposes for which this Corporation was organized by dis-  
 8 tributing such assets in such manner, or to such organization or  
 9 organizations, organized and operated exclusively for educational,  
 10 religious, scientific or charitable purposes as shall at the time  
 11 qualify as exempt organizations under Section 501(c)(3) of the  
 12 Internal Revenue Code of 1954, as amended, or as the same may here-  
 13 after be amended (or the corresponding provision of any future  
 14 Internal Revenue laws of the United States) as the Board of  
 15 Trustees of this Corporation shall determine to be proper. Any  
 16 assets not so disposed of, shall be disposed of by the Eighth  
 17 Judicial District Court of the State of Nevada in and for the  
 18 County of Clark by ordering the distribution thereof for such  
 19 purposes, or to such organization or organizations, as said Court  
 20 may determine, to be organized and operated as near as may be for  
 21 the purposes for which this Corporation is organized.

22 IN WITNESS WHEREOF, we have executed these presents  
 23 this 20th day of February, 1980.

24 *[Signature]*

25 *[Signature]*

26 *[Signature]*

27 *[Signature]*

28 *[Signature]*

Kalman Appel  
Geri Rentler  
Melanie Greenberg

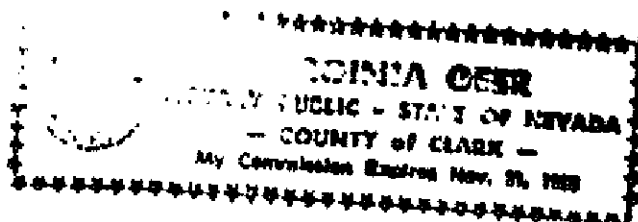
1  
2  
3  
4  
5  
6  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32

STATE OF NEVADA)  
: ss.  
COUNTY OF CLARK)

On this 20th day of February, 1980, before me, the undersigned, a Notary Public in and for said County and State, personally appeared DENNIS SABBATH, ARNE ROSENCRANTZ, CAROLYN GOODMAN, ALVIN D. BLUMBERG, M.D., GEORGE RUDIAK, KALMAN APPEL, GERI RENTCHLER, MELANIE GREENBERG known to me to be the persons mentioned in, and who executed the foregoing instrument, and duly acknowledge to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Virginia Geer  
NOTARY PUBLIC in and for said  
County and State.  
VIRGINIA GEER

My commission expires:



## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE**Commercial Recordings Division**

202 N. Carson Street  
Carson City, NV 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138

LIONEL, SAWYER &amp; COLLINS

Job: C20130412-0697

April 12, 2013

**Special Handling Instructions:**

C20130412-0697

DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE  
SENT: ARTICLES/AMENDMENTS/LIST 2007 FORWARD/CERTIFIED  
EMAILED RMICHIE@LIONELSAWYER.COM 4/12/13 FAB

**Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00003876091-74		30	\$2.00	\$60.00
Copies - Certification of Document	00003876091-74		1	\$30.00	\$30.00
24-HR Copy Expedite	00003876091-74		1	\$125.00	\$125.00
Total					\$215.00

**Payments**

Type	Description	Amount
Billed	750046	\$215.00
Total		\$215.00

Credit Balance: \$0.00

**Job Contents:**

NV Corp Certified Copy Request Cover 1  
Letter(s):

LIONEL, SAWYER &amp; COLLINS

## STATE OF NEVADA



**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

## Certified Copy

April 12, 2013

**Job Number:** C20130412-0697  
**Reference Number:** 00003876091-74  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138



Respectfully,

A handwritten signature in black ink, appearing to read "Ross Miller", written over a horizontal line.

ROSS MILLER  
Secretary of State

Certified By: F Lincoln  
Certificate Number: C20130412-0697  
You may verify this certificate  
online at <http://www.nvsos.gov/>

# Exhibit 4

# Exhibit 4



FILING FEE: \$10.00 DE C58270  
 GANG & BERKLEY/FREDERIC I. BERKLEY  
 415 SO. SIXTH ST., STE. 101  
 LAS VEGAS, NV 89101

**FILED**  
 OFFICE OF THE  
 SECRETARY OF STATE OF THE  
 STATE OF NEVADA

**AUG 22 1990**

ANNE SUE DE PAPA SECRETARY OF STATE

1073-80

**CERTIFICATE OF AMENDMENT OF THE  
 ARTICLES OF INCORPORATION OF  
 THE HEBREW ACADEMY  
 A Nevada Non-Profit Corporation**

The undersigned, being the President and Secretary of the Board of Trustees of THE HEBREW ACADEMY, hereby certify as follows:

1. The original Articles of Incorporation were filed in the Office of the Secretary of State for the State of Nevada on the 27th day of February, 1980.
2. That on the 14th day of August, 1989, at a special meeting of the Board of Trustees of said corporation, duly called and convened, at which a quorum for the transaction of business was present, notice of said meeting having been previously waived by the Trustees of said corporation in writing, the following resolution was adopted by the Board of Trustees of said corporation:

**RESOLVED:** That it is advisable and in the best interests of this Corporation that its Articles of Incorporation be amended by changing the language of Article I of said Articles to read as follows:

**ARTICLE I**

This corporation shall be known as:

**THE MILTON I. SCHWARTZ HEBREW ACADEMY**


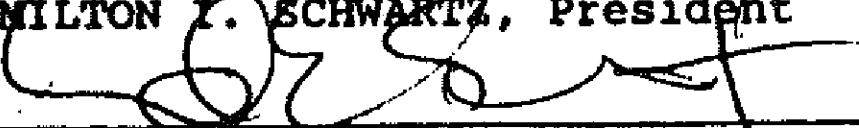
IN WITNESS WHEREOF, the undersigned, the President and Secretary of the Board of Trustees of THE HEBREW ACADEMY, a

///

///

///

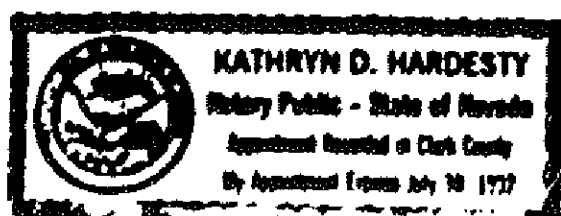
Nevada non-profit corporation, have executed and acknowledged these presents this 14<sup>th</sup> day of August, 1990.

  
 MILTON I. SCHWARTZ, President  
  
 LENARD E. SCHWARTZER, Secretary

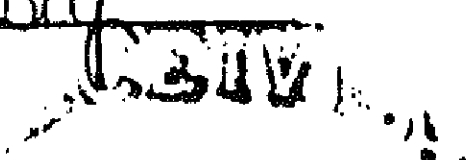
STATE OF NEVADA       )  
                                   SS:  
 COUNTY OF CLARK       )

On this 13<sup>th</sup> day of August, 1990, personally appeared before me, a Notary Public in and for said County and State, MILTON I. SCHWARTZ, known to me to be the President, and who is authorized to execute this instrument on behalf of THE HEBREW ACADEMY, a Nevada non-profit corporation. He acknowledged to me that he executed this instrument and, upon oath, did depose and say that he is the officer of the corporation as designated above, that he is acquainted with the seal of the corporation, and that the seal affixed to this instrument is the corporate seal of the corporation; that the signatures on this instrument were made by the officers of the corporation as indicated after their signatures; that the corporation executed this instrument freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL.



  
 NOTARY PUBLIC

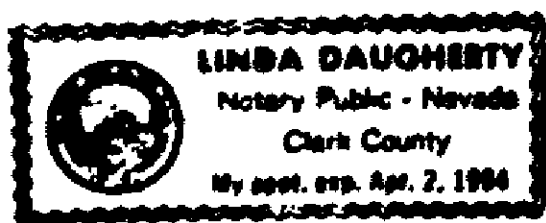
  
 AUG 22 1990

STATE OF NEVADA           )  
                                   ss:  
 COUNTY OF CLARK        )

On this 14 day of August, 1990, personally appeared before me, a Notary Public in and for said County and State, LENARD E. SCHWARTZER, known to me to be the Secretary, and who is authorized to execute this instrument on behalf of THE HEBREW ACADEMY, a Nevada non-profit corporation. He acknowledged to me that he executed this instrument and, upon oath, did depose and say that he is the officer of the corporation as designated above, that he is acquainted with the seal of the corporation, and that the seal affixed to this instrument is the corporate seal of the corporation; that the signatures on this instrument were made by the officers of the corporation as indicated after their signatures; that the corporation executed this instrument freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL.

*Linda Daugherty*  
 NOTARY PUBLIC



## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

**Commercial Recordings Division**  
202 N. Carson Street  
Carson City, NV 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138

LIONEL, SAWYER &amp; COLLINS

**Job: C20130412-0697**  
April 12, 2013

**Special Handling Instructions:**

C20130412-0697

DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE

SENT: ARTICLES/AMENDMENTS/LIST 2007 FORWARD/CERTIFIED

EMAILED RMICHIE@LIONELSAWYER.COM 4/12/13 FAB

**Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00003876091-74		30	\$2.00	\$60.00
Copies - Certification of Document	00003876091-74		1	\$30.00	\$30.00
24-HR Copy Expedite	00003876091-74		1	\$125.00	\$125.00
Total					\$215.00

**Payments**

Type	Description	Amount
Billed	750046	\$215.00
Total		\$215.00

**Credit Balance: \$0.00****Job Contents:**

NV Corp Certified Copy Request Cover 1  
Letter(s):

LIONEL, SAWYER &amp; COLLINS

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State



**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

## Certified Copy

April 12, 2013

**Job Number:** C20130412-0697  
**Reference Number:** 00003876091-74  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138



Respectfully,

A handwritten signature in black ink, appearing to read "Ross Miller", written over a horizontal line.

ROSS MILLER  
Secretary of State

Certified By: F Lincoln  
Certificate Number: C20130412-0697  
You may verify this certificate  
online at <http://www.nvsos.gov/>

# Exhibit 5

# Exhibit 5

**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

Filing Fee \$25.00 C32919

**OCT 19 1994**

1073-80

CHERYL A. LAU SECRETARY OF STATE

The Milton I. Schwartz Hebrew Academy

Name of Corporation

We the undersigned, Ira David Sternberg and  
President or Vice President (or Chairman)

Robert Rakita of The Milton I. Schwartz Hebrew Academy  
Secretary or Assistant Secretary Name of Corporation

do hereby certify:

That the Board of Directors of said corporation at a meeting duly convened, held on the 25th  
day of August, 1994, adopted a resolution to amend the original articles as follows:

Article I is hereby amended to read as follows:

This corporation shall be known as:

THE HEBREW ACADEMY

**RECEIVED**

**SEP 20 1994**

Secretary of State

[Signature]  
President or Vice President (or Chairman)  
[Signature]  
Secretary or Assistant Secretary

State of NEVADA } ss.  
County of Clark

On September 13th 1994, personally appeared before me, a Notary Public,

IRA D. Sternberg and Robert C. Rakita, who acknowledged  
Names of Persons Appearing and Signing Document

that they executed the above instrument.

Terry Bothmann  
Signature of Notary



TERRY BOTHMANN  
Notary Public - Nevada  
(NOTARY STAMP OR SEAL)  
Clark County  
My appt. exp. Mar. 25, 1996



## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE**Commercial Recordings Division**

202 N. Carson Street  
Carson City, NV 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138

LIONEL, SAWYER &amp; COLLINS

**Job: C20130412-0697**  
April 12, 2013

**Special Handling Instructions:**

C20130412-0697

DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE  
SENT: ARTICLES/AMENDMENTS/LIST 2007 FORWARD/CERTIFIED  
EMAILED RMICHIE@LIONELSAWYER.COM 4/12/13 FAB

**Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00003876091-74		30	\$2.00	\$60.00
Copies - Certification of Document	00003876091-74		1	\$30.00	\$30.00
24-HR Copy Expedite	00003876091-74		1	\$125.00	\$125.00
Total					\$215.00

**Payments**

Type	Description	Amount
Billed	750046	\$215.00
Total		\$215.00

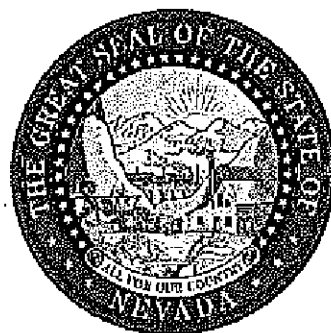
**Credit Balance: \$0.00****Job Contents:**

NV Corp Certified Copy Request Cover 1  
Letter(s):

LIONEL, SAWYER &amp; COLLINS

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State



**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

## Certified Copy

April 12, 2013

**Job Number:** C20130412-0697  
**Reference Number:** 00003876091-74  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138



Respectfully,

A handwritten signature in black ink, appearing to read "Ross Miller".

ROSS MILLER  
Secretary of State

Certified By: F Lincoln  
Certificate Number: C20130412-0697  
You may verify this certificate  
online at <http://www.nvsos.gov/>

# Exhibit 6

# Exhibit 6

**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

- NRS 82.356 -

**CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION**

**MAR 21 1997**

(after first meeting of directors)

No. 1073-80

**THE HEBREW ACADEMY**

Name of Corporation

DEAN HELLER, SECRETARY OF STATE

We the undersigned

**Jacalyn Glass-Wolfson**

President or Vice President

**Geri Rentchler**

Secretary or Assistant Secretary

of **The Hebrew Acad**

Name

Filed in the office of

*Dean Heller*

Dean Heller  
Secretary of State  
State of Nevada

Document Number

**C1073-1980-010**

Filing Date and Time

**03/21/1997 12:00 AM**

Entity Number

**C1073-1980**

do hereby certify:

That the public officers or other persons, if any, required by the articles have approved the amendment. The vote of the members (if there are members) and directors by which the amendment was adopted is as follows: members n/a, and directors 4.

They hereby adopt the following amendment(s) to the articles of incorporation:

Article number(s) I is amended to read as follows:

This corporation shall be known as The Milton I. Schwartz Hebrew Academy

*Jacalyn Glass-Wolfson*  
President or Vice President (or Chairman)  
*Geri Rentchler*  
Secretary or Assistant Secretary

State of NEVADA

County of CLARK

ss.

On 11<sup>th</sup> Day of December 1996, personally appeared before me, a Notary Public,

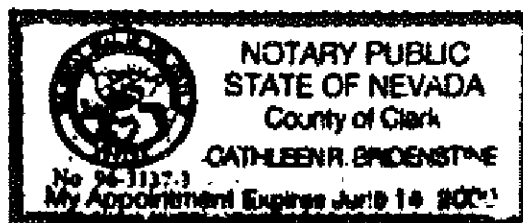
Jacalyn Glass-Wolfson and Geri Rentchler, who acknowledged

Names of Persons Appearing and Signing Document

that they executed the above instrument.

*Cathleen R. Binstone*  
Signature of Notary

(NOTARY STAMP OR SEAL)



## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

**Commercial Recordings Division**  
202 N. Carson Street  
Carson City, NV 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138

LIONEL, SAWYER &amp; COLLINS

**Job: C20130412-0697**  
April 12, 2013

**Special Handling Instructions:**

C20130412-0697  
DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE  
SENT: ARTICLES/AMENDMENTS/LIST 2007 FORWARD/CERTIFIED  
EMAILED RMICHIE@LIONELSAWYER.COM 4/12/13 FAB

**Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00003876091-74		30	\$2.00	\$60.00
Copies - Certification of Document	00003876091-74		1	\$30.00	\$30.00
24-HR Copy Expedite	00003876091-74		1	\$125.00	\$125.00
Total					\$215.00

**Payments**

Type	Description	Amount
Billed	750046	\$215.00
Total		\$215.00

**Credit Balance: \$0.00****Job Contents:**

NV Corp Certified Copy Request Cover 1  
Letter(s):

LIONEL, SAWYER &amp; COLLINS

## STATE OF NEVADA



**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

## Certified Copy

April 12, 2013

**Job Number:** C20130412-0697  
**Reference Number:** 00003876091-74  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138



Respectfully,

A handwritten signature in black ink, appearing to read "Ross Miller", written over a horizontal line.

ROSS MILLER  
Secretary of State

Certified By: F Lincoln  
Certificate Number: C20130412-0697  
You may verify this certificate  
online at <http://www.nvsos.gov/>



# Exhibit 7

# Exhibit 7


Mar-21-08 02:26pm From-LOURIE &amp; CUTLER,PC

617-742-5720

T-154 P.03/04 F-375



ROSS MILLER  
Secretary of State  
204 North Carson Street, Ste 1  
Carson City, Nevada 89701-4299  
(775) 884 5708  
Website: secretaryofstate.biz

Filed in the office of 	Document Number <b>20080195694-74</b>
Ross Miller Secretary of State State of Nevada	Filing Date and Time <b>03/21/2008 11:20 AM</b>
	Entity Number <b>C1073-1980</b>

**Nonprofit Amendment  
(After First Meeting)**  
(PURSUANT TO NRS 81 AND 82)

USE BLACK INK ONLY - DO NOT HIGHLIGHT

ABOVE SPACE IS FOR OFFICE USE ONLY

**Certificate of Amendment to Articles of Incorporation**  
**For Nonprofit Corporations**  
(NRS Chapters 81 and 82 - After First Meeting of Directors)

## 1. Name of corporation:

The Milton I. Schwartz Hebrew Academy

## 2. The articles have been amended as follows (provide article numbers, if available):

Article I is hereby deleted in its entirety and replaced with the following: "This Corporation shall be known in perpetuity as 'The Dr. Miriam and Sheldon G. Adelson Educational Institute'."

See attachment for additional amendments.

3. The directors (or trustees) and the members, if any, and such other persons or public officers, if any, as may be required by the articles have approved the amendment. The vote by which the amendment was adopted by the directors and members, if any, is as follows: directors ☒ and members ☒.\*

## 4. Officer Signature (Required):

X

Signature

Title

\*A majority of a quorum of the voting power of the members or as may be required by the articles, must vote in favor of the amendment. If any proposed amendment would alter or change any preference or any relative or other right given to any class of members, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of a majority of a quorum of the voting power of each class of members affected by the amendment regardless of limitations or restrictions on their voting power. An amendment pursuant to NRS 81.210 requires approval by a vote of 2/3 of the members.

FILING FEE: \$50.00

**IMPORTANT:** Failure to include any of the above information and submit the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State AM 81-82 April 2007  
Revised 04/01/07

Attachment to  
Certificate of Amendment to Articles of Incorporation  
of The Milton I. Schwartz Hebrew Academy

Article II is hereby amended by adding a paragraph at the end of Article II to state the following specific language: "The schools conducted by the corporation shall be community schools of mixed gender, not affiliated with a specific denomination of Judaism. Students in the schools shall not be required to pray. Male students shall be strongly recommended (but not required) to wear a kippa during prayer and other religious ceremonies. Also, no student shall be required to wear a kippa at any time."

Article IV is hereby deleted in its entirety and replaced with the following specific language: "The governing board of the corporation shall be known as the Board of Trustees and the Board of Trustees shall constitute the corporation. The term of office of each Trustee shall be three years. The number of Trustees may from time to time be increased or decreased by the Board of Trustees but in no event shall the number of Trustees be fewer than seven (7) or more than twenty (20). If for any reason a Trustee shall not be elected in the time and manner provided for herein, or in the Bylaws, such Trustee shall continue to serve as Trustee until his or her successor has been elected."

F:\users\jvarela\clients\edelsonfamilycharitablefoundation\schwartz-amendedarticles

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State

**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

**Commercial Recordings Division**  
202 N. Carson Street  
Carson City, NV 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138

LIONEL, SAWYER &amp; COLLINS

**Job: C20130412-0697**  
April 12, 2013

**Special Handling Instructions:**

C20130412-0697  
DR. MIRIAM AND SHELDON G. ADELSON EDUCATIONAL INSTITUTE  
SENT: ARTICLES/AMENDMENTS/LIST 2007 FORWARD/CERTIFIED  
EMAILED RMICHIE@LIONELSAWYER.COM 4/12/13 FAB

**Charges**

Description	Document Number	Filing Date/Time	Qty	Price	Amount
Entity Copies	00003876091-74		30	\$2.00	\$60.00
Copies - Certification of Document	00003876091-74		1	\$30.00	\$30.00
24-HR Copy Expedite	00003876091-74		1	\$125.00	\$125.00
Total					\$215.00

**Payments**

Type	Description	Amount
Billed	750046	\$215.00
Total		\$215.00

**Credit Balance: \$0.00****Job Contents:**

NV Corp Certified Copy Request Cover 1  
Letter(s):

LIONEL, SAWYER &amp; COLLINS

## STATE OF NEVADA

**ROSS MILLER**  
Secretary of State



**SCOTT W. ANDERSON**  
Deputy Secretary  
for Commercial Recordings

OFFICE OF THE  
SECRETARY OF STATE

## Certified Copy

April 12, 2013

**Job Number:** C20130412-0697  
**Reference Number:** 00003876091-74  
**Expedite:**  
**Through Date:**

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
C1073-1980-001	Articles of Incorporation	6 Pages/1 Copies
C1073-1980-003	Amendment	4 Pages/1 Copies
C1073-1980-005	Amendment	3 Pages/1 Copies
C1073-1980-007	Amendment	1 Pages/1 Copies
C1073-1980-008	Amendment	1 Pages/1 Copies
C1073-1980-010	Amendment	1 Pages/1 Copies
C1073-1980-012	Amendment	1 Pages/1 Copies
20070003515-43	Annual List	1 Pages/1 Copies
20080084895-54	Annual List	1 Pages/1 Copies
20080195694-74	Amendment	2 Pages/1 Copies
20080586063-38	Amended List	1 Pages/1 Copies
20090255488-73	Annual List	1 Pages/1 Copies
20100102296-53	Annual List	1 Pages/1 Copies
20110048708-01	Annual List	2 Pages/1 Copies
20120024437-45	Annual List	2 Pages/1 Copies
20120851508-32	Annual List	2 Pages/1 Copies

**Commercial Recording Division**  
202 N. Carson Street  
Carson City, Nevada 89701-4069  
Telephone (775) 684-5708  
Fax (775) 684-7138



Respectfully,

A handwritten signature in black ink, appearing to read "Ross Miller", written over a horizontal line.

ROSS MILLER  
Secretary of State

Certified By: F Lincoln  
Certificate Number: C20130412-0697  
You may verify this certificate  
online at <http://www.nvsos.gov/>

# Exhibit 8

# Exhibit 8

FIRST CODICIL **FILED**

TO

OCT 11 4 23 PM '07

LAST WILL & TESTAMENT

OF

*Chris [Signature]*  
CLERK OF THE COURT

**MILTON I. SCHWARTZ**  
(Will dated February 5<sup>th</sup>, 2004)

I, MILTON I. SCHWARTZ, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the First Codicil to my Last Will and Testament dated February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 in every respect. If any part of the Will or my First Codicil is inconsistent, this First Codicil dated January 27, 2006 shall govern (hereinafter, the "First Codicil").

NOW, THEREFORE, I, MILTON I. SCHWARTZ, being of sound and disposing mind and memory and having heretofore executed my Last Will & Testament, bearing the date of February 5, 2004 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the First Codicil to my Last Will and Testament:

I.

I hereby amend Article "Second", Section 2.5 of my Will entitled "Bequests" as follows:

*ic84*



The purpose of the Milton I. Schwartz 1991 Irrevocable Trust, dated August 21, 1991 has been satisfied (hereinafter, "MIS 1991 Trust") as follows: My wife, Abigail Richlin Schwartz (hereinafter, "Abigail") has relinquished all rights to that certain property located at 2120 Silver Avenue, Las Vegas, NV 89102 (hereinafter, the "Residence"). I, Milton I. Schwartz, no longer have any duty to purchase the Residence from the MIS 1991 Trust and gift it to Abigail. Abigail has accepted a payment of One Million Dollars (\$1,000,000.00) less a debt owed from Abigail to me in the amount of Two Hundred Thirty Thousand Dollars (\$230,000.00) for a total payment from me to Abigail in the amount of Seven Hundred Seventy Thousand Dollars (\$770,000.00) (hereinafter, "Consideration"). The Consideration was paid to Abigail August of 2004. Therefore, I hereby cancel, revoke, repudiate and terminate section 2.5 of Article Second of my Will. Abigail shall have no rights to ownership of the Residence. Notwithstanding the foregoing, provided Abigail and I are married and living together at my death, Abigail shall have the right to live at the Residence for a period of one year rent free from the date of my death. Should Abigail choose not to inhabit the residence personally, any right to occupy the Residence shall terminate.

## II.

I hereby amend Article Fourth, entitled "Executor", section 4.10 (c) only, of my Will as follows:

In connection with management duties performed by **A. JONATHAN SCHWARTZ** for or on behalf of the Grantor, the Grantor's estate and the Milton I. Schwartz Revocable Trust, dated January 29, 1986, Ninth Amendment dated February 5, 2004 (hereinafter, "Revocable Trust") or any successor entity thereto regarding Yellow, Checker, Star Cab Companies



(hereinafter, "YCS") and any successor companies thereto, and all real estate related thereto; A. **JONATHAN SCHWARTZ** shall receive that Payroll, Director's fees, medical insurance and all other benefits (hereinafter "YCS Director's Salary") customarily received by me (Milton I. Schwartz) as a Director of YCS during my life. To the extent that the Board of Directors of YCS amends or changes the YCS Director's Salary after my death, A. **JONATHAN SCHWARTZ's** YCS Salary shall be amended to equal that of the respective YCS Directors. If any portion of this First Codicil shall conflict with the Revocable Trust, this First Codicil shall govern.

### III.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 as follows:

On January 26, 1993 I entered into a Premarital Agreement (hereinafter, the "Premarital Agreement") with my wife, Abigail Richlin Schwartz (hereinafter, "Abigail") which was amended October 26, 1994, (hereinafter, the "October 1994 Amendment"), was the subject of a Reconciliation Agreement dated December 24, 1996 (hereinafter, the "Reconciliation Agreement"), was amended April 9, 1997 (hereinafter, the "1997 Amendment") and amended October of 2004 (hereinafter, the "October 2004 Amendment"). I hereby affirm, ratify confirm and republish the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment by reference as if set forth in full hereinafter. I hereby direct my Executor to take any action necessary or appropriate to carry out the terms of the Premarital Agreement, the October 1994 Amendment, the Reconciliation Agreement, the 1997 Amendment and the October 2004 Amendment. I hereby instruct my representatives to fulfill the terms and provisions of the Premarital Agreement, the



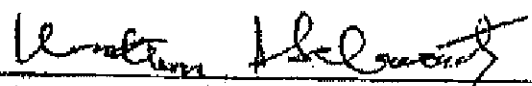
Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment in lieu of any other bequests or legacies to Abigail, only to the extent agreed to in writing by Abigail and myself. Abigail shall have no further interest in my estate, Will or trusts other than what is provided for in the Premarital Agreement, the Reconciliation Agreement, the October 1994 Amendment, the 1997 Amendment and the October 2004 Amendment.

IV.

I hereby amend Article Fifth of my Will, titled Testamentary Declarations, section 5.5 (b) as follows:

As of January 2006, Abigail Schwartz currently has no outstanding loans to me or my estate. The balance on the Note has been satisfied in full.

I subscribe my name to this FIRST CODICIL this 27 day of January, 2006.

  
MILTON I. SCHWARTZ

On the date last above written, MILTON I. SCHWARTZ declared to us, the undersigned, that this instrument, consisting of five (5) pages, including the page signed by us as witnesses, was his FIRST CODICIL to LAST WILL AND TESTAMENT, and requested that we act as witnesses to it. He thereupon signed this First Codicil in our presence, all of us being present at the same time. We now, at his request, in his presence and in the presence of each other, subscribe our names as witnesses.

William P SHRANKO residing at 2012 Fort Halifax Henderson NV  
 Witness Name Witness Address 89052

Sheila L. Robertson residing at 4174 Don Bonito, LVNV 89121  
 Witness Name Witness Address

STATE OF NEVADA )

)ss.

COUNTY OF CLARK )

Then and there personally appeared the within named William R Shranko and Sheila L Robertson who, being duly sworn, depose and say:

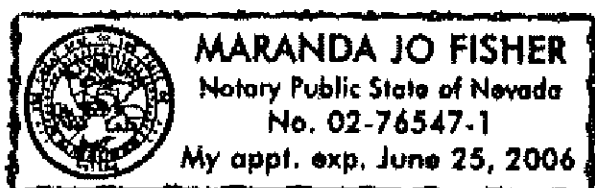
That they witnessed the execution of the within First Codicil to Last Will and Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the First Codicil and declared the same to be the First Codicil to his Last Will and Testament in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution of the First Codicil appeared to them to be of sound mind and memory; and that they make this Affidavit at the request of the Testator.

William P Shranko  
 Witness Signature

Sheila L Robertson  
 Witness Signature

SUBSCRIBED and SWORN to before me  
 this 27<sup>th</sup> day of January, 2006.

Maranda Jo Fisher  
 NOTARY PUBLIC in and for said County and State.



# Exhibit 9

# Exhibit 9

SECOND CODICIL  
TO  
LAST WILL & TESTAMENT  
OF

**MILTON I. SCHWARTZ**  
(Will dated February 5<sup>th</sup>, 2004)  
(First Codicil dated January 27, 2006)

I, MILTON I. SCHWARTZ, declare that I am a resident of Las Vegas, County of Clark, State of Nevada, and that this is the Second Codicil to my Last Will and Testament dated February 5, 2004.

DECLARATIONS AND RECITALS

WHEREAS, my currently effective Last Will & Testament was executed on February 5, 2004 in Las Vegas, Nevada (herein "Will").

WHEREAS, I executed a currently effective First Codicil to my Will dated January 27, 2006 ("First Codicil").

WHEREAS, I married Abigail Richlin Schwartz ("Abigail") on January 28, 1993.

WHEREAS, Abigail and I are parties to both a valid and enforceable Premarital Agreement dated January 26, 1993 (the "Premarital Agreement"), and a Reconciliation Agreement dated December 24, 1996 ("Reconciliation Agreement"), an Addendum to Reconciliation Agreement dated April 9, 1997 ("Addendum to Reconciliation"), a Second Addendum To Reconciliation Agreement dated October 1, 1999 ("Second Addendum To Reconciliation Agreement") and an Addendum to Premarital Agreement dated October 28, 2004 ("Addendum to Premarital Agreement"), all of which shall be incorporated as if set forth in full

herein by reference and referred to as the "Marital Agreements". I hereby ratify, confirm and republish the Marital Agreements except as modified below herein.

WHEREAS, I executed an Affidavit dated March 30, 2006 stating my decision to divorce Abigail which shall be incorporated by reference as if set forth in full herein ("Affidavit").

WHEREAS, I hereby ratify, confirm and republish my Will dated February 5, 2004 and my First Codicil in every respect. Notwithstanding the foregoing, if any part of the Will or my First Codicil dated January 26, 2006 is inconsistent, this Second Codicil dated July 31, 2006 shall govern and control (hereinafter, the "Second Codicil").

NOW, THEREFORE, I, MILTON I. SCHWARTZ, being of sound and disposing mind and memory and having heretofore executed my Last Will & Testament, bearing the date of February 5, 2004 and my First Codicil dated January 27, 2006 and not acting under duress, menace, fraud or undue influence of any person, do hereby make, publish and declare the following to be the Second Codicil to my Last Will and Testament:

I.

I informed my wife, Abigail Richlin Schwartz ("Abigail") of my decision to divorce her on March 29, 2006. Due to my decision to divorce Abigail, and because we are not living together as husband and wife, I hereby cancel, revoke and terminate any bequest or gift to Abigail whatsoever within my Will, First Codicil, Premarital Agreement, the Reconciliation Agreement, the Addendum to Reconciliation Agreement, the Second Addendum to Reconciliation Agreement, the Addendum to Premarital Agreement, and any other written agreements that may exist between Abigail and myself. Abigail shall share in no part of the various trusts created by me. There are no oral agreements between Abigail and myself. Abigail



shall share in no part of my estate whatsoever.

II.

Notwithstanding the terms of section 4.9 of my Will, to the extent that my Executor is also a Director of Yellow, Checker, Star Cab Companies (hereinafter, "YCS") and receives Director's Fees, Director's Salary and other direct pecuniary payments as a Director in the amount of \$272,000.00 or more annually, my Executor shall receive no compensation for his or her role as Executor. The foregoing calculation of Director's Fees, Salary and pecuniary payments (\$272,000.00) (hereinafter, "Director's Salary") shall not include any benefits, financial or otherwise, attributable to travel expenses, health insurance, sports box benefits, and any distributions of cash flow or profits as an owner or shareholder of YCS, National Automotive, Besdew or any successors thereto. However, my Executor is authorized to employ any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the administration of my estate, but said firm or affiliate of my Executor shall be uncompensated therefor while a Director of YCS receiving the Director's Salary. In the event that my estate is no longer an owner of YCS or the Director receives substantially less than the foregoing Director's Salary, my Executor is expressly authorized to employ and compensate any firm with which my Executor may be associated to perform any services that are in my Executor's opinion necessary or convenient to the

///

///

INTENTIONALLY LEFT BLANK

///

WAG



000143

MILTON I. SCHWARTZ

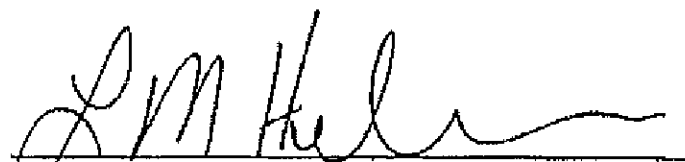
LMH, residing at 1410 W. Scales Way  
 Witness Name Witness Address

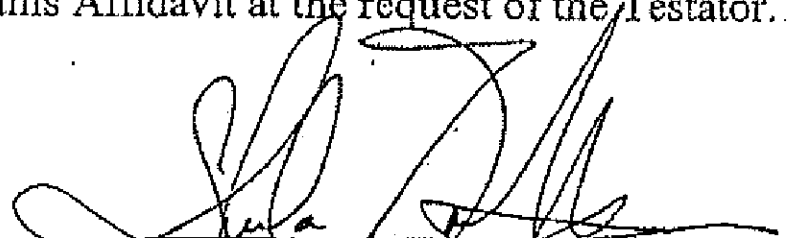
John A. Smith residing at 4174 Don Berto  
Witness Name Witness Address

)53.

Then and there personally appeared the within  
named Lynn Henderson and  
Sheila Robertson who, being duly sworn, depose and say:  
That they witnessed the execution of the within Second Codicil to Last Will and

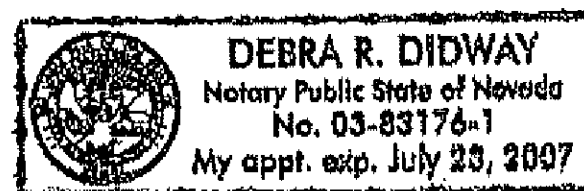
Testament, dated February 5, 2004, of the within named Testator, MILTON I. SCHWARTZ, that the Testator subscribed the Second Codicil and declared the same to be the Second Codicil to his Last Will and Testament in their presence; that they thereafter subscribed the same as witnesses in the presence of the Testator and in the presence of each other and at the request of the Testator; that the Testator at the time of the execution of the Second Codicil appeared to them to be of sound mind and memory; and that they make this Affidavit at the request of the Testator.

  
Witness Signature

  
Witness Signature

SUBSCRIBED and SWORN to before me  
this 21st day of July, 2006.





NOTARY PUBLIC in and for said County and State

# Exhibit 10

# Exhibit 10

# PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Chg. Coll.	Account	Officer	Initials
\$1,810,000.00	12-06-2007	12-06-2010	100338216	6902	22962	068	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** THE MILTON I. SCHWARTZ HEBREW ACADEMY,  
A NEVADA NON-PROFIT CORPORATION  
9700 W. HILLPOINTE RD.  
LAS VEGAS, NV 89134

**Lender:** Bank of Nevada  
West Sahara Regional Office  
2700 W. Sahara Avenue  
Las Vegas, NV 89102  
(702) 248-4200

**PAID**  
12-10

**Principal Amount:** \$1,810,000.00

**Date of Note:** December 6, 2007

**PROMISE TO PAY.** THE MILTON I. SCHWARTZ HEBREW ACADEMY, A NEVADA NON-PROFIT CORPORATION ("Borrower") promises to pay to Bank of Nevada ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million Eight Hundred Ten Thousand & 00/100 Dollars (\$1,810,000.00), together with interest on the unpaid principal balance from December 6, 2007, until paid in full.

**PAYMENT.** Borrower will pay this loan in accordance with the following payment schedule: 12 monthly consecutive interest payments, beginning January 6, 2008, with interest calculated on the unpaid principal balances at an interest rate of 4.880% per annum; 23 monthly consecutive principal and interest payments of \$10,528.92 each, beginning January 6, 2009, with interest calculated on the unpaid principal balances at an interest rate of 4.880% per annum; and one principal and interest payment of \$1,743,339.72 on December 6, 2010, with interest calculated on the unpaid principal balances at an interest rate of 4.880% per annum. This estimated final payment is based on the assumption that all payments will be made exactly as scheduled; the actual final payment will be for all principal and accrued interest not yet paid, together with any other unpaid amounts under this Note. Unless otherwise agreed or required by applicable law, payments will be applied to Finance Charges first; then to unpaid principal; then to late charges and other charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Bank of Nevada, West Sahara Regional Office, 2700 W. Sahara Avenue Las Vegas, NV 89102.

**LATE CHARGE.** If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment or \$10.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. After maturity, or after this Note would have matured had there been no default, the Default Rate Margin will continue to apply to the final interest rate described in this Note. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Environmental Default.** Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with any loan.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's existence as a going business; the insolvency of Borrower; the appointment of a receiver for any part of Borrower's property; any assignment for the benefit of creditors; any type of creditor workout; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occurs with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Nevada.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here VC)

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, any trust accounts for which setoff would be prohibited by law, or monies in any accounts that were received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors'

**PROMISSORY NOTE  
(Continued)**

Loan No: 103338216

Page 2

benefits, supplemental security income benefits and disability insurance benefits. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

**COLLATERAL.** Borrower acknowledges this Note is secured by a Deed of Trust dated December 6, 2007, to a trustee in favor of Lender on real property located in CLARK County, State of Nevada.

**ARBITRATION.** Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

**DISHONORED ITEM FEE.** I may be charged a fee if I make a payment on my loan and the check or preauthorized charge with which I pay is later dishonored.

**DUE ON SALE - CONSENT OF LENDER.** Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property or any mobile home or manufactured home located on the property whether or not it is legally a part of the real property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES.** Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: Bank of Nevada West Sahara Regional Office 2700 W. Sahara Avenue Las Vegas, NV 89102.

**GENERAL PROVISIONS.** If any part of this Note cannot be enforced, this fact will not effect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

THE MILTON I. SCHWARTZ HEBREW ACADEMY, A NEVADA NON-PROFIT CORPORATION

By: 

VICTOR CHALTIEL, Chairman/President of THE MILTON I. SCHWARTZ HEBREW ACADEMY, A NEVADA NON-PROFIT CORPORATION

# Exhibit 11

Exhibit 11

**STATE OF NEVADA - DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH - SECTION OF VITAL STATISTICS  
CERTIFICATE OF DEATH**

STATE FILE NUMBER

TYPE OR  
PRINT IN  
PERMANENT  
BLACK INK

DECEDENT

IF DEATH  
OCCURRED IN  
INSTITUTION SEE  
HANDBOOK  
REGARDING  
COMPLETION OF  
RESIDENCE  
ITEMS

1a. DECEASED-NAME FIRST Milton			1b. MIDDLE I		1c. LAST SCHWARTZ		2. DATE OF DEATH (Mo/Day/Year) August 09, 2007		3a. COUNTY OF DEATH Clark		
3b. CITY, TOWN, OR LOCATION OF DEATH Las Vegas			3c. HOSPITAL OR OTHER INSTITUTION - Name (If not either, give street and number) Valley Hospital Medical Center			3d. If Hosp. or Inst. Indicate DOA, DPEmer. Run. Inpatient (Specify) Inpatient			4. SEX Male		
5. RACE (e.g., White, Black, American Indian) (Specify) White		6. Was Decedent of Hispanic Origin? If yes, specify Mexican, Cuban, Puerto Rican, etc. Non-hispanic		7a. AGE-Last birthday (Years) 85		7b. UNDER 1 YEAR MOS DAYS HOURS MINS		7c. UNDER 1 DAY HOURS MINS		8. DATE OF BIRTH (Mo/Day/Yr) December 07, 1921	
9a. STATE OF BIRTH (If not U.S.A., name country) New York		9b. CITIZEN OF WHAT COUNTRY United States		10. EDUCATION 12		11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) Divorced		12. SURVIVING SPOUSE (if wife, give maiden name)			
13. SOCIAL SECURITY NUMBER 052-12-9515			14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired) Entrepreneur			14b. KIND OF BUSINESS OR INDUSTRY Various					
15a. RESIDENCE - STATE Nevada		15b. COUNTY Clark		15c. CITY, TOWN OR LOCATION Las Vegas		15d. STREET AND NUMBER 2293 Duneville Street		15e. INSIDE CITY LIMITS (Specify Yes or No) No			
16. FATHER - NAME (First Middle Last Suffix) Samuel SCHWARTZ						17. MOTHER - NAME (First Middle Last Suffix) Gussie KOPPELMAN					
18a. INFORMANT - NAME (Type or Print) Jonathan SCHWARTZ				18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip) 440 Pinnacle Heights Las Vegas, Nevada 89146							
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) Removal from State				19b. CEMETERY OR CREMATORY - NAME New Montefiore Cemetery				19c. LOCATION City or Town State Farmingdale New York			
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) BART BURTON SIGNATURE AUTHENTICATED				20b. FUNERAL DIRECTOR LICENSE 50		20c. NAME AND ADDRESS OF FACILITY King David Memorial Chapel 2697 E Eldorado Ln Las Vegas NV 89120					
TRADE CALL - NAME AND ADDRESS Riverside Nassau North Chapel 55 N. Station Plaza Great Neck NY 11020											
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <i>[Signature]</i>						22a. On the basis of examination and/or investigation, in my opinion, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)					
21b. DATE SIGNED (Mo/Day/Yr) 8/10/07						21c. HOUR OF DEATH 17:17					
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)						22b. DATE SIGNED (Mo/Day/Yr)					
21e. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)						22c. HOUR OF DEATH					
21f. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)						22d. PRONOUNCED DEAD (Mo/Day/Yr)					
21g. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)						22e. PRONOUNCED DEAD AT (Hour)					
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Oscar Batugal MD 2501 W Charleston Las Vegas Nevada 89102								23b. LICENSE NUMBER 8269			
24a. REGISTRAR (Signature) <i>[Signature]</i>						24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) AUG 10 2007			24c. DEATH DUE TO COMMUNICABLE DISEASE YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)											
PART 1 (a) <i>Respiratory failure</i>											
DUE TO, OR AS A CONSEQUENCE OF:											
(b) <i>Respiratory pneumonia</i>											
DUE TO, OR AS A CONSEQUENCE OF:											
(c)											
PART 2 OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part 1.											
<i>Bowel obstruction</i>											
26a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST. (Specify)			26b. DATE OF INJURY (Mo/Day/Yr)			26c. HOUR OF INJURY			26d. DESCRIBE HOW INJURY OCCURRED		
26e. INJURY AT WORK (Specify Yes or No)			26f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)			26g. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE					

Print Date: 08/10/2007 10:12:42

000149



526964

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED  
SEAL OF THE SOUTHERN NEVADA  
HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.  
Registrar of Vital Statistics

By:

Date Issued: *[Signature]* AUG 14 2007

# Exhibit 12

# Exhibit 12



ORIGINAL

6

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CC18  
Steven J. Oshins, Esq., Bar No. 5732  
Heidi C. Freeman, Esq., Bar No. 8458  
Kristen E. Simmons, Esq., Bar No. 9187  
Oshins & Associates  
1645 Village Center Circle, Suite 170  
Las Vegas, NV 89134  
(702)341-6000  
Attorneys for Petitioner

FILED

JAN 30 4 38 PM '08

CR  
CLERK COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of  
MILTON I. SCHWARTZ,  
Deceased

Case No. P61300  
LETTERS TESTAMENTARY

Date of Hearing: N/A  
Time of Hearing: N/A

On January 11, 2008, an Order of the Court was entered admitting to probate the decedent's Will dated February 5, 2004, and two Codicils to said Will dated January 27, 2006 and July 21, 2006, respectively, and appointing A. JONATHAN SCHWARTZ, as Executor of the decedent's estate, and who having qualified is hereby authorized to act and have the authority and shall perform the duties of Executor.

In testimony of which I have this date signed these letters and affixed the seal of this Court.

Dated: JAN 30 2007

~~SHIRLEY D. PARRAGUIRRE~~, Clerk

By: , Deputy Clerk  
JULIE RICHMOND

CLERK OF THE COURT

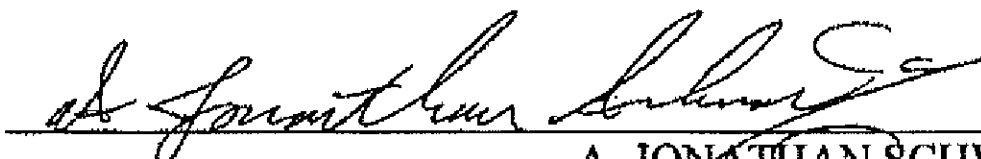
JAN 30 2008

RECEIVED

## OATH

STATE OF Nevada }  
COUNTY OF Clark } :SS

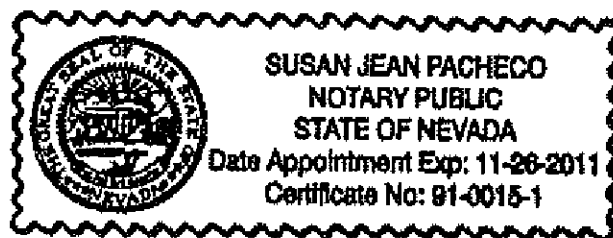
I, A. JONATHAN SCHWARTZ, whose mailing address is 2293 Duneville Street, Las Vegas, NV 89146, solemnly affirm that I will faithfully perform according to law the duties of Executor.

  
A. JONATHAN SCHWARTZ

SUBSCRIBED AND SWORN TO before me

this 25<sup>th</sup> day of January, 2008.

  
NOTARY PUBLIC



# Exhibit 13

# Exhibit 13

Print

Page 1 of 1

From: Jonathan Schwartz (jonathan@miltson.com)  
 To: paul.schiffman@adelsoncampus.org;  
 Date: Tue, March 9, 2010 11:44:33 AM  
 Cc:  
 Subject: Fw: Milton I. Schwartz Hebrew Academy Agreement

Paul:

So you know, the email below and attachments were sent to Victor last Friday. I'm awaiting a response. Thank you.

Jonathan Schwartz

----- Forwarded Message -----

From: Jonathan Schwartz <jonathan@miltson.com>  
 To: vchaitlel@redhillsventures.com; jonathan@miltson.com  
 Sent: Fri, March 5, 2010 11:39:36 AM  
 Subject: Milton I. Schwartz Hebrew Academy Agreement

Victor:

It was a pleasure meeting with you and Paul Schiffman on Wednesday of this week. I always enjoy seeing the school!

As I discussed with you, I have talked about the various issues concerning the Bequest with my family since our meeting on Wednesday. Because of the various discussions I had with you and others regarding the Bequest, the attached Agreement is necessary. The Agreement makes sure that my Dad's intent is respected and followed (the "Agreement"). Primarily, the Agreement memorializes that which the School is already doing to commemorate my Dad's nearly thirty (30) year devotion to the School and its predecessors. Further, the Agreement makes sure that the original intent of the Board is complied with when it named the school; the Milton I. Schwartz Hebrew Academy. This Agreement doesn't attempt to "leverage" anything.

In speaking with my family, the one thing that we respectfully request is that you and the current Board restore the 2008 era logo of the Milton I. Schwartz Hebrew Academy to the letter-head and all other "Media". The logo was removed without discussion with my family and we believe it is reasonable and fitting for the Logo to remain on the letter-head and Media. The Agreement simply memorializes minimum guarantees so that my Dad's commemoration as the founder of the Milton I. Schwartz Hebrew Academy isn't eroded. The Agreement does not negatively effect the gifts made by Mr. Adelson, nor their commemoration as currently respected.

The only reason I put a deadline of signature by Monday is that I need to know by then so that I can sell some securities to make the funds available for the Bequest on Friday. Please forward your signed copy of the Agreement to me by either email or fax (702-387-8770). I hope that we can bring these matters to a close so that we can all approach the School with joy in our hearts moving forward. Good Shabbos!

Jonathan Schwartz

# Exhibit 14

# Exhibit 14

DRAFT

**AGREEMENT BETWEEN THE ESTATE OF MILTON I. SCHWARTZ  
AND THE MILTON I. SCHWARTZ HEBREW ACADEMY**

This Agreement (the "Agreement"), made and entered into this \_\_\_\_\_ day of March, 2010 by and between the Estate of Milton I. Schwartz ("Estate"), the Milton I. Schwartz Revocable Family Trust ("Trust"), by and through its Executor and Trustee, A. Jonathan Schwartz ("Schwartz") and the Milton I. Schwartz Hebrew Academy ("MISHA") and the Adelson Educational Campus and of the Adelson School (collectively, "Adelson School"), by and through its President, Victor Chaitiel ("Chaitiel") with reference to the following facts:

- A. At section 2.3 of the Last Will and Testament of Milton I. Schwartz dated February 5, 2004 (the "Will"), the Will provides, in pertinent part, a bequest to the MISHA in the amount of \$500,000 in the form of securities (stocks, bonds or cash) with the largest profit so that the Estate can take advantage of the low cost basis and increased price as directed in the sole discretion of the Executor (Jonathan Schwartz) (the "Bequest"). The purpose of the Bequest is to fund scholarships for Jewish children only ("Purpose").
- B. Pursuant to the Clark County Assessors Office, the MISHA is situated on the land known as (parcel number 138-19-516-001) (the "Land").
- C. The term the "School" or the "Schools" herein shall refer collectively to the Milton I. Schwartz Hebrew Academy, the Adelson School, and of the Adelson Educational Campus.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the parties promise, covenant and agree as follows:

- (1) Contingent upon all signatories execution of the Agreement by March 8, 2010 and delivery of the Agreement by that date to Schwartz, the Bequest shall be made to MISHA no later than March 12, 2010.
- (2) The school located on the Land (grades Pre-K through Fourth) and at any new location shall be known in perpetuity as the *Milton I. Schwartz Hebrew Academy*. Any and all by-laws, agreements, articles of incorporation, operating agreements or other documents associated with the Schools located on the Land or at any new location shall heretofore, and in perpetuity, identify grades Pre-K through Fourth as the *Milton I. Schwartz Hebrew Academy*.
- (3) The MISHA shall prominently depict signage on the face of the building housing the Pre-K through Fourth grades (facing Hillpointe Ave.) (situated on the Land) and at any new location, and at all entrances thereto, exclusively identifying it (and regularly maintaining it) as the *Milton I. Schwartz Hebrew Academy* so that it is clearly evident to the public that it is known as the *Milton I. Schwartz Hebrew Academy*. The sign facing Hillpointe Ave., located on the MISHA as of March 3, 2010 is acceptable to Schwartz.

DRAFT

## DRAFT

- (4) All letter-head, stationary, correspondence, promotional material, websites, business cards, fundraisers, advertisements, etc. (hereinafter, "Media") associated with the Schools shall clearly and prominently identify the *Milton I. Schwartz Hebrew Academy* as grades Pre-K through Fourth in perpetuity. All Media shall depict a logo bearing the name, the Milton I. Schwartz Hebrew Academy (in bold, all capped letters), no smaller than any other logo located on the face of said Media, to be reasonably approved of by the Trust and the Schools ("Logo"). The foregoing shall be completed no later than the start of the 2010-2011 school year. For purposes of clarification, the 2008 Logo of the Milton I. Schwartz Hebrew Academy which appeared on that certain tax receipt dated May 28, 2008 (attached hereto) is acceptable with the exception that the wording "MILTON I. SCHWARTZ" shall be in all capital letters, bolded.
- (5) The interior main entrance of the MISHA shall prominently house a painting and/or photograph of Milton I. Schwartz ("MIS") in perpetuity to be approved of by Schwartz which shall include a plaque listing Milton I. Schwartz and identifying Milton I. Schwartz as the founder of the Milton I. Schwartz Hebrew Academy.
- (6) The website of the Schools shall prominently (in perpetuity) list the MISHA as grades Pre-K through Fourth and shall include a description as follows:
- The Milton I. Schwartz Hebrew Academy is home to the lower school, grades pre-K through Fourth. The Milton I. Schwartz Hebrew Academy was established in 1988 through the generosity of Las Vegas businessman Milton I. Schwartz and others who answered a need in the Southern Nevada community for a strong secular and Judaic educational institution for elementary school-aged children.*
- (7) When the Bequest is funded, it shall act to satisfy in full any obligation, liability or duty of Milton I. Schwartz, the Estate of the Trust toward or associated with the MISHA or the Adelson School. Upon MISHA's receipt of the Bequest, a full and final release of Milton I. Schwartz, the Estate, the Trust, A. Jonathan Schwartz and the heirs, assigns and beneficiaries of Milton I. Schwartz, the Estate or Trust shall be effectuated.
- (8) The MISHA shall supply the Estate of Milton I. Schwartz and the Milton I. Schwartz Revocable Family Trust (at the direction of the Trust) with a receipt for tax purposes from the MISHA listing its IRS 501 (c)(3) non-profit tax id number for the Bequest.
- (9) As specified in the Will, the Bequest shall be used solely for the purpose of funding scholarships for Jewish children only at the MISHA.
- (10) Once per year, the MISHA agrees to reasonably cooperate with members of the Milton I. Schwartz family, at a time when it would not interfere with school activities, for the Schwartz Family's access to the School for viewing and verification of compliance with

DRAFT



## DRAFT

the foregoing terms and conditions. The Schwartz Family, its agents, etc. shall indemnify and hold harmless the School for its access to the premises.

- (11) Miscellaneous. This Agreement constitutes the entire Agreement between the Estate, the Trust, Schwartz, the Schwartz Family, its heirs, assigns and beneficiaries and the MISHA, Adelson School and/or the Adelson Educational Campus. This Agreement confirms the understanding of the parties regarding the naming rights of the Estate of Milton I. Schwartz with regard to the Schools. No amendment, alteration or withdrawal of the Agreement shall be valid or binding unless made in writing and signed by each of the parties affected by such provision. This Agreement shall be binding upon the heirs, successors and assignees of all of the parties associated with the Schools. Each of the parties acknowledges that it has been advised to obtain legal counsel of its own choosing regarding this Agreement and that it has availed itself of said legal counsel. The terms and conditions of this Agreement shall not be construed against any party regardless of whom the Agreement was drafted by. No party to this Agreement shall assign its right or delegate its duties hereunder without the prior written consent of the other parties. Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law, but if any provision of the Agreement shall be prohibited or invalid under applicable law, the remainder of such provision and the remaining provisions of this Agreement shall continue in full force and effect. This Agreement represents a settlement of disputed facts. In the event of any dispute or litigation concerning the terms of this Agreement, the prevailing party shall receive reimbursement for its reasonable legal fees. Each of the signatories to this Agreement warrant and certify that they have the authority to execute the Agreement in the capacity indicated herein. This Agreement may be executed in counterparts which all together shall constitute one Agreement, binding on all parties. This Agreement shall be construed under the laws of the State of Nevada.

IN WITNESS WHEREOF, the undersigned Parties hereto have executed this Agreement as of the date first written above.

Estate of Milton I. Schwartz,  
A. Jonathan Schwartz, Executor

Milton I. Schwartz Hebrew Academy,  
Victor Chalfiel, President

Milton I. Schwartz Revocable Family  
Trust, A. Jonathan Schwartz, Trustee

The Adelson School, Victor Chalfiel,  
President

DRAFT

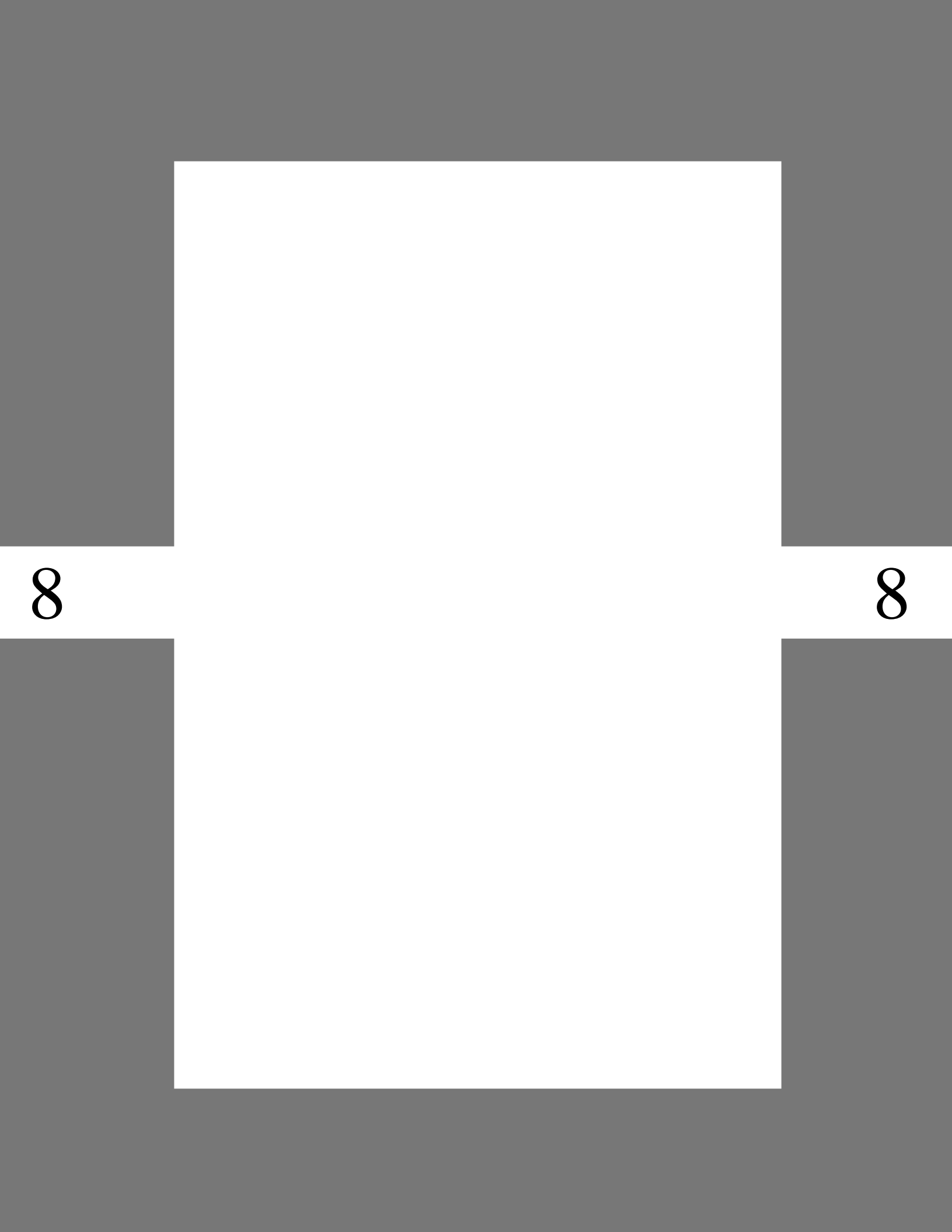
DRAFT



The Adelson Educational Campus, Victor  
Chaffel, President

DRAFT

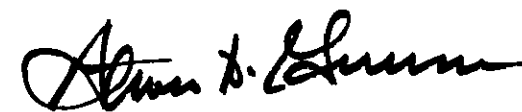
DRAFT



8

8

Electronically Filed  
05/14/2013 02:09:30 PM



CLERK OF THE COURT

**NEOJ**

Maximiliano D. Couvillier, III (SBN #7661)

mcouvillier@lionelsawyer.com

Ketan D. Bhirud (SBN #10515)

kbhirud@lionelsawyer.com

Kendal L. Davis (SBN #11946)

kdavis@lionelsawyer.com

LIONEL SAWYER & COLLINS

1700 Bank of America Plaza

300 South Fourth Street, Suite 1700

Las Vegas, Nevada 89101

(702) 383-8888 (Telephone)

(702) 383-8845 (Fax)

Attorneys for The Dr. Miriam and  
Sheldon G. Adelson Educational Institute

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased.

Case No.: P061300

Dept. No.: 26/Probate

Date of Hearing: May 31, 2013

Time of Hearing: 9:30 a.m.

**NOTICE OF ENTRY OF ORDER TO APPEAR AND SHOW CAUSE**

PLEASE TAKE NOTICE that an Order to Appear and Show Cause was entered by the  
Court on the 14<sup>th</sup> day of May, 2013, a true and correct copy of which is attached hereto.

Dated this 14<sup>th</sup> day of May, 2013.

LIONEL SAWYER & COLLINS

By: 

Maximiliano D. Couvillier, III (SBN #7661)

Ketan D. Bhirud (SBN #10515)

Kendal L. Davis (SBN #11946)

Attorneys for The Dr. Miriam and Sheldon G.  
Adelson Educational Institute

## CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2013, service of the foregoing **NOTICE OF ENTRY OF ORDER TO APPEAR AND SHOW CAUSE** was made by placing a true and correct copy of the same in the United States Mail, First Class postage prepaid, addressed to the following persons at their last known addresses:

Steven J. Oshins, Esq.  
OSHINS & ASSOCIATES  
645 Village Center Circle  
Las Vegas, NV 89134

*Attorneys for Executor*

Eileen Joanna Zarin  
9 Steven Lane  
King Point, NY 11024

Samuel Schwartz  
351 Woodlake Drive  
Marlton, NJ 08053

Zachary Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Joshua Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

The Milton I. Schwartz Revocable Family  
Trust, A. Jonathan Schwartz, Trustee  
2293 Duneville Street  
Las Vegas, NV 89146

Robert P. Dickerson, Esq.  
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, NV 89134

*Attorneys for Abigail Richlin Schwartz*

Robin Sue Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Michael Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Benjamin Landsburg  
1028 Bobwhite Drive  
Cherry Hill, NJ 08003

Frances A. Martel  
235 Vista Del Parque  
Redondo Beach, CA 90277


Medicaid Estate Recovery  
1050 E. William Street, Suite 435  
Carson City, NV 89701-3199



An Employee of Lionel Sawyer & Collins

Electronically Filed  
05/14/2013 12:01:49 PM

# ORIGINAL



CLERK OF THE COURT

ORD

Maximiliano D. Couvillier, III (SBN #7661)

mcouvillier@lionelsawyer.com

Ketan D. Bhirud (SBN #10515)

kbhirud@lionelsawyer.com

Kendal L. Davis (SBN #11946)

kdavis@lionelsawyer.com

LIONEL SAWYER & COLLINS

1700 Bank of America Plaza

300 South Fourth Street, Suite 1700

Las Vegas, Nevada 89101

(702) 383-8888 (Telephone)

(702) 383-8845 (Fax)

Attorneys for The Dr. Miriam and Sheldon G. Adelson Educational Institute

## DISTRICT COURT

## CLARK COUNTY, NEVADA

In the Matter of the Estate of

MILTON I. SCHWARTZ,

Deceased.

Case No.: P061300

Dept. No.: 26/Probate

Date of Hearing: May 31, 2013

Time of Hearing: 9:30 a.m.

### ORDER TO APPEAR AND SHOW CAUSE

This Court, having reviewed the Ex Parte Petition for an Order to Appear and Show Cause, filed by the Dr. Miriam and Sheldon G. Adelson Educational Institute ("Petitioner"), devisee of the will of the Decedent in the above-referenced Estate, by and through its attorneys, Maximiliano D. Couvillier, III, Ketan D. Bhirud and Kendal L. Davis, of the law firm of Lionel Sawyer & Collins, hereby finds that there is good cause to grant said Ex Parte Petition for an Order to Issue Citation to Appear and Show Cause.

**IT IS HEREBY ORDERED** that A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, personally appear on the 31st day of May, 2013, at the hour of 9:30 a.m., before the Probate Commissioner of the Eighth Judicial District Court - Family Division, located at 601 North Pecos Road, Las Vegas, Nevada 89101, Courtroom 9, to SHOW CAUSE, if any: (i) for his failure to distribute to the Petitioner; (ii) for his failure to file a first and all subsequent annual accountings of the Estate and why he should not be compelled to file the same; (iii) for his failure to use reasonable diligence in performing his duties and pursuing the administration of

1 the Estate; (iv) for his failure to timely close the Estate; and (v) why he should not be removed as  
 2 Executor of the Estate.

3 **IT IS FURTHER ORDERED** that, pursuant to NRS 141.090, the appointment of A.  
 4 Jonathan Schwartz as Executor of the Estate is suspended and that A. Jonathan Schwartz shall  
 5 personally appear before this Court on the 31st day of May, 2013, at the hour of 9:30 a.m., to  
 6 show cause why his Letters Testamentary should not be revoked.

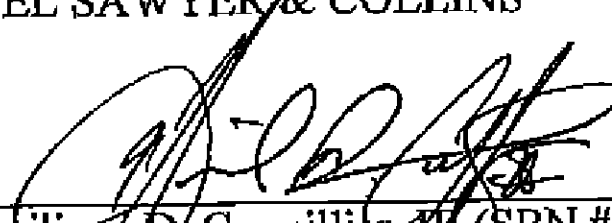
7 **IT IS FURTHER ORDERED** that, pursuant to NRS 141.095, A. Jonathan Schwartz  
 8 shall not act with regards to the Estate except to account, correct misfeasance of administration,  
 9 or preserve the Estate.

10 Dated this <sup>SW</sup>14 day of May, 2013.

11   
 12 \_\_\_\_\_  
 13 DISTRICT COURT JUDGE  
 14 

15 Submitted By:

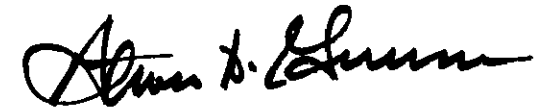
16 LIONEL SAWYER & COLLINS

17   
 18 Maximiliano D. Couvillier, III (SBN #7661)  
 19 Ketan D. Bhurud (SBN #10715)  
 20 Kendal L. Davis (SBN #11946)  
 21 300 South Fourth Street, #1700  
 22 Las Vegas, Nevada 89101

23 Attorneys for The Dr. Miriam and  
 24 Sheldon G. Adelson Educational Institute  
 25  
 26  
 27  
 28

9

9



CLERK OF THE COURT

1 **RESP**  
2 MARK A. SOLOMON, ESQ.  
3 Nevada State Bar No. 00418  
4 [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
5 ALAN D. FREER, ESQ.  
6 Nevada State Bar No. 7706  
7 [afreer@sdfnvlaw.com](mailto:afreer@sdfnvlaw.com)  
8 STEVEN E. HOLLINGWORTH, ESQ.  
9 Nevada State Bar No. 7753  
10 [shollingworth@sdfnvlaw.com](mailto:shollingworth@sdfnvlaw.com)  
11 SOLOMON DWIGGINS & FREER  
12 9060 West Cheyenne Avenue  
13 Las Vegas, Nevada 89129  
14 Telephone: (702) 853-5483  
15 Facsimile: (702) 853-5485

16 *Attorneys for Respondent, A. Jonathan Schwartz*

17  
18 **DISTRICT COURT**  
19 **CLARK COUNTY, NEVADA**

20 In the Matter of the Estate of	)	Case No. P061300
21 MILTON I. SCHWARTZ,	)	Department No. 26/Probate
22 Deceased.	)	
23	)	<b>Date of Hearing: 05/31/2013</b>
24	)	<b>Time of Hearing: 9:30 a.m.</b>
25	)	

26  
27 **OBJECTION TO PETITION TO COMPEL DISTRIBUTION, FOR ACCOUNTING,**  
28 **AND FOR ATTORNEYS' FEES AND EX PARTE PETITION FOR ORDER TO ISSUE**  
**CITATION TO APPEAR AND SHOW CAUSE**

29 A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, by and through his  
30 attorneys, Mark A. Solomon, Alan D. Freer, and Steven E. Hollingworth of the law firm of  
31 Solomon Dwiggins & Freer, Ltd., does hereby object to the Ex Parte Petition for Order to Issue  
32 Citation to Appear and Show Cause and the Petition to Compel Distribution, For Accounting, and  
33 For Attorneys' Fees (collectively the "Petitions") filed by the Dr. Miriam and Sheldon G. Adelson  
34 Educational Institute (the "Adelson School"), and responds as follows.



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. OBJECTION TO PETITION TO COMPEL DISTRIBUTION,  
FOR ACCOUNTING, AND FOR ATTORNEYS' FEES.**

**A. FACTUAL BACKGROUND**

The Adelson School seeks the Executor's removal and other personal penalties as leverage in a dispute over whether the School can avoid its obligations to the decedent and his estate. The Adelson School attempts to characterize this dispute as if it arose only after the decedent's death. In fact, this dispute has a long history going back for decades.

The history of the Hebrew Academy (the "Academy") is crucial to this matter. Milton Schwartz was instrumental in the Howard Hughes Corporation's gift of land where the Academy and Adelson School now stand. In addition, Milton provided key funding during its formative years, through both personal donations and fundraising. Without his efforts and contributions, there would be no Hebrew Academy or Adelson School today. There would have been nothing for later philanthropists like the Adelsons to build on.

In August 1989, Milton Schwartz donated \$500,000 to the Academy in return for which the Academy would guarantee that its name would change in perpetuity to the "Milton I. Schwartz Hebrew Academy."<sup>1</sup> The Board of Directors of the Hebrew Academy memorialized this agreement in its minutes from its August 14, 1989 special meeting<sup>2</sup> and in Bylaws for the Academy, adopted on December 18, 1990.<sup>3</sup> Amended articles of incorporation were filed on August 22, 1990, changing the name of the school to the "Milton I. Schwartz Hebrew Academy." In addition, by deed executed April 9, 1991, the Hebrew Academy conveyed the underlying property of the

---

<sup>1</sup> Ex. 1, Supplemental Affidavit of Milton I. Schwartz dated February 22, 1993 at ¶4.

<sup>2</sup> See Ex. 2, Minutes of the Board of Trustees, Special Meeting, August 14, 1989 ("A letter should be written to Milton Schwartz stating the Academy will be named after him"); Ex. 3, Certificate of Amendment of the Articles of Incorporation of the Hebrew Academy.

<sup>3</sup> Ex. 4, Bylaws (12/18/1990), Article I(1) ("The name of the corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall [*sic*] remain so in perpetuity"); see also Ex. 5, Bylaws (April 13, 1999), Section 1.01 ("The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity.")

1 Academy to the "Milton I. Schwartz Hebrew Academy, a Nevada non-profit corporation."<sup>4</sup>

2 The Academy's perpetual obligations and promises were recognized by its board members  
3 at various times over the years. For example, on July 17, 1992, board member Lenard E.  
4 Schwartz, Esq. acknowledged to Milton, "It's your school, it has your name on it forever."<sup>5</sup>  
5 Likewise, when the Academy became embroiled in a dispute with Milton in 1992, board member  
6 Tamar Lubin offered to return Milton's \$500,000 donation made in 1989.<sup>6</sup> Such offer further  
7 evidences an acknowledgment by the Academy that Milton's gifts were conditional, not simply  
8 gratuitous in nature.

9 In addition to cash gifts, Milton Schwartz guaranteed the debts of the Academy until the  
10 debts were paid in full after his death. Milton made all of his contributions and guarantees in  
11 reliance on the Academy's agreement and the representations. However, the Academy failed to  
12 keep its end of the bargain and on October 19, 1994, filed amended articles of incorporation  
13 removing his name from the school. During this period when the school no longer bore his name,  
14 Milton ceased making donations to the Academy.<sup>7</sup>

15 On May 23, 1996, the Academy agreed to restore its name to the "Milton I. Schwartz  
16 Hebrew Academy" and amend its articles of incorporation accordingly.<sup>8</sup> Amended articles were  
17 filed on March 21, 1997. In addition to restoring its former name, the Academy agreed to  
18 implement the following actions to prominently display the full name of the "Milton I. Schwartz  
19 Hebrew Academy" on signage, stationery, letterhead, and brochures:

20 Restore the marker in front of the Hebrew Academy identifying it  
21 as the "Milton I. Schwartz Hebrew Academy."

22 Change the Hebrew Academy's formal stationary [sic] to include its

---

23  
24 <sup>4</sup> Ex. 6, Quitclaim Deed.

25 <sup>5</sup> See Ex. 7, Letter from Lenard E. Schwartz dated July 17, 1992.

26 <sup>6</sup> See Ex. 8, Affidavit of Michael Novick, Feb. 19, 1993 at ¶11-12.

27 <sup>7</sup> See Ex. 9, Spreadsheet of Contributions.

28 <sup>8</sup> Ex. 10, Letter from Dr. Roberta Sabbath, School Head, dated May 23, 1996.

1 full name, the "Milton I. Schwartz Hebrew Academy," in a form  
2 consistent with this letterhead and include our full name on future  
brochures.

3 Where practicable, display the full name of the Hebrew Academy.  
4 In print advertising of sufficient size, the full name of the school  
5 will be displayed in a design consistent with the letterhead. Where  
6 impractical by reason of size, utilization of voice media, informal  
correspondence, informal memoranda, etc., and in answering the  
telephone, the school will utilize the shorthand version of its name  
as Hebrew Academy or simply, its logo.<sup>9</sup>

7 The Academy further informed Milton that "you can rest assured it is the intention of the School  
8 Head and the School's Officers and Directors that the utilization of the school's full name will  
9 consistent with an intent to recognize and honor your contribution and assistance."<sup>10</sup>

10 In reliance on this agreement and these representations from the Academy, Milton I.  
11 Schwartz resumed making monetary contributions to the Academy up until his death, in the  
12 additional amount of approximately \$500,487.<sup>11</sup> His total lifetime contributions were  
13 approximately \$1,010,656.66.<sup>12</sup> Also in reliance on the Academy's agreement and promise, on  
14 February 5, 2004, the decedent executed a will providing a bequest of \$500,000 to the Milton I.  
15 Schwartz Hebrew Academy.

16 On or around 2006 and 2007, and before Milton's death, Mr. Adelson pledged \$25 million  
17 to build a high school on the site of the Academy. Milton, the Academy, and Mr. Adelson agreed  
18 that the high school would be called the "Adelson School," while grades K-8 would continue to  
19 be known as the "Milton I. Schwartz Hebrew Academy." This understanding and agreement is  
20 evidenced by a letter signed by Mr. Adelson and Victor Chaltiel of the Board of Directors.<sup>13</sup>

21 At the time of Milton's death on August 9, 2007, the name of grades K-8 was the "Milton  
22

---

23  
24 <sup>9</sup> *Id.*

25 <sup>10</sup> *Id.*

26 <sup>11</sup> *See* Ex. 9, Spreadsheet of Contributions.

27 <sup>12</sup> *Id.*

28 <sup>13</sup> Ex. 11, Gala Announcement.

1 I. Schwartz Hebrew Academy,” consistent with the parties’ agreement. However, unbeknownst  
2 to the Executor, and without even allowing Milton’s family seven months to grieve his passing, the  
3 Academy violated its contractual obligations and promise by filing amended articles of  
4 incorporation changing the corporate name to the “Dr. Miriam and Sheldon G. Adelson  
5 Educational Institute.” From the timing of events, it appears clear that the Academy was waiting  
6 for an opportune moment to jettison its obligations, in the hopes that the Executor of Milton’s  
7 estate would be unwilling to raise a challenge.

8 The Academy took other, more gradual actions in violation of its agreement with the  
9 Decedent. For example, the name of the middle school (grades 5-8) was changed from the “Milton  
10 I. Schwartz Hebrew Academy” to the “Adelson Middle School.” The Executor became aware of  
11 the Academy’s breach on or about March, 2010.

12 The Executor has patiently reviewed this history with the Academy Board of Directors and  
13 has attempted to resolve this dispute without resorting to litigation. The Executor has repeatedly  
14 acknowledged the generosity of Dr. Miriam and Sheldon G. Adelson, raising no objection to the  
15 naming of the high school (grades 9-12) located on the campus after the Adelsons.

16 Along with many others in the community, the Executor is supportive of the Academy’s  
17 purposes and goals. In his capacity as Trustee of the Milton I. Schwartz Revocable Family Trust,  
18 he has the means to satisfy the bequest to the Academy, if appropriate. However, in light of the  
19 Academy’s breach, the Executor has requested written assurances from the Academy that it will  
20 comply with its obligations with respect to the naming of grades K-8 after Milton I. Schwartz.

21 Instead of acknowledging its wrongful conduct and reaffirming its prior assurances, the  
22 Academy’s Petition now seeks to punish the Executor for his painstaking efforts to negotiate an  
23 amicable settlement that protects the intent of the decedent and the rights of the Estate. The Petition  
24 adds insult to injury by willfully ignoring the past and feigning outrage at what it calls the  
25 Executor’s “personal demands.” These so-called “personal demands” are, in fact, nothing more a  
26 request that the Academy honor the terms of its agreement as memorialized in its May 23, 1996  
27  
28

1 letter to Milton.<sup>14</sup>

2 **B. LEGAL ARGUMENT**

3 **1. The Bequest to the School Lapses Because a Legal Entity Named the Milton**  
 4 **I. Schwartz Hebrew Academy is no Longer in Existence.**

5 The will of Milton Schwartz provides for a bequest of \$500,000 to the "Milton I. Schwartz  
 6 Hebrew Academy." However, there is no legal entity currently bearing that name.

7 It is axiomatic that the terms of a will must be construed in accordance with the testator's  
 8 intent. *See, e.g., Adkins v. Oppio*, 105 Nev. 34, 36 (1989) ("[I]t is the long accepted position of this  
 9 court that the primary aim in construing the terms of a testamentary document must be to give  
 10 effect, to the extent consistent with law and policy, to the intentions of the testator"). Based on the  
 11 Academy's agreement and representations to Milton at the time of the execution of the will and  
 12 until his death, Milton understood and expected that the Hebrew Academy was obligated to bear  
 13 his name in perpetuity.<sup>15</sup> This understanding was reflected in Milton's own sworn testimony:  
 14 "Affiant donated \$500,000 to the Hebrew Academy in return for which it would guaranty that its  
 15 name would change in perpetuity to the Milton I. Schwartz Hebrew Academy."<sup>16</sup>

16 Milton's express intent as reflected in the will, therefore, was not to benefit a charitable  
 17 organization generally, but to benefit an entity *bearing his name perpetually*. Had Milton known  
 18 that the Academy would remove his name almost immediately following his death, he would not  
 19 have made the bequest. This is evident by the fact that he took vigorous action against the Academy  
 20 during his lifetime to remedy breaches by the Academy, and he ceased making donations until it  
 21 changed its name back to the Milton I. Schwartz Hebrew Academy.

---

22  
 23 <sup>14</sup> Note the close correspondence between the supposedly "outrageous" request by the Executor  
 24 that all "letter-head, stationery, correspondence, promotional material" and other media associated  
 25 with the Schools "shall clearly and prominently identify the 'Milton I. Schwartz Hebrew  
 26 Academy'" with the Academy's *express agreement* to "change the Hebrew Academy's formal  
 stationary [sic] to include its full name, the 'Milton I. Schwartz Hebrew Academy,' in a form  
 consistent with this letterhead and include our full name on future brochures."

27 <sup>15</sup> *See* Ex. 1, Supplemental Affidavit of Milton I. Schwartz at paragraph 4.

28 <sup>16</sup> *Id.*

1 Because there is no existing entity named after Milton I. Schwartz on a perpetual basis, the  
2 \$500,000 bequest lapses and is distributable as part of the residue of the Estate.

3 **2. The Bequest to the School Was Induced by Fraudulent Representations and**  
4 **is Void.**

5 Because the Academy removed Milton's name from the corporate documents almost  
6 immediately after his death, it is obvious that the Board of Directors was waiting for the moment  
7 when Milton would be unable personally to defend his legacy. The plan to breach was hidden from  
8 Milton, in hopes that he would continue to provide generous gifts, fundraising, and ultimately a  
9 bequest in his will.

10 After remedying its prior breach in 1996, the Board maintained its assurances to Milton that  
11 the school would perpetually bear his name.<sup>17</sup> Yet the Academy had no intent to honor its  
12 agreement, as evidenced by the prompt change after Milton's death. Milton's donations and the  
13 bequest were thus induced by misrepresentations. Had Milton known that the Academy had no  
14 intention of honoring its obligations and representations, he would not have made any gifts or  
15 bequests to the Academy. On the contrary, if he were living today he would likely have sued for  
16 restitution and damages.

17 A bequest that is induced by fraud is void. Restatement (Third) of Property: Wills and Other  
18 Donative Transfers § 8.3(a). Accordingly, the Estate has no obligation to distribute any amount  
19 to the Petitioner.

20 **3. The Bequest to the School, Even if Valid, is Offset by the Estate's Claim for**  
21 **Damages.**

22 Even if the bequest to the Academy is valid, the Estate has no obligation to distribute any  
23 amount to the school. Because the Academy has breached the obligations and promises that  
24 induced Milton's lifetime and testamentary gifts, the Academy is liable to the Estate for rescission  
25  
26

---

27  
28 <sup>17</sup> See, e.g., Ex. 5, Bylaws (April 13, 1999), Section 1.01 ("The name of the Corporation is the  
Milton I. Schwartz Hebrew Academy and will remain so in perpetuity").

1 of these gifts, plus damages.<sup>18</sup> The Estate believes the amount thus owed from the Academy  
 2 exceeds \$1,000,000.<sup>19</sup> The Estate has the right to offset the \$500,000 bequest to the School in the  
 3 amount of the damages due from the School. *See, e.g., Matter of Estate of Morrell*, 428 S.E.2d 697,  
 4 699 (N.C. Ct. App. 1993) (“[T]he right and duty of an executor to deduct from a legacy the amount  
 5 of any indebtedness of the legatee to the estate of his testator, is well settled, and is in full accord  
 6 with elementary principles of justice”).

7 **4. The Bequest to the School is Abated Because the Estate Has Insufficient Funds**  
 8 **to Meet All Bequests.**

9 When an estate has insufficient funds or assets after payment of claims, bequests under the  
 10 will abate according to priority.<sup>20</sup> Bequests to unrelated persons, such as the Hebrew Academy,  
 11 abate before bequests to spouses or to kindred. *See* NRS 151.163 (“Unless a different intention is  
 12 expressed in the will, abatement takes place in any class only as between devisees of that class, and  
 13 *devisees to a spouse or to kindred are chargeable only after devisees to persons not related to the*  
 14 *testator.*”) [Emphasis added]. The will of Milton I. Schwartz contains no contrary direction.

15 Although the amended estate inventory filed on January 8, 2009 indicates a gross value of  
 16 \$929,884.17, the actual amount distributable to devisees is much less due to expenses and claims  
 17 against the estate. For example, as more fully indicated in the accounting filed by the Executor  
 18 contemporaneously herewith, the estate settled a claim brought by the decedent’s ex-wife, Abigail  
 19 Richlin Schwartz, for the amount of \$385,000. Additional expenses, including legal expenses that  
 20 are attributable to protecting the estate’s rights vis-à-vis the Academy, have, and are expected to,  
 21 deplete the estate assets further.

22 To the extent assets remain for distribution, the specific bequest of tangible personal  
 23

---

24 <sup>18</sup> Restatement (Third) of Restitution And Unjust Enrichment, §11(2) (“A donor whose gift is  
 25 induced by invalidating mistake has a claim in restitution as necessary to prevent the unintended  
 26 enrichment of the recipient.”)

27 <sup>19</sup> *See* Ex. 9, Spreadsheet of Contributions.

28 <sup>20</sup> *See* NRS 151.163; Restatement (Third) of Property (Wills & Don. Trans.) § 1.1, Comment f.

1 property to the decedent's descendants (total inventory value \$244,025.00) and the monetary  
 2 bequest of \$180,000 to the decedent's grandchildren take priority over the bequests to the Hebrew  
 3 Academy and the residual bequest to the Milton I. Schwartz Revocable Family Trust. The Hebrew  
 4 Academy thus has no claim to the full \$500,000 bequest. In fact, once the final expenses of the  
 5 estate are determined, it is possible, if not likely, that the Hebrew Academy will not have a claim  
 6 to *any* distribution under the terms of the will.

7 As previously stated, the Executor, in his capacity as Trustee of the Milton I. Schwartz  
 8 Revocable Family Trust, has the means to satisfy the bequest to the Academy. However, neither  
 9 the Estate nor the Trust will do so unless the Academy makes good on its obligations and promises  
 10 to the decedent and which enure to the benefit of the Estate.

## 11 **II. OBJECTION TO EX PARTE PETITION FOR ORDER TO** 12 **ISSUE CITATION TO APPEAR AND SHOW CAUSE**

### 13 **1. The Executor Has Been Attempting to Reach Resolution With Petitioner for** 14 **Several Years Concerning the Alleged Distribution to the Petitioner.**

15 As the history of the decedent, his estate, and the Academy indicates, the Executor has  
 16 substantial concerns about the enforceability of the Petitioner's claims and the amount, if any, that  
 17 is payable to Petitioner. The Executor is mindful, of course, of the educational mission of the  
 18 Academy and his father's support of the Academy over many years. Consequently, the Executor's  
 19 desires both to support the Academy and preserve his father's legacy have led him to seek to  
 20 resolve the dispute without litigation. Unfortunately, his efforts over several years have been  
 21 rejected. The Academy has flatly refused to provide any written assurances whatsoever.

### 22 **2. The Executor Has Diligently Performed His Administration of the Estate.**

23 a. Contrary to Petitioner's assertion, the Executor has exercised diligence in  
 24 administering the estate. There have been primarily three issues that have caused the estate to  
 25 remain open: (1) litigation concerning the creditor's claim filed by the Decedent's ex-wife, Abigail  
 26 Richlin Schwartz; (2) tax controversy with the Internal Revenue Service concerning the Decedent's  
 27 income taxes; and (3) ongoing attempts by the Executor to resolve informally Petitioner's breach  
 28 of agreement with and promises to Decedent that Petitioner would be named the "Milton I.



1 Schwartz Hebrew Academy" in perpetuity.

2 i. Creditor's Claim: As detailed in the Account and Report filed  
3 concurrently herewith, on April 23, 2008, the Decedent's ex-wife, Abigail Richlin Schwartz filed  
4 a creditor's claim in the amount of \$4,052,206.00. The Executor rejected this claim, which led to  
5 litigation being filed against the estate on July 18, 2008. After protracted litigation, this litigation  
6 was settled for the amount of \$385,000, which was satisfied on or about July 12, 2012.

7 ii. Tax Controversy: Likewise, for the past several years, the Executor  
8 has been dealing with the Internal Revenue Service in an attempt to negotiate and resolve the  
9 Decedent's income tax liability incurred prior to death. Such issues were finally and fully resolved  
10 in February 2013.

11 iii. Dispute With Adelson Educational Institute: In addition, as set forth  
12 *supra*, the Executor has attempt to amicably resolve the dispute between Petitioner and the estate  
13 arising from Petitioner's breach of an agreement with and misrepresentations made to Decedent.  
14 Concurrent with this Objection, the Executor has filed a Petition for Declaratory Relief to  
15 determine the rights of the parties. After such determination has been made, the Estate will be in  
16 a position to close.

17 b. Regarding Petitioner's concerns regarding the lack of an accounting,  
18 concurrently with this Objection, the Executor has filed an accounting, which is set for hearing on  
19 June 14, 2013. Any objections Petitioner may have to such accounting can be dealt with in the  
20 normal course.

21 c. Accordingly, the estate is not in a position to close because of the issues  
22 regarding Petitioner. Otherwise, due to the recent settlement with the Internal Revenue Service,  
23 the estate would be in a position to close. As such, once a ruling has been entered on the  
24 Executor's Petition for Declaratory Relief, the estate will be in a position to file a final accounting,  
25 make distributions and close.

26 **3. Petitioner's Request to Remove Mr. Schwartz as Executor Is Unjustified and**  
27 **Sought for Improper Motives.**

28 a. The removal of a personal representative nominated by a testator is a drastic

1 action that should be taken "only when the estate is actually endangered and such action is  
2 necessary to preserve its assets." *In re Ulansey's Estate*, 73 Pa. D. & C.2d 453, 456 (Pa. Com. Pl.  
3 1975).

4 b. Here, as set forth above, Executor has diligently administered the estate, has  
5 filed an accounting that is set for hearing for June 14, 2013, and has set forth the issues that have  
6 required the estate to remain open.

7 c. Indeed, as set forth *supra*, it is apparent that Petitioner has requested the  
8 Executor's removal for the ulterior motive of seeking leverage or advantage regarding the bequest  
9 to the Milton I. Schwartz Hebrew Academy. However, removal of a personal representative should  
10 not be granted where moving party has ulterior motives for removal, such as a litigation tactic.  
11 Accordingly, not only is the Executor's removal unjustified given his administration of the estate,  
12 it is wholly inappropriate, as such removal has been sought merely as a litigation tactic posed by  
13 Petitioner in the hope that it can override the decedent's well-evidenced intent without objection.

### 14 III. CONCLUSION

15 WHEREFORE, Mr. Schwartz requests that this Court deny the relief sought in the  
16 Petitions. Further, Mr. Schwartz requests the following:

17 1. That the Court hold in abeyance any decision concerning the bequest to the Milton  
18 I. Schwartz Hebrew Academy until adjudication of the Petition for Declaratory Relief, filed  
19 concurrently herewith on May 27, 2013;

20 2. That the Court acknowledge that an accounting was filed concurrently herewith on  
21 May 27, 2013, and any issues regarding the accounting shall be dealt with in the ordinary course  
22 at the hearing scheduled thereon for June 14, 2013;

23 3. That the Court expressly deny Petitioner's request to suspend or remove Mr.  
24 Schwartz as Executor;

25 4. That the Court expressly deny Petitioner's request for attorney's fees;

26 5. That the Court grant the estate its fees and costs against Petitioner incurred in  
27 responding to the Petition; and  
28

1           6.       For such other and further relief as this Court deems appropriate.

2       **DATED** this 28<sup>th</sup> day of May, 2013.

3                               SOLOMON DWIGGINS & FREER

4  
5       By: 

6                               MARK A. SOLOMON, ESQ.

7                               Nevada State Bar No. 00418

8                               ALAN D. FREER, ESQ.

9                               Nevada State Bar No. 7706

10                              STEVEN E. HOLLINGWORTH, ESQ.

11                              Nevada State Bar No. 7753

12                              SOLOMON DWIGGINS & FREER

13                              9060 West Cheyenne Avenue

14                              Las Vegas, Nevada 89129

15                              Telephone: (702) 853-5483

16                              Facsimile: (702) 853-5485

17                              *Attorneys for Respondent*

# EXHIBIT “1”

SUPPLEMENTAL AFFIDAVIT OF MILTON I. SCHWARTZ

STATE OF NEVADA           )  
                                  ) SS.:  
COUNTY OF CLARK         )

MILTON I. SCHWARTZ, being first duly sworn, upon oath, deposes and says:

1. This Affidavit is made of my own personal knowledge except where stated on information and belief, and as to those matters, I believe them to be true, and if called as a witness, I would confidently testify thereto.

2. That Affiant hereby affirms under penalty of perjury that the assertions of this Affidavit are true.

3. This Affidavit is submitted in support of Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Declaratory Judgment and Injunctive Relief; Plaintiff's Opposition to Defendant's Countermotion for Sanctions; Plaintiff's Opposition to Defendant's Countermotion to Dismiss or, in the Alternative, for a More Definite Statement; and Plaintiff's Countermotion to Strike Defendant's Opposition.

4. That on or about August of 1989, Affiant donated \$500,000 to the Hebrew Academy in return for which it would guarantee that its name would change in perpetuity to the MILTON I. SCHWARTZ HEBREW ACADEMY. Affiant was first elected Chairman of the Board of Directors in the August 1989 Board of Directors meeting. Affiant was reelected Chairman of the Board of the Milton I. Schwartz Hebrew Academy in June of 1991.

5. That Affiant has been instrumental in bringing large sums of money into the MILTON I SCHWARTZ HEBREW ACADEMY from personal

1 donations and donations of friends and business acquaintances of  
2 Affiant. That as a result of the actions of Tamar Lubin, and the  
3 Defendants, many of the people that donated money will no longer donate  
4 money to the MILTON I. SCHWARTZ HEBREW ACADEMY. As a result, the MILTON  
5 I. SCHWARTZ HEBREW ACADEMY will suffer severe financial problems.

6           6. That as a result of the actions of the Defendant, the  
7 MILTON I. SCHWARTZ HEBREW ACADEMY has suffered and will continue to  
8 suffer irreparable harm. That as a result of the actions of the  
9 Defendant and in particular of Tamar Lubin, there has been a high  
10 turnover of school teachers at the Hebrew Academy. This caused the loss  
11 of highly qualified teachers that had the respect of the parents and  
12 children and has caused and will continue to cause irreparable damage to  
13 the MILTON I. SCHWARTZ HEBREW ACADEMY. In addition, Tamar Lubin has  
14 repeatedly lied to the Board of Directors. She informed the Board of  
15 Directors in May of 1992 that all teachers would be returning in  
16 September to the Academy and she had informed the Board of Directors  
17 that the teachers would receive their contracts. However, neither of  
18 these statements were true at the time she made them. At least two  
19 teachers were terminated immediately subsequent to her reassuring the  
20 Board of Directors that all teachers would return in September of 1992.

21           7. It was the intention of some of the Directors, including  
22 Affiant, to not renew Tamar Lubin's contract that is up for renewal on  
23 June 3, 1993. This decision was the result of numerous complaints that  
24 were received by the Directors concerning the actions of Tamar Lubin.  
25 One graphic example is that one student became nervous and upset and  
26 vomited. Tamar Lubin required that student to sit in his vomit and not  
27 move. This type of abuse should not occur today. A letter concerning  
28 that incident was given to Affiant and is attached as Exhibit "10" to

1 this Motion. In addition, other letters and complaints concerning Ms.  
2 Tamar Lubin are attached to this Motion as Exhibit "11" and were the  
3 basis of the Board's concerns with renewing the contract.

4 8. That Affiant believes that the Defendant is in the  
5 process of negotiating a long term contract with Tamar Lubin to be the  
6 Administrator of the MILTON I. SCHWARTZ HEBREW ACADEMY and that this  
7 action will cause irreparable harm to the MILTON I. SCHWARTZ HEBREW  
8 ACADEMY.

9 9. That Defendant's rely on the fact that there had been  
10 approximately ten more students enrolled in the Academy to demonstrate  
11 that they have not harmed the Academy. However, three (3) of the  
12 private schools in the Las Vegas area that compete with the Academy,  
13 Temple Beth Sholom, Las Vegas Day School and the Meadows are operating  
14 at near capacity and have a waiting list to get in and the Hebrew  
15 Academy is only operating at approximately 40% of its capacity. That as  
16 a result of the actions of Tamar Lubin, many parents have removed their  
17 children from the MILTON I. SCHWARTZ HEBREW ACADEMY to enroll them in  
18 either the Meadows, Temple Beth Sholom, the Las Vegas Day School, or to  
19 place them in public school. As a result, the MILTON I. SCHWARTZ HEBREW  
20 ACADEMY is suffering irreparable harm as long as Tamar Lubin remains  
21 employed. Attached to this Motion as Exhibit "\_" are true and correct  
22 copies of petitions from parents that have either removed their children  
23 or are considering removing their children from the MILTON I. SCHWARTZ  
24 HEBREW ACADEMY as a result of the actions of Tamar Lubin. Two of the  
25 former directors of the Hebrew Academy, Sam Ventura and Dr. Neville  
26 Pokroy, have informed Affiant that at least fifty (50) students that  
27 were removed from the school are waiting to return to the MILTON I.  
28 SCHWARTZ HEBREW ACADEMY as soon as Tamar Lubin leaves.

1           10. That the minutes of the May 21st meeting, that are  
2 attached as Exhibit "B" to the Defendant's Opposition To Plaintiff's  
3 Motion For Declaratory Judgment And Injunctive Relief And Countermotion  
4 For Sanctions; Countermotion To Dismiss Or, In The Alternative, For A  
5 More Definite Statement are not a true and correct copy of the minutes  
6 of the meeting that occurred on May 21, 1992.

7           11. That at the May 21, 1992 meeting of the Board of  
8 Directors, it was determined that a conflict existed between the Bylaws  
9 which mandated the time required for the nominating committee to give  
10 its report and the time that elections could occur after that report was  
11 given. That as a result, it was resolved at the May 21st meeting that  
12 the only way elections could occur in the June meetings was that new  
13 Bylaws would be approved at the beginning of the June meeting and a  
14 provision in the new Bylaws would delete the time period which must  
15 occur between the report of the nominating committee and the election.  
16 Once the new Bylaws were approved, the elections could be held during  
17 the June meetings. Otherwise, elections could not be held until the  
18 July meeting.

19           12. That on or about June 10, 1992, Affiant was notified by  
20 Dr. Edward Goldman that the nominating committee had decided that due to  
21 the conflict in the Bylaws and the discussion that occurred at the May  
22 21, 1992 Board meeting, that the elections should be put off until the  
23 July Board meeting. That as a result of this conversation, Affiant  
24 drafted the letter dated June 11, 1992. Affiant sent that letter to  
25 each of the board members of the MILTON I. SCHWARTZ HEBREW ACADEMY  
26 indicating to them that the elections would not occur at the June  
27 meeting.

28           13. That during the June 18, 1992 meeting of the Board of



1 Directors, the Directors did not vote on the Bylaws. That at the June  
2 meeting, Affiant strenuously objected to the fact that elections were  
3 going on.

4 14. That Affiant was specifically requested by Lenard  
5 Schwartz, a member of the Defendant, the Second Board of Directors, to  
6 not file this suit until after the fundraisers and Jewish holidays  
7 occurred. In addition, Affiant attempted to arrange a meeting with  
8 members of the Defendant, the Second Board of Directors, to resolve this  
9 dispute. However, the meeting never took place because Tamar Lubin was  
10 acting in bad faith and refused to allow the meeting to occur.

11 15. That on May 21, 1992, the Board of Directors of the  
12 MILTON I. SCHWARTZ HEBREW ACADEMY consisted of Milton I. Schwartz,  
13 Michael Novick, Dan Goldfarb, Cynthia Michaels, Frederick Berkley, Dr.  
14 Edward Goldman, Scott Higginson, Dr. Tamar Lubin, Lenard Schwartz,  
15 Robert Rikita, Ira Sternberg, Geri Rentchler, Don Schlesinger, and Dr.  
16 Richard Ellis. In addition, that Roberta Sabbath and Dr. Neville Pokroy  
17 were Honorary Members of the Board of Directors. Honorary Members can  
18 advise the Board of Directors but they cannot vote.

19 16. That on July 16, 1992, Affiant called a meeting of the  
20 Board of Directors at Affiant's home because Affiant was not allowed on  
21 the premises of the MILTON I. SCHWARTZ HEBREW ACADEMY. That at that  
22 meeting the Board of Directors first voted for new Bylaws which removed  
23 the requirement that the Board wait thirty (30) days after receiving the  
24 Nominating Committee's report to hold an election.

25 17. That as of November 5, 1992, the Plaintiff's Board of  
26 Directors consisted of: Milton I. Schwartz, Mike Novick, Abigail  
27 Richlin, Frederick Berkley, Dr. Edward Goldman, Phyllis Darling, Sam  
28 Ventura, Dr. Alvin Blumberg, Roger Soime, Wendy Roselinsky, Ira

1 Sternberg, Bob Rakita, Dr. Richard Ellis, Scott Higginson and Dr. Tamar  
 2 Lubin. However, Ira Sternberg, Bob Rakita, Dr. Richard Ellis, Scott  
 3 Higginson and Dr. Tamar Lubin have not acknowledged the past three (3)  
 4 Board notices Affiant sent out, nor did they attend the July, August or  
 5 November Board meetings, nor did they return telephone calls.

6 18. That Affiant was informed by Dr. Edward Goldman, the  
 7 Assistant Superintendent, Administrative Operations and Staff Relations  
 8 of the Clark County School District, and a member of the Board of  
 9 Directors, that there is an inadequate degree of critical skills  
 10 teaching in the upper classes. In addition, Affiant was told that if  
 11 this is not corrected the education of the students who attend the  
 12 MILTON I. SCHWARTZ HEBREW ACADEMY will suffer irreparable harm.

13 FURTHER AFFIANT SAYETH NAUGHT.

14   
 15 MILTON I. SCHWARTZ

16 SUBSCRIBED AND SWORN to before  
 17 me this 22 day of February, 1993

18   
 19 NOTARY PUBLIC



DIANNE SANDERS  
 My exp. date, Nov. 21, 1993

# EXHIBIT “2”

MAR-04-2010 12:21

SCHWARTZ OFFICE

7023976770 P. 32-04

THE HEBREW ACADEMY  
Minutes of the Board of Trustees  
Special Meeting  
August 14, 1989

## Present:

Elliott Klain  
Gerri Rentchler — 388-GIFT / 10AM  
Neville Pokroy  
Fred Berkley  
George Rudiak  
Tamar-Lubin  
Milton Schwartz  
Roberta Sabbath  
Susan McGarraugh

Milton Schwartz called the meeting to order at 1:30p.m.

The minutes were approved as read.

Because of the change in format in 1988, the Jewish Federation will not give the Hebrew Academy the \$41,000 allocation for scholarships provided. The Hebrew Academy provided \$28,000 worth of scholarships in 1988 and has a policy not to give the recipient's names to anyone. The Jewish Federation is now requesting this information due to their "new" format.

Milton Schwartz would like to meet with Lenny Schwartz, Tamar-Lubin Saposhnik, and Norm Kaufman tomorrow (8-15-89) to discuss the "new" format of the Jewish Federation because the "rules" for 1988 were changed after the school year. (That is: they now request the recipients names for the scholarships).

George Rudiak moved that the Board accepts, with thanks, the donations from Milton Schwartz, George and Gertrude Rudiak, and Paul Sogg. A letter should be written to Milton Schwartz stating the Academy will be named after him. A letter should be written to Paul Sogg stating that a room or building will be named after him and Mr. Sogg has 60 days in which to choose. A letter should be written to George and Gertrude Rudiak stating that they have until December 31, 1989 as to which room they would like to named after their daughter, Gerri Rentchler.

The Board decided to add six additional class-rooms to the existing plans for an additional \$360,000.

A motion was made by Roberta Sabbath to honor Milton Schwartz at the next Gala (10-28-89). And also to have Milton Schwartz present a special award to Paul Sogg at the Gala. Tamar-Lubin Saposhnik seconded. All approved.

Motion to adjourn meeting at 2:15pm. Seconded and approved.

*Susan McGarraugh*  
Susan McGarraugh  
Acting Secretary

MCP-04-2010 12:21

SCHWARTZ OFFICE

7023878770

P.01-04

A. Jonathan Schwartz, Esq.  
 MILTSON CONSULTING, INC.

2293 Duneville Street

Las Vegas, NV 89146

(702)383-6767 - Phone

(702)387-8770 - Fax

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATE: \_\_\_\_\_

RE: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

PAGES (INCLUDING COVER): 4

Fred should have  
 "Staff" on this issue

I found two more copies of  
 the unsigned letter.  
 note date of minutes

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this is not the intended recipient, or the employee or agent for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is strictly prohibited.

August 14, 1989

Milton I. Schwartz  
2120 Silver Avenue  
Las Vegas, Nevada 89102

RE: Gift of Milton I. Schwartz to The Hebrew Academy

Dear Mr. Schwartz:

The Hebrew Academy acknowledges with thanks your generous gift of \$500,000 to be used in the Academy's building program for the construction of the new campus at Summerlin.

In appreciation and recognition of this gift, the Board of Trustees of The Hebrew Academy has decided to name the new campus the "Milton I. Schwartz Hebrew Academy," in perpetuity for so long as The Hebrew Academy exists and for so long as may be permitted by law, your name to be appropriately commemorated and memorialized at the academy campus.

Sincerely yours,

# EXHIBIT “3”

MAR-04-2010 15:35

SCHWARTZ OFFICE

7023878770

P.03.05

OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

AUG 22 1990

FRANKIE SUE DEL PAPA, SECRETARY OF STATE

CERTIFICATE OF AMENDMENT OF THE  
ARTICLES OF INCORPORATION OF  
THE HEBREW ACADEMY  
A Nevada Non-Profit Corporation

FILED

AUG 29 2 49 PM '90

NO. 1025

The undersigned, being the President and Secretary of the  
Board of Trustees of THE HEBREW ACADEMY, hereby certify as  
follows:

1. The original Articles of Incorporation were filed in the Office of the Secretary of State for the State of Nevada on the 27th day of February, 1980.
2. That on the 14th day of August, 1989, at a special meeting of the Board of Trustees of said corporation, duly called and convened, at which a quorum for the transaction of business was present, notice of said meeting having been previously waived by the Trustees of said corporation in writing, the following resolution was adopted by the Board of Trustees of said corporation:

RESOLVED: That it is advisable and in the best interests of this Corporation that its Articles of Incorporation be amended by changing the language of Article I of said Articles to read as follows:

## ARTICLE I

This corporation shall be known as:

THE MILTON I. SCHWARTZ HEBREW ACADEMY

IN WITNESS WHEREOF, the undersigned, the President and Secretary of the Board of Trustees of THE HEBREW ACADEMY, a

///

///

///



MAR-04-2010 15:35

SCHWARTZ OFFICE

7023878770

P.04/05

Nevada non-profit corporation, have executed and acknowledged these presents this 14<sup>th</sup> day of August, 1990.

MILTON I. SCHWARTZ, President

LENARD E. SCHWARTZER, Secretary

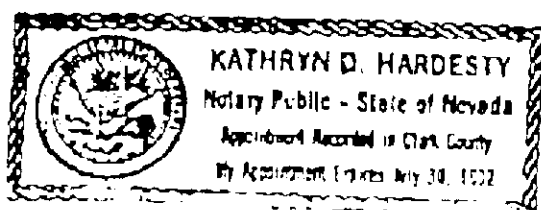
STATE OF NEVADA )

SS:

COUNTY OF CLARK )

On this 13<sup>th</sup> day of August, 1990, personally appeared before me, a Notary Public in and for said County and State, MILTON I. SCHWARTZ, known to me to be the President, and who is authorized to execute this instrument on behalf of THE HEBREW ACADEMY, a Nevada non-profit corporation. He acknowledged to me that he executed this instrument and, upon oath, did depose and say that he is the officer of the corporation as designated above, that he is acquainted with the seal of the corporation, and that the seal affixed to this instrument is the corporate seal of the corporation; that the signatures on this instrument were made by the officers of the corporation as indicated after their signatures; that the corporation executed this instrument freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL.



Kathryn D. Hardesty  
NOTARY PUBLIC

MAR-04-2010 15:35

SCHWARTZ OFFICE

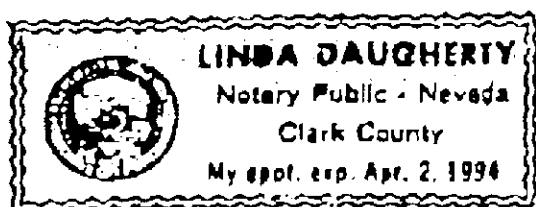
7023878773 P.05/05

STATE OF NEVADA            )  
                                   SS:  
 COUNTY OF CLARK            )

On this 14 day of August, 1990, personally appeared before me, a Notary Public in and for said County and State, LENARD E. SCHWARTZER, known to me to be the Secretary, and who is authorized to execute this instrument on behalf of THE HEBREW ACADEMY, a Nevada non-profit corporation. He acknowledged to me that he executed this instrument and, upon oath, did depose and say that he is the officer of the corporation as designated above, that he is acquainted with the seal of the corporation, and that the seal affixed to this instrument is the corporate seal of the corporation; that the signatures on this instrument were made by the officers of the corporation as indicated after their signatures; that the corporation executed this instrument freely and voluntarily, and for the uses and purposes therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL.

*[Signature]*  
 NOTARY PUBLIC



TOTAL P.05

# EXHIBIT “4”

FEB 04 '91 15:25

P:2/10

RASH-FAX	TO: <i>D. Ed Goldman</i>	FROM: <i>Milton Schwartz</i>	DATE: <i>5/19/92</i>
	FAX #: <i>749-5505</i>	FAX #:	PHONE #: <i>385-6709</i>

## BYLAWS OF

Exhibit A

THE MILTON I. SCHWARTZ HEBREW ACADEMY

## ARTICLE I

NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.
2. Office: The principal office of the corporation shall be at 9700 W. Hillpointe Road, Las Vegas, Nevada.

## ARTICLE II

TRUSTEES

1. The governing board of the corporation shall be known as the Board of Trustess and the membership of the Board of Trustees shall constitute the corporation.
2. The Board of Trustees shall be composed of fourteen members eleceted by the Board of Trustees and the school head.
3. In the event the parents of the students of The Academy form a parent-teacher organization with dues paying members representing at least fifty percent of the student body, which holds regular meetings, such organization shall be entitled to one representative to the Board of Trustees at the discretion of the Board of Trustees and, dependent upon the activity level and services rendered to The Academy by the parent-teacher organization.
4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

BYLAWS OF

THE MILTON I. SCHWARTZ HEBREW ACADEMY

ARTICLE I

NAME AND OFFICE

1. Name: The name of this corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and shall remain so in perpetuity.
2. Office: The principal office of the corporation shall be at 9700 W. Hillpointe Road, Las Vegas, Nevada.

ARTICLE II

TRUSTEES

1. The governing board of the corporation shall be known as the Board of Trustees and the membership of the Board of Trustees shall constitute the corporation.
2. The Board of Trustees shall be composed of fourteen members elected by the Board of Trustees and the school head.
3. In the event the parents of the students of The Academy form a parent-teacher organization with dues paying members representing at least fifty percent of the student body, which holds regular meetings, such organization shall be entitled to one representative to the Board of Trustees at the discretion of the Board of Trustees and, dependent upon the activity level and services rendered to The Academy by the parent-teacher organization.
4. In the event of a vacancy during the term of a trustee, the Board of Trustees shall appoint, after due consultation with the nominating committee, a person to fill the unexpired term.

FEB 24 '91 15:25

P13/10

5. Election of members of the Board of Trustees shall be conducted during the regular June meeting of the corporation or as soon thereafter as possible.

6. The election of the Chairman of the Board of Trustees, president, vice president, secretary and treasurer's offices in both the corporation and the Board of Trustees shall be held at the first meeting of the original Board of Trustees for a one-year term. Subsequent elections shall be held in conjunction with the annual June trustee elections.

7. If, for any reason, any trustee is not elected in the time and manner provided for by these Bylaws, such trustee shall continue to serve until such time as his successor has been elected.

8. A functional quorum of trustees shall consist of forty percent of the total number of trustees then serving, except during such periods of time when the total number of trustees actually serving is twelve or less, in which event a quorum shall consist of a majority of such trustees.

9. In the event a trustee fails to attend three consecutive meetings of the Board of Trustees, the Chairman shall direct a letter to be sent to the last known address of such trustee, requesting a written confirmation as to whether or not he/she desires to continue to serve. In the event that the confirmation letter is not received by the chairman prior to a fourth consecutive meeting, which such trustee has failed to attend, the office of the trustee shall be deemed thereafter vacant. In the

FEB 04/91 15:26

absence of the chairman, the secretary or treasurer may direct such a letter.

10. The Board of Trustees may, from time to time, elect a person to serve as an honorary trustee. An honorary trustee shall be entitled to attend and participate in all meetings of the Board of Trustees but shall have not vote. An honorary trustee shall serve until removed by the Board of Trustees.

### ARTICLE III

1. The Chairman shall preside over all meetings of the Board of Trustees. In case of his/her absence, a chairman selected by Board members present shall preside.

### ARTICLE IV

#### COMMITTEES

1. Chairmen: All chairmen of committees shall be chosen by the president annually for one year terms during which each chairman of each committee shall preside over committee affairs, be responsible for active disposal of committee business and be required to give adequate notice to committee members of all committee meetings.

2. Executive Committee: The Executive Committee shall manage the interim business and affairs of the corporation, excepting the Board's power to adopt, amend or repeal bylaws. The Board of Trustees shall have the power to prescribe the manner in which proceedings of the executive committee and other committees shall be conducted. The executive committee shall be composed of the president, the vice president, the treasurer and the secretary.

FEB 04 1991 15:26

The executive committee shall be the primary management mechanism between meetings of the Board of Trustees.

3. Nominating Committee: Members of this committee shall be appointed by the corporate president and the committee shall consist of three trustees. The committee shall submit a full report to the Board of Trustees no later than thirty days in advance of the June election. Any trustee in good standing may freely submit additional nominations, provided that such nominations are submitted in writing to the nominating committee and to the remaining members of the Board of Trustees no later than thirty days prior to the annual election. There shall be no nomination from the floor at the time of the elections.

4. Student Aid Committee: The student aid committee shall be appointed by the president and shall consist of a minimum of three members of the Board of Trustees. This committee shall review and consider all applications received by the Academy from any child enrolling in the Academy seeking a reduction in tuition fees.

5. Corporate Officers: The elected officers of the corporation shall be the same as the officers of the Board of Trustees.

6. Vacancies: The Board of Trustees of the Academy shall alone determine when a vacancy exists in any corporate or Board position appearing on the annual election slate, and shall report all such vacancies, from time to time, to the chairman of the nominating committee, who shall immediately convene his/her



FEB 04 91 15:27 P.6/10

committee for the purpose of receiving and submitting recommendations to the Board of Trustees in order to fill such vacancies.

7. Removal of Trustee: Any trustee may be removed from office through an affirmative vote by two-thirds of the total members of the Board, pursuant to a motion registered in person at any regular or special meeting called for that purpose; an adequate basis for removal shall consist of any conduct detrimental to the interest of the corporation. Any trustee, properly proposed to be removed because of conduct detrimental to the corporation, shall be entitled to at least five days notice in writing by mail of the meeting during which such removal is to be voted upon and shall be entitled to appear before and be heard at such meeting.

8. Compensation and Expenses: Trustees shall not receive any salary or compensation for their services as Trustee, nor any compensation for expenses incurred in connection with such services.

9. Standing Committees: The following committees shall be designated permanent committees:

- a. Fund-raising
- b. Nominating
- c. Student
- d. Building Fund

10. Other Committees: The president may establish and appoint members in good standing to additional committees, from

FEB 24 '91 15:27

P.7/10

time to time, as he/she or the Board of Trustees may deem appropriate.

## ARTICLE V

### DESCRIPTION AND DUTIES OF OFFICERS OF THE BOARD

1. Chairman of the Board: The Chairman shall preside at all meetings of the Board of Trustees. One person may hold the position of Chairman and President.
2. President: The president shall preside at all meetings of the Board of Trustees. He/she is authorized to exercise general charge and supervision of the affairs of the corporation and shall be deemed invested with adequate authority to perform such other duties as may be assigned to him/her by the Board of Trustees. He/she shall serve two consecutive terms.
3. Vice President: At the request of the president or in the event of his absence or disability, the vice president shall perform the duties and possess and exercise the correlative powers of the president. To the extent authorized by law, the vice president may be invested with such other powers as the Board of Trustees may determine, and perform such other duties as may be assigned to him/her by the Board of Trustees.
4. Secretary: The secretary shall attend and keep the minutes of all meetings of the Board of Trustees. He/she shall keep an alphabetically arranged record containing names of all members of the corporation, showing their places of residence; such record shall be open for public and member inspection as prescribed by law. He/she shall perform all duties generally incidental to

FEB 04 1911:15:29

the office of secretary, although such duties are subject to the control of the Board of Trustees, additional duties being properly assignable by the Board to the secretary.

5. Treasurer: The treasurer shall maintain all financial records of the corporation and shall supervise and be responsible for those persons whose duty it will be to receive and disburse all corporate funds and maintain complete records of accounts. The treasurer is additionally charged with the preparation and submission of an annual financial statement and a budget to the Board of Trustees.

#### ARTICLE VI

##### MEETINGS OF THE BOARD OF TRUSTEES

The Board of Trustees shall meet monthly in accordance with a regular basis to be determined by Board resolution. Additional meetings may be held at the call of the president upon one week's notice. Such notice shall be given in writing if possible, or otherwise by telephone. Meetings may be held at the call of the Chairman without regard to the aforementioned notice requirements, although subject to good faith duty to attempt notification of all trustees.

#### ARTICLE VII

##### ELECTIONS

Except in the case of voting by acclamation, all voting shall be by secret ballot and no ballot shall be deemed valid unless it

FEB 24 '91 15:28

P.9/10

contains a vote for a number of candidates equal to the number of vacancies to be filled. A majority of valid ballots cast shall be required to elect a trustee to office.

#### ARTICLE VIII

##### AMENDMENTS

1. The Board of Trustees shall have the power to make, alter, amend and repeal the bylaws of the corporation by affirmative vote of a majority of the full board at a meeting duly noticed therefor.

#### ARTICLE IX

##### RULES

1. The Board of Trustees may adopt such Rules of Order and Procedure for the conduct of the business of its meetings as they deem appropriate, provided that such Rules are not inconsistent with these bylaws.

2. In the absence of specific Rules adopted by the Board of Trustees and in all cases not covered by these bylaws, all deliberations and procedures shall be governed by Robert's Rules of Order, Revised.

KNOW ALL MEN BY THESE PRESENT:

That we, the undersigned, being a majority of all the persons appointed in the Amended Articles of Incorporation to act as the first Board of Trustees of The Hebrew Academy hereby assent to the foregoing bylaws and adopt the same as the bylaws of said corporation.

FEB 04 '91 15:29

P.10/10

IN WITNESS WHEREOF, we have hereunto set our hands this 18  
 day of December, 1990.

[Signature]  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]

# EXHIBIT “5”

10 15 04 THE 12:00 FAX 1 702 4667102

THE HEBREW ACADEMY

RE: 10

given to Bl-  
3-24-05

## BY LAWS

OF

Exhibit F

THE MILTON I. SCHWARTZ

HEBREW ACADEMY

### ARTICLE I

#### PURPOSE AND POWERS

Section 1.01. Name. The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity.

Section 1.02. Purpose. The Corporation shall have such purposes as are now or may hereafter be set forth in its Articles of Incorporation.

Section 1.03. Powers. The Corporation shall have such powers as are now or may hereafter be granted by the Nonprofit Corporation Act of the State of Nevada.

### ARTICLE II

#### OFFICES

The principal office of the Corporation for the transaction of its business is shall be located at 9700 West Hillpointe Road, Las Vegas, Clark County, Nevada. The Corporation shall have and continuously maintain in the State of Nevada a registered office and a registered agent and may have other offices within or without the State of Nevada as the Board of Trustees may from time to time determine.

### ARTICLE III

#### BOARD OF TRUSTEES

Section 3.01. General Powers. All of the business and affairs of the Corporation shall be managed and controlled by the Board of Trustees.

Section 3.02. Number Election And Tenure. The Board of Trustees shall consist of not less than 12 nor more than 20 members (each member may hereinafter be referred to as a "Trustee" and, collectively, as the "Trustees"). Each of the Trustees of the Corporation shall be elected and appointed to the office at a duly constituted meeting of the Board of Trustees, and shall serve for a

CHUCKERMAN, JAMES W. PRESIDENT  
MARCH 2, 2004

term of three (3) years. A Trustee's term of office shall commence upon the election and appointment of such Trustee and shall continue until the earlier to occur of the election and appointment of such Trustee's successor or the death, resignation or removal of such Trustee. The election of Trustees shall be staggered. The School Head shall not be eligible for election to the Board of Trustees as a Trustee while serving the Corporation in such capacity.

Section 3.03. Ex Officio Members Of The Board. The Trustees may from time to time, with the consent of a majority of the Board of Trustees, appoint one or more additional persons, including, without limitation, the School Head, as ex officio members of the Board. Ex officio members of the Board of Trustees shall be entitled to all of the rights and privileges of Trustees but shall not have any voting rights nor shall they be counted in determining the existence of a quorum.

Section 3.04. Annual Meeting. Unless action is taken by written consent, an annual meeting of the Board of Trustees shall be held in June of each year, at such time and place as shall be designated by the President of the Corporation in the notice of the meeting for the purpose of electing Officers (as hereinafter defined) and Trustees and for the transaction of such other business as may come before the meeting.

Section 3.05. Regular Meeting. Unless action is taken by written consent, a regular meeting of the Board of Trustees shall be held at least once every ninety (90) days, at such time and place as shall be designated by the President of the Corporation in the notice of the meeting for the transaction of such Corporate business as may come before the meeting, unless otherwise determined by a majority vote of the Board of Trustees. The Board of Trustees may provide by resolution for the holding of additional regular meetings.

Section 3.06. Special Meetings. Special meetings of the Board of Trustees may be called by the Secretary at the direction of the President of the Corporation, or a majority of the voting Trustees then in office, to be held at such time and place, either within or without the State of Nevada, as shall be designated in the notice of the meeting.

Section 3.07. Notice. Notice of the time and place of any meeting of the Board of Trustees shall be given at least three days previously thereto by written notice delivered personally or sent by mail or telegram to each Trustee at this address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Trustee may waive notice of any meeting. The attendance of a Trustee at any meeting shall constitute a waiver of notice of such meeting, except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless required by statute or under these Bylaws.





(c) The Trustee repeatedly and persistently fails to abide by the policies established by the Board of Trustees of the Corporation; or

(d) The Trustee discloses any confidential information concerning the Corporation or any of the schools operated by the Corporation to any third parties without the express or implied consent of the Board of Trustees.

Section 3.13. Vacancies. Any vacancy on the Board of Trustees of the Corporation whether created by the death, resignation or removal of a Trustee or by an increase in the number of Trustees, may be filled at any time by a majority of the remaining Trustees.

Section 3.14. Compensation; Reimbursement for Expenses. Trustees shall not be entitled to receive any salary or other compensation from the Corporation for their services as Trustees of the Corporation. Trustees shall be entitled to reimbursement for actual expenses incurred by the Trustees related to the performance of their duties; provided, that the Board of Trustees shall have the right to establish rules and other guidelines regarding such reimbursements.

#### ARTICLE IV

#### STANDING AND SPECIAL COMMITTEES

Section 4.01. Executive Committee. There shall be an Executive Committee which shall be comprised of (i) the Officers of the Corporation, (ii) the School Head and (iii) any other person or persons designated by the Board of Trustees. The School Head and any other person or persons appointed by the Board of Trustees to the Committee (other than the Officers of the Corporation) shall be members of the Committee, ex officio, or without a vote.

The Executive Committee shall advise and aid the Board of Trustees of the Corporation in all matters concerning the Corporation's interests and management of its business and, when the Board of Trustees is not in session, the Executive Committee shall have and may exercise its powers as may be from time to time to expressly delegated to it by the Board of Trustees.

Section 4.02. Nominating Committee. There shall be a Nominating Committee which shall be comprised of at least three Trustees and the School Head. The Nominating Committee shall be responsible for reviewing any candidates for election to the Board as a Trustee and submitting recommendations regarding such candidates to the Board of Trustees. Such recommendations must be submitted to each of the Trustees at least thirty (30) days prior to the date of the meeting of the Board of Trustees at which the election of Trustees is to occur.

Section 4.03. Other Committees. Either the Board of Trustees or the President, subject to the approval of the Board of Trustees, may create such other committees from time to time as it deems necessary.

Section 4.04. Chairpersons. The President, subject to the approval of the Board, shall select the members and designate the Chairperson of any committees created hereunder and shall prescribe their duties which shall not be inconsistent with these Bylaws.

## ARTICLE V

### OFFICERS

Section 5.01. Officers. The officers of the Corporation shall consist of the President, the First Vice-President, the Second Vice-President, Secretary, and Treasurer, and any subordinate officer or officers to fill such subordinate office or offices as may be created by the Board of Trustees (each officer may hereinafter be referred to as an "Officer" and, collectively, as the "Officers"). Any person may hold more than one office.

Section 5.02. President. The President shall preside at all meetings of the Board of Trustees or the Executive Committee at which he or she may be present; shall perform such other duties as may be prescribed by these Bylaws or assigned to him or her by the Board of Trustees, and shall coordinate the work of the Officers and committees of the Corporation in order that the purposes of the Corporation may be promoted.

Section 5.03. First Vice-President. The First Vice-President shall act as an aid to the President and shall perform the duties of the President in the absence or disability of that Officer to act. He or she shall carry out such additional duties as may be assigned to him or her by the President or the Board of Trustees.

Section 5.04. Second Vice-President. The Second Vice-President shall act as an aid to the President and shall perform the duties of the President in the absence or disability of the President and the First Vice-President to act. He or she shall carry out such additional duties as may be assigned to him or her by the President or the Board of Trustees.

Section 5.05. Secretary. The Secretary shall record the minutes of all meetings of the Board of Trustees and the Executive Committee, and shall perform such other duties as may be delegated to him or her.

Section 5.06. Treasurer. The Treasurer shall have custody of all of the funds of the Corporation; shall keep a full and accurate account of receipts and expenditures, and shall make disbursements in accordance with the approved budget, as authorized by the Board of Trustees or the Executive Committee. The Treasurer shall present interim financial reports when requested by the Board of Trustees or the Executive Committee, and shall make a full report at the annual meeting. The Treasurer shall be responsible for the maintenance of such books of accounts and records as conform to the requirements of the Bylaws.

Section 5.07. Duties. All Officers shall perform the duties prescribed in these Bylaws and such other duties as may be assigned to them from time to time. All Officers shall deliver to their successors all official material not later than ten (10) days following the election of their successors.

Section 5.08. Election. The Officers of the Corporation shall be elected annually as the first order of business at the annual meeting of the Board of Trustees. Officers shall serve for a term of one (1) year and until the election and qualification of their successors. To be eligible for election as an Officer of the Corporation, a person must be serving as a Trustee of the Corporation.

Section 5.09. Vacancy. The Board of Trustees may fill any vacancy created by death, resignation or removal of any Officer, for the unexpired term of such Officer, at any regular meeting of the Board of Trustees of the Corporation or at any special meeting specifically called and noticed for that purpose.

Section 5.10. Removal. The Board of Trustees may remove any Officer at any regular meeting of the Board of Trustees of the Corporation or at any special meeting specifically called and noticed for that purpose. An Officer may be removed for any reason whatsoever, including, without limitation, the following:

- (a) The Officer commits any act or omission that brings disrepute or embarrassment upon the Corporation;
- (c) The Officer repeatedly and persistently fails to abide by the policies established by the Board of Trustees of the Corporation; or
- (d) The Officer discloses any confidential information concerning the Corporation or any of the schools operated by the Corporation to any third parties without the express or implied consent of the Board of Trustees.

## ARTICLE VI

### INDEMNIFICATION OF TRUSTEES, OFFICERS, EMPLOYEES AND AGENTS INSURANCE

Section 6.01. The Corporation shall indemnify, to the maximum extent permitted by the law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the Corporation, by reason of the fact that he or she is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in

or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and that, with respect to any criminal action or proceeding, he or she had reasonable cause to believe that his conduct was unlawful.

Section 6.02. The Corporation shall indemnify, to the maximum extent permitted by the law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, but no indemnification shall be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

Section 6.03. To the extent that a Trustee, Officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 6.01 and 6.02, or in defense of any claim, issue or matter therein, he or she shall be indemnified by the Corporation against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with such defense.

Section 6.04. Any indemnification under Sections 6.01 and 6.02, unless ordered by a court, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Trustee, Officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 6.01 and 6.02. Such determination shall be made:

(a) By the Board of Trustees by majority vote of a quorum consisting of Trustees who were not parties to such act, suit or proceeding;

(b) If such a quorum of disinterested Trustees so orders, by independent legal counsel in a written opinion; or

(c) If such a quorum of disinterested Trustees cannot be obtained, by independent legal counsel in a written opinion.

Section 6.05. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Trustees in the specific case upon receipt of an undertaking by or on behalf of the Trustee, Officer, employee or agent to repay such amount unless it is ultimately determined that he is entitled to be indemnified by the Corporation as authorized in this section.

Section 6.06. The indemnification provided by this section:

(a) Does not exclude any other rights to which a person seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested Trustees or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office; and

(b) Shall continue as to a person who has ceased to be a Trustee, Officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 6.07. The Corporation may purchase and maintain insurance on behalf of any person who is or was a Trustee, Officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Trustee, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this section.

## ARTICLE VII

### CONTRACTS, LOANS, CHECKS, DEPOSITS AND GIFTS

Section 7.01. Contracts. The Board of Trustees may authorize any Officer or agent of the Corporation, in addition to the Officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.02. Borrowing. No loan shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Trustees. Such authority may be general or confined to specific instances.

Section 7.03. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Trustees may select.

Section 7.04. Gifts. The Board of Trustees may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the Corporation. The Board of Trustees may vary the use to which a specific contribution, gift, bequest or devise can be put in the event the use for which the contribution, gift, bequest or devise is to be used becomes impossible, unnecessary, impractical or contrary to the best interests of the Corporation.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Books And Records. The Corporation shall keep correct and complete books and records of account, and the minutes of the proceedings of the Board of Trustees and Executive Committee. Copies of the minutes of the Board of Trustees and of the Executive Committee shall be regularly distributed to each member of the Board of Trustees and the Executive Committee. The books and records of accounts, and the records of the actions of proceedings of the Board of Trustees and the Executive Committee shall be open to inspection upon the written demand of any Trustee at any reasonable time and for any purpose reasonably related to its interest as a Trustee. Such inspection may be made by any agent or attorney of the Trustee and the right to make such inspection shall include the right to make extracts.

Section 8.02. Intentionally Deleted.

Section 8.03. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year unless otherwise determined by resolution of the Board of Trustees.

Section 8.04. Waiver Of Notice. Whenever any notice is required to be given under the provisions of the Nonprofit Corporation Act of the State of Nevada or under the provisions of the Articles of Incorporation or these Bylaws, a waiver thereof in writing signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 8.05. Self-Dealing. In the exercise of voting rights by members of the Board, no individual shall vote on any issue, motion, or resolution which directly or indirectly inures to his benefit financially except that such individual may be counted in order to qualify a quorum and, except as the Board may otherwise direct, may participate in the discussion of such an issue, motion, or resolution if he or she first discloses the nature of his or her interest.

Section 8.06. Loans To Officers And Trustees Prohibited. No loans shall be made by the Corporation to its Officers or Trustees. The Trustees of the Corporation who vote for or assent to the making of a loan to an Officer or Trustee of the Corporation, and any Officer or Officers

11-01-10 FAX 1-702-365-1234

THE HEBREW ACADEMY

11-01-10 FAX 1-702-365-1234

THE HEBREW ACADEMY

2010

2010

participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until the repayment thereof.

Section 8.07. Additional Organizations. The Board of Trustees may authorize the formation of such auxiliary organizations as would in the opinion of the Board assist in the fulfillment of the purposes of the Corporation.

Section 8.08. Rules. The Board of Trustees may adopt, amend or repeal Rules (not inconsistent with these Bylaws) for the management of the internal affairs of the Corporation and the governance of its Officers, agents, committees and employees.

Section 8.09. Conduct of Meetings. Robert's Rules of Order, latest edition, or another similar manual or procedural guide concerning the conduct of meetings which is commonly used by corporations similar to the Corporation shall govern the conduct of meetings when not in conflict with the Articles of Incorporation of the Association, these Bylaws and any rules adopted pursuant to Section 8.08 of these Bylaws.

## ARTICLE IX

### AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by vote of two-thirds (2/3) of the Board of Trustees with the approval of two-thirds (2/3) of the Members.

By Carol Lee Fuchs  
President

Adopted this 13<sup>th</sup> day of April, 1999

The undersigned hereby certifies that the foregoing are the Bylaws of the Milton I. Sorkin Hebrew Academy as adopted on the date hereof.

13  
at 13<sup>th</sup> day of April, 1999

By Gene R. Rabinovitch  
Secretary



# EXHIBIT “6”

RPTT \$

Exhibit G

## QUITCLAIM DEED

THIS INDENTURE WITNESSETH: That

The Hewbrow Academy, a Nevada non-profit corporation

in consideration of \$ 10.00

the receipt of which is hereby acknowledged, do hereby grant, release and forever quitclaim to  
 07 The Milton I. Schwartz Hebrew Academy, a Nevada non-profit corporation

all that real property situate in the

County of Clark

State of Nevada, bounded and described as follows:

All of Lot Fourteen (14) of the AMENDED PLAT OF  
 "SUMMERLIN VILLAGE 1 NORTH" subdivision, situated  
 in the City of Las Vegas, County of Clark, State  
 of Nevada, as shown on the Amended Plat of said  
 subdivision recorded on February 8, 1990 as  
 Instrument No. 00445 in Book 900208 and on file  
 in Book 045 of Plats, Page 0010, in the Office  
 of the County Recorder of Clark County, Nevada.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness \_\_\_\_\_ Hand \_\_\_\_\_ this 9th day of April 1991

The Hebrew Academy

By

Milton I. Schwartz, President

STATE OF Nevada

County of Clark

On this 9th day of April 1991

Personally appeared before me, a Notary Public in and for said

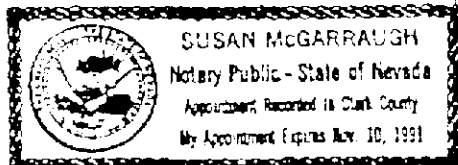
County and State,

Milton I. Schwartz,

President

known to me to be the person described in and who executed  
 the foregoing instrument, who acknowledged to me that he  
 executed the same freely and voluntarily and for the uses and  
 purposes therein mentioned.

*Susan McGarraugh*  
 Notary Public in and for said County and State.



ESCROW NO. \_\_\_\_\_

WHEN RECORDED MAIL TO: \_\_\_\_\_

E-11

# EXHIBIT “7”



# EXHIBIT “8”

SUPPLEMENTAL AFFIDAVIT OF MICHAEL NOVICK

1  
2 STATE OF NEVADA           )  
                                  ) ss.:  
3 COUNTY OF CLARK        )

4           MICHAEL NOVICK, being first duly sworn, upon oath, deposes and  
5 says:

6           1.   This Affidavit is made of my own personal knowledge  
7 except where stated on information and belief, and as to those matters,  
8 I believe them to be true, and if called as a witness, I would  
9 competently testify thereto.

10           2.   That Affiant hereby affirms under penalty of perjury that  
11 the assertions of this Affidavit are true.

12           3.   This Affidavit is submitted in support of Plaintiff's  
13 Reply to Defendant's Opposition to Plaintiff's Motion for Declaratory  
14 Judgment and Injunctive Relief; Plaintiff's Opposition to Defendant's  
15 Countermotion for Sanctions; Plaintiff's Opposition to Defendant's  
16 Countermotion to Dismiss or, in the alternative, for a more definite  
17 statement; and Plaintiff's Countermotion to Strike Defendant's  
18 Opposition.

19           4.   That Affiant is a First Vice President of Investments  
20 with Dean Witter Reynolds, Inc. and donates Affiant's time to the Board  
21 of Directors of the Milton I. Schwartz Hebrew Academy as a public  
22 service.

23           5.   That Affiant was elected to the Board of Directors in  
24 January of 1991.

25           6.   That Affiant was a member of the Board of Directors on  
26 May 21, 1992 and was present at the Board of Directors meeting that  
27 occurred on that date.

28           7.   That the minutes of the May 21st meeting that are

1 attached as Exhibit "B" to the Defendant's Opposition To Plaintiff's  
2 Motion for Declaratory Judgment and Injunctive Relief And Countermotion  
3 For Sanctions; Countermotion To Dismiss Or In The Alternative, For A  
4 More Definite Statement is not a true and accurate copy of the minutes  
5 of the May 21st meeting. That at the May 21, 1992 meeting, the Board of  
6 Directors agreed to hold the elections in June of 1992 only if problems  
7 with the Bylaws could be resolved prior to the election occurring. In  
8 addition, the Board of Directors also discussed problems with the Bylaws  
9 relating to the thirty (30) day requirement and that the nominating  
10 committee had recognized that this problem would also have to be  
11 resolved prior to the elections being held.

12 8. That on or about June 11, 1992, Affiant received a letter  
13 from Milton I. Schwartz, Chairman of the Board and President of the  
14 Hebrew Academy and that this letter stated that the Board of Directors  
15 would not be having elections at the meeting on June 18, 1992. That as  
16 a result of receiving this letter, Affiant did not attend the June 18,  
17 1992 meeting due to the fact that another business meeting had also been  
18 scheduled for that time.

19 9. That had Affiant not received this letter, Affiant would  
20 have rearranged Affiant's schedule to attend the meeting so that Affiant  
21 could vote.

22 10. That Affiant has attempted to mediate the dispute between  
23 the Plaintiff and the Defendant in the instant action. That the Affiant  
24 and Frederic Berkley attempted to attend a board meeting in August of  
25 1992. However, Mr. Berkley was barred from entering the meeting and was  
26 informed that he was no longer a member of the Board of Directors.  
27 Affiant was allowed to attend the meeting, but no progress was made  
28 toward resolving the dispute. In addition, Affiant had numerous

1 | conversations with Tamar Lubin in an attempt to resolve this conflict.  
2 | Affiant also attempted to arrange a meeting between Tamar Lubin, Ira  
3 | Sternberg, Lenard Schwartzer, Milton Schwartz and Affiant. However,  
4 | they refused to meet with Affiant, Milton Schwartz, and Mr. Schwartz'  
5 | attorneys.

6 |           11. That on September 3, 1992, Tamar Lubin instructed Affiant  
7 | to offer to return \$500,000 to Milton I. Schwartz.

8 |           12. That Affiant understands that the \$500,000 was the amount  
9 | of money Milton I. Schwartz donated to the Hebrew Academy prior to  
10 | Milton I. Schwartz being elected Chairman of the Board of Directors of  
11 | the MILTON I. SCHWARTZ HEBREW ACADEMY.

12 |           13. That in September of 1992, Affiant received a letter from  
13 | the Defendant's stating that Affiant would be removed from the  
14 | Defendant, the Second Board of Directors unless: (1) Affiant recognized  
15 | that the Defendant, the Second Board of Directors is the true and  
16 | correct Board of Directors; (2) Resigned; or (3) came and talked to the  
17 | Defendants on September 27, 1992. Affiant responded in writing that  
18 | Affiant would be in Phoenix for Rosh Hashana on the 27th and unable to  
19 | meet with them. Affiant subsequently received a letter notifying  
20 | Affiant that Affiant was removed from the Board of Directors of the  
21 | Defendant.

22 |           14. That the Hebrew Academy will suffer irreparable harm if  
23 | the actions of the Defendant are not stopped. That as a result of the  
24 | actions of the Defendant and in particular Tamar Lubin, Affiant believes  
25 | there has been a high turnover of teachers since the Defendants have  
26 | wrongfully taken control of the Academy.

27 |           15. That it was the intention of the Board of Directors to  
28 | consider not extending Tamar Lubin's contract as the Board of Directors

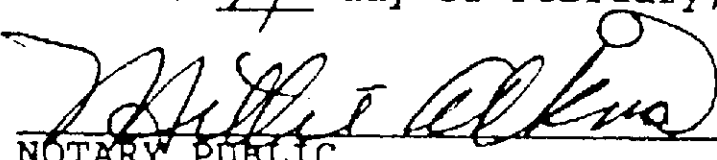


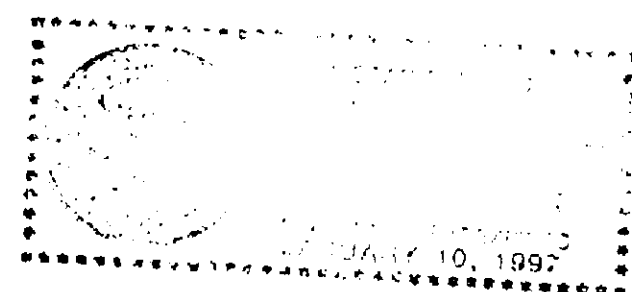
1 had received numerous complaints concerning the conduct of Tamar Lubin  
2 in running the Hebrew Academy and that Affiant believes that the  
3 Defendant is in the process of negotiating a long term contract with  
4 Tamar Lubin to be the Administrator of the MILTON I. SCHWARTZ HEBREW  
5 ACADEMY and that this action will cause irreparable harm to the Hebrew  
6 Academy.

7 FURTHER AFFIANT SAYETH NAUGHT.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
MICHAEL NOVICK

11 SUBSCRIBED AND SWORN to before  
12 me this 19 day of February, 1993.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
  
NOTARY PUBLIC



# EXHIBIT “9”

## Exhibit U

Milton I Schwartz Hebrew Academy									
MIS Contributions/donations									
		Per HA	yes	VGC	loans	return of loans			
1988	\$ 50.00				\$ -	\$ -			
1989	\$ 500,900.00		\$ 1,200.00	\$ 600.00	\$ -	\$ -			
1990	\$ 9,000.00				\$ -	\$ -			
1991	\$ 150.00			\$ 1,300.00	\$ -	\$ -			
1992	\$ 69.66				\$ -	\$ -			
1993	\$ -				\$ -	\$ -			
1994	\$ -				\$ -	\$ -			
1995	\$ -				\$ -	\$ -			
1996	\$ -				\$ -	\$ -			
1997	\$ 2,100.00				\$ -	\$ -			
1998	\$ 22,500.00				\$ -	\$ -			
1999	\$ 26,600.00				\$ -	\$ -			
2000	\$ 7,400.00				\$ -	\$ -			
2001	\$ 88,535.00	\$ 88,535.00	\$ 1,200.00		\$ -	\$ -			
2002	\$ 57,130.00				\$ 150,000.00	\$ -			
2003	\$ 51,323.00				\$ 83,000.00	\$ (40,000.00)			
2004	\$ 135,277.00				\$ -	\$ -			
2005	\$ 9,622.00				\$ -	\$ -			
2006	\$ 100,000.00				\$ -	\$ -			
2007									
Total	\$ 1,010,656.66	\$ 88,535.00	\$ 2,400.00	\$ 1,900.00	\$ 233,000.00	\$ (40,000.00)			
CLT	\$ 45,247.09								
Grand Total	\$ 1,055,903.75								

Milton I Schwartz Hebrew Academy	
CLT #45 Contributions/donations (12/90 - 2005)	
1991	\$ -
1992	\$ 8,052.09
1993	\$ -
1994	\$ -
1995	\$ -
1996	\$ -
1997	\$ -
1998	\$ -
1999	\$ -
2000	\$ 7,000.00
2001	\$ -
2002	\$ 30,000.00
2003	\$ -
2004	\$ -
2005	\$ 195.00
Total	\$ 45,247.09

# EXHIBIT “10”

**THE HEBREW ACADEMY**

9700 West Hillpointe Road  
Las Vegas, Nevada 89134  
Tel: (702) 255-4500 Fax: (702) 255-7232



Exhibit AK

Dr. Roberta Sabbath  
School Head

May 23, 1996

Milton I. Schwartz  
2120 Silver Ave.  
Las Vegas, NV 89102

Dear Milton:

On behalf of myself, President, Geri Rentchler and the entire Board of Directors of the Milton I. Schwartz Hebrew Academy, I am pleased to inform you that we will immediately commence action to implement as soon as practicable the following:

- (1) Restore the Hebrew Academy's name to the "Milton I. Schwartz Hebrew Academy."
- (2) Amend the Hebrew Academy's Articles of Incorporation to restore its former name of the "Milton I. Schwartz Hebrew Academy."
- (3) Restore the marker in front of the Hebrew Academy identifying it as the "Milton I. Schwartz Hebrew Academy."
- (4) Change the Hebrew Academy's formal stationary to include its full name, the "Milton I. Schwartz Hebrew Academy", in a form consistent with this letterhead and include our full name on future brochures.
- (5) Where practicable, display the full name of the Hebrew Academy. In print advertising of sufficient size, the full name of the school will be displayed in a design consistent with the letterhead. Where impractical by reason of size, utilization of voice media, informal correspondence, informal memoranda, etc., and in answering the telephone, the school will utilize the shorthand version of its name as Hebrew Academy or simply, its logo. You can rest assured it is the intention of the School Head and the school's Officers and Directors that the utilization of the school's full name will be consistent with an intent to recognize and honor your contribution and assistance.



Accreditation, Northwest Association of Schools and Colleges



Licensed: State of Nevada Department of Education



Member: National Association of Independent Schools

116-125-1996 11:18

116-125-1996

116-125-1996

The restoration of the name of the "Milton I. Schwartz Hebrew Academy" has been taken as matter of "menschlichkeit" in acknowledgement of your contribution and assistance to the Academy; your continued commitment to Jewish education reflected by the establishment of the "Jewish Community Day School" and last but not least, your recent action as a man of "shalom."

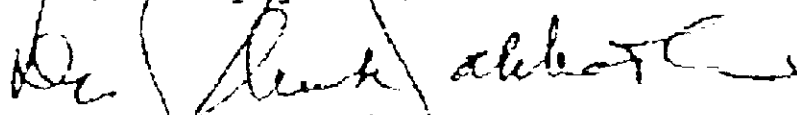
Your invitation to me as new School Head to meet and resolve differences and to work with me and the Board to bring "shalom" to our Jewish community will serve as a much needed example of Jewish leadership.

Please accept our assurance and commitment that we welcome with joy the establishment of the Jewish Community Day School which will provide Jewish parents a choice between the Jewish education offered by the "Milton I. Schwartz Hebrew Academy" during normal school hours and a school composed entirely of students with a Jewish parent and many more hours of Jewish education than can be offered in a normal school day.

You have our pledge that we are committed to make the "Milton I. Schwartz Hebrew Academy" a source of honor and a place of Jewish learning of which you and your family will always justly be able to take great pride.

Please accept our wishes for you and your family to have long, healthy, prosperous and joyous lives.

Very truly yours,



Dr. Roberta Sabbath  
School Head

100-109-100-11110

1-101-2-10210

F-61

**The Milton I. Schwartz  
HEBREW ACADEMY**

9700 West Hillpointe Road  
Las Vegas, Nevada 89134  
Tel: (702) 255-4500 Fax: (702) 255-7232



Dr. Roberta Sabbath  
School Head



Accreditation: National Association of Schools and Colleges



License: State of Nevada Department of Education



Member: National Association of Independent Schools

180-83 10-90 11-40

1-702-255-7232

CL 67



# EXHIBIT “11”

107

Dear Friends:

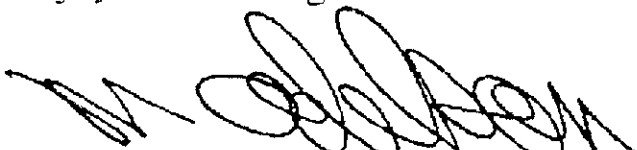
Welcome! It is our pleasure and privilege to chair The Milton I. Schwartz Hebrew Academy Gala. It is an inspiration to see so many in the community supporting not only The M.I.S. Hebrew Academy, but also The Adelson School. At last year's event, we presented plans to create a world class high school adjacent to The M.I.S. Hebrew Academy. We have now taken all key steps towards reaching this important goal. We are pleased to announce that the first graduating class of The Adelson School will begin their studies this fall!

Of course, a world class school needs more than superlative facilities, and it is here that head of school Paul Schiffman has met our extremely ambitious expectations: he searched the country and hired the best and the brightest educators. Paul is fond of saying that there is also a simple final criterion that each teacher must meet: "They must love children." Education, after all, is about guiding and nurturing children as well as educating and preparing them for the future. Many wonderful, extraordinary department heads for The Adelson School have already begun working full time along with our new Adelson School principal, Paul Mahoney (PhD UCLA). As our 9<sup>th</sup> and 10<sup>th</sup> grade classes begin their studies this August, we know that these children are beginning an exceptional journey at a school where a passion for learning, respect for Jewish mores, and a truly world class education coincide.


Many people have worked hard to create the success of our current Pre-K through 8<sup>th</sup> grade program and the beginning of our new high school. Tonight, we come together both to honor our "Pursuit of Excellence" Award winner and to say thank you to our wonderful teaching and administrative staff, our head of school, Paul Schiffman, our campus project director, Rhonda Glyman, our Board of Trustees, and to all the committed parents who have volunteered their time, intelligence and experience to make our school the very best it can be.

Tonight we honor the visionary behind The Hebrew Academy, Milton I. Schwartz. It is our privilege to honor Milton with the "Dr. Miriam and Sheldon G. Adelson In Pursuit of Excellence Award." With vision and foresight, Mr. Schwartz and a few others generously answered the need in Las Vegas for a strong secular and Judaic educational institution for elementary school-aged children by creating and continuously supporting The Milton I. Schwartz Hebrew Academy. The school, established in 1988, has since expanded to include preschool through 8<sup>th</sup> grade. Mr. Schwartz, an entrepreneur extraordinaire, sits on the Board of Trustees and has generously supported The M.I.S. Hebrew Academy's continued growth. We are truly pleased to bestow this award upon such a visionary leader of our community.

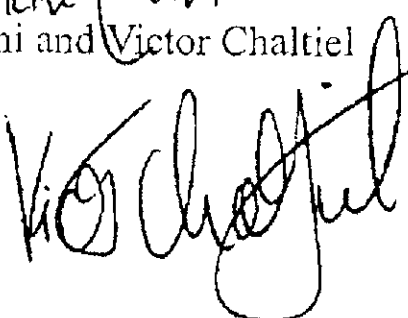
Enjoy the Evening!

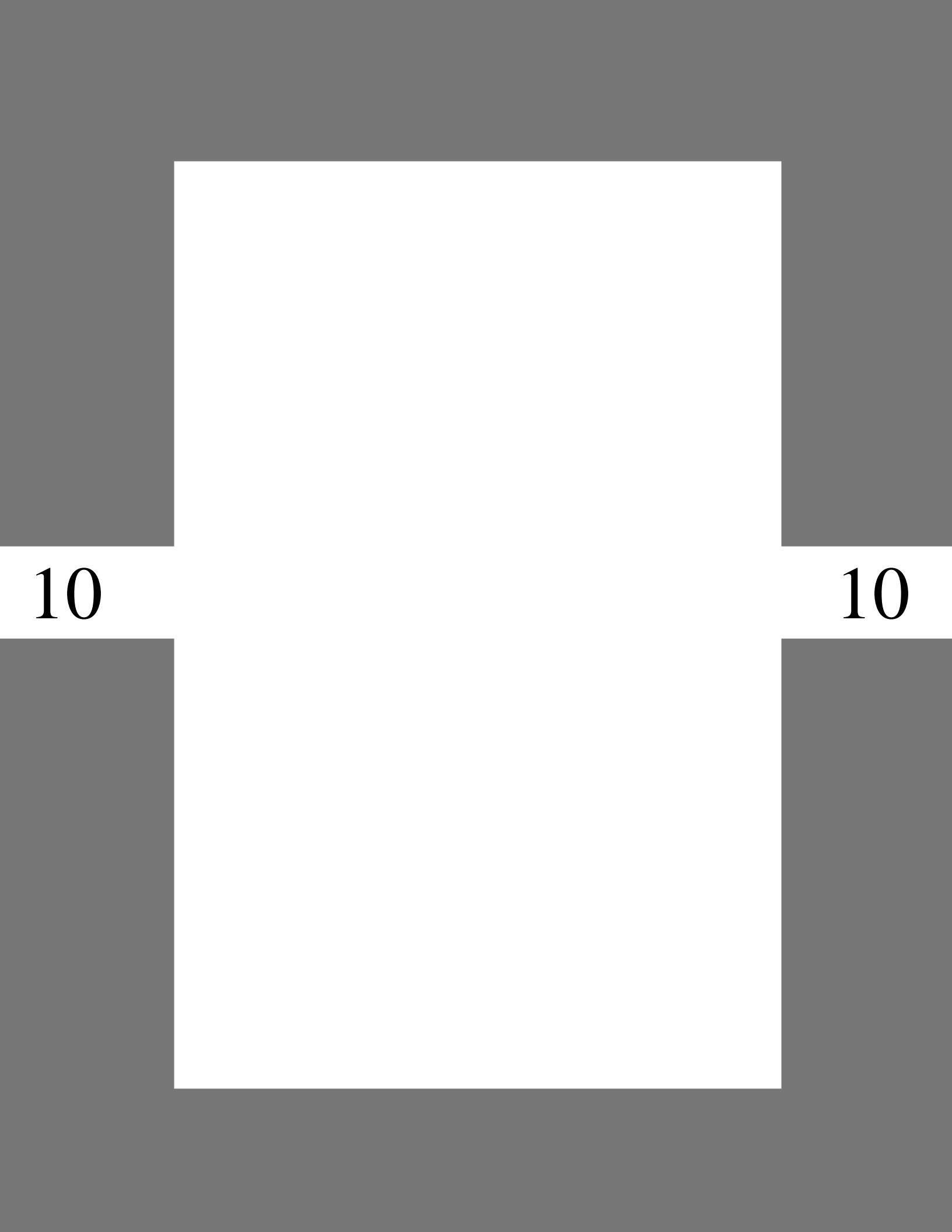


Dr. Miriam and Sheldon G. Adelson



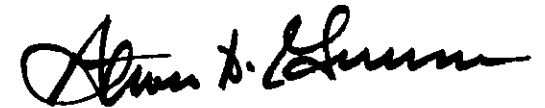
Toni and Victor Chaltiel





10

10



CLERK OF THE COURT

**PET**  
MARK A. SOLOMON, ESQ.  
Nevada State Bar No. 00418  
[msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
ALAN D. FREER, ESQ.  
Nevada State Bar No. 7706  
[afreer@sdfnvlaw.com](mailto:afreer@sdfnvlaw.com)  
STEVEN E. HOLLINGWORTH, ESQ.  
Nevada State Bar No. 7753  
[shollingworth@sdfnvlaw.com](mailto:shollingworth@sdfnvlaw.com)  
SOLOMON DWIGGINS & FREER  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: (702) 853-5483  
Facsimile: (702) 853-5485

*Attorneys for Respondent, A. Jonathan Schwartz*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In the Matter of the Estate of	)	Case No. P061300
	)	Department No. 26/Probate
MILTON I. SCHWARTZ,	)	
	)	
Deceased.	)	<b>Date of Hearing: 05/31/2013</b>
	)	Time of Hearing: 9:30 a.m.

**PETITION FOR DECLARATORY RELIEF**

A. Jonathan Schwartz, Executor of the Estate of Milton I. Schwartz, by and through his attorneys, Mark A. Solomon, Alan D. Freer, and Steven E. Hollingworth of the law firm of Solomon Dwiggins & Freer, Ltd., does hereby respectfully petition this Court pursuant to NRS 30.030, 30.040, 30.060, and 30.100 for declaratory and supplemental relief. Pursuant to NRS 30.110, Mr. Schwartz hereby demands the issues set forth herein to be tried and determined by a jury. Petitioners allege as follows:

## I. GENERAL ALLEGATIONS

### A. FACTUAL BACKGROUND

The Adelson School seeks the Executor's removal and other personal penalties as leverage in a dispute over whether the School can avoid its obligations to the decedent and his estate. The Adelson School attempts to characterize this dispute as if it arose only after the decedent's death. In fact, this dispute has a long history going back for decades.

The history of the Hebrew Academy (the "Academy") is crucial to this matter. Milton Schwartz was instrumental in the Howard Hughes Corporation's gift of land where the Academy and Adelson School now stand. In addition, Milton provided key funding during its formative years, through both personal donations and fundraising. Without his efforts and contributions, there would be no Hebrew Academy or Adelson School today. There would have been nothing for later philanthropists like the Adelsons to build on.

In August 1989, Milton Schwartz donated \$500,000 to the Academy in return for which the Academy would guarantee that its name would change in perpetuity to the "Milton I. Schwartz Hebrew Academy."<sup>1</sup> The Board of Directors of the Hebrew Academy memorialized this agreement in its minutes from its August 14, 1989 special meeting<sup>2</sup> and in Bylaws for the Academy, adopted on December 18, 1990.<sup>3</sup> Amended articles of incorporation were filed on August 22, 1990, changing the name of the school to the "Milton I. Schwartz Hebrew Academy." In addition, by deed executed April 9, 1991, the Hebrew Academy conveyed the underlying property of the

---

<sup>1</sup> Ex. 1, Supplemental Affidavit of Milton I. Schwartz dated February 22, 1993 at ¶4.

<sup>2</sup> See Ex. 2, Minutes of the Board of Trustees, Special Meeting, August 14, 1989 ("A letter should be written to Milton Schwartz stating the Academy will be named after him"); Ex. 3, Certificate of Amendment of the Articles of Incorporation of the Hebrew Academy.

<sup>3</sup> Ex. 4, Bylaws (12/18/1990), Article I(1) ("The name of the corporation is The Milton I. Schwartz Hebrew Academy (hereinafter referred to as The Academy) and schall [*sic*] remain so in perpetuity"); see also Ex. 5, Bylaws (April 13, 1999), Section 1.01 ("The name of the Corporation is the Milton I. Schwartz Hebrew Academy and will remain so in perpetuity.")

1 Academy to the "Milton I. Schwartz Hebrew Academy, a Nevada non-profit corporation."<sup>4</sup>

2 The Academy's perpetual obligations and promises were recognized by its board members  
3 at various times over the years. For example, on July 17, 1992, board member Lenard E.  
4 Schwartz, Esq. acknowledged to Milton, "It's your school, it has your name on it forever."<sup>5</sup>  
5 Likewise, when the Academy became embroiled in a dispute with Milton in 1992, board member  
6 Tamar Lubin offered to return Milton's \$500,000 donation made in 1989.<sup>6</sup> Such offer further  
7 evidences an acknowledgment by the Academy that Milton's gifts were conditional, not simply  
8 gratuitous in nature.

9 In addition to cash gifts, Milton Schwartz guaranteed the debts of the Academy until the  
10 debts were paid in full after his death. Milton made all of his contributions and guarantees in  
11 reliance on the Academy's agreement and the representations. However, the Academy failed to  
12 keep its end of the bargain and on October 19, 1994, filed amended articles of incorporation  
13 removing his name from the school. During this period when the school no longer bore his name,  
14 Milton ceased making donations to the Academy.<sup>7</sup>

15 On May 23, 1996, the Academy agreed to restore its name to the "Milton I. Schwartz  
16 Hebrew Academy" and amend its articles of incorporation accordingly.<sup>8</sup> Amended articles were  
17 filed on March 21, 1997. In addition to restoring its former name, the Academy agreed to  
18 implement the following actions to prominently display the full name of the "Milton I. Schwartz  
19 Hebrew Academy" on signage, stationery, letterhead, and brochures:

20 Restore the marker in front of the Hebrew Academy identifying it  
21 as the "Milton I. Schwartz Hebrew Academy."

22 Change the Hebrew Academy's formal stationary [sic] to include its

---

23  
24 <sup>4</sup> Ex. 6, Quitclaim Deed.

25 <sup>5</sup> See Ex. 7, Letter from Lenard E. Schwartz dated July 17, 1992.

26 <sup>6</sup> See Ex. 8, Affidavit of Michael Novick, Feb. 19, 1993 at ¶11-12.

27 <sup>7</sup> See Ex. 9, Spreadsheet of Contributions.

28 <sup>8</sup> Ex. 10, Letter from Dr. Roberta Sabbath, School Head, dated May 23, 1996.

1 full name, the "Milton I. Schwartz Hebrew Academy," in a form  
2 consistent with this letterhead and include our full name on future  
brochures.

3 Where practicable, display the full name of the Hebrew Academy.  
4 In print advertising of sufficient size, the full name of the school  
5 will be displayed in a design consistent with the letterhead. Where  
6 impractical by reason of size, utilization of voice media, informal  
correspondence, informal memoranda, etc., and in answering the  
telephone, the school will utilize the shorthand version of its name  
as Hebrew Academy or simply, its logo.<sup>9</sup>

7 The Academy further informed Milton that "you can rest assured it is the intention of the School  
8 Head and the School's Officers and Directors that the utilization of the school's full name will  
9 consistent with an intent to recognize and honor your contribution and assistance."<sup>10</sup>

10 In reliance on this agreement and these representations from the Academy, Milton I.  
11 Schwartz resumed making monetary contributions to the Academy up until his death, in the  
12 additional amount of approximately \$500,487.<sup>11</sup> His total lifetime contributions were  
13 approximately \$1,010,656.66.<sup>12</sup> Also in reliance on the Academy's agreement and promise, on  
14 February 5, 2004, the decedent executed a will providing a bequest of \$500,000 to the Milton I.  
15 Schwartz Hebrew Academy.

16 On or around 2006 and 2007, and before Milton's death, Mr. Adelson pledged \$25 million  
17 to build a high school on the site of the Academy. Milton, the Academy, and Mr. Adelson agreed  
18 that the high school would be called the "Adelson School," while grades K-8 would continue to  
19 be known as the "Milton I. Schwartz Hebrew Academy." This understanding and agreement is  
20 evidenced by a letter signed by Mr. Adelson and Victor Chaltiel of the Board of Directors.<sup>13</sup>

21 At the time of Milton's death on August 9, 2007, the name of grades K-8 was the "Milton  
22

---

23  
24 <sup>9</sup> *Id.*

25 <sup>10</sup> *Id.*

26 <sup>11</sup> *See* Ex. 9, Spreadsheet of Contributions.

27 <sup>12</sup> *Id.*

28 <sup>13</sup> Ex. 11, Gala Announcement.

1 I. Schwartz Hebrew Academy,” consistent with the parties’ agreement. However, unbeknownst  
2 to the Executor, and without even allowing Milton’s family seven months to grieve his passing, the  
3 Academy violated its contractual obligations and promise by filing amended articles of  
4 incorporation changing the corporate name to the “Dr. Miriam and Sheldon G. Adelson  
5 Educational Institute.” From the timing of events, it appears clear that the Academy was waiting  
6 for an opportune moment to jettison its obligations, in the hopes that the Executor of Milton’s  
7 estate would be unwilling to raise a challenge.

8 The Academy took other, more gradual actions in violation of its agreement with the  
9 Decedent. For example, the name of the middle school (grades 5-8) was changed from the “Milton  
10 I. Schwartz Hebrew Academy” to the “Adelson Middle School.” The Executor became aware of  
11 the Academy’s breach on or about March, 2010.

12 The Executor has patiently reviewed this history with the Academy Board of Directors and  
13 has attempted to resolve this dispute without resorting to litigation. The Executor has repeatedly  
14 acknowledged the generosity of Dr. Miriam and Sheldon G. Adelson, raising no objection to the  
15 naming of the high school (grades 9-12) located on the campus after the Adelsons.

16 Along with many others in the community, the Executor is supportive of the Academy’s  
17 purposes and goals. In his capacity as Trustee of the Milton I. Schwartz Revocable Family Trust,  
18 he has the means to satisfy the bequest to the Academy, if appropriate. However, in light of the  
19 Academy’s breach, the Executor has requested written assurances from the Academy that it will  
20 comply with its obligations with respect to the naming of grades K-8 after Milton I. Schwartz.

21 Instead of acknowledging its wrongful conduct and reaffirming its prior assurances, the  
22 Academy’s Petition now seeks to punish the Executor for his painstaking efforts to negotiate an  
23 amicable settlement that protects the intent of the decedent and the rights of the Estate. The Petition  
24 adds insult to injury by willfully ignoring the past and feigning outrage at what it calls the  
25 Executor’s “personal demands.” These so-called “personal demands” are, in fact, nothing more a  
26 request that the Academy honor the terms of its agreement as memorialized in its May 23, 1996  
27  
28



1 letter to Milton.<sup>14</sup>

## 2 FIRST CLAIM FOR RELIEF

### 3 (Construction of Will)

4 The will of Milton Schwartz provides for a bequest of \$500,000 to the "Milton I. Schwartz  
5 Hebrew Academy." However, there is no legal entity currently bearing that name.

6 It is axiomatic that the terms of a will must be construed in accordance with the testator's  
7 intent. *See, e.g., Adkins v. Oppio*, 105 Nev. 34, 36 (1989) ("[I]t is the long accepted position of this  
8 court that the primary aim in construing the terms of a testamentary document must be to give  
9 effect, to the extent consistent with law and policy, to the intentions of the testator"). Based on the  
10 Academy's agreement and representations to Milton at the time of the execution of the will and  
11 until his death, Milton understood and expected that the Hebrew Academy was obligated to bear  
12 his name in perpetuity.<sup>15</sup> This understanding was reflected in Milton's own sworn testimony:  
13 "Affiant donated \$500,000 to the Hebrew Academy in return for which it would guaranty that its  
14 name would change in perpetuity to the Milton I. Schwartz Hebrew Academy."<sup>16</sup>

15 Milton's express intent as reflected in the will, therefore, was not to benefit a charitable  
16 organization generally, but to benefit an entity *bearing his name perpetually*. Had Milton known  
17 that the Academy would remove his name almost immediately following his death, he would not  
18 have made the bequest. This is evident by the fact that he took vigorous action against the Academy  
19 during his lifetime to remedy breaches by the Academy, and he ceased making donations until it  
20 changed its name back to the Milton I. Schwartz Hebrew Academy.  
21

---

22  
23 <sup>14</sup> Note the close correspondence between the supposedly "outrageous" request by the Executor  
24 that all "letter-head, stationery, correspondence, promotional material" and other media associated  
25 with the Schools "shall clearly and prominently identify the 'Milton I. Schwartz Hebrew  
26 Academy'" with the Academy's *express agreement* to "change the Hebrew Academy's formal  
stationary [sic] to include its full name, the 'Milton I. Schwartz Hebrew Academy,' in a form  
consistent with this letterhead and include our full name on future brochures."

27 <sup>15</sup> *See* Ex. 1, Supplemental Affidavit of Milton I. Schwartz at paragraph 4.

28 <sup>16</sup> *Id.*

1 Because there is no existing entity named after Milton I. Schwartz on a perpetual basis, the  
2 Estate seeks a declaration that the \$500,000 bequest lapses and is distributable as part of the residue  
3 of the Estate.

4 **SECOND CLAIM FOR RELIEF**

5 **(Fraud in the Inducement)**

6 Because the Academy removed Milton's name from the corporate documents almost  
7 immediately after his death, it is obvious that the Board of Directors was waiting for the moment  
8 when Milton would be unable personally to defend his legacy. The plan to breach was hidden from  
9 Milton, in hopes that he would continue to provide generous gifts, fundraising, and ultimately a  
10 bequest in his will.

11 After remedying its prior breach in 1996, the Board maintained its assurances to Milton that  
12 the school would perpetually bear his name.<sup>17</sup> Yet the Academy had no intent to honor its  
13 agreement, as evidenced by the prompt change after Milton's death. Milton's donations and the  
14 bequest were thus induced by fraudulent misrepresentations. Had Milton known that the Academy  
15 had no intention of honoring its obligations and representations, he would not have made any gifts  
16 or bequests to the Academy. On the contrary, if he were living today he would likely have sued  
17 for restitution and damages.

18 A gift or bequest that is induced by fraud is void. Restatement (Third) of Property: Wills  
19 and Other Donative Transfers § 8.3(a). Accordingly, the Estate seeks a declaration by this Court  
20 that the bequest to the Academy is void, and that the Estate has no obligation to distribute any  
21 amount to the Petitioner. The Estate further seeks supplemental relief in the form of an award for  
22 damages caused by the Academy's fraudulent inducement of Milton's lifetime and testamentary  
23 gifts.  
24  
25  
26

---

27  
28 <sup>17</sup> See, e.g., Ex. 5, Bylaws (April 13, 1999), Section 1.01 ("The name of the Corporation is the  
Milton I. Schwartz Hebrew Academy and will remain so in perpetuity").

### **THIRD CLAIM FOR RELIEF**

#### **(Bequest Void For Mistake)**

The bequest made by Milton Schwartz to the Academy was based on, and motivated by, Milton's understanding and belief that the Academy had agreed to bear his name in perpetuity and would fulfil its promises as memorialized in its May 23, 1996 letter.<sup>18</sup> Contrary to the evidence, the Academy now appears to deny that it ever made these promises or representations. However, regardless of such denials, it is clear that Milton would not have made the bequest but for his belief that such an agreement existed.

The general law of mistake is applicable to both wills and other donative documents of transfer.<sup>19</sup> Milton's bequest to the Academy was induced by his belief that the Academy was bound to be named after him in perpetuity. Accordingly, the Estate seeks a declaration that the \$500,000 bequest is void by reason of mistake.

### **FOURTH CLAIM FOR RELIEF**

#### **(Offset of Bequest Under Will)**

Even if the bequest to the Academy is valid, the Estate has no obligation to distribute any amount to the Academy. Because the Academy has breached the obligations and promises that induced Milton's lifetime and testamentary gifts, the Academy is liable to the Estate for rescission of these gifts, plus damages.<sup>20</sup> The Estate believes the amount thus owed from the Academy exceeds \$1,000,000.<sup>21</sup>

The Estate seeks a declaration from the Court that the Estate has the right to offset the \$500,000 bequest to the Academy in the amount of the damages due from the Academy. *See, e.g.,*

---

<sup>18</sup> *See*, Ex. 1, Supplemental Affidavit of Milton I. Schwartz at ¶ 4.

<sup>19</sup> Restatement (Second) of Property, Donative Transfers §34.7, Comment d.

<sup>20</sup> Restatement (Third) of Restitution And Unjust Enrichment, §11(2) ("A donor whose gift is induced by invalidating mistake has a claim in restitution as necessary to prevent the unintended enrichment of the recipient.")

<sup>21</sup> *See* Ex. 9, Spreadsheet of Contributions.

1 *Matter of Estate of Morrell*, 428 S.E.2d 697, 699 (N.C. Ct. App. 1993) (“[T]he right and duty of  
 2 an executor to deduct from a legacy the amount of any indebtedness of the legatee to the estate of  
 3 his testator, is well settled, and is in full accord with elementary principles of justice”).

#### 4 **FIFTH CLAIM FOR RELIEF**

##### 5 **(Breach of Contract)**

6 The gifts and bequests made by Milton Schwartz were conditioned on the Academy bearing  
 7 his name perpetually and fulfilling its promises as memorialized in its May 23, 1996 letter. The  
 8 Academy has failed to comply with the agreement and conditions on which these gifts and bequests  
 9 were based. Members of the Board of Directors have acknowledged the conditional nature of these  
 10 gifts, as reflected by board member Tamar Lubin’s offer in 1992 to return Milton’s \$500,000  
 11 donation made in 1989.<sup>22</sup>

12 The Estate seeks a declaration that the Academy has breached its agreement and promises,  
 13 and as a direct result of the Academy’s breach, the Estate is not required to distribute the bequest  
 14 to the Academy. Further, as to the inter vivos gifts made by Milton, the Estate has suffered  
 15 damages in excess of \$1,000,000.<sup>23</sup> The Estate further seeks supplemental relief in the form of an  
 16 award for such damages.

#### 17 **SIXTH CLAIM FOR RELIEF**

##### 18 **(Revocation of Gift and Constructive Trust)**

19 The gifts and bequests made by Milton Schwartz were conditioned on the Academy bearing  
 20 his name perpetually and fulfilling its promises as memorialized in its May 23, 1996 letter. The  
 21 Academy has failed to comply with the conditions on which these gifts and bequests were based.  
 22 Members of the Board of Directors have acknowledged the conditional nature of these gifts, as  
 23 reflected by board member Tamar Lubin’s offer in 1992 to return Milton’s \$500,000 donation  
 24

---

27 <sup>22</sup> See Ex. 8, Affidavit of Michael Novick, Feb. 19, 1993 at ¶11-12.

28 <sup>23</sup> See Ex. 9, Spreadsheet of Contributions.

1 made in 1989.<sup>24</sup>

2 Milton understood and believed that the Academy had agreed to bear his name in  
3 perpetuity.<sup>25</sup> Even if the Academy denies that it made such promises or contends that such  
4 promises are not enforceable, the Estate is still entitled to recover all funds Milton contributed in  
5 reliance on his belief that an agreement existed. *See Earl v. Saks & Co.*, 226 P.2d 340, 344-45  
6 (Cal. 1951) ("A gift can be rescinded if it was induced by fraud or material misrepresentation  
7 (whether of the donee or a third person) or by mistake as to a basic fact. A failure by the donee to  
8 reveal material facts when he knows that the donor is mistaken as to them is fraudulent  
9 nondisclosure. A mistake which entails the substantial frustration of the donor's purpose entitles  
10 him to restitution." (Citations omitted); *see also* Restatement (First) of Restitution §15, Comment  
11 e ("[W]here one makes a payment to another in the mistaken belief that the other has promised to  
12 assume a duty in return for or with reference to the payment ... the payor is entitled to a return of  
13 his money upon disclaimer or refusal of the other to perform").

14 Accordingly, the Estate seeks a declaration that it is entitled to a revocation of the bequest  
15 and all gifts made during Milton's lifetime. Further, the Estate seeks supplemental relief in the  
16 form of a ruling that the Adelson School holds such funds in constructive trust in favor of the  
17 Estate.

18 **WHEREFORE**, the Executor requests that the Court enter an Order granting the relief set  
19 forth in the instant Petition and specifically grant the following relief:

- 20 1. That this matter be set over and scheduled for a jury trial;
- 21 2. That this Court declare that the bequest to the Milton I. Schwartz Hebrew Academy  
22 is void;
- 23 3. That this Court declare that the Executor of the Estate of Milton I. Schwartz was and  
24 is authorized to abstain from distributing the bequest to the Milton I. Schwartz Academy on  
25

---

27 <sup>24</sup> *See* Ex. 8, Affidavit of Michael Novick, Feb. 19, 1993 at ¶11-12.

28 <sup>25</sup> *See*, Ex. 1, Supplemental Affidavit of Milton I. Schwartz at ¶ 4.

1 account of the Academy's breach of agreement and/or promise made by and between the Academy  
2 and Decedent;

3 4. That this Court declare that the Executor of the Estate of Milton I. Schwartz is  
4 directed to abstain from distributing the bequest to the Milton I. Schwartz Hebrew Academy on  
5 account of the Academy's breach of agreement and/or promise made by and between the Academy  
6 and Decedent;

7 5. That this Court declare that the Academy fraudulently induced Decedent to leave  
8 a bequest to the Milton I. Schwartz Hebrew Academy;

9 6. That this Court declare that the Academy fraudulently induced Decedent to make  
10 lifetime gifts to the Milton I. Schwartz Hebrew Academy;

11 7. That the Executor of the Estate of Milton I. Schwartz is authorized and directed to  
12 offset the bequest to the Milton I. Schwartz Hebrew Academy against the lifetime gifts Decedent  
13 made the Decedent and that were fraudulently induced by the Academy;

14 8. That the Estate of Milton I. Schwartz is entitled to a revocation of the bequest to the  
15 Milton I. Schwartz Hebrew Academy and all gifts made to the Academy by Milton during his  
16 lifetime;

17 9. That the Estate of Milton I. Schwartz be granted supplemental relief in the form of  
18 a constructive trust over funds in the hands of the Adelson School which were contributed to the  
19 by Milton during his lifetime, to preserve them until the outcome of this action is finally  
20 determined;

21 10. That the Estate of Milton I. Schwartz be granted supplemental relief in the form of  
22 an award of damages against the Academy caused by the Academy's breach of contract and  
23 fraudulent inducement of lifetime gifts and testamentary bequest from Decedent;

24 11. That the Estate of Milton I. Schwartz be granted supplemental relief in the form of  
25 an award of punitive damages against the Academy caused by the Academy's fraudulent  
26 inducement of lifetime gifts and testamentary bequest from Decedent;

27 12. That the Estate of Milton I. Schwartz be granted fees and costs as the Court deems  
28

1 equitable and just; and

2 13. That the Court grant such other and further relief as it deems just and appropriate.

3 **DATED** this \_\_\_\_ day of May, 2013.

4 SOLOMON DWIGGINS & FREER

5

6

By: 

7

MARK A. SOLOMON, ESQ.

Nevada State Bar No. 00418

8

ALAN D. FREER, ESQ.

Nevada State Bar No. 7706

9

STEVEN E. HOLLINGWORTH, ESQ.

Nevada State Bar No. 7753

10

SOLOMON DWIGGINS & FREER

9060 West Cheyenne Avenue

11

Las Vegas, Nevada 89129

12

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

13

*Attorneys for Respondent*

14

15

16

17

18

19

20

21

22

23

24

25


26

27

28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

That he is the Petitioner who makes the foregoing **PETITION FOR DECLARATORY RELIEF** (“Petition”), 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 them to be true.

  
A. Jonathan Schwartz, Petitioner



# EXHIBIT “1”

SUPPLEMENTAL AFFIDAVIT OF MILTON I. SCHWARTZ

STATE OF NEVADA            )  
                                  ) SS.:  
COUNTY OF CLARK         )

MILTON I. SCHWARTZ, being first duly sworn, upon oath, deposes and says:

1. This Affidavit is made of my own personal knowledge except where stated on information and belief, and as to those matters, I believe them to be true, and if called as a witness, I would confidently testify thereto.

2. That Affiant hereby affirms under penalty of perjury that the assertions of this Affidavit are true.

3. This Affidavit is submitted in support of Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Declaratory Judgment and Injunctive Relief; Plaintiff's Opposition to Defendant's Countermotion for Sanctions; Plaintiff's Opposition to Defendant's Countermotion to Dismiss or, in the Alternative, for a More Definite Statement; and Plaintiff's Countermotion to Strike Defendant's Opposition.

4. That on or about August of 1989, Affiant donated \$500,000 to the Hebrew Academy in return for which it would guarantee that its name would change in perpetuity to the MILTON I. SCHWARTZ HEBREW ACADEMY. Affiant was first elected Chairman of the Board of Directors in the August 1989 Board of Directors meeting. Affiant was reelected Chairman of the Board of the Milton I. Schwartz Hebrew Academy in June of 1991.

5. That Affiant has been instrumental in bringing large sums of money into the MILTON I SCHWARTZ HEBREW ACADEMY from personal

1 donations and donations of friends and business acquaintances of  
2 Affiant. That as a result of the actions of Tamar Lubin, and the  
3 Defendants, many of the people that donated money will no longer donate  
4 money to the MILTON I. SCHWARTZ HEBREW ACADEMY. As a result, the MILTON  
5 I. SCHWARTZ HEBREW ACADEMY will suffer severe financial problems.

6           6. That as a result of the actions of the Defendant, the  
7 MILTON I. SCHWARTZ HEBREW ACADEMY has suffered and will continue to  
8 suffer irreparable harm. That as a result of the actions of the  
9 Defendant and in particular of Tamar Lubin, there has been a high  
10 turnover of school teachers at the Hebrew Academy. This caused the loss  
11 of highly qualified teachers that had the respect of the parents and  
12 children and has caused and will continue to cause irreparable damage to  
13 the MILTON I. SCHWARTZ HEBREW ACADEMY. In addition, Tamar Lubin has  
14 repeatedly lied to the Board of Directors. She informed the Board of  
15 Directors in May of 1992 that all teachers would be returning in  
16 September to the Academy and she had informed the Board of Directors  
17 that the teachers would receive their contracts. However, neither of  
18 these statements were true at the time she made them. At least two  
19 teachers were terminated immediately subsequent to her reassuring the  
20 Board of Directors that all teachers would return in September of 1992.

21           7. It was the intention of some of the Directors, including  
22 Affiant, to not renew Tamar Lubin's contract that is up for renewal on  
23 June 3, 1993. This decision was the result of numerous complaints that  
24 were received by the Directors concerning the actions of Tamar Lubin.  
25 One graphic example is that one student became nervous and upset and  
26 vomited. Tamar Lubin required that student to sit in his vomit and not  
27 move. This type of abuse should not occur today. A letter concerning  
28 that incident was given to Affiant and is attached as Exhibit "10" to

1 this Motion. In addition, other letters and complaints concerning Ms.  
2 Tamar Lubin are attached to this Motion as Exhibit "11" and were the  
3 basis of the Board's concerns with renewing the contract.

4 8. That Affiant believes that the Defendant is in the  
5 process of negotiating a long term contract with Tamar Lubin to be the  
6 Administrator of the MILTON I. SCHWARTZ HEBREW ACADEMY and that this  
7 action will cause irreparable harm to the MILTON I. SCHWARTZ HEBREW  
8 ACADEMY.

9 9. That Defendant's rely on the fact that there had been  
10 approximately ten more students enrolled in the Academy to demonstrate  
11 that they have not harmed the Academy. However, three (3) of the  
12 private schools in the Las Vegas area that compete with the Academy,  
13 Temple Beth Sholom, Las Vegas Day School and the Meadows are operating  
14 at near capacity and have a waiting list to get in and the Hebrew  
15 Academy is only operating at approximately 40% of its capacity. That as  
16 a result of the actions of Tamar Lubin, many parents have removed their  
17 children from the MILTON I. SCHWARTZ HEBREW ACADEMY to enroll them in  
18 either the Meadows, Temple Beth Sholom, the Las Vegas Day School, or to  
19 place them in public school. As a result, the MILTON I. SCHWARTZ HEBREW  
20 ACADEMY is suffering irreparable harm as long as Tamar Lubin remains  
21 employed. Attached to this Motion as Exhibit "\_" are true and correct  
22 copies of petitions from parents that have either removed their children  
23 or are considering removing their children from the MILTON I. SCHWARTZ  
24 HEBREW ACADEMY as a result of the actions of Tamar Lubin. Two of the  
25 former directors of the Hebrew Academy, Sam Ventura and Dr. Neville  
26 Pokroy, have informed Affiant that at least fifty (50) students that  
27 were removed from the school are waiting to return to the MILTON I.  
28 SCHWARTZ HEBREW ACADEMY as soon as Tamar Lubin leaves.

1           10. That the minutes of the May 21st meeting, that are  
2 attached as Exhibit "B" to the Defendant's Opposition To Plaintiff's  
3 Motion For Declaratory Judgment And Injunctive Relief And Countermotion  
4 For Sanctions; Countermotion To Dismiss Or, In The Alternative, For A  
5 More Definite Statement are not a true and correct copy of the minutes  
6 of the meeting that occurred on May 21, 1992.

7           11. That at the May 21, 1992 meeting of the Board of  
8 Directors, it was determined that a conflict existed between the Bylaws  
9 which mandated the time required for the nominating committee to give  
10 its report and the time that elections could occur after that report was  
11 given. That as a result, it was resolved at the May 21st meeting that  
12 the only way elections could occur in the June meetings was that new  
13 Bylaws would be approved at the beginning of the June meeting and a  
14 provision in the new Bylaws would delete the time period which must  
15 occur between the report of the nominating committee and the election.  
16 Once the new Bylaws were approved, the elections could be held during  
17 the June meetings. Otherwise, elections could not be held until the  
18 July meeting.

19           12. That on or about June 10, 1992, Affiant was notified by  
20 Dr. Edward Goldman that the nominating committee had decided that due to  
21 the conflict in the Bylaws and the discussion that occurred at the May  
22 21, 1992 Board meeting, that the elections should be put off until the  
23 July Board meeting. That as a result of this conversation, Affiant  
24 drafted the letter dated June 11, 1992. Affiant sent that letter to  
25 each of the board members of the MILTON I. SCHWARTZ HEBREW ACADEMY  
26 indicating to them that the elections would not occur at the June  
27 meeting.

28           13. That during the June 18, 1992 meeting of the Board of

1 Directors, the Directors did not vote on the Bylaws. That at the June  
2 meeting, Affiant strenuously objected to the fact that elections were  
3 going on.

4 14. That Affiant was specifically requested by Lenard  
5 Schwartz, a member of the Defendant, the Second Board of Directors, to  
6 not file this suit until after the fundraisers and Jewish holidays  
7 occurred. In addition, Affiant attempted to arrange a meeting with  
8 members of the Defendant, the Second Board of Directors, to resolve this  
9 dispute. However, the meeting never took place because Tamar Lubin was  
10 acting in bad faith and refused to allow the meeting to occur.

11 15. That on May 21, 1992, the Board of Directors of the  
12 MILTON I. SCHWARTZ HEBREW ACADEMY consisted of Milton I. Schwartz,  
13 Michael Novick, Dan Goldfarb, Cynthia Michaels, Frederick Berkley, Dr.  
14 Edward Goldman, Scott Higginson, Dr. Tamar Lubin, Lenard Schwartz,  
15 Robert Rikita, Ira Sternberg, Geri Rentchler, Don Schlesinger, and Dr.  
16 Richard Ellis. In addition, that Roberta Sabbath and Dr. Neville Pokroy  
17 were Honorary Members of the Board of Directors. Honorary Members can  
18 advise the Board of Directors but they cannot vote.


19 16. That on July 16, 1992, Affiant called a meeting of the  
20 Board of Directors at Affiant's home because Affiant was not allowed on  
21 the premises of the MILTON I. SCHWARTZ HEBREW ACADEMY. That at that  
22 meeting the Board of Directors first voted for new Bylaws which removed  
23 the requirement that the Board wait thirty (30) days after receiving the  
24 Nominating Committee's report to hold an election.

25 17. That as of November 5, 1992, the Plaintiff's Board of  
26 Directors consisted of: Milton I. Schwartz, Mike Novick, Abigail  
27 Richlin, Frederick Berkley, Dr. Edward Goldman, Phyllis Darling, Sam  
28 Ventura, Dr. Alvin Blumberg, Roger Soime, Wendy Roselinsky, Ira

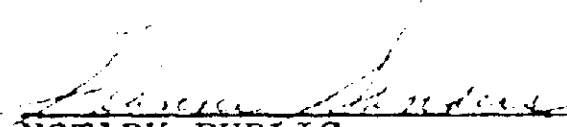
1 Sternberg, Bob Rakita, Dr. Richard Ellis, Scott Higginson and Dr. Tamar  
 2 Lubin. However, Ira Sternberg, Bob Rakita, Dr. Richard Ellis, Scott  
 3 Higginson and Dr. Tamar Lubin have not acknowledged the past three (3)  
 4 Board notices Affiant sent out, nor did they attend the July, August or  
 5 November Board meetings, nor did they return telephone calls.

6 18. That Affiant was informed by Dr. Edward Goldman, the  
 7 Assistant Superintendent, Administrative Operations and Staff Relations  
 8 of the Clark County School District, and a member of the Board of  
 9 Directors, that there is an inadequate degree of critical skills  
 10 teaching in the upper classes. In addition, Affiant was told that if  
 11 this is not corrected the education of the students who attend the  
 12 MILTON I. SCHWARTZ HEBREW ACADEMY will suffer irreparable harm.

13 FURTHER AFFIANT SAYETH NAUGHT.

14   
 15 MILTON I. SCHWARTZ

16 SUBSCRIBED AND SWORN to before  
 17 me this 12 day of February, 1993

18   
 19 NOTARY PUBLIC



22 DIANNE SANDERS  
 23 My exp. date, Nov. 21, 1993